HOUSE OF REPRESENTATIVES—*Wednesday, January 22, 1986*

The House met at 3 p.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Grant to all who labor in this place, O God, the fullness of Your grace. Give to each person wisdom needed for judgment, courage needed for action, understanding needed for unity, and the dedication and commitment needed for justice. Bless us this day and every day. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

SECRETARY OF AGRICULTURE URGED TO IMPLEMENT INCOME PROTECTION PROVISIONS OF FARM BILL

(Mr. McCLOSKEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCLOSKEY. Mr. Speaker, early next month notices may go out to 2,200 farmers in the State of Indiana giving them one last chance to rearrange loan repayment schedules to avoid foreclosures or other adverse legal actions. Many will go to Eighth District family farmers. However, the tragedy of farm foreclosure will not be confined to one farmer or one farm family. If this Nation foresakes its farmers we abandon entire communities and our future. I have urged the Secretary of Agriculture to implement fully the income protection provisions of the farm bill approved last year. We eagerly await his reply. Unfortunately, his initial decisions have been to implement the lowest possible loan rates for feed grains. This makes it especially important for him to announce implementation as soon as possible of the advanced deficiency payment program provided in the farm bill for producers for the 1986 crop year. Many farmers simply cannot make it without showing creditors additional cash flow. And they will not make it in the long term unless we can help reduce operating loan interest rates. If the banks of this country can loan other countries money at interest rates of less than 10 percent, surely we can treat our farmers no worse. Mr. Speaker, if we make progress toward a balanced Federal budget, interest rates can be lowered further and the value of the dollar can decline to the point where U.S. commodity exports regain a measure of competitiveness. But time is a commodity that many farmers have run out of. Only through full implementation of the income protection provisions of the 1985 farm bill can we provide our farmers with the time they need to recover.

WHISTLEBLOWER PROTECTION ACT OF 1986

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, American taxpayers want Government whistleblowers protected. They want the plug pulled on cost overruns in defense contracts; they want to put a stop to misspent tax dollars. Whistleblowing conjures up images of heroes and villains, of Davids and Goliaths, of lonely but loyal civil servants acting at personal risk to protect the taxpayer.

Congress voted in 1978 to protect whistleblowers. We established the Office of Special Counsel to receive their allegations and to protect their rights.

These efforts have failed. Whistleblowers are today no better protected than they were before the passage of the Civil Service Reform Act of 1978.

We still speak to the glory of whistleblowers, we hail them as the salvation of our budget traumas, and we promise them their place in Heaven. But in fact, we have let them be eaten alive.

Last spring, the House Subcommittee on Civil Service held a series of hearings on the Office of Special Counsel and its protection of whistleblowers. All witnesses agreed: there is no protection for whistleblowers. The litany of troubles that befall those who dare—as Ernie Fitzgerald says—to commit the truth is appalling.

So, despite our best intentions, Federal employees risk it all when they choose to expose the truth.

In its study of the Office of Special Counsel [OSC], the General Accounting Office [GAO] determined that only 8 percent of allegations made to the OSC survive the initial screening process to receive an indepth investigation, and only a tiny fraction of these cases have been actively pursued. The special counsel closes more than 99 percent of whistleblower cases without initiating disciplinary or corrective action.

As a result, Federal workers are increasingly unwilling to report wrongdoing. They are fearful that they will be subject to reprisal, and all too often they are right. A Merit System Protection Board study in 1983 found a sharp increase from 1980 in the number of Federal employees who said that reporting official wrongdoing posed too great a personal risk.

Today, I, along with a bipartisan group of Senators and Representatives, am introducing the Whistleblower Protection Act of 1986. This legislation reaffirms congressional support for whistleblowers and provides increased protection for the rights of Federal employees who disclose Government waste, fraud, and mismanagement.

The bill emphasizes that the primary duty of the special counsel is to represent employees who claim to be victims of prohibited personnel practices.

It provides Federal employees with a private right of action, allowing an individual to bypass the special counsel and seek stays or corrective action from the Merit Systems Protection Board [MSPB] and, if necessary, from court. In addition, the bill broadens the power of the MSPB to sanction Presidential appointees, military officers, and contractor officials for committing prohibited personnel practices, including taking reprisals against whistleblowers.

These changes should provide increased protections to Federal employees and should encourage other witnesses of wrongdoing to step forward. It is legislation that is made all the more pressing by the intolerably large Federal deficit. Federal whistleblowers can help us reach the deficit reduction goals of Gramm-Rudman, if only we let them.

CRAZY?

(Mr. MICHEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MICHEL. Mr. Speaker, I understand the Speaker referred to President Reagan's budget as—and I quote—"crazy, nonsensical."

He also said: "The time for taking the hard knocks has come for Mr. Reagan."

The Washington Post said the strategy of the Democratic leadership is—and I again quote—"to exploit the President's call for massive domestic

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spending cuts for maximum political advantage."

Yes, the President's budget is fair game for disagreement—from either side of the aisle.

But when criticism is clearly motivated by a desire to gain partisan political advantage, then we're wasting our time and the exercise is a hoax.

I've called for the creation of a Joint Budget Committee because we need to work together—House and Senate, Democrat and Republican.

The only thing crazy and nonsensical at this point would be to turn this issue into a bitter, partisan affair.

Instead of playing the role of the spoiler, it would better serve the Democratic leadership and the country, if they joined with us to work together for the people instead of trying to "exploit" anyone or anything.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 2443, EXPEDITED FUNDS AVAILABILITY ACT

Mr. PEPPER, from the Committee on Rules, submitted a privileged report (Rept. No. 99-463) on the resolution (H. Res. 357) providing for the consideration of the bill (H.R. 2443) to limit the number of days a depository institution may restrict the availability of funds which are deposited in any account, which was referred to the House Calendar and ordered to be printed.

RULE PROVIDING FOR THE CONSIDERATION OF H.R. 2443

(Mr. PEPPER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PEPPER. Mr. Speaker, the privileged report I just sent to the desk concerned a rule providing for the consideration of H.R. 2443, the Expedited Funds Availability Act. The House will consider the rule tomorrow.

I want to bring to the attention of my colleagues one element of the rule. The rule makes in order only those amendments printed in the CONGRESSIONAL RECORD at least 1 legislative day before H.R. 2443 is considered. Since H.R. 2443 is scheduled for consideration tomorrow, Members are advised to print their amendments in today's CONGRESSIONAL RECORD.

In a moment, I will ask unanimous consent that Members may have until 6 o'clock tonight to submit amendments to be printed in today's RECORD.

PERMISSION FOR MEMBERS TO SUBMIT AMENDMENTS TO H.R. 2443 TO BE PRINTED IN TODAY'S RECORD

Mr. PEPPER. Mr. Speaker, I ask unanimous consent that Members may have until 6 o'clock tonight to submit amendments to H.R. 2443 to be printed in today's CONGRESSIONAL RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

Mr. WALKER. Mr. Speaker, reserving the right to object, I want to ask a question here about that particular procedure, because it strikes me that Members are being given very, very insufficient notice in this case. With the rule being filed just now, we are being told that amendments have to be in the RECORD by the end of today for a bill to come up tomorrow. I would hope that under this procedure that we are not setting a precedent that that is how we are going to bring such rules to the floor in the future, because Members do need sufficient time in order to prepare amendments. This is certainly not giving anybody close to sufficient time to deal with the crucial issues such as the one which we are going to be taking up tomorow.

Can I receive some assurance from the gentleman that we are not going to use this as a precedent of what we are going to do in the future?

I will be glad to yield to the gentleman.

Mr. PEPPER. Mr. Speaker, in reply to my friend, I can assure him, without any question, that that is the policy of the Rules Committee, to be very sparing with a holding of this kind; that is, requiring the amendments to be printed in the RECORD. There is always a reason, in the opinion of the committee, where we do it; and we do it reluctantly and infrequently.

Mr. WALKER. Mr. Speaker, further reserving the right to object, I understand, then, that the chairman is telling me that the policy of the Rules Committee will be to assure that there is sufficient time and that we will not have other rules coming out here on a frequent basis in which the Members are being told to file amendments basically on the same day that the rule is being presented.

Mr. PEPPER. I thank the gentleman.

Mr. WALKER. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

THE ELECTION IN THE PHILIPPINES

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, from every conceivable report, it appears that the election in the Philippines will not be fair.

The last report from the Marcos-controlled election commission contains an edict that says that no foreign observers will be allowed near the polls.

Why should the United States care? A question was asked: Is it any of our business? The answer is "Yes." The United States has substantial strategic interests in the Philippines. The United States cares about free elections and respect for human rights. The U.S. taxpayer has poured billions of dollars into the Philippines.

Mr. Speaker, if there is going to be genuine reform in the Philippines, there must be military reform, there must be an end to the corruption of the Marcos regime.

Mr. Speaker, as a Member of this body, I support the efforts of Mr. SOLARZ, the chairman of the House Asian and Pacific Affairs Subcommittee, who is probing into allegations of corruption in the Marcos family and who is trying to ensure that efforts are made for the elections to be fair.

Mr. Speaker, if the election is judged to be unfair by the nonobservers that will not be there, this country and this body should still evaluate our policy toward the Marcos regime.

Billions of dollars go there, and it is incumbent upon us to assess whether it is in our interest to support a dictator who appears headed into the path of oblivion and nonsupport and many other things that are not in the best interest of the United States.

EXPEDITED FUNDS AVAILABILITY ACT

(Mr. VENTO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VENTO. Mr. Speaker, this week the House will consider an important consumer measure, the funds availability proposed law. This is one of the most important proconsumer measures before Congress and affects all the people we represent.

When you deposit a check in a financial institution, you have a right to expect that it is credited to your account promptly. To the dismay of consumers today, they are discovering often to their embarrassment, that financial institutions have established arbitrary and unreasonable time delays before crediting consumers' checking accounts.

Holding check credit has become a lucrative practice for banks that earn millions of dollars in interest on the money. But for consumers, checks holds can mean not just embarrassment but hardship. Some financial institutions are even holding veterans and Social Security checks for inordinate time periods. Most veterans and Social Security recipients receive small

enough benefits, without making retired workers wait days to pay their bills and purchase their groceries.

The funds availability rapid check credit measure responds to the problems mentioned and is a clear victory for consumers. It sets precise and reasonable time limits on how long a financial institution can hold a check. I am pleased to be a sponsor of this measure, and I urge my colleagues to support a good strong rapid check credit bill. It is needed and it is right.

WILL CONGRESS TOTALLY ABDICATE?

(Mr. SEIBERLING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SEIBERLING. Mr. Speaker, Members are still reeling from the revelations as to what they are going to have to go through with the Gramm-Rudman law particularly the cuts in important programs for our cities, for people in need, and for the environment. Nevertheless, today's New York Times says President Reagan will seek $100 million in aid for the Contras who are seeking the overthrow of the Nicaraguan Government.

As if that were not chutzpah enough, an article last week in the Washington Times says: "Reagan to ask Hill for broad war powers." And I am now quoting:

> President Reagan will ask Congress for a resolution, similar to that passed in 1964 following the Gulf of Tonkin incident, to empower the executive branch to use "whatever military force is required" to deal swiftly and effectively with the terrorist threat, a senior administration official said.

I suppose the theory is that Congress, having abdicated its fiscal powers, might now be prepared to abdicate its war powers. If so, then we might as well go home, just turn everything over to the geniuses of the Pentagon and the OMB, and declare that we are no longer a democratic Republic but a nation ruled by one man and his hand-picked bureaucrats.

□ 1515

WE OUGHT TO BE WORKING TOGETHER IN A BIPARTISAN SPIRIT TO DO WHAT THE AMERICAN PEOPLE WANT: BALANCE THE BUDGET

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, every bit of data that we have makes clear that the American people want the budget balanced. Many would have you believe that there is no difference between the two great political parties on this issue. Oh, really? Let us look at the record.

When the law was passed requiring a balanced budget, a majority of Democrats, mostly liberals, voted against the balanced budget law. A majority of Republicans voted for it. The first call in this House to repeal the balanced budget law came from a Democrat. When the court suit was filed trying to gut the balanced budget law, it was filed by mostly Democrats. It is the Democrats in this House who are suggesting stonewalling the budget process in order to undermine the balanced budget law. It sounds like some pretty wide differences between the two parties on this crucial issue, and my guess is that as the year unfolds, the differences will become even wider.

We ought to be working together in a bipartisan spirit to do what the American people want: Balance the budget. But that is not what is shaping up in this House.

OUR HUGE DEFICIT REQUIRES CUTS IN SPENDING AND INCREASES IN TAXES

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, during the last Presidential election, Walter Mondale said, "I will have to raise taxes and I am telling you the truth." Reagan will too, only he will not tell you.

Although the President still declares that there will be no taxes, even he now recognizes that this huge deficit will require both cuts in spending and increases in revenue that should be fair and should target those who pay little or no taxes.

Gramm-Rudman, our current plan, is flawed from a constitutional, an economic standpoint, and a human standpoint. If we allow it to continue, depressed areas like mine will literally collapse. We have suffered from this administration while they continue to boast of a growing economy. An economy that I term now "supply-side suffer." It is time for Congress, mandated by constitutional law, to make the tough decisions that we were elected to make, to take that bold action. We cannot avoid our responsibility any longer; we must raise revenue and we must cut spending.

Finally, I remember in an election 6 years ago where one candidate called the other as having policies of voodoo economics. If we fail now to do what is mandated by the Constitution, we will put another $500 billion of debt on the backs of the people of this country.

WAS IT THE CONGRESS' FAULT? ABSOLUTELY YES

(Mr. MACK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MACK. Mr. Speaker, to speak about flaws, I think the question that is going through many Members' minds today or yesterday is how did we get from the $171.9 billion deficit that we claimed was going to occur as a result of the budget resolution that was passed just last August? $171.9 billion, and the projection today is $220 billion. How did we get there? Was it the President's fault? I do not think so. Was it the Congress' fault? Absolutely yes.

When you look at what occurred, there is an increase in the size of that deficit of roughly $45 to $49 billion. Where did it come from? Yes. Part of it came from the fact that we grew at a level slightly lower than what we had projected in the budget resolution; about $13 billion.

But the balance of it, $32.7 billion, came because the Congress failed to carry out its own budget resolution. Flaws? You better believe there are flaws. Flaws in our ability to live with the practices that we have established in saying that we are going to live with our own budget resolutions.

I mentioned lower economic growth, but how about failure to enact the revenue increases called for in the budget resolution itself? How about the allocation of $6.3 billion in unobligated funds for pay raises for the military? Failure to enact military retirement reform called for in the budget resolution of $2.8 billion. Faster payout in the defense budget. Enacting the farm legislation which actually increases outlays in 1986 of $4 to $5 billion over the budget resolution. Lower prices required higher payouts under the bill.

The end result is that we failed to pass a reconciliation bill; about another $8 billion. The point that I am making is that Congress failed to carry out its responsibility last year, and if there is one major argument that says that the Gramm-Rudman bill should have been passed, it is this data that I have now placed into the RECORD.

FIRST-TIME ECONOMIC AID TO NORTHERN IRELAND

(Mr. BIAGGI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BIAGGI. Mr. Speaker, according to press accounts, Congress may have a unique St. Patrick's Day initiative before it very soon. Specifically, a supplemental appropriations of $40 million to provide first time United States aid to Northern Ireland.

As the author of the only pending bill to provide such aid, I have a considerable interest in this new proposal. It seems to be motivated by optimism based on the new Anglo-Irish agree-

ment on Northern Ireland. However we must be extremely careful in how we draft any bill which provides aid.

I support economic aid controlled and distributed only by the United States.

I support economic aid provided in accordance with our Foreign Assistance Act, especially with regard to human rights protections.

I support aid that is not used for military or security purposes; and

I support only that aid which goes to benefit both communities in Northern Ireland. Otherwise, we are simply voting to underwrite continued discrimination in Ulster.

I urge that immediate hearings be held on economic aid to Northern Ireland. I know there is a desperate need for the aid. However, I also know that unless we insist on certain conditions and protections, our aid may only add fuel to certain problems in the north instead of being the catalyst for their solution.

A COMPLETE ECONOMIC EMBARGO OF LIBYA

(Mr. DREIER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DREIER of California. Mr. Speaker, I rise to introduce a resolution in support of the President's decision to impose a complete economic embargo on Libya. I believe this embargo is necessary to eliminate one of international terrorism's main bases of operation. At the same time I also feel these economic steps should be considered Mr. Qadhafi's last chance. We can ignore the colonel's childish statements in defiance of the international community, but we cannot tolerate his persistence in sponsoring international terrorism and its acts of aggression. In this vein, this resolution also supports the President's pledge to take "further steps," if necessary, to fulfill his promise that terrorists "can run but they can't hide."

THE TRAGEDY OF BACK-ALLEY ABORTIONS

(Mr. WEISS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEISS. Mr. Speaker, 13 years ago today, the right of women to choose abortion in appropriate circumstances was affirmed by the highest court in the land.

Abortion is legal, and the overwhelming majority of Americans want to keep it that way.

Nevertheless, a vocal minority continues to threaten this fundamental right with a constant barrage of attacks on abortion rights. We must remain ever vigilant against these misguided efforts

As a young prosecutor in New York City charged with investigating and prosecuting illegal abortionists, I witnessed firsthand the tragedy of back alley abortions. No one should want to force anyone's loved ones back to the hands of the kind of butchers who performed abortions in those days before Roe versus Wade.

Millions of women risked permanent disability as a consequence of procedures used in the home or in the underground network of back alley abortionists.

Hundreds of women died annually as a result of botched abortions.

On this day of remembrance, we must recommit ourselves to maintaining the right to choose. We must support the Supreme Court's refusal to weaken Roe versus Wade. And we must restore full abortion rights to those who suffer unfairly under legislated restrictions. Making abortions illegal didn't prevent abortion. It just made them dangerous and often lethal.

A woman's right to choose a safe and legal abortion must remain as sacred as any right American citizens enjoy.

MOST RECENT REPORT OF THE PHYSICIANS TASK FORCE ON HUNGER

(Mr. FORD of Tennessee asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FORD of Tennessee. Mr. Speaker I want to bring to the attention of my colleagues an alarming study released by the Physicians Task Force on Hunger in America.

The study reveals that the hunger crisis in this country is becoming worse and that the safety net we have promised the needy is coming unraveled. The study shows that about 20 million Americans regularly go hungry. It identifies 150 "hunger counties" in which more than 20 percent of the population is poor, but where food stamps reach only 33 percent of the eligible population.

An earlier study of the task force cited low AFDC benefits and inadequate unemployment benefits as major reasons for the increase in hunger. Combined with the failure of the Food Stamp Program to reach the poor, the failure of AFDC and the unemployment insurance programs is helping to create a population suffering from chronic hunger.

As chairman of the Subcommittee of Public Assistance and Unemployment Compensation, I intend to carefully investigate the reasons for this increase in hunger. I hope that in this year's budget debate we will not lose sight of the issues of poverty and hunger. While Gramm-Rudman may be the major topic of conversation in Washington, in too many communities the issue of the day is the same as it was yesterday, and the same issue that it will be tomorrow, the issue of survival.

□ 1525

"SICKER AND QUICKER" UNDER THE NEW MEDICARE PROSPECTIVE PAYMENT SYSTEM

(Mr. MANTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MANTON. Mr. Speaker, on January 7, President Reagan gave his maiden news conference for 1986. The first question the President was asked concerned the Medicare prospective payment system. I was delighted to hear the President say that his administration was looking into some of the problems with the payment system and working on solutions.

Both the Senate and House Select Committees on Aging have been examining the problem of Medicare beneficiaries being discharged from hospitals "sicker and quicker" under the new prospective payment system. Under the prospective payment system, Medicare pays the hospitals a fixed rate for each diagnosis. The fee does not vary with the length of stay and hospitals seem to have an incentive to discharge patients quickly.

One of my constituents recently told me that she was in the hospital after suffering from her third heart attack. She was sent home from the hospital 7 days later even though she was unable to walk across a room. Hospital officials told her she was being discharged because Medicare would not pay for additional health care.

Unfortunately, this woman's experience is not unique. The Select Committee on Aging has heard testimony from Medicare beneficiaries regarding incidences of discharges by hospital authorities before patients were healthy enough to return home. According to the Senate Aging Committee, over 4,000 similar cases of such early dismissals have been marked for further investigation by the Health Care Financing Administration.

Mr. Speaker, I known many of my colleagues share my concern regarding these premature dismissals. The problems with the prospective payment system have been clearly identified. The President said they were being examined and a solution is being worked on. I urge the President to give this matter his highest attention and forward his proposed remedies to the Congress at the earliest possible date.

GRAMM-RUDMAN AND THE BRIAR PATCH

(Mr. DAUB asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. DAUB. Mr. Speaker, "Please, please," Brer Rabbit said to Brer Bear, "don't throw me in the briar patch. Please don't throw me in the briar patch."

Now, I wondered about this as I examined the Congressional Quarterly's report of the votes for Gramm-Rudman—vote No. 415, House Joint Resolution 372—and I noticed that only 153 Republicans voted for it—certainly not a majority in this Chamber. I then quickly noted that 118 Democrats, Mr. Speaker, voted for Gramm-Rudman, 1 of them being the chairman of the Ways and Means Committee, another the chairman of the Democratic caucus, and then, oh, goodness, the majority leader himself.

"Oh, no," cried Brer Rabbit, "please don't throw me in the briar patch."

I think that the House is at its best when it acts in a truly bipartisan spirit. That is what Gramm-Rudman was, that is what the spending cuts that we decided to make ought to be, and the American public deserves no less from the leadership of this House.

ATTEMPTS TO BALANCE THE BUDGET AND GRAMM-RUDMAN SEEN AS SYNONYMOUS

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker, let me say to the Members of the House that it is appropriate that so many Members of Congress who are taking the well today are expressing their opinions on Gramm-Rudman. And we ought to do that.

One thing that ought to be made perfectly clear, to rephrase an old phrase, is that when we speak about Gramm-Rudman-Hollings on the Senate side or Mack on this side of the Congress, we are talking about an expression of will of the American people to effect a balanced budget. So let us not take account of Gramm-Rudman as simply another bill coming through the process of the Congress of the United States. It is calling for a balanced budget. Gramm-Rudman-Hollings and Mack are synonymous with a balanced budget. Those who then supported Gramm-Rudman supported a balanced budget.

As Congressman DAUB has just said, that is an important distinction to make. It is not that the Congress of the United States has adopted some isolated concept that was strung up overnight; Gramm-Rudman-Hollings is the personification, the manifestation of the desire of the American people to reach a balanced budget quickly, as quickly as possible, for the sake of the people of our country.

GENERAL LEAVE

Mr. STENHOLM. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include therein extraneous material on the subject of the special order today by the gentleman from Illinois [Mr. ANNUNZIO].

The SPEAKER pro tempore (Mr. ROWLAND of Georgia). Is there objection to the request of the gentleman from Texas?

There was no objection.

SIXTY-EIGHTH ANNIVERSARY OF UKRAINIAN INDEPENDENCE DAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, on January 22, 1918, the Ukrainian Central Rada, the Parliament of the Ukrainian people, declared the independence of Ukraine, realizing the country's fondest hopes of securing self-determination and freedom.

The Parliament for the Ukrainian people, consisting of representatives of various Ukrainian political parties, as well as other societies and groups, and proudly proclaimed:

People of Ukrainian! By your own power your will and your word a free Ukrainian republic now exists in your land. The ancient dream of our forefathers, who were fighters for the freedom and rights of the working people has come true * * * From this day forward, the Ukrainian National Republic is the independent, free and sovereign state of the Ukrainian people * * *

These words still constitute the cornerstone of political thought of Ukrainian throughout the world, as they continue in their efforts to return Ukraine once again to its rightful place among the community of free nations.

When the Ukrainian people founded the Ukrainian National Republic, they had great expectations for a new era of national renewal dedicated to the principles of justice and human dignity. Sadly, however, the reality of freedom was shortlived, because by 1922, the Bolsheviks forced their way into power, and resumed persecutions, relocations of whole villages, exiles of Ukrainian leaders, brutal starvations, and wholesale executions. Millions of brave Ukrainians perished during the terrible years of Stalin's rule, and yet through it all, the Ukrainians remained steadfast in their resolve to regain their freedom and national sovereignty.

During the past 68 years, thousands of innocent people in Ukraine have been persecuted and imprisoned by agencies of the Soviet Government. In recent years, Soviet authorities have stepped up their arrests for alleged "anti-Soviet agitation and propaganda" by Ukrainian intellectuals, writers, literary critics, professors, students, and scientists, as well as other individuals from all walks of life, who merely attempt to preserve the culture, religion, heritage, and langage of their people. Despite the most severe repression by the Communists, Ukrainian tradition has survived.

On January 12, Ukrainian observed a Day of Solidarity with Ukrainian Political Prisoners. This day, observed since 1974, is a time for Ukrainians to express their support for the objectives of the courageous men and women who daily stand up against the brutality of the Communists, as well as a time to reaffirm their commitment to freedom and self-determination.

At this point in the RECORD, I would like to include an article which appeared in the January 12 edition of the Ukrainian Weekly that outlines the tragic fate of some of the individuals in the human rights movement in Ukraine.

The article follows:

[From the Ukrainian Weekly, Jan. 12, 1986]

JANUARY 12—DAY OF SOLIDARITY WITH UKRAINIAN POLITICAL PRISONERS

January 12 has been observed as a Day of Solidarity with Ukrainian Political Prisoners annually since 1974, when imprisoned Ukrainian journalist Vyacheslav Chornovil, now age 48, declared a hunger strike that day in commemoration of the 1972 mass arrests of Ukrainian intellectuals.

Mr. Chornovil, author of "Lykho z Rozumu" (Misfortune of Intellect, published in English as "The Chornovil Papers"), an expose of the 1965-66 trials of some 20 intellectuals in Ukraine, was among those caught up in the wave of arrests on that fateful day.

January 12 has evolved into a symbol of Ukrainians' universal yearning for freedom. It serves as a reminder that the struggle of Ukrainian human, national and religious rights activists continues, and as a reminder of the sad plight of participants in that struggle.

Ukrainians in the West have set aside this day to express their solidarity with these courageous men and women who are serving terms in prisons, labor camps, internal exile or psychiatric hospitals—some of them imprisoned on political charges like "anti-Soviet agitation and propaganda" or anti-Soviet slander," others on trumped-on criminal charges.

Among the political prisoners we recall on the Day of Solidarity are:

The eternal prisoner, Yuriy Shukhevych, 52, who has been in and out of Soviet prisons and camps since the age of 15. He has spent 33 years of his life without freedom simply because he is the son of Roman Shukhevych, leader of the Ukrainian Insurgent Army and a nationalist hero. Mr. Shukhevych is now in internal exile.

Yosyp Terelia, 42, an activist in the outlawed Ukrainian Catholic Church and leader of the Initiative Group for the Defense of Believers and the Church, who was sentenced last year to serve seven years in prison camps and five years in exile. He has already spent some 20 years in camps, prisons and psychiatric hospitals.

Yuriy Badzio, 49, a teacher and literature specialist who documented the Russification of Ukrainian culture by the Soviet authorities in a major paper about 1,400 pages long, titled "The Right to Live". Mr. Badzio is reported to be ailing in a labor camp to which he was sentenced for seven years. This term will be followed by five years' internal exile.

There are literally, countless other Ukrainian political prisoners—some better

known than others, some unknown to us in the West. But we recall these persons, too, on the Day of Solidarity. And we hope for a day when such a Day of Solidarity will no longer be needed when there will be no political prisoners.

Mr. ANNUNZIO. Mr. Speaker, it is with pride that I join with Americans of Ukrainian descent in the 11th Congressional District of Illinois which I am honored to represent, and Ukrainians all over this Nation, who are continuing their struggle for self-determination in their own homeland. Let us reaffirm our belief in freedom for all peoples and our hope that the valiant Ukrainians shall one day triumph over their oppressors and again enjoy the blessings of liberty for which they have courageously struggled for so long.

Mr. HOYER. Mr. Speaker, today, Ukrainian-Americans commemorate the 68th anniversary of the reestablishment of a free Ukrainian state. On January 22, 1918, the Ukrainian Central Rada proclaimed Ukraine's independence. A year later, on January 22, 1919, an Act of Union unified, albeit briefly, all Ukrainian lands in one state. Although the fledgling Ukrainian Republic was brutally overrun by the Red army in 1920. This period of independence stands as a testament to the Ukrainian people's quest for freedom and self-determination.

Since that brief period of independence, the Ukrainian nation has suffered greatly. Under Soviet rule, the Ukrainian population has incurred unimaginable losses. In the early 1930's, over 6 million Ukrainians lost their lives in Stalin's artificially induced famine. Millions more perished in slave labor camps in Siberia.

In the last few decades, the legitimate efforts of Ukrainians to promote respect for human rights and fundamental freedoms have been met with cynical contempt by the Soviet Government. Ukrainian intellectuals in the 1960's, the Ukrainian Helsinki Monitoring Group in the 1970's and the Group for the Defense of the Rights of the Ukrainian Catholic Church in the 1980's have been suppressed and most of their members severely punished.

In the past year alone we have witnessed a continued crackdown on the Ukrainian Helsinki Group with the arrests and rearrests of Mykola Horbal, Petro Sichko, and Yosyf Zisels. We have seen a crackdown on religious activists, particularly defenders of the Ukrainian Catholic Church, with the imprisonment of Yosyf Terelya and Vasyl Kobryn. Perhaps most tragically, our consciences were stirred with the death of one of the greatest contemporary Ukrainian poets, 47-year-old Vasyl Stus, who died in the harsh conditions of a Soviet labor camp after a prolonged illness. Despite these persecutions, Ukrainians persist in pressing for their rights and in protesting against the Kremlin's callous designs to destroy Ukraine's national identity.

Mr. Speaker, as cochairman of the Helsinki Commission, I am greatly disturbed by all too frequent reports about Soviet violations of the Helsinki Final Act in Ukraine. However, I am also encouraged by the valiant struggle of Ukrainians who manifest an abiding faith in the final act's noble principles. It is our obligation as Americans to heed the calls of the Ukrainian people and to assist those who risk their well-being, and sometimes their lives, in the promotion of values which we all cherish and share.

Mr. MANTON. Mr. Speaker, I am honored to join in today's celebration of the 68th anniversary of the proclamation of independence in Ukraine. Sixty-eight years ago today, in the city of Kiev, a dream of freedom and democracy was realized when the sovereign nation of Ukraine was established.

While this is a joyous occasion, it is also one of remorse and determination. That cherished dream was a short lived reality. Within 3 short years after their sovereignty was established, the Ukrainian National Republic was overpowered by the Bolsheviks and more than 40 million Ukrainians lost their freedom. Today we not only remember a once free Ukraine, but we also reaffirm out hope and determination that soon Ukraine will be free again.

For the past 68 years, the leaders of the Soviet Union have sought to eradicate the Ukrainian national identity. Under Soviet occupation, the Ukrainian people have suffered persecution and repression. The leaders of the Soviet Union have tried to force russification on the people of Ukraine. Ukrainian culture and heritage have been endangered. The Ukrainian language is not allowed in schools and the Ukrainian Catholic and Eastern Orthodox religions are outlawed. Ukrainians who dare to speak for freedom and against the practices of the Soviet regime, are harassed and arrested. Often, those Ukrainians who fight for human rights are usually harshly sentenced.

However, it is not only Ukrainians in the Soviet Union who work for freedom. Ukrainian-Americans who have contributed so much to our own country, have not forgotten the dream of a free Ukraine. They have not allowed their spirit, or their determination and optimism that the Ukraine will one day again be free, to diminish. Their dedication is an inspiration to people around the world who are struggling for freedom.

Mr. Speaker, the struggle of the Ukrainians is our struggle as well. Liberty is becoming a precious commodity in today's world and we must always remember to cherish and protect it. And, the best way to protect this precious commodity is by supporting the struggles of those who have been denied their basic human rights.

Mr. Speaker, today I gladly pledge my support to the Ukrainian people. I share the hope of many that we will again see a free Ukraine.

Mr. MICA. Mr. Speaker, January 22 is observed by persons of Ukrainian origin in this country and throughout the free world as the date when their ancestral homeland knew freedom and independence.

On January 22, 1918, Ukrainians in what had hitherto been the Russian empire declared their independence. On January 22, 1919, Ukrainians in what had been the Austrian empire unified their part of the country with the Ukrainian National Republic, creating a unified independent Ukrainian state.

The freedom for which they struggled was brief. After 3 short years, their state was crushed between its more powerful neighbors.

But the memory of their independent democracy continues to hold a special place in the hearts of Ukrainians everywhere. In free countries, they can observe this anniversary. In their homeland, they cannot. Such is the way of tyranny.

The Ukrainian Republic was but a brief episode in modern history. By 1921, the bulk of the country had come under Soviet rule and, at the time of the Hitler-Stalin Pact of 1939, the rest of the country was annexed by the USSR.

As citizens of the U.S.S.R., Ukrainians have suffered one of the most devastating tragedies of all time, the great manmade famine of 1933. This atrocity, perpetrated by Soviet authorities who decreed the seizure of crops from those who grew them, claimed some 7 million Ukrainians.

As Chairman of the newly created Commission on the Ukrainian Famine, I believe it is incumbent on all us to never forget this tragedy, and also to note the pride with which Ukrainians continue to cherish their national culture and identity. Further, we must demonstrate our solidarity with their continuing struggle for freedom, human rights, and the national independence of this oppressed land.

Those Ukrainians who have come to this Nation, initially to seek a better life and later to escape the tyranny of their homeland, have made a tremendous contribution to American life. Their example in becoming loyal and productive Americans while continuing to maintain their unique identity, has enriched this country for all of us.

They demonstrate, as do other ethnic Americans, that becoming citizens of this land does not mean losing their affection and attachment for their ancestral homeland. Mr. Speaker, I urge my colleagues to join me in noting with pride this Ukrainian Independence Day.

Mr. MOAKLEY. Mr. Speaker, I rise today to commemorate the 68th anniversary of the proclamation of independence in Ukraine. On January 22, 1918, the people of Ukraine achieved their freedom and independence from their powerful neighbors. Unfortunately, this freedom was short lived. In 1921, the Ukrainian independent state was crushed by the Soviet Union.

Mr. Speaker, I consider myself very fortunate to live in a country that entitles me to freedom and independence. I cherish these rights more than anything. I volunteered for service in World War II because I believed strongly that these essential values should and must be protected. And I would volunteer for service again if the freedom of our country was threatened.

I certainly can understand the burning desire of the people of Ukraine who want so desperately to be free. Those of us in America have an obligation to not only condemn the Soviet oppression that still plagues the people of Ukraine—but to also support and encourage their struggle to regain their independence. I am proud to stand with my colleagues in honoring this important date and also in our commitment to the people of Ukraine.

Mr. MORRISON of Connecticut. Mr. Speaker, today marks the 68th anniversary of the proclamation of the Ukrainian Central Rada which reestablished Ukraine as a full-fledged sovereign and independent state. I know that my colleagues join me in commemorating with Ukrainians world-wide this important event in

the long struggle of the Ukrainian people for freedom.

The Ukrainian state born on January 22, 1918, was strongly supported by the Ukrainian people. Ukrainians of all ages rallied to the fledgling state's defense when it was attacked late in 1918 by the Polish Army from the West and the Red and White Russian Armies from the East. After a heroic struggle lasting 3 years, the Ukrainian National Republic succumbed to the numerically superior military forces of Communist Russia.

Ever since the Soviet conquest, the Ukrainian people have suffered political, cultural, and religious repression, economic exploitation and all-encompassing Russification. In an enforced collectivization of Ukraine's agriculture in 1932–33 some 7 million Ukrainians were starved to death by the government-sponsored famine. During and after World War II, hundreds of thousands of Ukrainians were deported, exiled, or killed for their support of the many resistance movements which fought first against the Nazis and then against the Soviets after the Soviet Union reoccupied Ukraine.

The struggle for Ukrainian rights continues. Scores of intellectual and cultural activists bravely criticize the Soviet regime despite the great personal risks they take in doing so. Almost half of all political prisoners in the U.S.S.R. are Ukrainians.

As we commemorate Ukrainian Independence Day, we remember the cost the Ukrainian people have paid in their struggle for freedom. The celebrations honoring Ukrainian independence that are taking place in Ukrainian communities around the world today are not only a salute to those who have kept the dream of an independent Ukraine alive, but also celebrate the ideal of freedom, the right of all people to self-determination.

I know that my colleagues share my appreciation for the efforts made by so many Ukrainians and Ukrainian descendants to keep the cause of freedom before the world's eyes and conscience.

Mr. KINDNESS. Mr. Speaker, today marks the 68th anniversary of the proclamation of independence for the people of the once independent Republic of Ukraine. As many are painfully aware, this independence was short-lived due to the Communist takeover and domination of Ukraine beginning in 1921.

On this day of celebration, we cannot and should not forget the brutal treatment inflicted upon so many Ukrainian citizens by the Soviet Union. Reports of imprisonment and violence against Ukrainians continue to mount as the Soviets persist in attempts to break the independent Ukrainian spirit, and to eliminate the culture and religious traditions of the Ukrainian people. Every such cruel attempt results in the clearer identification of the Ukrainian people as a separate, distinguishable and oppressed people.

I am proud to join Ukrainians throughout the world in recognition and remembrance of the celebration of Ukrainian independence. The efforts of the Ukrainian people to stand against repression and the denial of basic individual rights are truly commendable and inspiring.

Indeed, our Ukrainian friends are not alone in their struggle for a lasting peace and independence for their homeland.

I encourage all Ukrainians to continue their valiant efforts on behalf of all who struggle in the fight for freedom and human dignity. Without these efforts the struggle against tyranny will be blanketed with darkness; but with such efforts the lamp of liberty is fueled.

Mr. YATRON. Mr. Speaker, today, January 22, 1986, marks the 68th anniversary of the independence for the Ukraine. I am proud to join with my House colleagues and with the people of Ukrainian origin in commemorating this special and noteworthy occasion.

Unfortunately, as we know all too well, the freedom of the Ukrainian nation lasted only 3 years before the Bolshevik armies invaded the newly independent state and reestablished Russian control. Since that time the Ukrainian people have endured unspeakable forms of repression, persecution, and human rights abuses at the hands of the Soviet oppressors. However, this brave and valiant people have refused to succumb to such acts of inhumanity and have maintained their vibrant culture and unquenchable thirst for freedom. It is most fitting that we pay tribute to their courage which should serve as an inspiration to all of us. This occasion should also serve to remind us how precious the freedoms we enjoy as Americans truly are and the degree to which they are cherished by many of the world's oppressed.

As chairman of the House Subcommittee on Human Rights and International Organizations, I have actively worked to reduce the suffering of the Ukrainian people. The subcommittee has conducted extensive hearings on the countless human rights abuses committed by the Soviet Union, and I have initiated legislation on this subject.

I am also proud to have played an active role in the passage of legislation to establish a Congressional Commission to study the causes and effects of the Great Famine in the Ukraine. This legislation was signed into law on October 12, 1984. The famine-holocaust was one of the most tragic events in recent history and it is an example of the cruelty of the Soviet system and what the Ukrainian people had to endure. It was an attempt by the Soviet Government to erase an entire culture and race with the famine of 1932–33. During this man-made famine, 7 to 10 million Ukrainian people starved to death as a result of Stalin's brutal collectivization program. The Commission will provide the details of what actually occurred during the famine and enhance public awareness of this atrocity.

The Soviet Government continues to wage its campaign of oppression and terror against the Ukrainian people, ruthlessly suppressing the activities of the Helsinki Monitoring Group in Ukraine. Many of these bold defenders of freedom languish in jail, subject to terrible forms of ill-treatment.

I am hopeful that we will remember these people, not only today, but whenever we take the time to reflect upon our own cherished freedoms.

Mr. RUDD. Mr. Speaker, today marks the 68th anniversary of the proclamation of Ukraine's independence from the Russian Empire on January 22, 1918.

For 3½ years—from March 1917 to the end of 1920—the Ukrainian people struggled valiantly to preserve their hardwon independence. But surrounded by predatory and imperialist-minded neighbors, alone and unaided, they succumbed to the superior physical forces of their enemies.

Under Soviet Communist Russia, Ukrainians have suffered inhuman treatment and persecution:

Since the incorporation of the Ukraine into the Soviet Union in 1922, Ukrainians have been made victims of genocide through man-made famines, executions, arrests and deportations;

They have suffered systematic Russification of their language and educational system, and obliteration of the Ukrainian national identity;

Their culture has been suppressed and their history and literature have been distorted; and

Ukrainians have suffered religious persecution, economic exploitation and destruction of their political structure.

Observing the 68th anniversary of the proclamation of the Ukrainian National Republic is a special event for all Ukrainians, but it should also be a reminder to all Americans and other freedom-loving peoples of the world, that communism is an unacceptable tyranny that threatens to engulf any nation with ideals based upon sovereignty, national pride, and peace.

Let us all hope that independence and freedom—especially freedom from Soviet enslavement—will be restored to the people of the Ukraine.

DOD'S RESPONSE TO INQUIRIES ON PASSENGER AIRLIFT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Mississippi [Mr. MONTGOMERY] is recognized for 5 minutes.

Mr. MONTGOMERY. Mr. Speaker, in the wake of the tragic crash of our military charter flight in Newfoundland, the Defense Department is conducting a review of all policies concerning military personnel air travel. With this in mind, I recently wrote a letter to Secretary of Defense Caspar Weinberger, recommending that the Defense Department consider using military aircraft or Air National Guard and Reserve planes to move our personnel. I also suggested that we utilize the services of private charter companies to handle the movement of military cargo. This would be a reversal of the current policy.

I wanted to share with my colleagues the response I received from Secretary Weinberger:

THE SECRETARY OF DEFENSE,
Washington, January 17, 1986.

Hon. GILLESPIE V. MONTGOMERY,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN: Thank you for your letter of January 2, 1986, concerning the Department of Defense (DoD) use of charter airlift to transport our military personnel and their families. Let me assure you that we all share in the tragic loss of our peacekeeping force as it returned from the Sinai last month.

A high priority review of DoD policies and procedures which govern passenger airlift is in progress. It will include an assessment of military and civil air passenger operations, standards of service and related safety concerns. Our review will address your sugges-

tion to shift passenger and cargo movement between military and civil airlift. After his telephone conversation with you, Dr. James P. Wade, Jr., Assistant Secretary of Defense for Acquisition and Logistics, met with the military commanders responsible for arranging charter airlift and with respresentatives of the Department of Transportation (DoT) and Federal Aviation Agency (FAA).

While we are reviewing airlift operations, we have taken prudent interim steps to increase our surveillance of charter operations. We are assigning more evaluators to charter flights, increasing the frequency of carrier surveys and plan to review carrier maintenance facilities. Secretary Dole has announced an intensive near-term FAA review of air carriers operating charters for the DoD. We expect further initiatives through close liaison with DoT and the FAA.

We carefully considered suspension of Arrow Airways after the Gander accident. However, in their investigation of Arrow, the FAA has not uncovered safety or operational deficiencies that would justify removal of Arrow's certification. Arrow continues to operate scheduled and non-scheduled service in the private sector.

We appreciate your concern for the safety and welfare of our military forces.

Sincerely,

CASPAR WEINBERGER.

ORDER OF BUSINESS

Mr. GAYDOS. Mr. Speaker, I ask unanimous consent that in the priority of the special orders, the gentleman from Pennsylvania [Mr. SHUSTER] be allowed to proceed before me.

The SPEAKER pro tempore (Mr. STENHOLM). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

A TRIBUTE TO THE LATE HONORABLE JAMES E. VAN ZANDT OF PENNSYLVANIA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. SHUSTER] is recognized for 60 minutes.

Mr. SHUSTER. Mr. Speaker, I thank the Chair, and I certainly thank my distinguished friend and colleague, the gentleman from Pennsylvania [Mr. GAYDOS], the distinguished dean of our delegation.

Mr. Speaker, I come before this distinguished body today to mourn the loss of a dear friend and colleague, but most importantly to celebrate a life that was lived with vigor, commitment, and dignity. I speak of former Congressman James E. Van Zandt, more often known as "Jimmy," who passed away on January 6, 1986, at the age of 87. Jimmy was the very essence of what is known as a "good man." His life should serve as an inspiration to those who choose to truly participate in life and it is for this reason that I wish to share with you some of the highlights of Jimmy's remarkable journey on this Earth.

History was hard on those in Jimmy's era. Born at the turn of the century in Altoona, PA, he was to serve in both world wars and the Korean conflict. He enlisted as an apprentice seaman in the U.S. Navy while still in high school, and was discharged as chief quartermaster at the war's end. Subsequently, he enlisted in the Naval Reserve and organized the Naval Reserve unit at Altoona.

In 1938, he successfully ran for Congress from what was then the 23d Congressional District of Pennsylvania. He held this seat until 1943 when he resigned to report for active duty in the Naval Reserve for the remainder of World War II. Never a sunshine patriot, when the Japanese attacked Pearl Harbor, Jimmy returned to the Japanese Ambassador a medal he had been given in 1936 from the Imperial Reservists Association of Japan. To describe Jimmy's military service, I believe the following commendation from Capt. Richard Scruggs [USN] says it all: "You have been bombed, shelled, and torpedoed, but the fires were extinguished, the holes plugged, and not a ship has been lost."

As a legislator, Jimmy served over 20 years in Congress. During his tenure, he was an outspoken stalwart for American veterans. He served as senior member of the House Armed Services Committee, and was ranking Republican member of the Joint Committee on Atomic Energy. As a member of the House Committee on Veterans' Affairs, he introduced a series of bills providing benefits for veterans of World War II, which later provided the basis for drafting of the G.I. bill of rights. In addition to his legislative contributions, Jimmy's bravery was displayed during an attack by four Puerto Ricans who were firing on the House Chamber from the Gallery. Under fire, Jimmy dropped to the floor, crawled through a cloakroom to the gallery steps, and seized one of the terrorists. Jimmy never turned his back on a fight worth fighting.

One cannot speak of Jimmy Van Zandt without mentioning his zealous dedication to the Veterans of Foreign Wars. During his 3 years as commander-in-chief, he traveled over 1 million miles to every department in the organization. It has been written that his unanimous reelections were an acknowledgment to his strong leadership in VFW's battle on behalf of disabled veterans and their dependents, and for a "Program of Americanism" which focused on the welfare and security of the United States and its people as a whole. As a tribute to his efforts on behalf of veterans, the VA Medical Center in Altoona is known as "The James E. Van Zandt Veterans' Administration Medical Center."

Jimmy Van Zandt fell into many categories: He was an American, a husband and father, a Christian, a Pennsylvanian, and a distinguished veteran. Each of these roles he played masterfully. He met all obstacles face-to-face, and there were many in his time.

It is a great honor and privilege to represent part of the district once represented by Jimmy Van Zandt. He left a legacy, and that is to provide the best possible government for Pennsylvanians, about whom he cared deeply.

In memory of Jimmy Van Zandt, I wish to close by calling to mind the words of Daniel Webster: "Thank God! I—I also—am an American!"

□ 1535

Mr. Speaker, I am happy to yield to the distinguished dean of our delegation, Congressman GAYDOS.

Mr. GAYDOS. Mr. Speaker, just about 2 years ago, the members of the Pennsylvania congressional delegation came to the floor to heap praises on Jimmie Van Zandt, a former colleague of ours who, after long and distinguished careers in the U.S. Navy and the Congress, was retiring from his third career, secretary to the Pennsylvania congressional delegation.

Today, our task is somewhat more difficult because James E. Van Zandt, retired rear admiral in the U.S. Naval Reserve, former Congressman from Altoona, PA, and, for 20 years, the unpaid adviser to his home State's Members of Congress, passed away on January 6 at age 87.

I, for one, am glad that on January 31, 1984, we took the opportunity to say the things we did about Jimmie while he was alive and could be here with us to hear how we really felt about him and his dedication to his country.

Jimmie served with distinction in each of his careers. As a young man, he joined the Navy in 1917 as an apprentice seaman and served in both world wars and the Korean conflict before retiring as a rear admiral in 1959, winning various military decorations as a testament to his illustrious service.

He was first elected to Congress in 1938, resigned in 1943 because his country needed him in the Navy, and then came back to the Congress in 1946 to continue an illustrious service over two decades, leaving in 1962 after an unsuccessful run for the U.S. Senate from Pennsylvania. But, instead of retiring from public service, he began a new career, of service without pay to the Pennsylvania congressional delegation and to the people of his home State.

Mr. Van Zandt also found time during those years to serve as the Washington representative for two Governors of Pennsylvania. He was a mainstay of the Veterans of Foreign Wars: Twice he commanded the Department of Pennsylvania and three times he was the VFW's national com-

mander and received that organization's Distinguished Service Medal. Further, he was a member of the Veterans' Administration Cemetery System Advisory Board.

To merely recite Jimmie's accomplishments, however, does not really provide an accurate picture of this man we called friend, associate, and colleague.

It is said that bad men will prevail if good men remain silent. Well, there was never any danger that the good would lose as long James Van Zandt was around. His service to his country in time of war—actually three different times—is a sure sign that the bad would not be allowed to take what they wanted without a stiff fight.

His service to his country in times of peace—more than 20 years in the U.S. House of Representatives, where, in his first term, he spoke 63 times and introduced 32 bills—was some indication of his willingness to speak out on behalf of those who had no voice.

His service to his State—another 20 years as the unpaid secretary to the congressional delegation during which period he never showed any political partiality—was evidence of his dedication to the service of man.

I think that the last, his willingness to submerge his own political preferences in order to see that the job got done right, was one of his most important characteristics. To paraphrase another American who had more than one successful career, Thomas Jefferson, a strong heart is the first blessing and a knowing head the second. Jimmie Van Zandt was twice blessed and we and our friends in Pennsylvania are far the better for it.

When he retired nearly 2 years ago, Jimmie, then 85, told us he needed to work on his memoirs, put his congressional papers in order, and prepare for the dedication of the James E. Van Zandt Veterans' Administration Center in Altoona, PA, his hometown.

We of the Pennsylvania congressional delegation, have missed Jimmie these past 2 years and, now, we will miss him even more. No longer will we be able to draw on that vast store of knowledge, that clear thinking, that understanding that marked James Van Zandt's career.

Mr. Speaker, my remarks as prepared are a part of the RECORD, and I would like to proceed extemporaneously to talk about a man who was close to the delegation, close to every individual Member of the delegation personally.

Jim Van Zandt had served the Pennsylvania delegation, as my colleague well knows, because we both served on the Steering Committee. Way at the beginning when we had our good friend, Doc Morgan from Pennsylvania as dean of the delegation, that is when it started. At that time I remember when I first came to Congress, I had asked Doc Morgan, I said, "Doc, how is it that Jim Van Zandt, an admiral in the Reserve, former Congressman, former head of the VFW, a great legionnaire, how is it that he serves our Pennsylvania delegation so efficiently and yet he is not paid?"

Doc Morgan responded to me, he said, "That man is dedicated," and that is how I found him.

After Doc Morgan, I think the leadership then passed over to the gentleman from Pennsylvania [Mr. MCDADE], because we have that type of an arrangement in Pennsylvania.

Mr. SHUSTER. Mr. Speaker, will the gentleman yield for just one very minor correction?

Mr. GAYDOS. Yes, I yield.

Mr. SHUSTER. Congressman Van Zandt was paid for his work by the delegation. He was paid $1 a year, I understand.

Mr. GAYDOS. Well, I stand corrected and I think that is tantamount to showing the sincerity and the dedication of this man.

I have to say this. We went through Democratic and Republican leadership in our delegation and we try to keep nonpartisan, but when it came to Jimmie Van Zandt, there was no partisan politics played at all. He served the Democrats as efficiently and as sincerely as he did the Republicans. He was well-connected. He helped us. I think we were somewhat ahead of the other delegations because Jim Van Zandt was there to serve us with the Republican leadership when it was in the White House and then when it changed and the Democrats came in, Jim Van Zandt was just as effective. He seemed to have connections on both sides.

I could say this, that there was many a sensitive problem that was first brought to our attention by our secretary, Mr. Van Zandt, and then the solution advocated and suggested by Mr. Van Zandt and the problem ultimately solved by Mr. Van Zandt. That is my remembrance of a man who was so sensitive to Pennsylvania's needs that both the Republicans and the Democrats felt they were obligated to him. They never even considered, remotely considered having to change the secretary of the delegation for any purpose whatsoever.

He was a gentleman and a dedicated politician to what he thought was right in the Pennsylvania delegation and he was reliable, reliable to the extent that probably spoiled us, because after he left there was an obvious void. We had to hire a person and then another person and then we have these what we call impromptu committees working, doing the work that Jimmie Van Zandt used to do by himself alone and did so effectively.

So it is without reservation that I get up and say, No. 1, the delegation has lost a very close friend.

No. 2, Pennsylvania has lost a very dedicated soldier and the whole country has lost a patriot. That is the Jimmie Van Zandt that I remember. That is the one that I want to remember and I think that I speak on behalf of all members of the delegation when I say that is the Jimmie Van Zandt we had experience with.

That is the extent of my comments at this time.

I would ask after my colleague does recognize other Members of the delegation if he would be so kind as to recognize me again to insert another matter into the RECORD.

Mr. SHUSTER. I would be very happy to and I certainly thank the distinguished dean of our delegation, a gentleman with whom it is a privilege and an honor to serve.

Mr. Speaker, I am happy to yield to my good friend, the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Speaker, I greatly appreciate the gentleman yielding for this purpose.

It is a sad and happy purpose that we are engaging in pursuing at this moment; sadness because we know that Jimmie has gone to his final reward and happy because it gives us an opportunity to recount what he has meant to us personally, what he has meant to the Commonwealth of Pennsylvania and, most eloquently, what he has meant to the Nation.

I am so happy that the gentleman from Pennsylvania [Mr. SHUSTER] took it upon himself to recount those moments of valor in the life of Jimmie Van Zandt, stemming from his service to the country of which he gave unflinchingly, as was indicated by Congressman SHUSTER; but if we eliminated all of that and never once mentioned that total heroism in this man, I believe that every citizen in the country would have to make a special place for Jimmie Van Zandt in their own personal views of the American citizen when we recall what Congressman SHUSTER said about what he did on the very floor of the House here where we stand at that tragic moment when shots were fired into this body. I can just picture Jimmie, as Congressman SHUSTER was describing, crawling up the aisle and through the cloakroom and up the steps, right in the face of fire, so to speak, to grab one of the terrorists that we had even in that day who would have dared to come in and did successfully engage in that tragic act of terrorism.

I will always think of Jimmie Van Zandt as the courageous hero that every American recognizes as the embodiment of being an American in the first place.

At lunch today, for the edification of the membership, which I shared with Congressman BOB MICHEL, our respected leader on the Republican side, I

mentioned to him that we were going to have this special order for Jimmie Van Zandt, which he then recalled and said that he wished he could join with us because his recollections parallel those that were already expressed by my colleagues from Pennsylvania. That is a nice thing. It is easy for us Pennsylvanians to remember him because we criss-crossed his path a thousand times in our lives, but when we hear the Republican leader, or the remarks of Congressman MONTGOMERY as they have been transferred now into the RECORD by Congressman GAYDOS, that makes us Pennsylvanians just a little more proud of what Jimmie Van Zandt has meant to this body and the country.

My first recollection of Jimmie was on the political warpath. He had announced that he was running for the Senate of the United States. I believe it was the year 1962, the same year that Bill Scranton successfully became the Governor of Pennsylvania through a very dynamic campaign. It was Scranton-Van Zandt. I went to a small political meeting in Middletown, PA, which happens to be now in my district, and sat in the first row. Jimmie Van Zandt was introduced. There was no microphone. I tell you, none was needed. Jimmie got up and the first blast from his mouth just acknowledging the introduction was so loud and so clear that I was taken aback in the first row, an instance I will revere forever as a politician, as one who captured the imagination and the attention of his audience from the very first words spoken. From that first word spoken, in my engagement with the life of Jimmie Van Zandt down to the last engagement that we had here in the Pennsylvania delegation meetings, I have always admired and felt close to Jimmie Van Zandt.

□ 1550

His family, who accompanied him on all his political endeavors and all the endeavors on behalf of veterans, became a part of the Van Zandt mystique. It was very natural for us who were with Jimmy Van Zandt or who worked with him or in any way crossed his path, also included in his life and his doings those of the family because he was always with them and they were always with him. That is a nice thing to remember as well.

So as we take leave of our association with James Van Zandt, we do so as American citizens, as those interested in the welfare of our country, and who know that at least one of our fellow Pennsylvanians, who distinguished himself as a Member of the Congress of the United States, as a hero of World War II and other military engagements, who distinguished himself as a politican in the best sense, and who distinguished himself as a personal friend to everyone who met him, we say farewell, Jimmy, and I thank the gentleman from Pennsylvania [MR. SHUSTER] for giving us the time to express our feelings.

Mr. SHUSTER. My colleague's comments bring to mind one other story about Jimmy. He was a great athlete and, in fact, in his eighties he could often be found in the House gym dribbling a basketball around the court staying in shape. He told me, if I recall correctly, that he was a runner, a real runner, running in first-class races, including Madison Square Garden. He told me that the last race he ever ran was in Madison Square Garden the night before he was sworn in as a U.S. Congressman back in the 1930's, and he did not stop running from that point until his sad death just a few weeks ago.

Mr. GAYDOS. Mr. Speaker, would my colleague yield for just one more observation?

Mr. SHUSTER. Surely. I would be glad to yield to the gentleman from Pennsylvania.

Mr. GAYDOS. I think it is basically essential that I not let this opportunity pass without reminding our delegation, our colleagues in the House, and yes, the whole Nation, of Jim Van Zandt's dedication to Pennsylvania when he put together—and I want to emphasize he put together; we worked with him, as my good friend, the gentleman in the well, Mr. SHUSTER knows—when he put together Pennsylvania Day. That is the time that we got all the industry together in Pennsylvania, and we had to improvise at the time, an awful lot of participation from banks, businesses and things of that nature. I think we put together, along with Fred Waring, who was at the affair and who was there because Jim Van Zandt had made the arrangements, and when we put all this together, I think we did ourselves proud here in Washington because we had a very, very well received and, I think, a delightful time on the Pennsylvania Day. That is when we brought up the flute players and the band from down in Pittsburgh, and also the band members from up in Philadelphia, along with, of course, an outstanding performance at that time by Fred Waring, who is now deceased and who, as a result of that Pennsylvania Day, I believe received a gold medal authorized by this very House.

So Jimmy Van Zandt, with all the attributes, and all the things he had accomplished in his life, to me that is one of the most sensitive and very personal areas that he operated in because he showed us how to make Pennsylvania Day a success. We had never had it in the past, and I think it is going to be the prototype of what we are going to do in the future.

So in closing, Mr. Speaker, I think that the record should show this man's dedication in that area also, along with the other areas that we already have spoken of.

Mr. SHUSTER. I thank my friend.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. SHUSTER. I yield to my friend and colleague, the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding. I thank him also for taking this special order to give us a chance to say a few words about a great patriot, one of the greatest that our State has ever produced, Jimmy Van Zandt.

When I first came to the Hill it was about 20 years ago, and I came here as a staff aide at that point to former Congressman Ed Eschleman. I remember at that time that Jimmy had already assumed his role as secretary of the delegation. He had been Governor Scranton's chief man in Washington and was performing distinguished service to the entire Commonwealth at that time.

But at that point he had had several careers, as admiral, as Congressman, as a railroad man. He had gone through a whole series of careers and people at that time would say, "Gee, how old is Jimmy Van Zandt?" and somebody would point out all these careers that he had had, and his age, and they would say, "Oh, that cannot be. He cannot be that old." Twenty years later we were still depending upon Jimmy Van Zandt and those questions were still being raised by young staffers as they came to the Hill.

The man was just absolutely remarkable. He had a great talent and genius for bringing together political factions, philosophical factions and doing the right thing on behalf of the State of Pennsylvania. I do not know that we have had anybody serve us for that long a time that well as did Jimmy Van Zandt.

It is entirely fitting that this tribute be paid on this floor because he loved this House. He loved serving Pennsylvania in this House. We will all miss him as we go about building the future of our Commonwealth and the contributions that he has made to that.

Mr. SHUSTER. I thank my friend.

Mr. Speaker, in closing, I think it is entirely proper to note that as we pay tribute to Jimmy Van Zandt here today, we certainly should include in that tribute recognition of his wife, Meisie, and his son, Jamie, a commander in the U.S. Navy, a wife and a son who, throughout Jimmy's illustrious life, were helpmates and substantial contributors who helped make possible the outstanding life of this distinguished American.

Mr. COUGHLIN. Mr. Speaker, I pay tribute today to our former colleague, James E. Van Zandt, whose battle against cancer ended

January 6 when he died at the Hospice of Northern Virginia.

Those of us who were privileged to know Jimmy Van Zandt always will remember him as a warm and unpretentious person whose industry and plain ways marked him as a truly honorable man.

Almost 2 years ago a special order was held honoring Jimmy who was—at the age of 85—retiring. At that time, he had served 11 terms in the House of Representatives, 3 terms as national commander of the Veterans of Foreign Wars, and as secretary of the Pennsylvania congressional delegation for 20 years.

During the four decades of his public service, Jimmy was consistently a positive force in Pennsylvania governmental and political affairs. He was a gentleman in the truest sense of the word who enjoyed the confidence and trust of Republicans and Democrats alike. No matter which party controlled the State government in Harrisburg or the Pennsylvania congressional delegation in Washington, Jimmy served all with equal dedication, energy, and zeal.

A strong and steadying influence, Jimmy was a catalyst upon whom each of us in the Pennsylvania delegation could rely upon for advice and guidance during his service as the delegation's secretary. But most of all, Jimmy was a worker. His former titles and positions never stopped him from doing the everyday work and details that helped our delegation and all those from Pennsylvania who came to consult us in Washington.

His devotion to serving the needs of the commonwealth and this Chamber were in evidence each day. Despite Jimmy's long work days, I think it commendable to note that he served for 20 years as our delegation's secretary without pay.

A Navy veteran who saw active duty in World War I, World War II, and the Korean conflict, he was honored by Congress in 1983 when a Veterans Administration center was dedicated as the "James E. Van Zandt Medical Center." It was an honor well-merited for a gentleman whose contributions to our Nation's veterans were many. Yet as great that tribute was, somehow it cannot do justice to Jimmy Van Zandt and his life.

When he retired in 1984, he had planned to write his memoirs. Unfortunately his memoir, which would have been among the most inspiring and interesting ever written by a former congressman, was unfinished when he died.

That he will be missed by his friends and colleagues is undistputed. He served his Pennsylvania constituency and the U.S. House of Representatives with honor and distinction. His contributions at the national, State and local levels in serving the public are undeniable.

I hope that his wife and son are comforted by the knowledge that Jimmy left a legacy of devoted and effective public service, and of respect and warmth by those who knew and worked with him.

Mr. GRAY of Pennsylvania. Mr. Speaker, I rise today to pay special tribute to our late colleague, James Van Zandt, who served in this Chamber and set an example for all of us.

"Jimmie," as we knew him, was Mr. Pennsylvania. He represented our State for 11 years in Congress, and then went on to serve the Commonwealth as its representative in Washington until 1971. He was a man of unselfish commitment. He resigned from this body to serve his country in the U.S. Navy during World War II. He had already served during World War I, and he went on to serve again during the Korean conflict. He retired as a rear admiral from the Naval Reserve in 1959.

Mr. Van Zandt's commitment to veterans took him from commander of the Altoona Post of the Veterans of Foreign Wars to State commander for Pennsylvania and national commander of the VFW for three terms, from 1933–36.

His decorations included the Legion of Merit and the Bronze Star.

During his House career, he was senior member of the House Armed Services Committee and ranking Republican of the House on the Joint Committee on Atomic Energy.

We can all be proud of this man who served us and his constituency with commitment and caring. For so many years his name has been synonymous with our great State. I ask you all to join me in paying tribute to this fine American and in sending our deepest sympathies to his family.

Mr. McDADE. Mr. Speaker, the Commonwealth of Pennsylvania and the country will miss our dear friend and trusted colleague, Jimmie Van Zandt, who passed away January 6.

Jimmie was a fighter for freedom and life till the day he died. He served Pennsylvania as a responsible, honest, hard-working Congressman for 20 years and 9 months before, during and after World War II.

When the country needed Jimmie he was always there. At the age of 18 he enlisted as an apprentice seaman. In 1919 he was discharged as a chief quartermaster. And in the early 1940's when our European allies were fighting Hitler, Jimmie, as a Congressman, was in the center of this country's greatest debate over U.S. aid and support for those allies. The dabate waged, with the entire Nation watching, until the Japanese attacked Pearl Harbor on December 7, 1941.

On that date, which we should never forget, Congressman Jimmie Van Zandt was already on active duty with the U.S. Navy as a reservist. He heard the call of his country, and shipped out in September 1941 after Congress had recessed. The Navy needed his expertise and experience during World War II, so he left his family and interrupted his congressional career to serve the country—Jimmie was not a selfish man.

Jimmie loved his country. Not only did he serve his country in World War I, World War II, and the Korean conflict; he also served all those men and women, who were veterans of those wars, as commander of the Altoona Post of the Veterans of Foreign Wars, State commander for Pennsylvania and national commander of the VFW.

As a national leader in veterans matters, he fought for the bonuses for World War I veterans—a struggle that continued for years—but, finally the Congress conceded and World War I veterans received their just bonus in 1936. In 1936, Jimmie was VFW national commander—Jimmie always fought for the little guy.

I know that one of Jimmie's greatest days was when the James E. Van Zandt Veterans' Medical Center was dedicated to him in his hometown, Altoona, PA.—he was proud of his hometown and the people that lived there.

Jimmie cared deeply for Pennsylvania and its people. In 1964, he volunteered to assist the Pennsylvania congressional delegation so the people of his beloved State would be served. He also served the Commonwealth of Pennsylvania as the official representative of the Governor of Pennsylvania in the Nation's Capital twice during his work with the delegation. He counseled both Republican and Democrat Members. He brought members from different political parties together so the people of Pennsylvania would benefit.

Jimmie was a true American hero. He is the epitome of a public servant; he served his country freely for over six decades. His wit, wisdom, and guidance will be missed by his family and his friends. It is difficult to think that Jimmie is gone, but his love for his country, Pennsylvania and his family will go on.

Mr. SCHULZE. Mr. Speaker, I am pleased to join in this tribute to Jimmy Van Zandt who dedicated his life to his country and to this body.

For his entire adult life, Jimmy either served in the Armed Forces, in the U.S. House of Representatives or for the benefit of the House. He volunteered to serve in World War I, entering the Navy as an apprentice seaman and concluded his military service in 1959 as a rear admiral in the U.S. Naval Reserve. During his 42 years of service in the military, Jimmy saw action in both World Wars as well as in the Korean conflict.

He gave the same devotion to his duties in the House. Elected in 1939, Jimmy gave all he had to representing the 22d District of Pennsylvania, until he was recalled to active duty to serve with the Pacific Fleet in 1941. Undaunted by interruptions in his legislative career, Jimmy ran again when his active duty assignments were concluded, winning election to the House for eight more succeeding terms. And he didn't stop there. Following his years as a Member of Congress, Jimmy served voluntarily as the secretary of the Pennsylvania congressional delegation.

I am honored that I had the opportunity to work with Jimmy Van Zandt. His zest for life and love of work were inspirational. He had a smile and kind words for everyone. But he also had an intelligence and savvy that came from years of hard-won experiences. Those who would seek him out and listen to his advice, were always the better for it—and he certainly has a wealth of friends and colleagues here today who can testify to being richer for having known and worked with him.

Jimmy cared about mankind and he put every ounce of his almost limitless energies into helping his fellow man. He rarely asked for help for himself; instead he just gave and gave and gave. I am pleased that we are paying tribute to Jimmy today so that a small measure of what he gave to us can be given to remembering this brave and honorable man.

I know that his wife, Esther, and son, James II, are proud of him and loved him very much. I hope they can take consolation in knowing

that many of us share in that pride and affection.

Mr. GOODLING. Mr. Speaker, Recently, the State of Pennsylvania and our entire Nation lost a truly devoted public servant, Congressman James Van Zandt. Jimmy Van Zandt not only loved this Nation, but served it dutifully.

His entire life was devoted to service. Not only in Congress, but in World Wars I, II and the Korean war. After his retirement, he worked for Pennsylvania Governor Scranton and also served as secretary to the Pennsylvania delegation for a mere salary of $1 a year.

One story typifies his service. In 1954, Van Zandt was on the floor of Congress when several terrorists fired gunshots into the House Chamber. The Congressman crawled off the floor, ran up the steps to the gallery, and apprehended one of the gunmen.

This shows the type of devotion Jimmy Van Zandt gave to helping others. Throughout his career, and his entire life, he thought more of those he served than of himself. He will be dearly missed.

Mr. CLINGER. Every once in a while, a special kind of person comes along and touches our lives in a way that few others could ever hope to. Jimmie Van Zandt was one of those people.

His achievements and his service to his State, and to his Nation, are unique and will be mentioned many times today. I would simply like to say that if there were just a few more Jim Van Zandt's around today, this country would be an even more special place in which to live. Thank you Jimmie. We're going to miss you.

Mr. YATRON. Mr. Speaker, it is with great sadness that I join today in paying tribute to James E. Van Zandt, my friend and former colleague who served in the House of Representatives for 11 terms.

Jimmie's distinguished career in both the military and the House of Representatives serves as a model for all of us to emulate. He joined the Navy during his senior year at Altoona, PA, High School and served as a signalman aboard merchant convoys during World War I. Between the Wars, he remained in the Naval Reserve and became active in the Veterans of Foreign Wars—serving two terms as the Pennsylvania department commander and three terms as national commander. He returned to active duty in World War II and also served during the Korean conflict. Jimmie's military decorations included the Legion of Merit and the Bronze Star. After many years of tireless and dedicated service, he retired from the Naval Reserve as a rear admiral in 1959.

Jimmie's career in the House of Representatives was equally distinguished. He was first elected to the House in 1938 and served for 11 terms. In keeping with his strong commitment to our national security, he resigned from his position in 1943 to concentrate on his duties with the Navy. He returned to the House in 1946 and served until 1963. During his House career, Jimmie served as senior member of the House Armed Services Committee and as ranking Republican on the joint Committee on Atomic Energy. He was known as a forceful advocate for the VFW and other veterans' groups as well as a strong supporter of efforts to strengthen our national security.

I came to know Jimmie very well during his twenty years of service as Secretary of the Pennsylvania congressional delegation. From our work together, I learned that he was not only a dedicated public servant but also a warm, engaging and personable man whom I am honored to have called my friend. Jimmie's commitment to the interests of both Pennsylvania and our Nation was admirable and I know he was a source of inspiration to all of my colleagues. He will be sadly missed, but the goals and ideals which he stressed and his contributions to this institution and the further development of our Nation will always stand as his lasting achievement.

Mr. MONTGOMERY. Mr. Speaker, on January 6 we lost a former colleague and great American hero to cancer—Jimmie Van Zandt.

As many Members of this body know, Jimmie Van Zandt carved a nationally recognized reputation as a loyal champion of veterans' rights. Though I did not have the pleasure of serving with Jimmie during his tenure as a Member of Congress, I did have the privilege of witnessing his abilities, his knowledge, and his resolve as a spokesman for veterans.

November 30, 1983, marked the enactment of an appropriate and lasting tribute to Jimmie—legislation initiated by members of the Pennsylvania congressional delegation to name the VA hospital in Jimmie's hometown of Altoona, PA, the "James E. Van Zandt Veterans' Administration Medical Center" and which had received the unanimous nod of this Chamber was signed into law.

On July 21, 1984, the intent of Public Law 98-190 was carried out in a special ceremony on the hospital grounds at Altoona. It was said of Jimmie on that day: "Just as this structure—the hospital—* * * is supported by mortar and steel, this Nation is supported by a strong foundation comprised of courageous and proud individuals like Jimmie Van Zandt."

When you consider his valorous service in three wars, his able leadership of one of the Nation's most outstanding service organizations, Veterans of Foreign Wars, and his 22 years in the U.S. Congress, there is no more apt description of Jimmie Van Zandt's life than "inspiring."

Jimmie's life and works serve as beacons for all others who seek excellence in life's endeavors. His greatest characteristics—spirit, determination, loyalty, amiability—enabled him to achieve enviable success in all he did. It was the good fortune of those of us who knew him and worked with him to have crossed paths with such a good man. He will be greatly missed.

Mr. EDGAR. Mr. Speaker, the House was recently saddened with the news of the passing of our former great friend and colleague, Jimmie Van Zandt. Jimmie's life represented the best that America has to offer in service to country and dedication to the principles which have always kept our Nation strong and free.

Born on December 18, 1898, in Altoona, PA, Jimmie enlisted as an apprentice seaman in the U.S. Navy in April 1917. He retired, January 1, 1959 as a rear admiral in the U.S. Naval Reserve. He saw active duty in both world wars and the Korean conflict.

Jimmie was elected to the U.S. House of Representatives in 1938. He resigned his seat in 1943 to enter the U.S. Navy during World War II. After the war he was reelected to Congress in 1946 and served until 1963.

During his congressional career he served as a senior member of the House Armed Services Committee and was the ranking Republican member of the Joint Committee on Atomic Energy, the Veterans' Affairs Committee and Naval Affairs. He was also a member of the Corregidor Bataan Memorial Commission.

Following his retirement from the House, Jimmie continued to serve the people of the Commonwealth of Pennsylvania as a forceful and committed secretary to the Pennsylvania congressional delegation.

Mr. Speaker, Jimmie Van Zandt's career in service to the veterans of this Nation was remarkable and certainly unique. As a member of the House Veterans' Affairs Committee myself for the past 11 years, I remember well that he was an active and frequent visitor to our committee even following his retirement from the House. His love and concern for those who had served with him in three armed conflicts during this century knew no bounds. He was elected three times as National Commander-in-Chief of the Veterans of Foreign Wars of the United States and twice as Pennsylvania Department Commander of the VFW. He served as a member of the National Advisory Council on Veterans' Affairs of the U.S. Senate and as a member of the National Cemetery System Advisory Board of the Veterans' Administration. He was a member of the American Legion, the Veterans of World War I and Forty and Eight.

In 1983, it was my high honor as chairman of the House Veterans Affairs Subcommittee on Hospitals and Health Care to receive the request from Jimmie's beloved Department of Pennsylvania VFW to introduce legislation, H.R. 4294, to rename the VA Medical Center in Altoona, PA, Jimmie's home town, the "James E. Van Zandt Veterans' Administration Medical Center." The bill was unanimously endorsed by all federally chartered veterans organizations in Pennsylvania and the Pennsylvania congressional delegation. H.R. 4294 was approved by my subcommittee on November 3, 1983, passed by the House on November 8, the Senate on November 18 and was signed by the President of the United States on November 30, 1983.

Perhaps no greater lasting tribute could be made to Jimmie's lifetime of achievement and concern for the American veterans than to have his name perpetually associated in his home town and his congressional district with an institution dedicated to provide healing and comfort to those who have served and sacrificed so much in defense of this nation. Even though Jimmie has left us, the Van Zandt VA Medical Center will continue to promote the ideals and achievements of his outstanding life through love of country, recognition of service and the principles which have always kept America strong and free. He will be sorely missed. But his legacy will continue in Abraham Lincoln's words: "To care for him who shall have borne the battle and for his widow, and his orphan."

Mr. MURTHA. Mr. Speaker, when he died on January 6, we lost a friend, and we lost a man who had served in the highest traditions of Congress and the Nation.

Jimmy Van Zandt entered World War I in 1917. He served as a signalman aboard merchant convoys sailing between the United States and Europe. Later he would serve in World War II, in the North Atlantic during 1941 and 1942 while still serving in Congress. After resigning, he spent 3 years on active duty in the Pacific where he commanded landing craft. He also served in Korea during the conflict there, and retired from the Naval Reserve as a rear admiral in 1959.

His military decorations included the Legion of Merit and the Bronze Star.

Jimmy Van Zandt served 11 terms in the House of Representatives, beginning in 1938 and surrounding his military duty until 1962 when he resigned to run for the Senate. He also served three terms as commander of the Veterans of Foreign Wars.

My memories of Jimmy Van Zandt include his volunteer service as secretary of the Pennsylvania congressional delegation where he attended to the details of congressional delegation decisions. Moreover, he was a friend with whom I could exchange information about the military and the history of the House of Representatives. He brought a clear eye to present debates coupled with the experience of history and the continuing study and insight into present problems.

Jimmy Van Zandt's service to his country was in the highest tradition of what has made America the greatest country in the world.

Truly the citizen-soldier, truly the citizen-legislator, Jimmy Van Zandt left his mark on this world, and we can truly say our Nation is better for his presence.

Mr. MURPHY. Mr. Speaker, the residents of the Commonwealth of Pennsylvania and, indeed, the entire United States, suffered a great loss with the recent death of former Congressman James E. (Jimmie) Van Zandt.

Few Americans have acheived so much in just 87 short years on this Earth. His accomplishments are of legendary proportion. Three times the national commander of the Veterans' of Foreign Wars, 11 terms as A U.S. Congressman, service in both world wars and Korea, for which he was awarded the Legion of Merit and the Bronze Star. A dedicated husband, father, and public servant, Jimmie never stopped fighting for those less fortunate, less blessed, less able to help themselves.

My earliest memories of Jimmie take place, when as a boy growing up in the 1930's, my parents often took me to parades and public gathering where Jimmie was frequently called upon to be the speaker. A man possessed of limitless drive and energy, Jimmie would remain a lifelong champion of veterans' causes and an outspoken proponent of a strong national defense.

For more years than I care to recount, I considered Jimmie to be a friend and advisor. That friendship was cemented when, in 1976, I came to Congress as a freshman Member from Pennsylvania. Jimmie was already here serving our delegation and his advice and assistance to me proved invaluable. I will miss his wit, his wisdom, his energy, and his leadership.

So rare is a man who can and will dedicate his entire life to the betterment and service of his country and his God. Too few people are left to fill the void that Jimmie's passing has created.

Mr. KOSTMAYER. Mr. Speaker, I join my colleagues in the Pennsylvania delegation today to pay tribute to Jimmy Van Zandt.

Jimmy had such an extraordinary record of public service, Mr. Speaker.

He served in three wars, seeing active duty in World War I, World War II, and in Korea.

He interrupted his House career in 1943 to voluntarily go into active duty in the Navy.

After his active military career he became the senior member of the Armed Services Committee, and then national commander of the Veterans of Foreign Wars.

On a personal basis, Mr. Speaker, when I first came to Congress in 1977, Jimmy had been retired for 14 years, but he was still a leader in the Pennsylvania delegation. He had boundless energy, and was a real factor in getting the delegation together, and keeping us aware of important State issues. He was a help to new Members, and particularly in that year, 1977, when nine new Members from Pennsylvania arrived in Washington.

I will always remember Jimmy for his selfless contribution to the delegation and his infectious enthusiasm. I am grateful to have known Jimmy, and I join the many here today praising Jimmy Van Zandt for his tremendous service to his constituents and his country.

Mr. COYNE. Mr. Speaker, today, I would like to pay a special tribute to a former member of the Pennsylvania delegation, James Van Zandt. Jimmy Van Zandt died at the age of 87, on January 6, 1986, at his home in Alexandria, VA.

Although I never had the opportunity to serve in this body with Mr. Van Zandt, I first met Jimmy when I became a Member of the Pennsylvania delegation. Jimmy, at that time, was the secretary of the Pennsylvania delegation, a job which he held for years.

Not many of us will have such an illustrious career as Mr. Van Zandt. He was first elected to the House of Representatives in 1938, representing the city of Altoona, PA.

While he was a Member of the House, Jimmy Van Zandt enlisted in the Navy during World War II. He served 4 months in the Pacific and North Atlantic before he resigned his House seat in 1943. He then went on to serve 3 years of active duty in the Pacific. After World War II, he returned to the House in 1946 where he served until he retired in 1962.

The period from 1943–46 was only a brief part of Mr. Van Zandt's military life. He quit school during his senior year of high school and joined the Navy during World War I. Jimmy served as a signalman aboard a merchant cargo vessel traveling between the United States and Europe. He remained in the Naval Reserves after his time of duty and retired in 1959 with the rank of rear admiral. He was awarded the Legion of Merit and the Bronze Star.

During his tenure in the House, Jimmy Van Zandt sat on the Joint Atomic Energy Committee and was the ranking Republican on the House Armed Services Committee.

Jimmy Van Zandt also was credited with capturing one of four Puerto Rican gunmen who fired onto the House floor on March 1, 1954. During the incident, Jimmy was on the floor of the House. When the gunfire occurred, he crawled to the cloakroom, ran up the steps to the gallery and seized the terrorist.

I would like to thank my colleagues Mr. GAYDOS and Mr. SHUSTER for taking this time today to honor this man who unselfishly served his district, his State, and his Nation. I know that Jimmy Van Zandt will be dearly missed.

Mr. SHUSTER. Mr. Speaker, that concludes my special order eulogizing Congressman James Van Zandt.

GENERAL LEAVE

Mr. SHUSTER. Mr. Speaker, I ask unanimous consent that all Members may have permission to insert their remarks on the subject of this special order in tribute to our former colleague, Jimmie Van Zandt.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

FARMWORKERS ARE ENTITLED TO THE BASICS AS MUCH AS OTHER AMERICAN WORKERS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. GAYDOS] is recognized for 60 minutes.

Mr. GAYDOS. Mr. Speaker, when the Occupational Safety and Health Act of 1970 was signed into law, those of us who were involved in its passage believed we had set a series of standards that would cover all workers in this country, regardless of the industry in which they were employed.

Unfortunately, through time, it hasn't worked exactly as we planned. One segment of industry, agriculture, but more specifically those persons engaging in the hand harvesting of fruits and vegetables, which is usually called stoop labor, appears to have been left out.

For more than 13 years, and through several administrations, America's farmworkers who do that hand harvesting have been left out of OSHA's coverage, suffering indignity, inconvenience, and higher incidences of disease due to a lack of basic sanitation facilities.

No other segment of the American work force has been forced to do without toilets, hand-washing provisions and drinking water on the job, regardless of whether they are working in the fields or in a factory.

America's construction workers work out of doors and they are afforded those basic sanitation necessities. Well, why aren't our farmworkers? Through those 13 years, even with the

support of the Federal court system, farmworkers have been unable to win support for those simple basics even though testimony by experts at OSHA hearings have shown that farmworkers face health risks many times greater than the general population.

Finally, the courts insisted that OSHA determine whether or not a field sanitation standard was necessary. In one of OSHA's darker moments, even in this administration, former Assistant Secretary of Labor for OSHA, Robert Rowland, told the court that the experts, even those hired by OSHA itself, were wrong and there was no need for a Federal field sanitation standard.

But Rowland even went a step further. He said that even if there were such a standard, OSHA neither could nor would enforce it.

Newly sworn Secretary of Labor Bill Brock said he was going to review the decision, but time ran out for the farmworkers when one court ruled that the lower court did not have jurisdiction in the case, thereby voiding years of effort and struggle.

Given that escape from the courts, Brock announced last September that a Federal field sanitation standard was not warranted, but should really be the responsibility of the individual States.

Brock did indicate that if those States in which hand harvesting took place did not develop acceptable standards within 18 months, he would take action on a Federal standard.

At this point in time, some 13 States have field sanitation standards of sorts. It is also evident that some of those State agencies assigned the responsibility of enforcing the State standards are either unable or unwilling to do so.

Because it is criminal for us not to act, to wait for another year or more while farmworkers' health is endangered because of a lack of basic sanitation facilities, I am introducing a bill to establish an occupational health and safety standard on field sanitation with respect to agricultural employees engaged in hand-labor operations.

The standard proposed in this bill closely parallels the standard proposed by OSHA to the Secretary of Labor in terms of the toilet facilities, hand washing and drinking water provisions.

This bill, however, does require the Secretary of Labor to submit to the Congress within 90 days after enactment of this measure a plan for the inspection of farms where the standard would apply. It also requires a report from the Secretary within 2 years of enactment on how the plan is working.

After more than 13 years of suffering untold indignities and disease, our farmworkers deserve the same rights that all other working Americans receive under the OSHA Act. They deserve no less if the integrity of the act is to be preserved.

□ 1600

With that, I urge my colleagues to examine the act very closely and hopefully, after they search their conscience, to join as a cosponsor so that we may conclude the hearings hopefully and bring this measure before the House for final determination and action. It is so small of an accommodation to so many people, and it is so fundamental that to me I feel chagrined that nothing has been done up until this time in this very sensitive and warranted area.

Mr. Speaker, I yield back the balance of my time.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Saunders, one of his secretaries.

ABORTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. SWINDALL] is recognized for 30 minutes.

Mr. SWINDALL. Mr. Speaker, it is significant that on Monday of this week, our Nation chose to pay tribute to a man who has come to symbolize this Nation's commitment to basic human and civil rights.

I think, however, Mr. Speaker, it is tragic that today, 2 days after that historic holiday, we find ourselves as a Nation ignoring the very declaration that Dr. King claimed in this same city in his now famous speech in 1963, that declaration being the declaration of our Founding Fathers that all men are created equal and that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.

As we all know, on this same date in 1973, the Supreme Court, in the Roe versus Wade decision, held that the unborn were no longer entitled the basic civil and human rights because, according to that Supreme Court, they were not persons as defined by the Constitution. In the wake of that decision, I have an entirely new understanding of the frustration that Dr. King must have felt, and along with him, many of our black brothers and sisters back in the early 1960's when individual restaurateurs and owners of businesses contended that it was their choice as to whether or not they would honor the basic civil rights of our black brothers and sisters. I have a new understanding, Mr. Speaker, of the frustration that blacks prior to the Emancipation Proclamation must have felt when slaveowners in this country contended that it was their choice as to whether or not those blacks would be entitled to the basic freedoms that we all take for granted.

Yet, that is precisely the same argument that we hear throughout this land today, and that is that women in this country ought to have the choice with respect to the basic right to life of our unborn. I think that it is significant that by definition the word "unalienable," the word to which Dr. King referred, means that which cannot be given or taken away. It is alarming the similarity between the Dred Scott decision decided in 1857 and the Roe versus Wade decision decided in 1973, because at the crux of both of those decisions was first and foremost the fact that the Supreme Court was yielding to the economic and social pressures of the times.

For example, it is a well-documented fact of history that in 1857 when the Supreme Court reached the now notorious Dred Scott decision, concluded that blacks were not entitled to constitutional protection because they were not persons or citizens under their definition in their interpretation, or I might say rewriting of the Constitution, that there was tremendous social and economic pressure to keep that system in place. I think that it is equally ironic that the Chief Justice that wrote the majority opinion of the Court was an individual who claimed to be personally opposed to slavery.

How many times have I heard individuals say I am personally opposed to abortion, but it is certainly not the place of our Government to impose choice on us. Thank God that there were individuals back in 1857 that had the courage to read the rest of that declaration that states that the purpose of Government is to make absolutely certain that those unalienable rights are protected, and that if a government fails in its obligation, it is the obligation of the governed to alter or abolish that government, because I am confident that soon-to-be President Abraham Lincoln was mindful of that when in 1858, he ran for the U.S. Senate in Illinois and he argued against the spread of slavery. We all know that he lost that election, but 2 years later, he defeated the same individual in the race for the Presidency of the United States, and 3 years subsequent to that election, he signed the Emancipation Proclamation which led to the 13th amendment that reversed that tragic era of American history.

I am confident that President Lincoln understood that we in this Nation, fortunately, are not a democracy. We are rather a constitutional republic, which means that the majority never has the right simply because they majoritively so state to take any rights that are guaranteed by our Dec-

laration of Independence and our U.S. Constitution.

We recognized that with the passage of the 13th amendment. Yet, if we look today at the Roe versus Wade decision, we see that the same exact flawed logic that characterized the Dred Scott decision characterizes the Roe versus Wade decision.

Many have told me that the Roe versus Wade decision turned on the issue of the right of privacy of the mother. Yet a careful reading of that decision leads to the inescapable conclusion that the Court could not even reach the issue of the privacy until they first resolved the issue of the right to life, because that is a right that is protected far beyond privacy. We know that the way that they went through that issue was they said that our unborn are not persons as defined by the Constitution. In essence, they rewrote the Constitution in much the same fashion that the Dred Scott Court rewrote the Constitution.

I would submit that irrespective of how you feel on the issue of abortion, if you hold our Constitution to be a document that ought to escape the social and economic pressures of any given era, we cannot afford for the Roe versus Wade decision to stand.

I have heard many individuals say how do we know that the unborn are persons. I would say to those individuals that our Constitution says that we are all innocent until proven guilty. The fifth amendment says you may not deprive someone of their life until due process of law.

My question would be: Where is the due process for the 18 million who are not with us today because of the Roe versus Wade decision and the numerous decisions that have followed that have legalized abortion on demand in this country?

I have heard a number of individuals argue that these children are unwanted. Yet I would say to those individuals that they ask the wrong question. The more appropriate question would be unwanted by whom, because we now know that there are 10-year wait lists for infant children. People pay $40,000 to $50,000 on the black market for infant children.

It may well be true that the natural mother may not want that child, but it is certainly not true that that child is unwanted.

The recently deceased Francis Schaeffer, a theologian whom I had the privilege of hearing speak in 1972, the year before the Roe versus Wade decision, argued that if this Nation, the United States of America, were to legalize abortion on demand, that that would be followed necessarily by infanticide and euthanasia. Why? Because abortion is a statement that we no longer consider human life to be sacred.

As we devalue human life, necessarily a utilitarian perspective will dictate that infanticide and euthanasia will follow.

We now know that this very Congress debated a couple of years ago an issue as to whether or not parents acting in consultation with a physician would have the right during the child's first three days of life outside the womb to unilaterally terminate that life; that is, murder the child, if it did not fit within their definitional framework of life that is worth living.

□ 1615

Fortunately, that legislation fell. But we do know that infanticide exists in this country today. In Atlanta, the city that I have the privilege of representing, in 1983 we learned there were 14 certificates of live births signed at an abortion clinic in Atlanta, GA. You say, "Why would there be live births in an abortion clinic?" The reason was something went wrong in the abortion. These third-trimester abortions yielded forth live children.

Because those parents did not want that child and because the purpose of the operation, the cesarean, was to end not save the life, each of these children were allowed to die by suffocating in their own fluids.

I became personally sensitized to that issue last year, almost exactly a year ago, on January 4 of that year. I then had the privilege of seeing my wife give birth to my first daughter. Because my daughter was breech, it was necessary to have a cesarean.

During that cesarean I recognized that the procedure for that cesarean where we wanted the child was precisely the same procedure as a third-trimester abortion with one notable exception: In the third-trimester abortion, before the cesarean, there is an injection of saline designed to burn the baby to death. If it works, the child is delivered dead. If it fails, then the child is delivered mutilated, burned but not yet dead, until nature takes its course and the child suffocates.

I must confess to you that when you look at the personal side of abortion it is not a pretty picture. It is not an issue with which we want to deal, but it is a very human issue.

I also have grown to recognize the direct correlation, as we devalue human life, between infanticide abortion, and euthanasia, because in the utilitarian society that devaluates human life and places it captive to the relative subjective opinions of the majority, we find that regrettably those that are least fit are least likely to survive.

So naturally our elderly become potential victims. In fact, recently a western Governor actually made the statement that our elderly have an obligation to step aside because they have nothing to contribute to society.

Last Friday in USA Today, the founder of the Hemlock Society, Derek Humphry, was quoted in an interview as responding in the following manner to the question: "How do doctors feel about the proposal to legalize euthanasia in this country?" His response was, "It is going to be a very controversial piece of legislation, but as long as one-fourth or one-third of doctors agree with us, that is all that will be necessary."

It is like abortion, it will be a matter of conscience. This will give sanction to active, voluntary euthanasia of a dying person to request it. It is death by request; it is not murder, and it is not killing.

You see, the problem is we in this Nation have deteriorated to the point where we believe just because we make something legal it makes it right. But again I return to the definition of unalienable rights. Unalienable are those which the majority under our constitutional Government ought not to be able to take or to give. As long as the motto that is inscribed just above the Speaker's platform is inscribed there, I think we need to pause and ask precisely what we mean when we say, "In God we trust." I know this, that but for the affirmative act of abortion there would be 18 million young people alive in this country today.

As we reflect on the incredible and positive accomplishments of the last several decades in the area of civil and human rights for our black brothers and sisters, I would simply ask that we reflect further on the consequences of the Roe versus Wade decision and pay particular attention to the quote of our Founding Fathers where they said, "All men are created equal." Notice they did not say, "All are born equal;" a significant choice of words, because it was their intent that that basic right to life began from the moment of creation, not from the moment of birth.

Even our own Supreme Court in the Three Sisters decision concluded that the Founding Fathers, in writing the Declaration of Independence, knew precisely the words that they chose and chose them intentionally.

In this Nation it is imperative to recognize that there is one very fundamental and inescapable difference between the plight of our black brothers and sisters during the era of slavery and during the era of segregation, and the plight of our unborn who are being aborted at the rate of 1.5 million per year; and that is this: Our unborn do not have the ability to picket, to march, to protest, to write their Congressmen, to vote, and, most regrettably under the state of law in this country today, they do not have the right to life.

I thank the Speaker.

SIXTH SCIENCE AND TECHNOLOGY REPORT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Science and Technology:

(For message, see proceedings of the Senate of today, Wednesday, January 22, 1986.)

REPORT OF THE NATION'S PROGRESS IN AERONAUTICS AND SPACE DURING 1984—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Science and Technology:

(For message, see proceedings of the Senate of today, Wednesday, January 22, 1986.)

REPORT OF THE NATIONAL SCIENCE BOARD ENTITLED "SCIENCE INDICATORS/THE 1985 REPORT"—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Science and Technology:

(For message, see proceedings of the Senate of today, Wednesday, January 22, 1986.)

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. GEKAS) to revise and extend their remarks and include extraneous material:)

Mr. STRANG, for 30 minutes, January 28.

Mr. CONTE, for 30 minutes, January 23.

(The following Members (at the request of Mr. STENHOLM) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. MONTGOMERY, for 5 minutes, today.

Mr. VISCLOSKY, for 5 minutes, January 23.

Mr. RANGEL, for 60 minutes, January 28.

(The following Member (at the request of Mr. SHUSTER) to revise and extend his remarks and include extraneous material:)

Mr. SWINDALL, for 30 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. GEKAS) and to include extraneous matter:)

Mr. RUDD.
Mr. FISH.
Mr. BADHAM in two instances.
Mr. SHUMWAY.
Mr. SILJANDER in two instances.
Mr. KINDNESS.
Mr. GEKAS.

(The following Members (at the request of Mr. STENHOLM) and to include extraneous matter:)

Mr. GUARINI.
Mr. MURTHA.
Mr. ADDABBO.
Mr. COELHO.
Mr. MURPHY.
Mr. GEPHARDT.
Mr. WALGREN.
Mr. EDWARDS of California.
Mr. FASCELL in two instances.
Mr. MARKEY in two instances.
Mr. YATRON.
Mr. MICA.
Mr. STARK.
Mr. HUBBARD.
Mr. GARCIA.
Mr. STOKES.
Mr. COLEMAN of Texas.
Mr. MINETA.

ADJOURNMENT

Mr. GEKAS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 25 minutes p.m.), the House adjourned until tomorrow, Thursday, January 23, 1986, at 11 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2557. A letter from the Secretary of State, transmitting the President's determination that the Government of Jamaica is sufficiently responsive to U.S. Government concerns on drug control for continuation of assistance, pursuant to Public Law 99-190, section 537; to the Committee on Appropriations.

2558. A letter from the Director, Defense Security Assistance Agency, transmitting notification of the Department of the Air Force's proposed letters of offer to Korea for defense articles and services, pursuant to 10 U.S.C. 133b (96 Stat. 1288); to the Committee on Armed Services.

2559. A letter from the Director, Defense Security Assistance Agency, transmitting notification of the Department of the Air Force's proposed letters of offer to Turkey for defense articles and services, pursuant to 10 U.S.C. 133b (96 Stat. 1288); to the Committee on Armed Services.

2560. A letter from the National Security Advisor, Executive Office of the President, transmitting a report on the implication of Soviet treaty violations, pursuant to title X, section 1001, 1986 Defense Department Authorization Act; to the Committee on Armed Services.

2561. A letter from the Treasurer of the United States, transmitting the final report relating to the minting of 1984 Los Angeles Olympic games' coins, pursuant to Public Law 97-220, section 11; to the Committee on Banking, Finance and Urban Affairs.

2562. A letter from the Chairman, Export-Import Bank of the United States, transmitting a report on loan, guarantee, and insurance transactions supported by Eximbank during November 1985 to Communist countries, pursuant to section 620(f) of the Foreign Assistance Act of 1961; to the Committee on Banking, Finance and Urban Affairs.

2563. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 6-124, "Wastewater System Regulation Amendment Act of 1985," and report, pursuant to Public Law 93-198, section 602(c); to the Committee on the District of Columbia.

2564. A letter from the Secretary of Education, transmitting a report on final regulations in connection with the administration of the Handicapped Special Studies Programs, pursuant to GEPA, section 431(d)(1) (88 Stat. 567; 90 Stat. 2231; 95 Stat. 453); to the Committee on Education and Labor.

2565. A letter from the Secretary of Education, transmitting a report on the activities of centers on educational media and materials for the handicapped, pursuant to Public Law 91-230, section 653(c) (89 Stat. 759); Public Law 96-88, section 207; to the Committee on Education and Labor.

2566. A letter from the Administrator, Office of Juvenile Justice and Delinquency Prevention, Department of Justice, transmitting the first annual missing children's summary; to the Committee on Education and Labor.

2567. A letter from the Administrator, National Aeronautics and Space Administration, transmitting a report on research, technology, and monitoring of the stratosphere, pursuant to CAA, section 154(b) (91 Stat. 728); to the Committee on Energy and Commerce.

2568. A letter from the Director, Defense Security Assistance Agency, transmitting notification of the Department of the Air Force's intent to issue letters of offer to sell certain defense articles and services to Turkey, pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

2569. A letter from the Director, Defense Security Assistance Agency, transmitting notification of the Department of the Air Force's intent to issue letters of offer to sell certain defense articles and services to Korea, pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

2570. A letter from the Director, Defense Security Assistance Agency, transmitting notification of the Department of the Navy's proposed letters of offer to Korea to sell certain defense articles and services,

pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

2571. A letter from the Assistant Secretary for Legislative and Intergovernmental Affairs, Department of State, transmitting a report on gifts by the U.S. Government to foreign individuals, pursuant to 22 U.S.C. 2694(2); to the Committee on Foreign Affairs.

2572. A letter from the Secretary of State, transmitting an interim report concerning the status of discussions with Mexico aimed at reducing impediments to intransit truck trade, pursuant to Public Law 99-83, section 717(c) (99 Stat. 247); to the Committee on Foreign Affairs.

2573. A letter from the Chairman, Agency for International Development, transmitting a report on the southern Africa regional programs, pursuant to Public Law 99-83, section 802(b)(3) (99 Stat. 261); to the Committee on Foreign Affairs.

2574. A letter from the Comptroller General, General Accounting Office, transmitting a list of all GAO reports issued during the month of December 1985, pursuant to 31 U.S.C. 719(h); to the Committee on Government Operations.

2575. A letter from the Acting Assistant Secretary for Health, Department of Health and Human Services, transmitting a report on a new system of records entitled, "National Medical Expenditure Survey, HHS/OASH/NCHSR," pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

2576. A letter from the Acting Assistant Secretary for Health, Department of Health and Human Services, transmitting a report on a new system of records in Lexington, KY, for patient records of the mentally ill, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

2577. A letter from the Administrator, Agency for International Development, transmitting an evaluation of compliance with the requirements of the internal accounting and administrative control system, pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Operations.

2578. A letter from the Executive Director, Neighborhood Reinvestment Corporation, transmitting a report on activities under the Freedom of Information Act, pursuant to 5 U.S.C. 552(d) to the Committee on Government Operations.

2579. A letter from the Clerk, U.S. Claims Court, transmitting a certified copy of the court's judgment order in *The Navajo Tribe of Indians* v. *The United States;* to the committee on Interior and Insular Affairs.

2580. A letter from the Administrator, Panama Canal Commission, transmitting the financial statements on maintenance and operation of the canal, pursuant to Public Law 96-70, section 1312; to the Committee on Merchant Marine and Fisheries.

2581. A letter from the Chairman, Merit Systems Protection Board, transmitting the sixth annual report of the Merit systems Protection Board, pursuant to 5 U.S.C. 1209(b); to the Committee on Post Office and Civil Service.

2582. A letter from the Secretary of Transportation, transmitting a report on the enforcement of vehicle weight limitations, pursuant to 23 U.S.C. 141 nt.; to the Committee on Public Works and Transportation.

2583. A letter from the Acting Administrator, National Aeronautics and Space Administration, transmitting a waiver of minimum funding and staffing requirements for a technology transfer from Federal laboratories, pursuant to Public Law 96-480, section 11(b); to the Committee on Science and Technology.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. PEPPER. Committee on Rules. House Resolution 357. Resolution providing for the consideration of H.R. 2443, a bill to limit the number of days a depository institution may restrict the availability of funds which are deposited in any account (Rept. No. 99-463). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BIAGGI:

H.R. 4024. A bill to amend the Merchant Marine Act, 1936; to the Committee on Merchant Marine and Fisheries.

By Mr. COLEMAN of Texas (for himself, Mr. HOYER, and Mr. BOUCHER):

H.R. 4025. A bill to amend part C of the Balanced Budget and Emergency Deficit Control Act of 1985 to provide that cost-of-living increases in benefits under the civil service, military, and Postal Service retirement and disability programs shall be exempt from reduction pursuant to sequestration orders thereunder; to the Committee on Government Operations.

By Mr. FAUNTROY:

H.R. 4026. A bill to amend the U.S. Housing Act of 1937 to encourage resident management of public housing; to the Committee on Banking, Finance and Urban Affairs.

By Mr. FAUNTROY (for himself, Mr. DELLUMS, Mr. MCKINNEY, Mr. BARNES, and Mr. BLILEY):

H.R. 4027. A bill extending the waiver authority of the District of Columbia Revenue Bond Act of 1985 to certain revenue bond acts of the District of Columbia, and for other purposes; to the Committee on the District of Columbia.

By Mr. FAUNTROY (for himself and Mr. DELLUMS):

H.R. 4028. A bill to eliminate Federal coverage concerning the political activities of District of Columbia Government employees and to authorize the District of Columbia Council to enact legislation regarding the political activities of such individuals; jointly, to the Committees on Post Office and Civil Service and the District of Columbia.

By Mr. GAYDOS:

H.R. 4029. A bill to establish an occupational health and safety standard on field sanitation with respect to agricultural employees engaged in hand-labor operations; to the Committee on Education and Labor.

By Mr. GEJDENSON:

H.R. 4030. A bill to provide financial assistance to State and local educational agencies for the development and expansion of demonstration chemical substance abuse prevention programs in the public elementary and secondary schools of such agencies, and for other purposes; to the Committee on Education and Labor.

By Ms. MIKULSKI:

H.R. 4031. A bill to amend the Internal Revenue Code of 1954 to delay the inclusion in gross income of interest on certain deposits which are subject to withdrawal restrictions by reason of the bankruptcy or insolvency of the financial institution or of a State requirement related to such a bankruptcy or insolvency; to the Committee on Ways and Means.

By Mr. MONTGOMERY (by request):

H.R. 4032. A bill to amend title 38, United States Code, to extend the required period for submission of a report on special pay for Veterans' Administration physicians and dentists; to the Committee on Veterans' Affairs.

By Mrs. SCHROEDER (for herself, Mr. HORTON, Mr. DYMALLY, Mr. ACKERMAN, Mr. FRANK, Mr. MCKERNAN, Mr. HOWARD, Mr. AKAKA, Mr. BARNES, Mr. FAZIO, Mr. GRAY of Pennsylvania, Mr. MATSUI, Mr. FOGLIETTA, Mr. GEJDENSON, Mr. HOYER, Mrs. BOXER, Mr. WHEAT, Mr. EVANS of Illinois, Mrs. BURTON of California, Mr. MCCLOSKEY, Mr. SIKORSKI, Mr. RICHARDSON, and Mr. VENTO):

H.R. 4033. A bill to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes; to the Committee on Post Office and Civil Service.

By Ms. SNOWE (for herself, Mr. BOEHLERT, Mr. WORTLEY, Mr. GALLO, Mrs. JOHNSON, Mr. CONTE, Mr. MARTIN of New York, Mr. MCKERNAN, Mr. CLINGER, and Mr. MCKINNEY):

H.R. 4034. A bill to extend the trade adjustment assistance programs until September 30, 1989; to the Committee on Ways and Means.

By Mrs. BOXER (for herself, Ms. SNOWE, Ms. MIKULSKI, Ms. OAKAR, Mrs. LONG, Mrs. BURTON of California, Mrs. COLLINS, Mrs. JOHNSON, Mrs. SCHROEDER, Mrs. MEYERS of Kansas, Mrs. KENNELLY, Ms. KAPTUR, Mr. WAXMAN, Mr. EVANS of Illinois, Mr. HOYER, Mr. MATSUI, Mr. HAYES, Mr. WEAVER, Mr. YATES, Mr. WEISS, Mr. KASTENMEIER, Mr. HORTON, Mr. UDALL, Mr. RAHALL, Mr. LANTOS, Mr. OWENS, Mr. COOPER, Mr. RODINO, Mr. FAZIO, Mr. CROCKETT, Mr. SAVAGE, Mr. BARNES, Mr. ANDREWS, Mr. CARR, Mr. SCHEUER, Mr. FASCELL, Mr. BOUCHER, Mr. HOWARD, Mr. MANTON, Mr. GEPHARDT, Mr. LELAND, Mr. DIXON, Mr. ALEXANDER, Mr. JACOBS, Mr. CHANDLER, Mr. ROE, Mr. FUSTER, Mr. LEVINE of California, Mr. MORRISON of Connecticut, Mrs. HOLT, Mr. HEFTEL of Hawaii, Mr. VENTO, Mr. BOSCO, Mr. DYMALLY, Mr. REID, Mr. DAUB, Mr. MCHUGH, Mr. ADDABBO, Mr. MCKERNAN, Mr. GEJDENSON, Mr. WOLPE, Mr. BRYANT, Mr. DORGAN of North Dakota, Mr. BEDELL, Mr. MRAZEK, Mr. GUNDERSON, Mr. VOLKMER, Mr. SMITH of Florida, Mr. MITCHELL, Mr. WILSON, Mr. PURSELL, Mr. MINETA, Mr. BOEHLERT, Mr. MILLER of Washington, Mr. MCEWEN, Mr. HUGHES, Mr. DWYER of New Jersey, Mr. LAGOMARSINO, Mr. FISH, Mr. EDGAR, Mr. LAFALCE, Mrs. MARTIN of Illinois, Mr. LUNGREN, Mr. GRAY of Illinois, Mr. DASCHLE, Mr. MOODY, Mr. LEWIS of California, Mr. SYNAR, Mr. PASHAYAN, Mr. DOWDY of Mississippi, Mr. AUCOIN, Mr. MARTI-

NEZ, Mr. MCKINNEY, Mr. EMERSON, Mr. HARTNETT, Mr. KASICH, Mr. RINALDO, Mrs. SMITH of Nebraska, Mr. DANNEMEYER, Mr. FOGLIETTA, Mr. MOORE, Mr. DELLUMS, Mr. REGULA, Mr. FRANK, Mr. CONYERS, Mr. WHEAT, Mr. FRENZEL, Mr. SIKORSKI, Mrs. BENTLEY, Mr. RICHARDSON, and Mr. NIELSON of Utah):

H.J. Res. 499. Joint resolution designating the week beginning March 2, 1986, as "Women's History Week"; to the Committee on Post Office and Civil Service.

By Mr. DREIER of California:

H. Res. 358. Resolution commending the President for the measures taken by him to discourage terrorism from Libya and supporting the pledge of the President to take further steps if Qadhafi continues to support terrorism; to the Committee on Foreign Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 471: Mr. COMBEST.

H.R. 598: Mr. SAXTON and Mr. PURSELL.

H.R. 604: Mr. MRAZEK.

H.R. 679: Mr. DELAY and Mr. MOODY.

H.R. 796: Mr. HOWARD and Mr. JEFFORDS.

H.R. 864: Mr. BATEMAN and Mr. WEBER.

H.R. 1309: Mr. GUARINI, Mr. PENNY, and Mr. CROCKETT.

H.R. 1398: Mr. GRAY of Pennsylvania and Mr. GAYDOS.

H.R. 2157: Mr. COATS, Mr. RITTER, Mr. SILJANDER, and Mr. PURSELL.

H.R. 2571: Mr. ARCHER.

H.R. 3006: Mr. SYNAR.

H.R. 3024: Mrs. SCHNEIDER, Mr. LOWRY of Washington, Mr. COMBEST, Mr. DERRICK, and Mr. NICHOLS.

H.R. 3041: Mr. ANTHONY, Mr. DE LA GARZA, Mr. DOWDY of Mississippi, Mr. DURBIN, Mr. EDGAR, Mr. ENGLISH, Mr. FLIPPO, Mr. HEFNER, Mr. JENKINS, Ms. KAPTUR, Mr. LEATH of Texas, Mr. LOWRY of Washington, Mr. MCCURDY, Mr. MAVROULES, Mr. MOLLOHAN, Mr. ROSE, Mrs. SCHROEDER, Mr. SHAW, Mr. SEIBERLING, Mr. SMITH of Iowa, Mr. SPENCE, Mr. STUDDS, Mr. TRAXLER, Mr. WATKINS, Mr. WHITLEY, and Mr. WISE.

H.R. 3180: Mr. MCKINNEY and Mr. LOEFFLER.

H.R. 3201: Mr. MCCAIN, Mr. DASCHLE, Mr. MILLER of Washington, and Ms. SNOWE.

H.R. 3297: Mr. KRAMER.

H.R. 3645: Mr. DASCHLE.

H.R. 3690: Mr. BARNES.

H.R. 3730: Mr. HOYER, Mr. RANGEL, Mr. EDWARDS of California, Mr. MARTINEZ, and Mr. CROCKETT.

H.J. Res. 244: Mr. SOLARZ, Mrs. LONG, Mr. DOWNEY of New York, Mr. ROBINSON, Mr. MOLLOHAN, Mr. MARTIN of New York, and Mr. FISH.

H.J. Res. 254: Mr. JONES of North Carolina, Mr. GEKAS, Mr. PANETTA, Mr. FUSTER, Mr. VENTO, Mr. FOGLIETTA, Mrs. LLOYD, Mr. COOPER, Mr. LIVINGSTON, Mr. LELAND, Mr. BIAGGI, Mrs. JOHNSON, Mr. MOORE, Mr. DENNY SMITH, Mr. SAVAGE, Mr. ROBERT F. SMITH, Mr. ROYBAL, Mr. VANDER JAGT, Mr. LEWIS of California, Mr. KANJORSKI, Mr. GILMAN, Mr. CONYERS, Mr. TAUKE, Mr. AUCOIN, Mr. LOTT, Mr. ROEMER, Mr. HEFNER, Mr. TAUZIN, Mr. BOEHLERT, Mr. HOPKINS, Mr. STUMP, Mr. QUILLEN, Mr. MCCOLLUM, Mr. BREAUX, Mr. TALLON, Mr. SISISKY, Mr. MILLER of Washington, Mrs. BOGGS, Mr. PASHAYAN, Mr. BOUCHER, and Mr. WILSON.

H.J. Res. 356: Mr. OWENS, Ms. KAPTUR, and Mr. HENDON.

H.J. Res. 410: Mr. BONER of Tennessee, Mr. YOUNG of Alaska, Mr. SCHAEFER, Mr. ROWLAND of Georgia, Mr. YATES, Mr. HAYES, Mr. HORTON, Mr. DAUB, Mr. FAZIO, Mr. AKAKA, Mr. DORNAN of California, Mr. YOUNG of Missouri, Mr. ACKERMAN, Mr. DE LUGO, Mr. LEVIN of Michigan, Mr. RAHALL, Mr. STRANG, Mr. WEISS, Mr. CROCKETT, Mr. FUQUA, Mr. RANGEL, Mrs. COLLINS, Mr. MORRISON of Washington, Mr. REID, Mr. HUGHES, Mr. WIRTH, Mr. DASCHLE, and Mr. MCKINNEY.

H. Con. Res. 209: Mr. GILMAN.

H. Con. Res. 217: Mr. NIELSON of Utah.

PETITIONS, ETC.

Under clause 1 of rule XXII,

267. The SPEAKER presented a petition of the Working Circle Hopi, Austria and Germany, relative to the Navajo and Hopi Indians; which was referred to the Committee on Interior and Insular Affairs.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 2443

By Mr. MCCOLLUM:

—Page 6, line 24, after "with respect to" insert "all".

By Mr. SHUMWAY:

—Strike all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SEC. 1. This Act may be cited as the "Fair Deposit Availability Act of 1986".

DEFINITIONS

SEC. 2. As used in this Act—

(1) the term "depository institution" means—

(A) Any insured bank or domestic branch as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act, other than a foreign bank having an insured or uninsured branch;

(B) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(C) any savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(D) any insured credit union as defined in section 101 of the Federal Credit Union Act or any credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act;

(E) any member as defined in section 2 of the Federal Home Loan Bank Act; and

(F) any insured institution as defined in section 401 of the National Housing Act or any institution which is eligible to make application to become an insured institution under section 403 of such Act;

(2) the term "deposit account" means an account in a depository institution on which the account holder is permitted to make withdrawals by negotiable or transferable instruments, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such term includes demand deposit accounts, negotiable order of withdrawal accounts, share draft accounts, savings, deposits, and share accounts. Such term does not include time deposits;

(3) the term "Board" means the Board of Governors of the Federal Reserve System; and

(4) the term "check or similar instrument" means a check, negotiable order of withdrawal, share draft, money order, or similar instrument, but does not include noncash items.

DISCLOSURE OF FUND AVAILABILITY POLICIES

SEC. 3. (a) Before opening a deposit account, a depository institution shall provide a written disclosure to the potential customer of its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into the customer's deposit account. A depository institution also shall provide a written disclosure to the potential customer of all fees and charges that can be assessed against deposit accounts. In the case of a deposit account which was opened prior to the effective date of this section, the depository institution shall include such disclosure with the first regularly scheduled mailing pertaining to the account which occurs after such effective date (but not later than 90 days after such effective date) unless the depository institution has provided a disclosure which meets the requirements of this section prior to such effective date.

(b) Each depository institution shall—

(1) post at each location where its employees receive deposits a clear and conspicuous notice setting forth its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument; and

(2) mail at least annually a brief reminder with respect to an account that deposits by check or similar instrument may not be available for immediate withdrawal.

(c) Each owner of an automatic or electronic terminal shall provide at each terminal location where deposits may be made a brief reminder that deposits by check or similar instrument may not be available for immediate withdrawal.

(d) Any change to a depository institution's general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into the customer's deposit account, or any change in the fees and charges to be assessed against a deposit account other than a change which expedites the availability of such funds, may take effect only after the depository institution has provided notice of such changes to the customer.

(e) Each depository institution shall provide disclosure, consistent with the disclosures required under subsection (a), by telephone of its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into a customer's account upon the telephone request of any person.

(f) The Board shall prescribe regulations to carry out this section. These regulations may contain such definitions, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as the Board determines are necessary to effectuate the purposes of this section, to prevent circumvention or evasion of this section, or to facilitate compliance with this section. The regulations of the Board shall require all disclosures, statements, and notices pro-

vided to be clear and conspicuous and in language that can be readily understood.

(g) A depository institution that does not begin to compute interest or dividends on funds deposited by check or similar instrument to an interest bearing deposit account or a time deposit on or before the date on which the depository institution receives provisional credit for the deposit (or if provisional credit is given on a nonbusiness day, the next business day) shall provide a written disclosure, within the time periods required under subsection (a), with respect to when the institution begins to compute interest on such funds.

(h) The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language. Nothing in this Act requires the use of any such model form or clause prescribed by the Board under this section. A depository institution shall be deemed to be in compliance with the provisions of this section if it (1) uses any appropriate model form or clause as published by the Board, or (2) uses any such model form or clause and changes it by (A) deleting any information which is not required by this Act, or (B) rearranging the format.

(i) Model disclosure forms and clauses shall be adopted by the Board after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

INTEREST ON DEPOSITS

SEC. 4. For the purpose of computing the amount of interest or dividends payable with respect to an interest bearing deposit account or a time deposit, a depository institution may not delay beginning to compute interest on funds deposited by check or similar instrument to such an account beyond the date on which that depository institution receives provisional credit for the check or similar instrument (or if provisional credit is given on a nonbusiness day, on the next business day) unless the computation of interest begins at a later date for all deposits, including cash deposits, made to the account or deposit. Nothing in this section requires the payment of interest with respect to funds deposited by check or similar instrument which is returned unpaid.

IMPROVED CLEARING PROCEDURES

SEC. 5. (a) Not later than 18 months after the date of enactment of this Act, the Board shall publish for comment a regulation for the purpose of improving the check clearing system used by depository institutions by expediting the process for returning checks or other means in order to achieve the goal of—

(1) making deposits of funds by check or similar instrument drawn on local depository institutions available for withdrawal upon the expiration of one business day after deposit, and

(2) making deposits of funds by check or similar instrument drawn on other depository institutions available for withdrawal upon the expiration of three business days after deposit. This subsection does not apply to any check or similar instrument which poses a serious risk of loss to a depository institution.

(b) In prescribing the regulation under subsection (a), the Board shall consider—

(1) adopting a uniform endorsement standard;

(2) providing for direct notification of returning checks and similar instruments to the depository institution of first deposit;

(3) providing for direct return of checks and similar instruments to the depository institution of first deposit;

(4) providing for return of all checks and similar instruments through the Federal Reserve System's clearinghouse;

(5) extending limits for returns;

(6) establishing schedules for the availability of funds deposited by checks and similar instruments;

(7) prescribing the availability of funds deposited by checks and similar instruments based on the nature of the account to which the deposit was made or the nature of the account holder;

(8) the use of electronic means of collecting and returning checks;

(9) providing for check truncation;

(10) the establishment of an automated return system;

(11) charging a depository institution based upon notification that a check or similar instrument will be presented for payment;

(12) creating incentives for depository institutions to return unpaid items promptly to the depository institution of first deposit; and

(13) keeping the costs of any improvements to be implemented to a minimum.

(c) The regulation prescribed under subsection (a) shall become effective not later than 36 months after the date of enactment of this section. Each depository institution shall comply with the provisions of such regulation.

(d) The Board shall establish an Expedited Funds Availability Council (hereinafter referred to as the "Council") to advise and consult with the Board in the exercise of its functions under this section. The Council shall consist of—

(1) the Comptroller of the Currency or his delegate;

(2) the Chairman of the Federal Deposit Insurance Corporation or his delegate;

(3) the Chairman of the Federal Home Loan Bank Board or his delegate;

(4) the Chairman of the National Credit Union Administration Board or his delegate;

(5) two members of the Consumer Advisory Council designated by the Board;

(6) one representative from the users of payment systems services; and

(7) one representative from the providers of payment systems services in competition with the services offered by the Federal Reserve System.

The Council shall meet from time to time at the call of the Board.

AVAILABILITY OF CERTAIN FUNDS

SEC. 6. The Secretary of the Treasury shall by regulation require that funds deposited by a check drawn on the Treasury of the United States, which is first endorsed for deposit by a customer who has an established relationship, as defined by the Board, with the depository institution shall be available for withdrawal by that customer not later than the date when the depository institution is given provisional credit for that check or, if provisional credit is given on a nonbusiness day, on the next business day.

ADMINISTRATIVE ENFORCEMENT

SEC. 7. (a) Compliance with the requirements imposed under this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and Federal savings banks), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owner's Loan Act of 1933, section 407 of the National Housing Act, and section 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union or insured credit union.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this Act is specifically committed to some other Government agency under subsection (a) of this section, the appropriate State regulatory authority shall enforce such requirements.

(d) The authority of the Board to issue regulations under this Act does not impair the authority of any other authority designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this Act.

CIVIL LIABILITY

SEC. 8. (a) Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under section 3 (other than subsection (e)), 4, or 6 with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A) in the case of an individual action such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than $50 nor greater than $500; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the depository institution; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among

other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance, the resources of the depository institution, the number of persons adversely affected, and the extent to which the failure of compliance was intentional.

(b) A depository institution may not be held liable in any action brought under this section for a violation of section 3, 4, or 6 if the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this Act is not a bona fide error.

(c) Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

(d) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

EFFECT ON CHECK ACCEPTANCE POLICIES AND OTHER LAWS

SEC. 9. (a) Nothing in this Act—

(1) prevents a depository institution, in accordance with the policy of such depository institution, from making funds available for withdrawal in a shorter period of time than is provided in this Act or in regulations adopted by the Board; and

(2) affects a depository institution's right—

(A) to accept or reject a check for deposit; or

(B) if a check for deposit and the depository institution has made provisional settlement with the depositor, pursuant to law to—

(i) revoke the provisional settlement given by the depository institution;

(ii) charge back the depositor's account; or

(iii) claim a refund of such provisional credit.

(b) Except as provided in subsection (a), the provisions of this Act or the regulations of the Board prescribed under this Act shall supersede the provisions of any State law which the Board determines to be inconsistent with the provisions of this Act or such regulation, but only to the extent of the inconsistency.

IMPROVING PAYMENT MECHANISMS

SEC. 10. Not later than one year after the implementation of any regulations under section 5 of this Act, the Board shall prepare a study and submit its findings to the Congress on the effect of improvements and changes in the payment system, including—

(1) the effect of the changes made by section 5 of this Act, and the advisability and feasibility of further changes;

(2) an assessment of improvements that can be made in the check collection system, including improved procedures for the return of unpaid items, reduction of costs, reduction in the number of returned checks, greater speed and efficiency in the check collection and return system, utilization of more efficient technology, and parity of treatment of depository institutions; and

(3) an assessment of the use of electronics in payments and of the need for improvements in the way the payments system provides services so as to insure efficient and affordable services, including the possible development of additional electronic services.

EFFECTIVE DATE

SEC. 11. Except as provided in section 5, this Act takes effect upon the expiration of twelve months following its enactment.

—On Page 18, line 15, add a new subsection (h) to section 5 as follows:

"(h) Sections 3(b), 4(c) and 4(d) shall not apply to a check if the receiving depository institution reasonably believes that the drawer or drawee of the check has become, or is about to become, subject to bankruptcy, receivership or similar proceeding, or when the receiving depository institution reasonably believes that a situation involving fraud or kiting exists."

By Mr. WYLIE:

—Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. This Act may be cited as the "Expedited Funds Availability Act".

SEC. 2. The Board of Governors of the Federal Reserve System (Board) shall immediately begin to develop a program with the goal of providing that with regard to deposits—

(1) funds deposited in depository institutions by items drawn on a local depository institution shall be available for withdrawal by depositors upon the expiration of one business day following the day on which such item was deposited; and

(2) for all other items, funds deposited in depository institutions shall be available for withdrawal by depositors upon the expiration of three business days after deposit. The Board may provide that such program does not apply to any item which poses a serious risk of loss to a depository institution.

(b) In order to achieve the goals specified in subsection (a), the Board shall consider (among other proposals) requiring, by regulation, that—

(1) each depository institution shall follow a uniform standard for placing its endorsement on items;

(2) each depository institution itself or through a third party shall provide wire notification directly to the institution which originally accepted for deposit an item in an amount of $100 or more, that the institution is returning the item unpaid to the institution of first deposit;

(3) each depository institution shall establish schedules for the availability of items deposited; and

(4) each depository institution shall provide for the direct return of unpaid items to the depository institution which originally accepted the item for deposit.

(c) Before a deposit account is opened, a depository institution shall provide a written disclosure to the potential customer of the policy of such depository institution with respect to the availability of deposited funds in accordance with regulations adopted by the Board. Such disclosure shall include the actual time periods before deposits made through different types of items will be available for withdrawal. Each depository institution shall also provide this information in writing to existing customers within thirty days of the effective date of this section, and at least annually thereafter. Any change in deposit availability policies or schedules, other than a change which expedites the availability of such funds, shall be communicated in writing to all customers before it may be put into effect.

(d) Each depository institution shall post in a conspicuous place in each office in which deposits are accepted, and at each automatic or electronic terminal where deposits are accepted, a notice which sets forth the information required to be disclosed in subsection (c) in accordance with regulations adopted by the Board.

(e) For the purpose of computing the amount of interest or dividends payable with respect to an interest bearing deposit account or a time deposit, a depository institution may not delay beginning to compute interest on funds deposited through an item beyond the date on which that institution receives provisional credit for that item, or if the provisional credit is given on a nonbusiness day, on the next business day, unless the computation of interest begins at a later date for all deposits, including cash deposits. Nothing in this section requires the payment of interest with respect to funds deposited through an item which is returned unpaid.

(f)(1) The Board may prescribe regulations to carry out this section. These regulations may contain such definitions, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as the Board determines are necessary to effectuate the purposes of this section, to prevent circumvention or evasion of this section, or to faciliate compliance with this section.

(2) The regulations of the Board may require all disclosures, statements, and notices provided to be clear and conspicuous and in language that can be readily understood. The Board may publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language. Nothing in this section requires the use of any such model form or clause prescribed by the Board under this section. A depository institution shall be deemed to be in compliance with the provisions of this section if it uses any appropriate model form or clause as published by the Board, or uses any such model form or clause and changes it by deleting any information which is not required by this title, or rearranging the format.

(g) Each depository institution shall comply with the provisions of any regulations adopted by the Board under this section. Compliance with the requirements imposed under this section including regulations promulgated by the Board of Governors of the Federal Reserve System, shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and section 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and

(3) the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union or insured credit union. Except to the extent that enforcement of the requirements of this section is specifically committed to another agency under this subsection (g), the appropriate state regulatory authority shall enforce such requirements.

(h) For purposes of this section—

(1) the term "depository institution" means a bank, as defined in section 2(c) of the Bank Holding Company Act of 1956 as amended, an insured bank, as defined in section 3(h) of the Federal Deposit Insurance Act, an insured institution, as defined in section 401(a) of the National Housing Act, or an insured credit union, as defined in section 101 of the Federal Credit Union Act, or any other institution which accepts deposits and utilizes Federal Reserve System payment system services, as that term is defined in section 2(j) of the Bank Holding Company Act as amended.

(2) the term "wire" shall include telephonic communication; and

(3) the term "item" means, check, draft, negotiable order of withdrawal, share draft, money order or similar instrument.

(4) the term "deposit account" means an account in a depository institution on which the account holder is permitted to make withdrawals by draft or other item. Such item includes demand deposits, negotiable order of withdrawal accounts, share draft accounts, savings accounts, share accounts and money market deposit accounts, but does not include time deposits.

—Page 4, line 15 delete section 3(a) and substitute in lieu thereof the following new section 3(a):

"SEC. 3. DEVELOPMENT OF ENHANCED AVAILABILITY SYSTEM.

"(a) ENHANCED AVAILABILITY SYSTEM.—The Board of Governors of the Federal Reserve System shall immediately begin to develop enhancements to the funds availability system as a means of reducing the risk to receiving depository institutions from meeting the funds availability requirements of section 3(b) within three years."

—Page 8, lines 18 through 20 are amended to read as follows:

"(2) a depository institution knows or is advised of final payment for a wire transfer for deposit in an account at such institution,".

—On page 13, delete the dash in line 5 and delege lines 6 through 12 and substitute therefore the following: "shorten or lengthen any time period in sections 3(b), 4(a), (b), (c) and (d) based on its assessment of the potential impact in terms of risks and losses to depository institutions and costs and benefits to depositors of such time periods as they may be shortened or lengthened from time to time hereunder."

—On page 18, after line 14, insert the following new subsection (h) to section 5:

"(h) RESTRICTIONS ON UNREGULATED DEPOSITORY INSTITUTION HOLDING COMPANIES.—

(1) PROHIBITION REGARDING AFFILIATED DEPOSITORY INSTITUTIONS.—In the case of any depository institution which is an affiliate of an unregulated holding company—

(A) no account may be established in such depository institution by or for such holding company or any other affiliate of such holding company; and

(B) no check or other negotiable instrument which is drawn, made, or endorsed by such holding company or any other affiliate of such holding company may be accepted or otherwise handled by such depository institution for the receipt, payment, collection, or clearing of such check or instrument or for any other purpose related to any function of the payment system with respect to checks.

(2) DEFINITIONS.—For purposes of this subsection—

(A) UNREGULATED HOLDING COMPANY.—The term "unregulated holding company" means any company which has control over any other company in the manner described in subparagraph (A), (B), or (C) of section 2(a)(2) of the Bank Holding Company Act of 1956 other than—

(i) a bank holding company (within the meaning given to such term by section 2(a)(1) of such Act), or

(ii) a savings and loan holding company (within the meaning given to such term by section 408(a)(1)(E) of the National Housing Act).

(B) AFFILIATE.—The term "affiliate" has the meaning given to such term by section 23A(b)(1) of the Federal Reserve Act. For purposes of the preceding sentence, such section 23A(b)(1) shall be applied by substituting the term "depository institution" (as defined by section 14(11) of this Act) for the terms "bank" and "member bank" each place such terms appear in such section 23A(b)(1).

—On page 18, line 15 add a new section 5(h) as follows:

"(h) DOUBTFUL COLLECTABILITY.—In accordance with regulations of the Board, sections 3(b), 4(c) and 4(d) shall not apply in instances where the receiving depository institution has reason to doubt the collectability of funds for a check (e.g. suspicion of bankruptcy of the drawer of a check, suspicion of fraud);".

—On page 19, line 11, insert after "Act" the following: "and to preserve the soundness of and prevent abuses of the payments system".

—Page 19, line 24 is amended by inserting after the first appearance of the word business the following phrase ", as determined in accordance with regulations of the Board,".

—On page 21, line 1, delete section 7 and redesignate all other sections accordingly.

—Page 24, lines 14 through page 25, line 6 are deleted, and the remaining sections of the bill are renumbered accordingly.

Page 33, lines 1 and 2 are deleted, and the rest of paragraphs of section 14 are renumbered accordingly.

—On page 25, delete lines 10 through 13, and insert in lieu thereof the following: "to carry out the purposes of this Act. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, and in the judgment of the Board are necessary or proper to effectuate the purposes of this Act, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith. In particular, such regulations may exempt from one or more of the provisions of this Act any class of accounts not primarily for personal, family, or household purposes, and not held by small business, if the Board makes an express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of this Act and reports such finding to the House Committee on Banking, Finance and Urban Affairs and the Senate Committee on Banking, Housing and Urban Affairs."

SENATE—*Wednesday, January 22, 1986*

(Legislative day of Tuesday, January 21, 1986)

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 cooperation with the Andrei Sakharov Institute, we join with parliaments of a number of nations in observing the sixth anniversary of Dr. Andrei Sakharov's forced exile in a minute of silence.

(A minute of silence.)

Almighty God, as this final session of the 99th Congress begins we express our gratitude to You for the strong, wise leadership of Senator DOLE and Senator SIMPSON, Senator BYRD, and Senator CRANSTON. Thank You for the deep bond of respect, admiration and cooperation which they have built. Guide them in the heavy responsibilities of party leadership through these days when the impending national elections will require partisan loyalty and commitment.

We are grateful, Father in Heaven, for a political system designed to accommodate pluralism and diversity with the inevitable conflict and compromise such a process generates. In a national election year, when polarization is inescapable, grant to them special sensitivity as they walk the fine line between party politics and national welfare. Grant to them daily the resources of Your love, wisdom, and power and, as pressures grow, protect their families against discouragement.

We pray, Heavenly Father, for their faithful, hardworking staffs, so often under great tension, and their families who cannot escape such strain. Grant that they also may enjoy daily divine enablement and blessing. Strengthen all who are involved in the life of the Senate against the enervating forces which provoke alienation and fragmentation. In His name Whose love transcends all human division. Amen.

RECOGNITION OF THE MAJORITY LEADER

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

A MINUTE OF SILENCE ON BEHALF OF DR. ANDREI SAKHAROV

Mr. DOLE. Mr. President, it is appropriate that the Senate, joined by other parliaments throughout the world, pause for 1 minute of silence to mark the sixth anniversary of Dr. Andrei Sakharov's forced exile to the closed city of Gorky. This is one anniversary no one should be proud of celebrating. For close to 2 years, the Soviets have kept this Nobel Peace Prize winner isolated from direct contact with his family or independent Western observers.

We are very pleased that Yelena Bonner is receiving the best of medical care in this country and, of course, we wish her a speedy recovery from heart surgery. Unfortunately, we cannot necessarily say the same for her husband, Dr. Sakharov. The Soviets have turned a deaf ear to the outpouring of international concern and outrage about his treatment.

No government's behavior has been as shameful as that of the Soviet Union in their attempt to persecute Mr. Sakharov. I find it inconceivable that a country that signed the Helsinki Final Act could treat the Nobel Peace Prize winner in such a violent manner. The Soviets must understand that Andrei Sakharov is not only a citizen of the Soviet Union, but a citizen of the world community.

The Sakharovs have become the symbol of the continuing struggle for freedom in the Soviet Union—and to the Kremlin, that is unpalatable. Yet, how long do the Soviets expect they can keep the world community waiting for news of Andrei Sakharov's well-being. The Soviets may be able to silence his voice temporarily, but they will never be able to silence the expressions of condemnation by the world community.

I cannot think of a better way to build on the spirit of Geneva than for the Soviets to end the isolation of Dr. Sakharov and permit family members and independent observers to meet with him. Freedom for Andrei Sakharov, I am afraid, will not come automatically simply because we in this body desire it. It must be pursued by those in this Chamber, by other parliaments, and the world community at large—by every means at our command. To that end, this minute of silence is a symbolic display of our concern about this courageous man.

I thank the Chaplain.

SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders have 10 minutes each. I have used part of my 10 minutes and I will reserve the remainder of my time. We then have special orders in favor of Senators PROXMIRE and COCHRAN, and then routine morning business not to extend beyond the hour of 12 noon, with statements therein limited to 5 minutes each.

Following the conclusion of morning business, the Senate will resume the Metzenbaum motion to proceed to S. 638, the Conrail bill. There could probably be an outside chance that we might find something we could take up later on this afternoon. I am not certain what may develop there, so I am not in a position to indicate that there would not be votes today. But I will try to alert Members at the earliest possible time.

As I understand it, we were looking at a drug export bill and maybe a sports franchise bill. But I doubt that we may reach those today.

I reserve the remainder of my time.

RECOGNITION OF THE MINORITY LEADER

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

Mr. BYRD. Mr. President, I thank the distinguished occupant of the chair, the President pro tempore of the U.S. Senate.

DR. ANDREI SAKHAROV

Mr. BYRD. Mr. President, today is a sad day for all those throughout the world who cherish human freedom and religious liberty. It marks the sixth anniversary of when the noted Soviet physicist and human rights activist, Dr. Andrei Sakharov, was exiled internally to the city of Gorky by Soviet authorities.

One of the original leaders of the Soviet human rights movement, Dr. Sakharov was exiled in 1980 and kept under virtual house arrest due to his human rights activity, and perhaps, according to the Congressional Helsinki Commission, because of his criticism of the brutal Soviet invasion of Afghanistan.

The entire free world has been inspired by the courageous struggle Dr. Sakharov and his wife, Yelena Bonner, have continued to wage, since his

exile, in defense of human rights in the Soviet Union.

We all know that the Soviets, after loud international outcry and the Sakharovs's own protests, recently issued a temporary exit visa to Mrs. Bonner to permit her to receive medical treatment in the United States. We wish her speedy recovery from her serious surgery.

Despite this temporary visa, and other decisions by the Soviets just before the Reagan-Gorbachev summit meeting to permit several Soviet citizens to join spouses in the West, repressive human rights conditions in the U.S.S.R. continue. Dr. Sakharov's continued internal exile amply demonstrates this fact.

Mr. President, when I led a bipartisan delegation of Senators to meet with General Secretary Gorbachev last September, I told the new Soviet leader—on behalf of myself and my colleagues, my colleagues having joined with me in the preparation of the statement which I made at that meeting—that human rights is a matter of critical concern to the people of the United States. I told him it was important to understand that Soviet human rights policies are serious obstacles to good United States-Soviet relations, because the American people know about, and care about, Soviet actions.

By observing this sad anniversary today of Dr. Andrey Sakharov's internal exile, the Senate will reinforce that important message to the Soviet leadership and underscore its solidarity with the cause of human rights.

AFGHANISTAN UPDATE

Mr. BYRD. Mr. President, December 27, 1985, marked the sixth anniversary of the Soviet invasion of Afghanistan. The 6 years of brutality have not brought the Soviets any closer to their goal of securing their southern border. Indeed, more Soviet troops are in Afghanistan today than immediately following the invasion. We are told that Soviet casualties are higher today, because more of those Soviet troops are directly involved in the fighting. More Soviet resources are being expended to subdue the Afghan people today. But none of the increased money, materiel, or manpower is achieving the Soviet objectives.

Dramatic evidence of the Soviet failure in Afghanistan comes to us in an excellent series recently published in the Washington Post. These articles describe the current situation in Afghanistan after 6 years of unparalleled warfare against Afghan civilians.

I have shared with my colleagues the fact that I had a very direct exchange of views on this subject with General Secretary Gorbachev. We can all remain hopeful that recent signs point toward a possible solution to the Afghan war. The Afghan war is not yet Mr. Gorbachev's war. But I would temper that optimism with the understanding that any fair and lasting solution must return Afghanistan to the Afghan people in peace and dignity.

Lenin said that it was a dangerous thing to go into Afghanistan, and a difficult thing to come out of Afghanistan. So any lasting solution must write an end to the Soviet brutality that these articles describe.

I ask unanimous consent that this series of articles from the Washington Post of January 12 through January 16, 1986, appear in its entirety in the RECORD.

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

[From the Washington Post, Jan. 12, 1986]

WAR RENDS FABRIC OF AFGHAN SOCIETY

(By James Rupert)

JERAGHTU-YE-WARDAK, AFGHANISTAN.—"It's shameful," said Abdurrahman, "That we cannot offer you, as our guest, any better food than this, but times are very difficult."

Gesturing, as he spoke, toward a dinner of bread, rice and a little meat spread on a cloth on the floor, Abdurrahman smiled sadly. A spry, bearded man of about 65, Abdurrahman is a leading elder of a tiny hamlet of 10 families near here.

With most of the village's older men, we sat in the best room of Abdurrahman's house, on cushions ranged along the four white-washed walls of mud and straw. Abdurrahman had guided me carefully to the best seat and had tucked the house's best pillow behind my back.

Traveling through southern Wardak Province, I had appeared in the village unannounced, with a small escort of mujaheddin (Afghan resistance fighters), and Abdurrahman immediately had asked us to spend the night at his house.

Before dinner, two boys from the family had brought the inevitable steaming kettles, asking, "Tor chai ya chin chai (black tea or green tea)?".

After six years of brutal, desperate warfare against the high technology and massed firepower of the Soviet Army and Air Force, Afghans such as the hospitable men of Abdurrahman's village can give a visitor the impression that, at its core, Afghanistan remains unchanged.

Despite the inescapable evidence of physical destruction—the gaping bomb and missile craters in orchards, houses and irrigation canals—Afghanistan's villagers, joking and talking softly at night in the dim glow of kerosene lanterns in their homes, suggest that the old and finely woven fabric of their society has survived untorn.

It is not so.

For all the Afghans' impressive resilience as individuals, and for all the binding power of their traditions, their social fabric is being rewoven by this war. It is happening in ways that are difficult for outsiders to see, and that leave even Afghans uncertain about the future of their society.

A month's travel in several southeastern provinces of Afghanistan, and several weeks of interviews in Pakistan with Afghans and others, indicate clearly that two important changes among Afghans since the Soviet invasion are a growing sense of nationalism and a new concern for politics.

Surrounded by deserts and the rugged peaks of the Hindu Kush, Afghanistan entered the 1980s as an isolated country of villagers and nomads, separated from each other by their mountains and by ethnic, linguistic and tribal differences.

As with many rural populations in the Third World, Afghans were largely unconcerned with the political activities of their country's elite in the distant capital and traditionally had rebelled against the government's efforts to extend its influence into the countryside.

Now, war has uprooted as many as one-third of Afghanistan's people, forcing them to abandon their homes and flee to other parts of the country, or to Pakistan or Iran, as refugees. Large sections of this insular population have been "instantly urbanized" in crowded refugee camps in Pakistan that hold between 2 and 3 million Afghans.

A NEW CLASS OF LEADERS

Six years after the Soviet invasion that linked the lives of common Afghans to the forces of world politics, even the uneducated and illiterate (the vast majority) appear newly attentive to political questions, both among themselves and internationally.

During my month of travel, Afghans frequently were eager to discuss politics at length—although usually all discussion stopped for the nightly BBC broadcasts in Persian and Pashtu, Afghanistan's main languages.

"Even if they're not used to thinking about politics, people who have suffered such terrible things start to ask why these things happen to them—and so they start to talk about politics," a young Afghan Moslem fundamentalist said.

And whether men like the hospitable Abdurrahman concede it or not—and many do not—their own authority as the traditional chiefs of this rural society is slowly slipping away into the grasp of men who represent an anomaly in Afghan history: young leaders.

In a country where, for centuries, men have wielded authority because of their age, religious training, wealth or lineage, a new class of leaders is emerging. Largely in their twenties and thirties, these men—the field commanders of the resistance—gather followers because they can successfully organize and lead a 20th-century guerrilla *jihad* (holy war) against the occupying Soviet Army.

Since early in the war, the young commanders have taken over battlefield authority from the traditional leaders. Now, such commanders are taking on civil authority as well, overseeing rural schools and hospitals and arbitrating local disputes once handled by traditional tribal leaders or landlords.

EVOLUTION OF A WAR

The weight and pressures of war—now longer and fiercer than anyone had expected—against a 20th-century superpower have bent and buckled the social traditions built by generations of Moslem farmers and shepherds in these harsh Central Asian steppes and mountains. As it has changed Afghanistan, the war itself has evolved also.

When the Soviets invaded in December 1979 to supplant Afghanistan's indigenous Communist government, there were widespread predictions that they would quickly crush the disorganized mujaheddin. But more than six years later, the military combat is more intense and more sophisticated. Soviet strategy has evolved to carry the conflict to new battlefields, aiming to destroy the resistance at its roots in the

countryside and to capture the cultural identity and loyalties of the rising generation of Afghans.

Last winter, hospitals in Pakistan for Afghan war casualties remained full, as fighting continued through months that in previous years had provided lulls in combat. Since then, the two sides have fought some of their largest and longest battles of the war. Each has conceded higher casualities in the past year—an unusual admission for the Soviets.

In interviews, many mujahed commanders admitted difficulties in coping with new Soviet tactics, such as their dropping anti-guerrilla forces by helicopter onto high ground from which they can ambush mujahed caravans and attack bases.

The Soviets also have increased their subversion. They promote conflict among the many Afghan resistance groups and use Afhan agents to help them find and kill effective resistance commanders.

The evolution of the combat, and especially the loss of mujahed commanders, leads some analysts to worry that the Soviets may be gaining a battlefield advantage, which, while it does not give them hope of an outright military victory, may yet weaken the resistance and permit Moscow to reduce its costs in the war.

The Soviets attribute their higher casualties through most of 1985 to the mujaheddin's use of heavier weapons.

New weapons—many reportedly supplied by a covert CIA program—are arriving in Afghanistan, although many are lost through corruption along the pipeline.

Despite its changes, the military battle in Afghanistan remains much as it has been reported in the past few years by the few western journalists who have traveled inside. The mujaheddin, fighting with impressive courage and inferior weapons, are deadlocked with the technologically superior Soviets.

Although they control as much as 90 percent of Afghanistan, the guerrillas cannot dislodge the Soviet and Afghan government bases in the country's major towns. With their relatively light weapons, the mujaheddin can only try to harass such bases and their supply convoys, hoping to raise the Soviets' human and economic costs from the occupation.

The mujaheddin continue to lack not only heavy weapons, but also effective air defenses. More importantly, in the view of many mujaheddin and others, the guerrillas still need even basic training and do not really know how to use some of the weapons being supplied to them.

The concerns of resistance leaders and Afghan intellectuals now reflect the expansion of the war to its new battlefields, and the implications of these new fronts for Afghan society.

CHOKING OFF SUPPORT

Increasingly, over the past 2 years, the Soviets have tried to choke off civilian support for the guerrillas simply by emptying the villages of their inhabitants. This has been one of their most brutal campaigns, including killings of unarmed villagers, the destruction of farms and irrigation canals, and the mining of villages and homes.

In the small part of Afghanistan toured recently, both the breadth and the success of this strategy were clear. Local residents in 20 of 32 villages visited said they had been bombed, shelled or attacked by Soviet or Afghan government ground forces. Many pointed out unexploded bombs and destroyed homes.

The other 12 villages, in the Zermat region of Paktia Province, were eerily abandoned, with cratered paths, crumbling walls and doors open wide into silent houses. An independent human rights report covering much of the same territory said that half of 8,000 village households surveyed had been abandoned.

In this new battle for the survival of the villages, the mujaheddin are fighting back, but they are hampered by their lack of money and trained professionals.

"The jihad depends on the villagers, so we must keep them on the land," explained Amin Wardak, a guerrilla commander in Wardak Province. "So we try to provide medical care, we run schools, we try to help the farmers," he said.

Despite efforts like Wardak's much of Afghanistan's society of villagers has been transformed into a society of refugees, suddenly thrown into sprawling camps of tents and mud buildings in Pakistan and Iran. Other Afghans have fled their homes for safer parts of the country, notably the Soviet-controlled capital, Kabul.

It is largely among these suddenly urbanized populations that still another battlefield has opened, in classrooms and mosques, for Afghanistan's very culture.

In an apparent attempt to mold a loyal pro-Soviet elite to help run the country, the Soviets have remodeled the Afghan education system and have taken children to be brought up in the Soviet Union.

The Soviets also are reinterpreting Afghanistan's Islamic faith, and in the past year they have installed government-trained mullahs in many of the mosques under their control.

The Soviets govern only a small part of the population, a fact that limits their ability to redesign the country's culture.

But in the cultural battle, the resistance, too, is severely handicapped. Even before the Soviet invasion, Afghanistan was, like so many Third World and Islamic countries, struggling to establish its own national identity—and the resistance remains divided on what it means to be Afghan.

It was, in part, the cultural divide between Afghanistan's tradition-bound countryside and its modernizing elite in Kabul that led to the Soviet invasion.

During the 1960's and '70s, segments of the educated elite, including the tiny Afghan Communist Party, found their ambitions frustrated by the monopoly on power of the traditional monarchy and grew impatient at its slow pace toward western-style modernization.

From 1973 to 1978, successive coups by members of this elite, backed by the Army, led to the takeover by a group of homegrown Communists in April 1978 in the "Saur Revolution," named for the month in which it occurred.

The takeover surprised Moscow, which had been getting along well with the nonaligned government of Mohammed Daud. Both promonarchy traditionalists and Moslem fundamentalists began leading a jihad against Kabul.

The rebellion spread nationwide when the first Communist regime tried to force radical changes—such as mandatory classes in Communist doctrine, compulsory schooling for girls and an end to the bride price—on the nation's villagers. By Christmas 1979, with the first Afghan Communist ruler assassinated and the resistance growing in strength, the Soviets intervened with 100,000 troops and installed Babrak Karmal as president.

"Afghanistan can never go back to the way it was," said Mohammed es'Haq, a political officer of the Jamiat-i-Islami (Islamic Society) party. "The war has broken the two pillars—the bureaucrats and the landlords—which used to run the country" under the monarchy, he said.

NEW POLITICAL AWARENESS

Es'Haq and others believe that several of the social changes wrought by the war are helping to forge a new sense of nationalism and a new politicization. The resistance is now gathered into seven "major" political parties (those recognized by the Pakistani government) and numerous other factions.

Es'Haq regards the simple existence of large political parties as a revolutionary change. Although for many people in Afghanistan and in the refugee camps the parties are little more than meaningless labels, Es'Haq argues that they represent an unprecedented effort to appeal across traditional ethnic and tribal divides.

Virtually all Afghans interviewed agreed that nationalism is growing. "It's natural, with the war," said Najib, a French-trained agronomist who returned to organize agricultural development projects in Wardak Province.

Asking not to be identified further to protect family in Soviet-held Kabul, Najib said, "The Soviets have created the same problems for everyone, and people can't explain it by reference to old-fashioned tribalism. Instead, we see this war and our suffering through the lens of Islam."

As numerous scholars point out, Afghans traditionally have identified—and defended—themselves and their country in terms of Islam.

The Soviets are not the first outside power to spawn a jihad with an invasion of Afghanistan. Starting in 1838, Britain fought three wars in an effort to dominate Afghanistan and protect its Indian colony to the south.

"This war is completely different," according to Es'Haq. "The British weren't . . . trying to Britishize or Christianize our country, but the Soviets are trying to completely erase our identity—especially our Islamic identity," he said.

"Also, war itself has changed," he said. "The Anglo-Afghan wars did not affect the whole country at the same time. . . . No place in Afghanistan is escaping this war."

A broad range of Afghans agreed that, as a people, they had become more interested in politics—especially their own national politics—and that this was one of the most important changes in their country since the Soviet invasion.

"Before the Communists, people didn't care about the government in Kabul," explained Abdul Haq, a prominent mujahed commander in Kabul for the Younis Khales faction of the Hezb-i-Islami (Islamic Party). "The Afghan people used to accept any regime, as long as it did not make problems for them. But it's not like that now," he said.

IS THAT GOOD FOR US?

Shortly after a frosty sunrise on Nov. 22, in a village near here, several mujaheddin and I breakfasted with a small group of local men, while the voice of President Reagan, broadcast by the Voice of America, filled the room. Reagan was addressing a joint session of Congress following his summit meeting with Soviet leader Mikhail Gorbachev.

My Afghan hosts listened to Reagan's speech and asked what he had said. Told

that the two leaders planned to exchange visits, one man asked, "Is that good for us?"

The question seemed to symbolize a new realization among Afghans after years of war: that their own lives are tied to distant political events and to the world's opinion about their country and its plight.

Afghans also often asked about outside impressions of their country. Often, the answers disappointed them—as though, having taken a new interest in world affairs, they felt ignored in return.

As one young mujahed conducted a tour of his village north of here, he asked what Americans thought of the various Afghan guerrilla leaders. When told that most Americans would not recognize names such as Gulbuddin Hekmatyar or Nabi Mohammadi, he seemed surprised.

"But why not?" he asked. "We know who Reagan is."

[From the Washington Post, Jan. 13, 1986]

SOVIETS TRY TO RESHAPE AFGHAN CULTURE

(By James Rupert)

BABRA KHEL, AFGHANISTAN.—Last month Omar brought his 8-year-old son from Kabul to leave him with relatives in a village near here; the little boy will not go back to the city.

"In Kabul the Soviets are taking the children," Omar explained.

Omar is now a city man. He moved from the village years ago to set up a business in Kabul. Even though life is better there than here in the countryside, he said, his son will stay here. In Kabul, the Soviets are taking children out of the schools and sending them to be brought up in the Soviet Union, he said.

"They are teaching the children to be Soviets, like them," he said. The Soviet authorities had started the practice, he said, soon after they invaded the country in 1979 to prop up Afghanistan's communist government.

Afghans and western specialists say the education of Afghan children in the Soviet Union is only one of many tools the Soviets are using to try to remold Afghanistan's culture along their own lines. Afghans say the Soviets are also manipulating Afghanistan's Islamic faith in their effort to "Sovietize" the country.

The Sovietization program takes on added significance with the apparent intensification of the peace process because it could allow the Soviets to leave behind a dedicated cadre of Moscow-trained communists when they pull out. It also complicates the return of the 3 million refugees in Pakistan—one of the requirements for a settlement—as they may not want to go back to a country that is under such tight control.

Seated on the floor at his brother's house, Omar's western-style trousers and overcoat contrasted with the loose-fitting clothes and blankets worn by his relatives and former neighbors gathered to hear him. Surprised to meet a foreign journalist, Omar spoke impatiently and urgently, asking me repeatedly if I understood his story.

But he was also afraid. "Please," he urged, "you must not write my name or the village's name in the newspaper—or we will be in danger."

Omar said that many children who had gone to the Soviet Union were those of Afghan communist party officials who he thought might have sent them willingly.

But, he said, "I know many families who did not know their children would be taken. The government sent people into the schools, and they took children away. The children's fathers only heard when someone came from school to tell them."

The teachers in the schools help the Soviets, and if people go to ask where the children were taken, the teachers will not talk to them, he said, adding that the parents afterward received letters from their children mailed from the Soviet Union.

At one point, leaning forward, he asked, "Do American people know about this?"

Western diplomats and officials of the Afghan Resistance Movement based in Pakistan also have reported similar stories.

A NEW SOVIETIZED ELITE

A 1984 State Department report said the Soviets began near the end of that year a mass program to bring up thousands of Afghan children in the Soviet Union. The children, ages 7 to 10, reportedly are to be trained there for 10 years in an effort to mold a new Sovietized elite.

Resistance commander Abdul Haq from Kabul said in an interview in Peshawar, Pakistan, that his resistance units have seen the first results of Soviet training of Afghan children. During the past 2½ years, he said, his guerrillas have captured about 15 boys who he said had been trained in the Soviet Union for missions against the resistance.

He described one incident last year in which resistance forces found a 12-year-old boy in a rebel-controlled village carrying a pistol and a photograph of a local guerrilla commander. He said the boy would not give any information until they staged his recapture by other resistance forces posing as Afghan government soldiers.

His name was Zalmai; he was the son of an Afghan brigadier," Abdul Haq said. "He told us he had been trained [in the Soviet Union] for almost 5 years, and now they had sent him to kill the resistance commander."

"He told us he liked his teacher more than his mother and father," Abdul Haq said. "What can we do with these children? We cannot kill them, but they are dangerous; so we can only try to keep them with us, and they mostly escape."

Since Soviet and Afghan authorities have closed Afghanistan to most foreign reporters, accounts such as Abdul Haq's cannot be investigated directly. But a broad range of diplomatic and Afghan sources say they are convinced that Soviet training is aimed at producing young Afghans with unquestioning Soviet loyalty.

REMAKING A COUNTRY

Afghanistan's war, which most observers initially thought would end in a quick victory for the technologically superior Soviet Army and Air Force, is now 6 years old—and both sides appear to recognize the growing importance of a new battlefield: the loyalties and cultural identity of the next generation of Afghans.

"The Soviets are using every tool they can find to remake this country in their image," said Prof. Sayd Majrooh, a former dean of Kabul University now based in Peshawar.

Various observers said the Soviets are using education—from kindergarten to the university level-cultural exchanges, religious institutions and the mass media to accomplish three main goals in Afghanistan:

Prevent the growth of nationalist sentiment by sharpening the splits among the country's many ethnic and linguistic groups and strengthening ties between northern Afghans and their Soviet ethnic counterparts.

Popularize a reinterpreted Islam more amenable to communist doctrine.

Build a new elite of pro-Soviet Afghans that would be free of the internal rifts that have paralyzed the current ruling communist party.

The ruling People's Democratic Party of Afghanistan has long been bitterly divided between two factions: the Khalq (Masses), predominantly urban, Persian-speaking and seen as more politically pragmatic, and the Parcham (Banner), dominated by Afghans of rural origin who speak Pashtu and are thought more ideological. The vendetta resembles a civil war, including assassinations and bombings, and hampers government efforts to establish full control, even over the capital.

Various Afghan academics and politicians in Peshawar said the Soviets' most important weapon in the cultural battle is education—notably education programs in the Soviet Union. Estimates of the numbers of Afghans who go there for study varied widely, although most suggested it might number about 6,000 a year.

Abdulbaqi Mehraban questions how well the Soviet education campaign is working. He studied veterinary medicine for nearly six years in the Soviet Union before returning to Kabul in 1981 and fleeing to Pakistan in 1984.

Mehraban said he believes most Afghan university students continue to go to the Soviet Union for the same reasons he did: the better technical education and living standards. "Many students also like it because you can get vodka and meet girls, unlike in Afghanistan, [and] you can stay out of the Army," he said. "When we had been there a short time, I was impressed, "People had jobs and weren't hungry."

"But after a year, I could speak good Russian and talk to people and found out that you can't talk about your ideas," he said. "Studying a long time in Russia doesn't make everyone into a communist."

REINTERPRETING HISTORY

Afghan exiles in Peshawar say the Soviets have been unable to consistently mold loyal functionaries for the Afghan regime with their university courses or training programs for adult Afghans. Not only do some Afghans—such as Mehraban—defect, but resistance groups say they place their supporters in various programs in both Afghanistan and the Soviet Union for technical training.

According to Majrooh and other Afghan academics, the Soviets have retooled the Afghan education system—installing Soviet teachers, a Marxist-Leninist curriculum and a reinterpretation of Afghan history that describes Russia as the historic friend of Afghanistan. Last March authorities replaced the French-style program for primary and secondary education with the Soviet system, including compulsory Russian-language study from the fifth grade onward.

Last year at a conference on education at Kabul's teachers college, most of the papers were by Russian professors, according to a program smuggled from the country. Abstracts of the papers stressed the need for a Marxist-Leninist orientation in Afghan education, largely to help overcome the influence of Islam on Afghan students.

Resistance leaders and Afghan intellectuals say Soviet radio broadcasts and publications aim particularly at Afghanistan's northern ethnic groups.

"We have seen increasing numbers of Soviet journals aimed at the Tajiks, Turkmens, and Uzbeks, and designed to show them how life is better for people of the

same groups in the [neighboring] Soviet republics," said Prof. Rasul Amin, formerly of Kabul University's social sciences faculty.

Amin said he is especially worried that new programs to teach regional languages—Baluchi, Turkmeni and Uzbek—will lead to a deemphasis on Pashtu and Persian (called Dari in Afghanistan), which serve as the common languages among ethnic groups.

But for most Afghans encountered during a seven-week assignment in Afghanistan and Pakistan, the most angering and worrisome part of the Sovietization campaign is the taking of children to the Soviet Union.

"What will happen to these children?" asked Mehraban, the former veterinary student. "When I was in Kiev I had Islam and my own mind to help me understand what I was seeing—but these children will have nothing."

"They will be robots," he said. "And when they come back, the Russians will just use them, and the Afghan people will hate them."

HARNESSING ISLAM

"Islam is the key to Afghanistan's culture," said Akhtar Mohammed, a young university graduate, "so to change Afghanistan, they want to change our Islam."

"They" are the Soviets. Like many other Afghan intellectuals, Mohammed worries about the Soviets' efforts to harness Afghanistan's Moslem faith as a means of controlling the country.

In their campaign to reshape Afghanistan's culture, Soviet authorities have taken control of official religious institutions and are reinterpreting Islamic doctrine.

"The Soviets were very sophisticated about using religion," said Fazle Akbar, an Afghan journalist here. When the Soviets invaded Afghanistan in December 1979, Akbar was director of Radio Afghanistan.

The Afghan communists who took power in 1978 "were very anti-Islamic," Akbar said. "They walked into the mosques with their boots on and smoked cigarettes inside."

"The Russians had to teach them how to use Islam as part of their propaganda," Akbar said.

Rasul Amin, a former Kabul University professor who now coordinates an organization of exiled Afghan intellectuals, said the Soviets have stepped up efforts to control religious life in Afghanistan. Last year, the Soviet-dominated regime of Babrak Karmal established a Religious Affairs Ministry, which, Amin said, has two roles.

"The Soviets know they will never change the ideas of the older generation" of Afghans," Amin said. "So for them, the government just wants to appear benign." Amin and others said the new ministry had made a great show of painting and cleaning mosques, to demonstrate its commitment to the religion.

"For young people," however, Amin said, "they want to change the very idea of Islam." During the past year, he said, the authorities had removed many independent mullahs from their mosques, after having tolerated them since the invasion.

It has taken the government several years to train its own mullahs, Amin said, and only now are they emerging to take over mosques in the cities controlled by the Soviets and the government. "The independent mullahs had never opposed the government in six years," Amin said, "but the official mullahs are more reliable for the authorities."

According to Afghan intellectuals and political leaders here, the Soviets and the Kabul government rely on the new mullahs to help spread a "Sovietized" Islam that emphasizes the obligations of a believer to the Islamic community, but that omits references to belief in God.

Amin said the Soviets would prefer to limit the distribution of the Koran, as they have done in their own Moslem republics, leaving the state freer to offer its own interpretation of the Koran's teachings.

"They could not change the Koran because too many Moslems, even in the Soviet Union, can recite it from memory," he said.

Soviet and Afghan broadcasts argue that Islam as a religion is under attack from the corrupting values of western imperialist powers, from the "medievalism" of Iran's Islamic revolution and from Israeli expansionism. Adopting a theme of Moslem fundamentalists, Soviet propaganda for years has portrayed western aid workers in Afghanistan—especially women—as anti-Islamic and corrupting influences.

Last fall, when the Jamiat-i-Islami Party turned back a French medical team that included women, western aid workers feared the Afghans had succumbed to Soviet propaganda.

Jamiat-i-Islami leader Burhanuddin Rabbani denied that his party had stopped accepting women but he acknowledged that "we do have problems with the Soviet propaganda about the women."

But western aid workers from various regions of Afghanistan agreed that Soviet propaganda is combining with the influence of conservative Iranians and Arabs who play supporting roles in the jihad, and making the westerners' presence in Afghanistan more difficult.

One British nurse said she met Arabs from the Persian Gulf states and Syria while working last summer near Mazar-i-Sharif, in northern Afghanistan.

"They were very negative about westerners," she said in an interview here. "They said non-Moslems didn't belong in a jihad."

[From the Washington Post, Jan. 14, 1986]

RAID ON A SOVIET STRONGHOLD

(By James Rupert)

GHAZNI, AFGHANISTAN.—"Watch!" whispered Mohammed Amin, pointing back at a Soviet Army post that we had crept by only moments before.

Amin's unit of Afghan guerrillas had just led me, slipping and stumbling, on a serpentine path through muddy streets, irrigation ditches and empty fields on the outskirts of this provincial capital. A cold wind was blowing away the clouds and rain that had blackened the night while we filtered cautiously through a double ring of guard positions defending the town.

We had passed less than 100 yards from one post and had clearly heard Soviet soldiers shouting orders to halt. Now, as the growing moonlight gave shape to the darkened neighborhoods of Ghazni that spread downhill from us, we heard the first few rifle shots as other guerrillas attacked the post Amin had indicated.

Then the night exploded.

The deep staccato of Soviet heavy machine guns and the concussive whump of mortar rounds drowned out the guerrillas' Kalashnikov rifles. Streams of glowing tracer bullets etched across the silhouettes of abandoned homes, and flares burst into harsh white light overhead.

"If we shoot one bullet at them," Amin said later, "they shoot 10 back at us, plus mortars—and if the helicopters can fly, they shoot rockets too. If we attack one post, they shoot from four or five posts . . . but they aim very badly."

The spectacle of Soviet firepower had punctuated a reconnaissance mission by Amin and about a dozen local *mujaheddin* (holy warriors, or resistance fighters) from the Mahaz-i-Milli, the National Islamic Front of Afghanistan, one of the smaller of Afghanistan's main resistance groups. They were choosing sites from which two nights later they would attack Ghazni's airport and the Soviet and Afghan Army garrison in the town's center.

I had asked to accompany the mujaheddin into Ghazni to try to understand something of what seemed an oddity: that outgunned and ill-trained men—mostly illiterate farmers and shepherds—have battled the powerful Soviet Army to a six-year standoff in Afghanistan.

Since their invasion, the Soviets have held Afghanistan's cities and provincial centers, with the support of the smaller and unreliable Democratic Republic of Afghanistan Army. The mujaheddin control the countryside and mountains, and each side remains unable to dislodge the other.

Ghazni, 78 miles southwest of Kabul, the capital, is an important center along the Soviets' main supply route to Afghanistan's south and west. The mujaheddin, who frequently exaggerate the size of enemy forces, said about 12,000 Soviets and not more than 4,000 Afghan Army troops are based there, with support from artillery and the garrison's helicopter base.

The mujaheddin, many of them former residents of Ghazni, live at guerrilla bases in nearby mountains and receive food and information from villages. During the last year, the Soviets have tightened defenses around Ghazni, as they have around all the towns and cities they hold.

Before, "we conducted our operations from within the town and went in both day and night," said Jalat Khan, 35, former shopkeeper who now commands a guerrilla unit of the Harakat Islamic Revolutionary Movement, another of the seven main Afghan parties. "But this year, they triped the number of guard posts around the city, so now we fight only at night."

Jalat Khan said that according to duty rosters smuggled out to him by sympathetic Afghan officers, two-thirds of the soldiers in each post are Soviet and one-third Afghan. "Even if the [Afghan soldiers] do not fight well, the Soviets need them because they know the local people," he said.

Agha Mohammed, 40, a former colonel in the Afghan Army, passed information to the mujaheddin until his activities were suspected and he was imprisoned in 1980. After a year in Pol-i-Charki Prison, near Kabul, he was released and immediately joined Mahaz-i-Milli resistence force. "Many officers who are still helping us want to come out to fight," he said. "Working from inside is very dangerous, but we ask them to stay as long as they can."

As with most resistence attacks on a Soviet stronghold, the assault I witnessed could not have altered the Soviets' fundamental control over the town. Only in a few cases during the war have mujaheddin threatened to capture a major town outright, an event that has led the Soviets to use large offensives to regain control.

The mujaheddin attack to inflict casualties and capture weapons. Weeks after the attack I watched, the mujaheddin, after receiving reports from their informers inside Ghazni, claimed to have killed 36 Soviet and Afghan Army soldiers and injured 29 and to

have damaged government offices, the airport and the town's main military garrison.

THE ATTACK

Late one afternoon, we descended the ravine from the Mahaz-i-Milli guerrilla base to an abandoned village at the edge of Ghazni's plain. About 45 mujaheddin gathered to hear their commanders explain their plan: Three different groups would attack at once, firing missiles, mortars and recoilless rifles at targets in the town's center and the airport.

I was told to accompany Sanaye, a short, thin commander in his 30s, whose dozen mujaheddin included an English speaker.

As always during my month inside Afghanistan, I wore the same traditional Afghan clothes as did the mujaheddin: a long shirt hanging loose outside baggy trousers, a wool cap and a blanket. It had seemed an intelligent concession to wear my good American running shoes.

We crammed ourselves into a pair of Russian-made trucks, which had been driven out from the city, and spotters climbed on top to watch for the Soviets' much-feared helicopters. As we rode across the rolling plain toward Ghazni, the mujaheddin—most in their teens and early 20s, sang and clapped, like a high school band on its way to a football game.

On a dirt road near Ghazni, the setting sun cast a yellow light on the guerrillas as they climbed out of the trucks and prostrated themselves on their blankets in prayer. As the daylight faded, we crept toward the first guard post.

It was here two nights earlier that I had asked my translator, Mohammed Amin, what it was that the Soviet soldiers had been shouting. "They are calling 'Halt or we will shoot you' " Amin had replied.

Sensing my shock, he had added quickly, "Don't worry. . . . They cannot see us. They always shout this at night whenever they hear some noise."

I was not always calmed by such reassurances from my host. Although the mujaheddin fear and respect the powerful and sophisticated Soviet weapons, they have a low opinion of Soviet soldiers. That and their confidence in their own superior knowledge of the terrain often gave them a relaxed air that I, in my own nervous state, sometimes found alarming.

The mujaheddin were fascinated by my habit of whispering notes into a small tape recorder as we walked through the town. Often during moments of heavy firing, they would motion excitedly for me to turn it on to record the noise.

One young resistance fighter, perhaps 15 years old, particularly irritated me by periodically looking at me and gleefully shouting "Gherraaam!" in imitation of guerrilla shells hitting their targets.

At one point, in a section distant from guard posts, about a dozen of us walked together through an open area. I wondered aloud to one guerrilla whether we were safe in such a large group. What if the Soviets should be patrolling?

"There are no patrols," he answered confidently. "The Soviets are afraid to come out of their posts at night." If such assurances never quieted my fears, I did not, happily, see them proven wrong.

A RUINED MARKET TOWN

As towns go, Ghazni was always poor. Now it is a ruin.

A market town, Ghazni drew its life from its position on one of Afghanistan's few paved roads. Even now, its shattered neighborhoods betray its roots in the dry and difficult farm land that surrounds it.

Ghazni's dirt streets and mud-and-straw houses give it the air of an overgrown rural village rather than an urban center. But as in other towns and cities of Afghanistan where the mujaheddin and Soviets have fought with increasingly heavier weapons, most of Ghazni's people have fled their shell-torn and bomb-cratered homes, seeking safety in the villages of relatives or in Pakistan.

Still, amid the rubble of neighboring buildings and nightly firefights, people have stayed. At one point as we hurried away from a burst of nearby gunfire, we rounded a corner and almost fell over a toddler—wearing only a shirt, playing in front of his house while his brother watched, unconcerned, from the doorway.

During most of our time in Ghazni, though, we walked through what seemed an urban moonscape: empty shells of buildings, streets littered with an occasional skeleton of an armored vehicle, and oddly, an old Buick Electra, mounted on blocks, its windows shattered.

As we neared our first destination, the site from which Sanaye would launch his four Chinese missiles, we crossed a small field. To reduce the chances of getting lost, I usually tried to stay near the middle of our file of six, but now I had carelessly let myself fall to the rear.

When red tracer bullets flashed silently across our path, we dropped to the dirt. The sound of the machine gun that had fired them came seconds later, a reminder that bullets travel faster than sound, shattering my illogical, but comforting, assumption that I could rely on a quick reaction to the sound of gunfire to help keep me safe.

The tracers stopped. I crawled forward on belly and elbows to ask my escorting mujaheddin what we should do. When I had gone about 15 yards, I realized that there was no one to ask.

My panic at the idea of being lost was perhaps the only thing that would have convinced me to stand up into the now more dreadful world of silent bullets. I sprinted across the field into a narrow street, where, heart thumping, I found my escorts preparing to dash back out to search for me.

Minutes later, we joined the rest of Sanaye's group, which, carrying the heavy four-foot-long missiles, had taken a different route. In a still-inhabited pocket of the town, we stopped at a mosque where two days earlier we had calmly eaten dinner amid the thunder of gunfire and mortars outside.

Now, in the mosque's sanctuary, lit by a kerosene lantern, the guerrillas quickly screwed detonators into the missiles' noses and attached wires for the battery that would ignite their fuel. As they carried the armed missiles down an adjacent street, I climbed a roof to watch their flight.

The missiles, with a reputed range of four to six miles, are a recent addition to the guerrillas' arsenal—and apparently one of the products of increased U.S. spending on covert arms supplies to the mujaheddin. They are especially convenient in guerrilla warfare: they can be launched from the ground, their trajectory adjusted by stacking stones under their small wooden launching blocks.

With an odd ripping sound, the missiles leaped in pairs from the street. Two incendiary missiles hit in the darkened center of the airport, setting fires, while the two explosive rockets flew over their target entirely, each exploding with a muffled roar and a dull red glow in the hills beyond.

As guns from nearby guard posts began firing into the neighborhood, we hurried away toward Sanaye's next target. After a few minutes' walk, I could hear the rumble of generators powering the lights of the Soviet stronghold, now nearby.

Our pace slowed. We crept more stealthily now, through a maze of streets and buildings, to flatten ourselves against a long wall of packed mud. Sanaye climbed over and, after a few minutes, beckoned us to follow him.

As I threw a leg over the top and slid down the other side, it was clear that we were now in a darkened corner of the lighted Soviet-Afghan government compound. A few moments later, in a shattered mosque nearby, I whispered my question with a calm I did not feel: "Where are we?"

"*Khad*," a young guerrilla answered, pointing at one of several buildings in the brightly lit and deserted street in front of us.

Khad, a Persian-language acronym for State Information Services, is the Afghan secret police agency, operated under the direct control of the KGB. As the Afghan Army, ridden by desertion and full of mujaheddin informers, proved to be unreliable, the Soviet military has built up Khad as its most dangerous weapon against the resistance.

ATTACK ON THE SECRET POLICE

If the displays of Soviet firepower in Ghazni suggested their technological advantage in this war, it was Sanaye's attack on the provincial office of Khad that seemed to symbolize the mujaheddin's determined courage, which has prevented the easy Soviet victory predicted by many following their December 1979 invasion.

Pulling two Chinese-made land mines out of a sack, Sanaye smiled at me and asked, "You are not cold, are you?"

"The temperature has not occupied my mind," I answered.

Lacking the Soviets' ability to strike from a safe, long range with artillery or aircraft, Sanaye carried the mines out of the mosque's gate. It seemed like hours later when two explosions roared, apparently from the back of the Khad office.

From somewhere farther inside the compound, we could hear excited shouting in Persian. Mentally I begged the group to leave, certain that we would soon be discovered.

When Sanaye slipped back through the gate, I gratefully shouldered my pack to go, and almost cried out in anguish when he stopped to fire two rounds from a recoilless rifle at the Khad bureau. In immediate response to the bright flash, machine gun fire rattled back in our direction.

We sprinted with the others for the wall of the compound and heaved ourselves over. After a few minutes of bewildering twists and turns, we slowed to a walk in a street some distance from the garrison.

Wondering how it was that the Soviets had not seen us escape, I paid no attention to the soft whistle of the first falling mortar round. The explosion knocked me down and left my ears ringing.

We ran again, and needing no second lessons, I threw myself to the dirt like the others with the warning sound of each new shell. We followed a small teen-aged guerrilla who had lived in Ghazni until a few years ago and who seemed to know every street.

Leaving the mortar attacks behind, we gradually slowed our pace, back toward the edge of the city. Hours later, at about 1 a.m., we reached the trucks that would take us back across the plains.

Ashir, 23, a guerrilla from Kabul, was pleased: among the three groups of mujaheddin, no one had been killed.

"God was with us," he said.

[From the Washington Post, Jan. 15, 1986]

DEPOPULATION CAMPAIGN BRUTALLY CHANGES VILLAGES

(By James Rupert)

BARAKAT, AFGHANISTAN.—Surrounded by rocky, snow-covered hills, this village is a man-made oasis.

Like all villages here in the harsh, dry lands of Ghazni Province, Barakat was founded around a reliable water source, and generations of villagers have slowly carved its sun-hardened hillsides into green fields and orchards. A villager insists that no one wants to leave Barakat. In Persian its very name means "Blessing."

But of about 1,500 residents before the war, villagers say between 150 and 200 have been killed. And with the fighting here getting worse, about a quarter of the families have fled to Pakistan, Kabul or to the villages of relatives.

During a month-long tour through southeastern Afghanistan, I found that the story varied in each village, but the general pattern was clear. Direct attacks on villages by the Soviet Army and Air Force, often assisted by Afghan government troops, are expelling farmers and shepherds who support the mujaheddin—the Afghan resistance fighters.

"The Soviets know the mujaheddin need the villages," one Afghan told me. "They want to kill the fish by emptying the water."

This remains a hidden war. With journalists legally barred from entering Afghanistan, it is impossible to be certain about most of what is happening here. But everyone—the Soviet authorities, the Afghan resistance leaders and the villagers of Barakat—agrees that the war and the suffering are growing. In large areas of Afghanistan, the Soviets and the mujaheddin are fighting a new kind of battle in the countryside. It is not a battle for physical control of villages, but a battle over whether villages shall continue to exist.

"This is genocide," said Michael Barry, an American scholar and human rights researcher who visits Afghanistan regularly. Barry and others worry that the widespread destruction of farms—plus three years of poor rainfall im much of Afghanistan—not only have forced out much of the population, but now threaten famine for those who remain.

Those who have left—nearly a third of Afghanistan's 16 million people—now live in teeming refugee camps in Pakistan and Iran. There, Afghan specialists say, their new environment already is changing Afghan society as a whole in ways that could lead to further instability in the region.

Whatever its ultimate effects on Afghan society, it was clear in the villages that the depopulation campaign has brutally changed the lives of individual Afghans.

In Barakat, "the Soviets bring jets, because they know we help the mujaheddin." Bismullah Kheir Mohammed, a resident, said. In October, the Soviets and Afghan Army troops staged a four-day sweep through Barakat and nearby villages, killing 20 people and taking 12 young men to serve in the Afghan Army, villagers said.

The villagers said the Soviets had entered the nearby hamlet of Gabrubr and killed Abdul Gul, 55, and Niaz Gul, 70. "They were just farmers," Bismullah said, "and they took their money from the house to keep the Soviets from stealing it."

"When the Soviets searched them and found the money, they stole it and strangled them. We found their bodies two days later, when the Soviets left," he said.

A young man from nearby Bedmoshk told a horrifying tale of Soviets who held a 14-year-old boy and slowly killed him when his parents would not pay a ransom. They tied him to a tree and beat him and stabbed him with a bayonet," the man said. "Finally they shot him."

Four members of the International Humanitarian Inquiry Commission visted Bedmoshk two days later and said they confirmed the torture and killing of the boy, among other atrocities in the area.

"Even one bomb is a disaster," said a young guerrilla, himself a farmer in Barakat. "It takes more than a month just to repair a bomb crater in a field. But these killings, for no reason, are the actions of animals. Who can know why they do such things?"

For the people of Pirangai, in Paktia Province, the horror of the war has come from bombings. In early November, they said, a Soviet jet thundered overhead and dropped two big canisters that exploded in midair.

The canisters scattered hundreds of small "butterfly" antipersonnel mines over the village, some of which were still there when I visited.

"We have heard about Soviet bombs that look like watches or toys," Sahab Gul, a shopkeeper, said. "So we always tell the children not to pick up strange objects."

Three children had hands or feet blown off by the butterfly mines, which are designed to maim rather than kill. A young boy, Wali Khan, said his grandfather had taken his 11-year-old cousin to doctors in Pakistan after the boy lost a hand and part of his face while examining one of the mines.

"We are ready to fight them if they come to us," said Gul, his voice quivering with anger. "But they want to make us leave by injuring our children." Few in the village have left, he said.

Invoking an Islamic conviction, he said: "It is better to be tortured in the jihad [holy war] and go to paradise than to live with our bodies ruined like this."

LEAVING FOR PAKISTAN

Of 32 villages I saw during my trip, none was untouched by the war. But even where villagers have recovered from such attacks, their lives remain difficult, and abandoning their homes for the relative safety of Pakistan remains a much discussed option.

Three years of meager rain and snowfall have dried up the weaker water sources in this and other regions of Afghanistan, leaving downstream villages in a virtual state of drought. Swedish doctor Johan Langerfelt, a member of the Humanitarian Inquiry Commission mission, said the group's four-week study last fall showed that irrigated farming production in Wardak, Ghazni and Logar provinces had dropped by as much as 80 percent. He suggested that only heavy snowfall this winter would avert famine in 1986.

An Afghan agronomist who surveyed much of southern Wardak Province last fall said he had found 70 percent of families living on bread and tea. "They are not even consuming sugar, which is a sign of extreme distress," he said.

In what many specialists regard as a "pre-famine" development, families have sold or slaughtered much of their livestock, which they could no longer afford to feed.

Even in the villages that have not been abandoned, most young men have left, making farming even more difficult. "It is dangerous for young men to stay," a village elder in southern Wardak said. "The Soviets may come and kill them or take them for the Army."

Many families have sent some of their sons to fight from nearby guerrilla bases and sent others to Pakistan or Iran to find jobs that will bring the family needed cash. Old men once retired from farming have gone back to work, tending as much of the land as they can.

The Soviet campaign to empty the villages has been uneven, but most intensive in Afghanistan's eastern half, according to Barry, who has researched the issue for human rights organizations and led the fall Humanitarian Inquiry Commission mission.

Barry said the Soviets systematically have created broad free-fire zones along the country's most strategic road, which arcs from Mazar-i-Sharif in the north through Kabul, to Kandahar in the south.

The Soviets have also depopulated areas along important resistance supply routes.

Following a resistance supply trail from Pakistan, my guerrilla escort and I crossed one such region, the plain of Zermat, south of Gardez.

Hiking all night to avoid helicopter attack on the exposed plain, we walked through the abandoned ruins of a dozen villages. Moonlight shone through the shellshattered walls of homes and mosques, and we had to watch our step to avoid falling into craters left where bombs had collapsed the underground irrigation system on which the region's fragile farm economy depends.

Amid the devastation, a few families stubbornly had refused to leave. Mohammed, a farmer and a resistance fighter, described how he and a few others farmed under cover of night to keep food and shelter available for guerrilla caravans passing through.

"The Soviets have done everything they could" to force the villagers out, he said. "Their helicopters shoot anything that moves—even a farmer hoeing his field or an animal grazing."

"If I could, I would go tomorrow to Pakistan like the others," Mohammed said, "but we must stay for the jihad."

Barry stresses the drastic scale of the depopulation of Afghanistan. His census last fall of 23 villages in southeastern Afghanistan showed, that 56 percent of the households had been abandoned.

The Pakistani and Iranian governments estimate that about 4.5 million Afghans have sought refuge in their countries, a figure Barry compares to the U.N. High Commissioner for Refugees' estimate for 10 million refugees worldwide. His voice rising, he asked, "Why don't people in North America pay more attention to this?"

THE LASTING SCAR

In the single room of a trailside teahouse crowded with mujaheddin, a French medical team of three women examined Hakam Khan. In the yellow glow of a kerosene lamp, a surgical scar, improperly healed, snaked across his stomach like a shallow trench.

Answering the doctor's questions, Hakam Khan explained that he had no idea what surgery had been performed on him when he went to a Kabul hospital last year with stomach pain. Now he was having trouble with the scar, and the French doctors, he said, were the only people around to ask for help.

The women had hiked 12 hours that day, crossing a mountain range. As soon as they had collapsed on the floor of the teahouse, mujahaddin had begun presenting their medical problems.

"It's always like this," Dr. Louise-Marie de la Mata said with a sigh.

In Wardak, as elsewhere in Afghanistan, it is only small groups of overworked French doctors who provide medical care for local residents. For resistance commander Amin Wardak, the volunteer doctors and their tiny hospital—sent by the Paris-based Doctors of the World organization—are a critical part of the battle to prevent the depopulation of the province.

Wardak's fledgling civil administration also runs schools and aids farmers.

"It is especially important to keep prices down," he emphasized. "We have arrested many government agents who came to the countryside to buy up animals and foodstocks at high prices—all to empty the country side of food."

Wardak and other commanders established rules to prevent speculation in limited food supplies and are looking for ways to improve production. A beginning agricultural development program involves an experimental farm testing new strains of wheat.

But the most significant factor keeping people in the villages in southern Wardak is that the Soviets have not applied the same degree of pressure as elsewhere. Without effective antiaircraft weapons, Wardak—like and commander—is unable to protect even remote villages from Soviet attack.

According to Barry, the "lack of air defenses places Afghanistan's resistance commanders in a dilemma: "Either they can fight and eventually lose their populations, or they can keep their populations, but by not fighting in that area."

'FORGING SENSE OF NATIONALITY

To the casual observer driving on the back roads of Pakistan near the Afghan border, it can be difficult to tell the better-established refugee camps from Pakistani villages. Both are built of mud bricks, using precious timber only as roof beams, and the people look much alike: turbaned men, and women draped in sheet-like *burkas*, with lace-covered "windows" for vision.

The difference is that the refugee camps are larger, often holding an many as 20,000 to 30,000 people. Many observers believe that this unprecedented concentration of Afghans, often including different ethnic groups—Pashtuns, Tajiks, Uzbeks, Hazaras and others—is helping to spawn a sense of national identity.

"When these camps first began springing up, even before the Soviet invasion, Afghans from different tribes and regions began to get acquainted," Prof. Rasul Amin, formerly of Kabul University's social sciences faculty, said. "Now we've even begun to see some of them intermarry."

The mixing of ethnic groups remains limited, according to Amin, because many camps are homogeneous, often with the populations of entire villages having moved intact to a single refugee camp.

At Kacha Gari, a large camp near Peshawar, refugees spoke about how their lives have changed.

"Here, there are so many children in school," one man said. How many, he was asked—75, 80 percent? He frowned. "No, not like that. Maybe one in four," he said.

Stephen Keller, an American professor who runs an education program for Afghans in Peshawar, said most of the new refugee children in school study for only about three years. He and many educated Afghans said that most average Afghans retain a long-standing indifference toward education—a sentiment that hardened into antipathy during 1978 and 1979, when Afghanistan's first communist ruler, Noor Mohammed Taraki, tried to enforce literacy classes and lessons in Marxism on the population.

Keller insisted, though, that even the limited spread of education among Afghan refugees represents an important change.

"To get an idea of where these people started, you just have to see that before the war, only 7 percent of rural Afghan men could read, and only 2 percent of women," he said, "and most of them were government functionaries."

The Afghan guerrilla war against Communist rule began in 1978, and the first refugees began gathering in Pakistan within months. Such long-term refugees, living in older camps such as Kacha Gari, chafe at their dependence and idleness over the years.

"This is not life; this is only passing the time," said Muhammed Yussuf, a middle-aged former farmer, of his seven years as a refugee. "Before, when I owned my land, I was independent. Now I can only find a little work as a butcher. We get rations from the camp, but no one wants to live that way."

For Keller and other observers, the frustrations of this growing refugee population—the world's largest—represent a potential threat to stability in the border area of Pakistan. "Whether they are educated or not, there is no future for the rising generation, either within the camps or in Pakistan, "Keller said.

Barry said he believes the camps favor the growth of Islamic fundamentalism among Afghans. "Fundamentalism is the wave of the future in Pakistan, and the choices made by the Pakistani establishment weigh heavily on the options available to the resistance parties," he said.

Barry warned that a sense of despair within the camps could embitter young Afghans, leading them to turn to terrorism. "I think we're going to see a Palestinization of the Afghans," he said.

[From the Washington Post, Jan. 16, 1986]

ARMS FOR REBELS SIPHONED OFF—SOME PROFIT FROM HOLY WAR

(By James Rupert)

DARA ADAM KHEL, PAKISTAN.—"We can't show you the missiles here in the shop," said Gul, a Pakistani arms dealer, "but I could take you to where we keep them. Do you have money with you?"

Gul does not run an ordinary gun shop. His dimly lit single room opening onto Dara's only street was crammed with automatic assault rifles, machine guns and grenade launchers. The heavy barrels from disassembled artillery pieces lay jumbled up with boxes of ammunition and old bolt-action rifles.

But to see the best items, the Chinese-built 107-mm, surface-to-surface missiles, the customer must have money to show Gul (not his real name) that he is serious.

Gul would not say exactly where he and Dara's dozens of other arms merchants get the heavy weapons they sell, most of them Chinese-made. Instead, his suspicions aroused by the questions of my Afghan translator, he asked us to leave.

While the Pakistan frontier region is notorious for its indigenous arms-manufacturing, there is clear evidence that many of the weapons being sold in Dara—and other arms markets nearby—come from CIA-funded arms shipments meant for the Afghan mujaheddin or resistance fighters, opposing the six-year-old Soviet occupation of their country. Observers also believe China is supplying some weaponry to the guerrillas.

Last spring, U.S. congressional intelligence committees reportedly approved $470 million for covert military aid to the Afghan resistance for this fiscal year, and there were reports that Congress later approved a supplemental $300 million in assistance for two years, according to congressional and other sources in Washington.

But at best, resistance sources and military specialists say, the covert aid operation, administered by the CIA, lacks accountability and often delivers inappropriate arms. At worst, it may be losing substantial percentages of its shipments to corruption and contributing to a militarization of the volatile Pakistani-Afghan border area, which could ultimately help destabilize the United States' ally in the region, Pakistan.

THE ARMS PIPELINE

It is here, among the parched hills of Pakistan's tribal territories, that the pipeline ends. Dust-covered trucks roll into guerrilla bases along the Afghan border and unload arms to be cleaned and repacked on donkeys and horses for the trip into Afganistan.

Accounts pieced together from Afghans, Pakistanis and westerners said that the CIA secretly buys weapons—in China, Egypt and elsewhere—and ships them to the Pakistani port of Karachi and isolated points along the coast of Baluchistan, to the west. One source said shipments in recent months included 40 tons of Soviet equipment captured by South Africa.

Once the shipments have landed, Pakistan's joint military intelligence agency takes over, transporting them to the Pakistani military installations for distribution to the mujaheddin. Pakistani military personnel advise each Afghan resistance group when to go to a particular depot to collect arms and then notify police of the truck's route to the group's base to avoid searches along the way.

According to two westerners who visited different bases in recent months, up to 70 percent of the weapons were Chinese, along with some Soviet and Egyptian made arms. They included Kalashnikov assault rifles, rocket-propelled grenades, mortars, land mines and missiles—many of them the same models as those on sale in Dara.

Mujaheddin and western observers in Pakistan say Pakistanis and Afghans are stealing weapons along the arms pipeline.

Independent western observers believe the Pakistani military is diverting entire batches of weapons for Pakistan's own use. They say Pakistani police officers have been issued new weapons in recent years—such as Lee-Enfield Mark Five and Chinese-made SKS rifles—which had come through the pipeline.

A source close to the Pakistani Army denied the allegations, saying the rifles had come from old Pakistani military stocks.

Many mujaheddin alleged that Pakistani officers who run the pipeline are often cor-

rupt, demanding bribes or a portion of the arms shipments, which they later sell.

"The worst thing is that some who are stealing are Afghans," said Ezim Wardak, a resistance official in Peshawar, Pakistan. "They call themselves mujaheddin but they are really businessmen, trying to make a profit from the jihad," or holy war. A guerrilla leader from northern Jozjan Province said he and other commanders regularly sold some of the weapons they received in Pakistan as the only way of paying the increasing costs of transporting the arms into Afghanistan—especially to its north west.

PAKISTANI CONTROL

A Pakistani military analyst insisted that Pakistan's Army was not diverting weapons. "Those chaps [the majaheddin] are a bit sore at us because we have certain controls over the weapons," he said.

Without giving details, the analyst explained that the Pakistani military often stores the arms, waiting for "the right time and the right groups" to distribute them.

Mohammed Es'Haq, a political officer of the Jamiat-i-Islami, conceded that some Afghan resistance officials are selling donated arms. Although his own party has an accounting system for the weapons, he said, "We don't have all the control we would like because we are guests here in Pakistan; we cannot run our own police force."

Es Haq and other resistance officials were reluctant to discuss the loss of arms from the pipeline, for fear publicity about the problem might prompt Congress to stop funding the operation. "It is better for us to get half of the weapons than to get none at all," said a guerrilla commander who asked not to be identified.

Despite the nearly universal allegations of corruption, it is unclear exactly how many of the CIA-supplied arms are being diverted. Different persons interviewed varied widely in their estimates and seemed to have little hard information.

Guerrilla commanders in Afghanistan, angry at having received few or no arms, argued that as much as 85 percent of the weapons are diverted, while Pakistani sources insisted that only a negligible amount is stolen—and only by Afghans, never by Pakistanis. In fact, the secrecy of the pipeline, and the fact that the weapons pass through so many hands, may prevent anyone—including the CIA—from knowing what percentage of the weapons is lost.

Noting reports that Congress authorized $250-$280 million to run the secret arms operation in 1985, a western military specialist who has traveled regularly in Afghanistan with the mujaheddin said, "These figures are completely out of line with what the mujaheddin are seeing."

Formally, Pakistan denies the very existence of the arms-supply operation. But Pakistani officials admit openly that they are worried about the heavy flow of arms into the tribal territories where the pipeline ends.

In the latest episode of a historical tussle between Afghanistan and Pakistan for the loyalties of the Pushtun (or Pathan) tribes that straddle their border, the Afghan government has armed dissident tribesmen from the Pakistani side and encouraged them to oppose the mujaheddin and the Pakistani government.

In early December, Pakistan sent thousands of troops into the Khyber district to crack down on the Kabul-supported dissident tribesmen and seize what it claimed were more than a thousand Kalashnikov rifles and other weapons.

Western diplomats and others contend Pakistan's claim that the arms that flood markets such as Dara—and the homes of Pushtun tribesmen—are all sent by Kabul. "Why would the Afghans be sending Chinese arms, and where would they get them?" a western analyst in Islamabad asked.

So many weapons have poured into the area since 1980, when the CIA operation began, that the market price of a Chinese-made Kalashnikov has fallen by more than a third. The flow of arms has seeped into other areas; tribesmen in Baluchistan, bandits in southern Sind Province and even Sikh extremists in the Indian city of Amritsar have been reported using guns from the CIA pipeline.

"The Americans and Parkistanis could tighten the accountability of their operation. They could mark the arms when they ship them in, and then seize them when they turned up in the bazaars," said a western military specialist on Afghanistan. "They would be able to trace the diversion to its sources."

Many rebel commanders and others agreed with Shah Mohammed, a guerrilla chief from Logar Province who argued that outside arms donors should bypass the Afghan political parties and deliver the aid directly to proven commanders inside Afghanistan, as do many European organizations offering humanitarian aid. Afghan political leaders traditionally have distributed largesse to their clients and supporters as a way of gaining influence—a habit that party leaders have continued during the war.

"The parties—some more than others—distribute the weapons to get political influence rather than according to the military needs of the jihad," Mustafa Wardak, a commander in Ghazni Province said.

The concerns about Pakistani and Afghan corruption are not limited to military aid. Officials of private aid organizations in Peshawar express misgivings about a new U.S. Agency for international Development humanitarian aid program preparing to spend $15 million this fiscal year on projects inside Afghanistan.

Like the military pipeline, the humanitarian aid operation will channel its funds exclusively through the Pakistani authorities and the Afghan political parties—a structure that aid workers say invites corruption and inefficiency. The aid official questioned whether the necessary infrastructure exists inside Afghanistan to spend the AID money efficiently, which dwarfs their private efforts.

AID has not yet released details on how it plans to spend the money, but one western source in Islamabad, Pakistan, dismissed the aid workers' fears, saying AID was planning "some creative new ways" to use the money in helping the mujaheddin.

CAN YOU READ THIS?

In the narrow ravine of their guerrilla base, the mujaheddin pried open wooden crates containing the Chinese missiles they would fire that night at Soviet positions in Ghazni. Inside one of the crates they found a sheet printed in Chinese and covered with tables of figures.

As he examined it, a guerrilla said, "I think it is information on how to launch the missiles." Suddenly, his face brightened, and smiling, he handed the paper to a Japanese photographer who had come to cover the war.

"Can you read this?" he asked.

The incident symbolized what many mujaheddin regard as one of their most basic problems in this war: their lack of technical information and training in how to use their weapons.

Whatever its problems with corruption on the Pakistani side of the border, the CIA's arms pipeline has succeeded in delivering the heaviest and most sophisticated weapons the resistence has had during its six year battle against the Soviets.

"Unfortunately, these weapons are coming to men who are illiterate peasants . . . and they are not being taught how to use them," said an American military specialist who has traveled with the mujaheddin.

At the few drab restaurants and hotels in Peshawar favored by foreign visitors, western journalists and others who have accompanied the mujaheddin inside Afghanistan recount stories about guerrillas firing missiles without detonators, planting land mines upside down and—one of the most consistent observations—wasting ammunition in small and ineffectual attacks on Soviet posts.

"Most of the mujaheddin . . . find the range [with a mortar] by setting it up, firing off a few rounds and tinkering with it," said Peter Jouvenal, a British documentary film maker who has covered the war since it began. "By the time they're ready to hit the target, they've run out of ammunition."

"If the CIA or anyone else were serious about helping the Afghans, they would be training them," one military analyst said, "westerners have this idea that the Pathans [the largest Afghan ethnic group] are natural fighters, and to an extent that's true," he said, "but you cannot expect a farmer to aim a modern missile with his instincts."

Several sources said the Pakistani Army had run—and apparently stopped—a small-scale training program for the mujaheddin, in addition to rudimentary training by the parties based in Peshawar.

Several military observers said the delivery of even simple forms of aid to the mujaheddin could be dangerous to the guerrillas in the absence of training. One described mujaheddin who received radios but who knew nothing about codes and broadcast their movements to each other in plain language.

Military specialists who have traveled with the mujaheddin argued that training would not only improve how the guerrillas handle their weapons but would help overcome divisions among guerrillas of different parties and regions, and improve their cooperation in the field.

Many, but not all, commanders agreed on the need for training. Several commanders from the fundamentalist Hezb-i-Islami faction of Gulbuddin Hekmatyar argued that military training, like secular education, was of relatively minor importance, next to the religious faith of the mujaheddin.

"It is the man and his faith which fights," said Shamsuddin, a former medical student now commanding a Hezb-i-Islami guerrilla group in Kunduz Province, in the north. "If training were most important, the Soviets would have beaten us long ago, because they have training and we do not," he said.

AIR DEFENSES CRITICAL

"We heard you are an American," the middle-aged guerrilla said. For 40 minutes, he and a companion had sat silently, on the floor of the teahouse, watching closely as I scribbled notes from the day's long hike.

That now finished, the men explained their request:

"When you go back to America," one asked politely, "could you send us some air defense?"

Although the question sounded odd to an American reporter, for the two Afghans it was both serious and urgent. Indeed, during a month inside Afghanistan, numerous guerrillas stressed that their greatest need in military aid is a defense against the Soviet jets and helicopters that attack their supply caravans and support commando raids against them.

The mujaheddin have little effective air defense, relying on heavy machine guns and a limited number of Soviet-made SA7 missiles. Virtually all the mujaheddin encountered disagreed with the conclusions of a December State Department report that said that resistance air defenses had improved with growing numbers of surface-to-air missiles and reduced the effectiveness of Soviet air power.

The most important recent change in the air war, according to Kabul area commander Abdul Haq and others, is that the Soviets now use more helicopters, especially in commando operations.

"They used to send in seven or eight helicopters in an attack, but now they might send 20," he said. The mujaheddin have responded, he said, by offering smaller targets. "We have to move our supplies at night, we use smaller caravans—maybe with 20 camels instead of a hundred."

Many mujaheddin believe that more and better missiles are the answer. And in Washington last fall, intelligence sources were quoted as saying the Reagan administration was considering supplying sophisticated portable antiaircraft missiles, such as the British blowpipe system.

"The U.S. must be careful about listening to missile requests," a western military analyst said in Peshawar. "The mujaheddin see solutions to their problems too easily in sophisticated hardware."

The analyst said that much of the reason for the guerrillas' disappointment in the antiaircraft missiles was their lack of training.

He suggested that simpler weapons, such as Soviet wire-guided missiles would be easier for the mujaheddin to learn to use.

"If they're thinking of sending in even more sophisticated weapons, without any training program, I wonder if they really know who they're dealing with," he said.

Mr. BYRD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. KASTEN). The Senator has 5 minutes remaining.

Mr. BYRD. Mr. President, I ask unanimous consent that I may reserve my 5 minutes throughout this day.

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

Mr. BYRD. I yield the floor.

RECOGNITION OF SENATOR PROXMIRE

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

SENATOR KASTEN'S WEDDING

Mr. PROXMIRE. Mr. President, I am happy to see my distinguished and handsome Wisconsin colleague presiding over the Senate this morning, and freshly back from his honeymoon.

I congratulate him officially in the RECORD on his marriage. He has obviously married a most beautiful and attractive wife.

I think he deserves all of our credit, and best wishes for a very happy married life.

THE WASHINGTON POST ON TARGET ON CUTTING THE DEFICIT

Mr. PROXMIRE. Mr. President, it is a rare occasion, as far as this Senator is concerned, that I can almost wholeheartedly approve of the recent editorial in the Washington Post. I had that happy experience this morning. The lead editorial in the Washington Post was an excellent editorial.

The Congress urgently needs constructive suggestions on how to reduce the deficit, and the Washington Post comes up this monring with one of the best this Senator has seen in a long, long time. In the lead editorial, the Post called for some powerful but essential cuts in domestic programs. That may surprise a lot of people. It is not quite the Washington Post style to call for cuts in domestic programs. But they do.

They favor ending revenue sharing, finishing off the Economic Development Administration. They would kill a program I authored back in the seventies: the urban development action grant, or UDAG Program. And it should be killed. They would knock off the Small Business Administration. They miss a few other targets. We could save $5 billion over the next few years by a 1-year moratorium on assisted housing. We could take at least $1 billion by 1987 out of the farm program. We can and should end Amtrak.

Mr. President, this is particularly helpful for a paper which I understand has opposed the Gramm-Rudman bill, which I supported. But I think if you are going to oppose the Gramm-Rudman bill, then you ought to come up with some specific cuts. They do that. By and large, the Post has proposed the right kind of reductions in the domestic side of the budget.

They observe properly that these reductions fall far short of the $70 or $80 billion of reductions we must find between now and fiscal year 1987 that begins next October 1. The Post takes it much too easy on defense. We can and should end star wars, the MX, the B-1. Stealth makes much more sense. The Pentagon is woefully topheavy in headquarters staff.

We do not really have to go all the way with a 600-fighting-ship Navy. But the actual economies available in defense are—as the Post points out—not great. This unfortunately is not a Sunday school world. We need a strong defense that will continue to require heavy spending. Sure, arms control negotiations could significantly ease that burden. But in spite of the big talk by Gorbachev and Reagan, such a consummation is very likely years away, probably well after the Reagan administration leaves office.

The Post rightly argues that all this means that a responsible fiscal course absolutely requires a tax increase of one kind or another. None of this will make 1986 a happy year politically. But there is a growing feeling in the country that the huge and continuing deficit represents a terrible future threat that will bring an enormous debt burden, rising interest rates and a curl-your-hair inflation unless the Congress acts and acts now. The country is politically right for both budget cuts and tax increases.

Mr. President, I ask unanimous consent that the lead editorial from the Washington Post be printed in the RECORD.

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

[From the Washington Post, Jan. 22, 1986]

THE BUDGET SOLUTION

Certainly it's possible to cut the federal budget further. And it's necessary. The Gramm-Rudman-Hollings machinery is now in gear, and the budget that President Reagan proposes to Congress in February will probably call for more than $60 billion in deficit reductions next year. He apparently intends to take nearly all of it from that one-third of the budget that is neither defense, interest nor Social Security and Medicare. Within that one-third, there are still programs—most of them survivors from less straitened times—that could indeed go.

For one example, general revenue sharing can be allowed to pass into history—as Congress acknowledged in the reconciliation bill that it didn't quite pass in December. For another example, the Economic Development Administration, offering additional grants to state and local governments, would not be greatly missed. Nor would UDAG, the urban development acting grant program; it supports cities' renewal plans, frequently for projects that might better find commercial financing. The president was right last year to call for an end to the Small Business Administration, and no doubt he will call for it again. The question is not what's desirable but, in a year of severe constraint, what's indispensable. The list of dispensables could be carried to greater length.

But when you add it all up, you are not going to come up with a great deal of money. Even pressing all the limits, it's hard to see as much as $15 billion in legitimate and plausible budget cuts here for next year. After all, this most vulnerable one-third of the budget has been reviewed repeatedly by the budget-balancers, beginning in the Carter administration. It is ground that has been raked over and over. That part of the budget currently comes to about $320 billion, and since the beginning of the Reagan administration it has sustained more than $60 billion in cuts. If cutting goes much further in this area, it will begin to

erode the ability of the government even to carry out the basic public functions necessary to keep itself operating effectively—to collect the taxes, enforce the laws, administer justice and the rest.

And while some parts of the budget can still be reduced, some other parts of it ugently need to be expanded. The poorest one-fifth of the American people are living in privation that has greatly increased in recent years, and half of that one-fifth are children. Their condition stands as evidence that cuts in family support, nutrition and health outlays have already gone too far.

That's why no part of the budget should be considered off limits. Although Mr. Reagan has adamantly refused to consider it, Social Security can be trimmed without injustice to recipients. Congress has moved a couple of times toward postponing or diminishing the cost-of-living adjustments. That's a bad idea, for the impact would fall equally on the poorest and the wealthiest of recipients alike. But how about taxing Social Security a bit more broadly? Half of Social Security benefits are now taxable above a certain income threshold—$32,000 a year, in the case of a couple. Why not abolish that threshold? If the same sound principle were applied to unemployment compensation and workers' compensation as well, all together it would raise $4 billion next year and much more in the years beyond. But all of that would still leave the total deficit reduction far less than half of the huge amount required by Gramm-Rudman-Hollings.

As for defense, it's possible to debate whether the Pentagon is spending its money on precisely the right things. It's reasonable to say that defense spending is adequate for present circumstances and may not require any further increase in real terms—that is, after inflation. But cutting the defense budget would be altogether unwise. Another way will have to be found to get the deficit under control.

There is only one other way: to raise taxes. A tax increase is now mandatory. It needs to be very large—in the range of $150 billion a year, phased in over the next several years. It does not have to be big enough to reduce the federal deficit to zero, least of all with the unemployment rate still hovering around 7 percent. But it has to be big enough to bring the deficit down rapidly, convincingly and permanently.

Over the months ahead, a simple test will distinguish serious budget strategy from posturing. Any serious strategy will require a tax increase sufficient to pay for national defense, social progress and the other public responsibilities that Americans want their federal government to uphold. Any budget plan that omits that tax is not serious. The arithmetic permits no detour around that reality.

There is a way out of the dangers into which the continuing gigantic budget deficits have brought the country. But there is only one way, and to take advantage of it President Reagan and Congress will have to move rapidly and forcefully.

IS STAR WARS WORTH THE COST?

Mr. PROXMIRE. Mr. President, we have the soaring, exploding, sky's-the-limit cost of this Star Wars Program. Here is a project that costs so much the experts cannot even give us an estimate. We know we will spend more than $2.7 billion on beginning research in the current fiscal year. That is the year beginning October 1, 1986, the 1987 fiscal year. We know that over the next 5 years, the research cost alone will reach $25 billion on this strategic defense initiative before we buy or deploy the hardware. The former Under Secretary of Defense, Secretary DeLauer, who championed this program, warned us that the cost would stagger us. How much will it cost? Estimates by SDI supporters range from $400 to $900 billion. Critics say it will cost well over $1 trillion.

Do you think that is bad? The latest reports are worse. The congressional Office of Technology Assessment tells us that we will have to revive our vanished air defense to supplement this program. Former Secretary of Defense Schlesinger has estimated that particular revival alone will cost at least $50 billion a year in current dollars to produce, deploy, and maintain the look-down, shoot-down capacity necessary to have any chance to stop the bombers, and especially the cruise missiles, that would shoot in under the SDI defense. Those cruise missiles can strike today with the force of 150,000 tons of TNT. Currently, we are defenseless against them. There is no assurance that even $50 billion a year would provide an effective defense.

And now we are told that SDI will need a full-scale civil defense program. Who can estimate the cost of building the underground shelters? How many shelters would this vast country need? One for each of our tens of millions of households? Could we evacuate our cities even with an all-out program that carried no cost limit? And if we could, what would happen to the millions of people pouring into the countryside to confront the real possibility of a nuclear winter? What civil defense could we construct against temperatures that plunged 45 degrees below normal? How could we begin to cope with an environmental disaster that would destroy food production throughout the world for 1 year or more? What would be the cost of a civil defense system designed to meet all these exigencies that would accompany a nuclear war fought under the umbrella of a star wars defense?

Mr. President, let me make it clear that if the star wars anti-missile defense could prevent a nuclear war or even measurably increase the likelihood this country could avoid a nuclear war, this Senator would gladly vote for the taxes and the appropriations necessary to buy the SDI research, the hardware, the deployment, the air defense against bombers and cruise missiles and the civil defense necessary to supplement the SDI. But why should any Member of this body vote to spend these immense sums when the best evidence indicates that SDI will not lessen the likelihood of nuclear war? On the contrary, this is shocking, but star wars defenses will surely increase the prospects of nuclear war. Why? Here is why: We cannot escape the grim fact that if both sides have an SDI or missile defense, the side that strikes first will win a tremendous advantage.

Can anyone deny the compelling fact that the success of the antimissile defense depends on somehow reducing the number of offensive missiles in the adversary's arsenal? This is precisely why, with the advent of the Antiballistic Missile Treaty, deterrence of nuclear war became the true peacekeeper. Why do both Mikhail Gorbachev and Ronald Reagan so emphatically agree that under present circumstances, a nuclear war must never be fought and can never be won? It is because both superpowers now recognize the utter, certain, and total catastrophe of nuclear war without antiballistic missile protective shield. Then, what do we buy when we get that protective SDI shield? What do we receive for the literally trillions of dollars of expenditures? We get a far more dangerous world than we had before.

Mr. President, we cannot find the answer to peace and security in this nuclear world by building more weapons. This is true whether those weapons are offensive or defensive. We cannot buy security and safety. For the first time in the world's history, we cannot, with all our marvelous technology and our superb economy, find salvation in offensive or defensive military strength alone. So where does our salvation lie? It lies in arms control. It lies in negotiating an agreement with the other superpower. Does that mean we approve or trust the Soviet Union? Of course not. It means we have to understand that no matter how aggressive they are, no matter how seriously their ideology erodes human freedom, the Soviet Union has the same yearning to survive that the United States has. The Soviet leader has clearly expressed the same understanding of the totally destructive consequences of a superpower nuclear war as our President.

We do not have to worry about the honesty or sincerity of the Soviet leader, we only have to be concerned over his understanding of the power of the U.S. 10,000 strategic nuclear warheads and of the sure destruction that follows from knowing that the Soviet leader understands, as an absolute certainty, that the United States has the capability of delivering that awesome destructive power on the Soviet Union. On the other hand, Secretary Gorbachev does not have to trust the American Government to agree not to institute an attack. He knows that we understand that any nuclear attack on the Soviet Union by the United States

would provoke a retaliation that would utterly destroy this country.

Given this situation, what purpose does arms control serve? Can both superpowers simply rely on the nuclear standoff continuing indefinitely? In the words of Churchill at the dawn of the nuclear age; "Safety was the twin child of terror." Why not keep it that way? The answer is that we cannot. Not without an arms control treaty like the ABM that prevents the superpowers from building a defensive system that could permit a preemptive first strike from so decimating the offensive arsenal of the adversary that star wars or SDI just might permit the attacking nation to become the lone survivor of an all-out, superpower exchange.

So, Mr. President, arms control is essential to peace in the nuclear world because it stops or freezes the dynamic technological momentum that, without arms control, will push both superpowers out of their deterrent stalemate into a nuclear first strike that could win world domination. Arms control can enable us to achieve peace without the colossal burden of military spending that such projects as star wars and their accompanying air defense and civil defense supplements would require.

We have a choice. We can ignore arms control. We can forget about agreements with the Soviet Union. We can rely on building bigger and better and more devastating offensive and defensive nuclear weapons than the Soviet Union. In the process, we will literally spend trillions. We will also greatly increase the prospect of nuclear war. Or we can negotiate an agreement to end the arms race with the Soviet Union. We can reinforce such an agreement with the strongest possible verification we can negotiate and pour our scientific resources into refining and improving the verificiation technology. We can further buttress the agreement with constant and aggressive reliance on the Standing Consultative Commission, promptly challenging any and every Soviet violation of the agreement. Finally, we can make it absolutely clear to the U.S.S.R. that if they do violate the agreement in any militarily significant way and refuse to stop the violation, we will renounce the treaty and resume the arms race that will be to the serious disadvantage of both nations.

Certainly there is no sure, risk-free panacea for peace in this troublesome nuclear age. We need both military strength and vigorous arms control. Military strength alone is not enough. Arms control can never eliminate a heavy burden of military preparedness. The two can and must work together. Without military strength, arms control becomes a beautiful but empty, idealistic dream. Without arms control, military strength leads us down the road to national bankruptcy and a far more dangerous world.

THE MYTH OF THE DAY: WELFARE RECIPIENTS ARE RESPONSIBLE FOR MEDICAID'S HIGH COSTS

Mr. PROXMIRE. Mr. President, the myth of the day is that the cause of medicaid's cost explosion can be traced to the excessive use of health care services by AFDC recipients.

While medicaid was enacted in 1965, it faced a troubled infancy as the States and the District of Columbia struggled to implement this new program to provide health care for the poor. So, it was not until 1972 that the Federal Government was able to gather and monitor statistics on medicaid enrollment and costs. At that point, medicaid cost $6.3 billion and covered 17.6 million persons. A decade later, medicaid coverage expanded to 22 million Americans and cost a whopping $30 billion. The program had grown at an annual compound rate of 16.9 percent. By contrast, Federal revenues grew at a compound rate of only 11.7 percent and State revenues grew at a slightly lower rate of 11.4 percent. So, it is clear that medicaid's rapid rate of growth has quickly been outstripping the ability of the Federal and State governments to meet its bills.

In my own State of Wisconsin, medicaid is now a billion dollar program with the Federal Government meeting 57 percent of its cost.

The tremendous rate of growth in medicaid has led many to conclude that this explosion in costs can be laid at the doorstep of the AFDC welfare population.

And they are dead wrong. Let us look at the numbers.

In 1982, the AFDC population made up 69 percent of the 22 million Americans eligible for medicaid, yet they were only responsible for 26 percent of all costs in that year.

That is right. Sixty-nine percent of medicaid recipients only ran up 26 percent of the costs for the entire program.

By contrast, the aged, blind, and disabled made up less than 30 percent of medicaid recipients yet incurred over 70 percent of total program costs.

How can that be?

First, the aged, blind, and disabled disproportionately use health care services. Even without the hardships of blindness or SSI-qualifying disabilities, the aged use health services at a rate 3½ times the total population. In addition, disabilities at any age increase service utilization and medicaid services for SSI recipients have increased at an annual compound rate of growth of 20.5 percent, compared to 13.9 percent for AFDC recipients.

Second, the aging of the population has increased the demand for institutionalization. While the number of aged medicaid recipients is actually declining slightly, reflecting in part the improved economic status of the elderly, the percentage of medicaid aged in nursing homes has increased, suggesting an evolution to an older and more impaired aged medicaid recipient.

Third, the decision to extend medicaid coverage to the SSI population, particularly the disabled, and the coverage of nursing home care in ICF-MR's [intermediate care facilities for the mentally retarded] has been a major factor in the rapid growth of medicaid costs. In 1975, the disabled accounted for 24 percent of all medicaid expenditures in nursing homes; by 1982, it had risen to 38 percent and is continuing to escalate rapidly. Costly ICF-MR's provide care to the one-third of institutionalized disabled who are mentally retarded.

Thus, the image of the welfare mother and her children accounting for the explosion in medicare costs misses the mark by a country mile. And by permitting this myth to continue, without refutation, we merely undercut the support which this vital "safety net" program deserves.

For many elderly, medicaid is there when they have exhausted their resources in the nursing home. Medicaid is there for the mentally retarded and the blind, the disabled, the least fortunate of our society when they most need it.

And far from being the cause of the medicaid cost spiral, Americans under age 65 who are in poverty and are not blind or disabled are perhaps the least protected by medicaid. And as I have pointed out before, we need to see that we better target these limited resources to meet their needs as well.

THE VISION OF DR. MARTIN LUTHER KING AND THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, this week we observed the first Federal holiday commemorating the birth of Dr. Martin Luther King, Jr. Much has been said of his leadership and of his legacy to America: His efforts for civil rights, on behalf of the poor and in support of the cause of peace stirred a complacent nation to action and changed the very fabric of American society within a single generation. He appealed to the very best aspects of American character and his legacy is reflected in our progress toward equality and social justice.

But Dr. King's vision was not limited to home; he had a vision far greater. A dream that the United States would assume its rightful place as a leader in the world for human rights—the rightful role for a nation which once re-

ferred to itself as the leader of the free world.

Unfortunately, we have made far too little progress toward achieving this broader goal. For all of our rhetoric, we have little of substance to demonstrate our willingness to follow through on our commitment to human rights. Among Western nations, we have had a poor track record for ratification of human rights treaties—the essential building blocks for securing these rights.

But why, Mr. President? Why? How could we fail to take action when it is within our grasp to do so? How can we fail to give meaning and substance to our rhetorical commitment to human rights? The sad answer, Mr. President, is that there is no excuse for our past inaction.

Yet while we cannot undo the past, we can change the future and we have a unique opportunity this year to do just that. President Reagan has called upon us to ratify the Genocide Convention, the most basic and fundamental of the human rights treaties ever drafted. Here is a treaty which seeks to guarantee the most fundamental right of all: The right to live for every national, ethnic, racial, and religious group; the right to live without fear of extermination. And what could be more basic?

The Federal holiday for Dr. King, a dedicated servant of the cause of human rights, is an important symbol of the man, his people and, most of all, his cause. As important as that is, it will ultimately be incomplete until we see the realization of that dream: both here and abroad. And ratification of the Genocide Convention this year will be a most fitting step in that direction.

Mr. President, I yield the floor.

RECOGNITION OF SENATOR COCHRAN

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

FORECLOSURE POLICIES OF THE FARMERS HOME ADMINISTRATION

Mr. COCHRAN. Mr. President, I take advantage of this opportunity to bring to the attention of my Senate colleagues that the Subcommittee on Appropriations which I chair, the Subcommittee on Agriculture, Rural Development and Related Agencies, will conduct a hearing on Friday of this week at 9:30 a.m. in room 138 of the Senate Dirksen Office Building to examine the foreclosure policies of the Farmers Home Administration. The subcommittee has jurisdiction over the funding of this agency. I am concerned about the possible impact of what may be a new policy relating to farm foreclosures on the budget and on the appropriations bill that our subcommittee will have to prepare later this year.

For some background on the subject, when I was back in my State over the Thanksgiving holiday, a friend brought to my attention some instructions that had been promulgated by the Department of Agriculture to county supervisors of the FmHA in my State, and presumably throughout the country, relating to foreclosure policy.

Attached to these instructions were some forms. One was entitled "Notice of Intent To Take Adverse Action."

Reviewing these instructions and the attachments to them, it became obvious to me that the Department of Agriculture, through the Farmers Home Administration, was going to be communicating with almost all Farmers Home borrowers and putting them on notice that immediately after the first of the year foreclosure action was contemplated against every one of them who was $100 or more behind in the payment on his Farmers Home loan.

Well, this struck me as unusual because my recollection had been that the Farmers Home Administration had a policy of leniency and that it would work with farmers to help them work their way out of indebtedness and prevent foreclosure, that that was the policy of the Farmers Home Administration and the Department of Agriculture.

So I wrote a letter upon returning to Washington to the new Administrator of the Farmers Home Administration. My letter was dated December 3, 1985. In my letter, I said:

> When I was in Mississippi this past weekend, I was handed a copy of Farmers Home Administration instruction No. 1924.71, et seq. I am enclosing a copy for your information. The interpretation of these instructions by some borrowers in my State is that anyone who is more than $100 delinquent on December 31 can expect foreclosure. It is my recollection that the policy of the Farmers Home Administration has been one of leniency, with a commitment to farmers to help them work out of their indebtedness problems if at all possible. I want to know if the policy has been changed and whether the interpretation of these instructions is correct or not. Your early advice would be appreciated very much.
>
> Sincerely,
>
> THAD COCHRAN,
> *U.S. Senator.*

Mr. President, I received a response to that letter today. It has taken almost 7 or 8 weeks to get a response to that inquiry. It seemed simple enough to me. I did appreciate a telephone call that I received earlier today from the Administrator of the Farmers Home Administration apologizing for the delay in responding to that inquiry.

But what disturbs me more than not getting an answer until January 22 to a letter dated December 3 about a fundamental policy of the Farmers Home Administration is the attitude on the part of the Farmers Home Administration that is reflected in these instructions and in these forms to which I have earlier referred. So Members will be on notice, I am asking unanimous consent, Mr. President, that copies of these attachments be printed at this point in the RECORD.

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

[Form FmHA 1924-25 (9-85)]

Position 3

United States Department of Agriculture

Farmers Home Administration

NOTICE OF INTENT TO TAKE ADVERSE ACTION

Dear :

We regret to inform you that a review of your Farmers Home Administration (FmHA) loan account indicates the need to take adverse action.

We have attempted to work out a satisfactory solution to your credit problems through the various servicing options available, but have not been able to do so. For your information and review, we have included with this material a copy of the FmHA notice entitled "Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities" (Form FmHA 1924-14).

This "Notice of Intent To Take Adverse Action" *requires a response from you within 30 days, using the attached form entitled "Borrower Acknowledgment of Notice of Intent to Take Adverse Action" (Form FmHA 1924-26).* That form offers you the opportunity to request for consideration a number of servicing options. Further details are provided below.

We have conducted a review of your Farmers Home Administration (FmHA) loan accounts and determined the following where checked:

☐ You are presently $———— behind schedule on your FmHA loan installments which is a violation of your note and mortgage and/or security agreement.

☐ You have made unapproved disposition(s) of property that is covered by security instruments which secure your FmHA indebtedness. The property in question is (describe property):

☐ You have stopped farming or ranching which is a violation of your loan agreements.

☐ You have (insert the reason(s) for the proposed adverse action):

If the above listed violation(s) is not corrected by one or more of the actions described in the attached Form FmHA 1924-26, "Borrower's Acknowledgment of Intent to Take Adverse Action," FmHA intends to accelerate your FmHA debts and foreclose on your real estate and/or chattels. This may include repossessing your chattels or in other ways proceeding against property you own in which FmHA has a security interest or terminating the release of sales records.

You may, with regard to your Operating, Economic Emergency, Emergency, Farm Ownership, Soil and Water, Special Livestock, Economic Opportunity, Rural Housing for farm service buildings, and/or Recreation loan(s), apply for servicing options, including deferrals, that are explained in the enclosed Form FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferrals and Borrower Re-

sponsibilities." Please read this form carefully.

If you wish to apply for any of the servicing options you must complete Part I of the enclosed Form FmHA 1924-26, "Borrower Acknowledgment of Notice of Intent To Take Adverse Action," sign the form, and return the form to the address listed on the letterhead of this notice within 30 days after you receive this notice. We will then arrange a conference with you to develop financial statements and farm operating plans which FmHA will use to make a determination on your request for servicing options. If you fail to attend this conference without offering a legitimate excuse or if you fail to provide necessary information, your request will be automatically denied and you will not be given an opportunity to appeal any adverse decision.

At the conference you will be given the opportunity to present information you believe will show you are eligible for the servicing option(s) you requested. FmHA will make a decision on your request based on the information submitted by you, the information in your FmHA case file and the plans developed by you and FmHA at the conference. Such a decision will be in writing and, if the decision is adverse, FmHA will explain how to appeal the decision and to have an appeal hearing. Such a hearing will cover both the denial of your request for servicing alternatives and other adverse actions FmHA intends to take against you as indicated above.

If you do not wish to request servicing options, you have the opportunity to appeal the adverse action(s) FmHA intends to take. In this case, you should complete only Part II of Form FmHA 1924-26, sign the form and return it to the address shown in the letterhead of this notice within 30 days after you receive this notice. You may appear in person, with or without an attorney or other representative, to present your information. The hearing officer will be an FmHA employee who has not been previously involved in your case. The hearing officer will arrange a mutually convenient time and place for the appeal hearing.

Several methods of curing defaults or liquidating your FmHA loan accounts are available. If you prefer to use one of those methods listed in Part III (Curing Defaults) or Part IV (Liquidation Action) of Form FmHA 1924-26, check the appropriate box, sign the form and return it to the address listed in the letterhead of this notice within 30 days of receipt of this notice.

Please note that Form FmHA 1924-26 must be postmarked within 30 days of the day you received this notice. If you fail to respond to this notice by completing, signing and returning Form FmHA 1924-26 in the prescribed time, FmHA will proceed to take the adverse action(s) against you without further notice and right of administrative appeal by you.

(The following paragraph applies for individual borrowers only.)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age *(provided that the applicant has the capacity to enter into a binding contract);* because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

_____,

FmHA County Supervisor.

Enclosures: FmHA Form 1924-14; FmHA Form 1924-26.

[Form FmHA 1924-26 (9-85)]

Position 4

United States Department of Agriculture

Farmers Home Administration

BORROWER ACKNOWLEDGMENT OF NOTICE OF INTENT TO TAKE ADVERSE ACTION

County Supervisor, FmHA

This acknowledges that I (we) received your Notice of Intent To Take Adverse Action dated:

(Complete Part I, II, III or Part IV and Part V.)

I. Servicing Actions:

I (we) request FmHA to consider the following servicing actions (check one or more)

A. ___ Rescheduling
B. ___ Reamortization
C. ___ Consolidation
D. ___ Deferral
E. ___ Limited Resource
F. ___ Subordination
G. ___ Restructuring the business and debt by selling a portion of my (our) assets

I (we) understand that if, after I (we) attend a mandatory conference and present necessary information, FmHA denies my (our) request, I (we) will be given opportunity to appeal.

(If you completed this part, proceed to Part V.)

II. Appeal:

I (we) do not wish to apply for the servicing options in Part I above. I (we) understand that I (we) may appeal FmHA's intended adverse action and I (we) wish to have the appeal hearing handled as follows:

(Check appropriate box)

A. ___ I (we) request an appeal hearing and I (we) believe FmHA's intended action is wrong for the following reason(s).

I (we) am (are) enclosing the following information for the hearing officer's consideration (Itemize specific documents).

B. ___ I (we) request an appeal hearing and I (we) will present information at the hearing which I (we) believe will prove FmHA's decision is incorrect.

C. ___ I (we) will not attend an appeal hearing but request the hearing officer to review the existing written record, and based on the review, determine whether FmHA's decision is correct.

D. ___ I (we) do not want to appeal the intended action and waive my (our) right to do so.

(If you completed this part, proceed to Part V.)

III. Curing Defaults (Complete this only if you have checked none of the boxes in I or II above):

I (we) do not wish to request a servicing option in Part I or to appeal the intended adverse action as allowed in Part II. I (we) wish to take the following action to correct the security agreement violations noted in Form FmHA 1924-25 and request a conference with you to discuss this action.

A. ___ Pay my (our) delinquent loan accounts current.

B. ___ Make restitution to FmHA for unauthorized disposition of security.

I will take this action within 60 days of the date this Form FmHA 1924-26 is postmarked. If I cannot accomplish this action within the 60 days, FmHA will proceed to take adverse action against me, and I will not be allowed to appeal the adverse action.

(If you completed this part, proceed to Part V.)

IV. Liquidation Actions (Complete this only if you have checked none of the boxes in I, II, or III above):

I (we) do not wish to request a servicing option in Part I, appeal the adverse action as permitted in Part II, or correct the security agreement violations as permitted in Part III. I (we) wish to take the following action to liquidate my (our) FmHA accounts and request a conference with you to discuss this action.

A. ___ Sell my (our) security for cash.

B. ___ Convey my (our) security to FmHA.

C. ___ Transfer my (our) security to someone who will assume the FmHA debt.

D. ___ Refinance my (our) debt with another lender.

I will take this action within 120 days of the date this Form FmHA 1924-26 is postmarked. I understand that I may be considered for FmHA debt settlement should sale, transfer, or conveyance of secured property fail to satisfy my (our) entire FmHA debt. I understand that if I cannot accomplish this action within 120 days, FmHA will proceed to take adverse action and I will not be allowed to appeal that action.

(Proceed to Part V.)

V. Certification:

I (we) hereby request one of the above actions. I (we) understand that if I (we) do not request any of the actions in Parts I, III, or IV or desire an appeal hearing in Part II, FmHA may proceed to take immediate action on my (our) loan accounts.

Sincerely,

(Signature of borrower)

[FmHA 1924-14 (Rev. 9/85)

Position 3

United States Department of Agriculture

Farmers Home Administration

NOTICE

FARMER PROGRAM BORROWER SERVICING OPTIONS INCLUDING DEFERRALS AND BORROWER RESPONSIBILITIES

SERVICING OPTIONS

All borrowers are expected to repay their loans according to planned repayment schedules. However, sometimes borrowers will not be able to pay as scheduled. If this happens, you may inquire about the following servicing options:

1. Deferral:

An approved delay in making regularly scheduled payments. Such a delay may be granted if FmHA finds that, due to circumstances beyond your control, you are temporarily unable to continue making the scheduled payments on such loan(s) without unduly impairing your standard of living. A more detailed description is available at any FmHA Office.

II. Limited Resource Program:

The Farmers Home Administration (FmHA) has authority to make limited resource farm ownership and operating loans to qualified applicants.

The program provides credit at an interest rate which is lower than FmHA's regular interest rate.

In addition to making loans at reduced interest rate, borrowers with existing farm ownership and operating loans who qualify as limited resource operators may have their loans rewritten at the lower interest rate.

III. Consolidation:

Combining and rewriting similar type loans made for operating purposes at new rates and terms.

IV. Rescheduling:

Rewriting loans made for operating purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

V. Reamortization:

Rewriting loans made for real estate purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

VI. Subordination of the FmHA lien to the lien of another creditor.

VII. Restructuring the business and debt by selling a portion of your assets.

If you would like additional information regarding any of the above items and how to apply you should contact the FmHA County Supervisor. You will be asked to attend a conference with the FmHA County Supervisor and you must furnish the information necessary for FmHA to make a decision on your request. The County Supervisor can advise you of the information needed for a decision.

FARMER PROGRAM BORROWER RESPONSIBILITIES

Please read carefully the following summary of major FmHA requirements. Farmer Program insured borrowers should understand what the Farmers Home Administration (FmHA) expects of them and how FmHA can be of better service. This is not a complete list of all responsibilities of an FmHA borrower; this highlights only some of those responsibilities.

Responsibilities consist of, but are not limited to, the following:

Payments: Payments are due as agreed upon in the note(s). It is essential that payments be made on time. Extra payments are encouraged whenever possible.

Security: The loan(s) is secured by a Financing Statement and Security Agreement and/or a real estate mortgage or other security instruments (depending upon the type of loan or security). These instruments give FmHA a valid lien on crops, chattels, land, etc., as applicable.

Use of loan funds: FmHA loan funds will be used for the purpose(s) shown on the Farm and Home Plan or other plan of operation acceptable to FmHA, and/or Development Plan in cases of real estate improvements.

Releases and sales: The Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," which you signed is the agreement between FmHA and you which explains what sales you plan to make, approximately when and to whom those sales will be made, and how the proceeds from those sales will be used. You must inform FmHA if you want to make any sales which are not listed on the form, if you want to sell to a purchaser not listed on the form, or if you make a sale and you receive an amount of proceeds different from the amount listed on the form. It may be a violation of Federal criminal law to make sales which have not been authorized on Form FmHA 1962-1 or to fail to account for sales proceeds.

Changes in operation: FmHA agreed to lend you money based on facts which you supplied about your operation. If any changes occur in your operation you should notify the FmHA County Supervisor at once.

Violation of responsibilities: Violation of any of the above responsibilities may result in denial of further FmHA assistance, and could cause your FmHA loan(s) to be accelerated.

Mr. COCHRAN. Let me read from one of these attachments. It is a document entitled "Notice of Intent To Take Adverse Action." It says that if the above listed violation is not corrected, the Farmers Home Administration intends "to accelerate your FmHA debts and foreclose on your real estate and/or chattels." Among the listed violations are that "You are presently $—— behind schedule on your Farmers Home Administration loan installments"; "You have made unapproved disposition is of property that is covered by security instruments"; or "You have stopped farming or ranching which is a violation of your loan agreements."

If any one of those three conditions exists, the borrower is told, according to this form, that Farmers Home is going to foreclose; no ifs, ands, or buts about it.

But there is another option given to the borrower, another attachment which is, according to these instructions, to be sent out by the Farmers Home county supervisor, giving the borrower a list of things he may check if he is interested in an alternative to foreclosure. I am assuming most would be interested in an alternative to foreclosure. But looking at this, to me, you would be led to believe that you could put a check mark by the word "deferral" and qualify for a deferral—a deferral of your repayment obligations to Farmers Home. A reading of these instructions would lead you to believe that there are some farmers who would qualify for that. And that is encouraging.

What is not encouraging is that after briefings of staff members on the Hill, now, since these instructions have been formulated and sent around all over the country, there is no criterion or eligibility standard that has been developed for the Farmers Home Administration to base a decision that a farmer qualifies for a deferral.

What I am saying, Mr. President, is that if, as earlier contemplated by the agency, it was going to send this notice around the country and then some farmers were going to say they wanted a deferral, the local county supervisor would have no guidelines on which to base a decision as to whether an individual farmer could qualify for a deferral. And where would we be then?

There are over 6,000 farmers in my State of Mississippi who would fall within the definition of those who would receive letters of notice of intent to take adverse action. Therefore, I am assuming that almost 6,000 farmers would contact their Farmers Home county supervisor and seek a way to work out their problems. But when they contacted the supervisor, they would not learn anything about whether they could qualify for deferral or not. And that is disturbing.

I think now that the Administrator and those in his agency and those higher up in the Department of Agriculture may realize what a problem this is going to cause.

Even though I did not have a timely response to the letter which I wrote in early December asking for an explanation about what this meant, others were able to get a response. Some newspapers began checking into it. They began hearing about this and writing stories in leading newspapers all around the country. I read a story in the New York Times which was interesting to me because it appeared that the information they obtained was quite easy to get. Although it is very difficult for a Senator to get an answer to a question, a reporter apparently can get a quick answer.

Not only did the New York Times write an article about the new policy and the new pressures that were going to be brought on borrowers by the Farmers Home Administration, so did the Washington Post, and so did the Wall Street Journal, and just this past week, in the Clarion-Ledger-Jackson Daily News, our leading newspaper in terms of circulation in my State of Mississippi, there was a long article with the headline "Farmers Home Administration To Pressure Delinquent Farmers."

What has all this done? All the stories in the newspapers, coupled with these instructions that have been sent out to all the FHA county offices throughout the country, have caused a near panic among Farmers Home borrowers.

So, on Friday, Mr. President, we are going to have an opportunity at least to question the Administrator of the Farmers Home Administration and the Under Secretary of Agriculture, Frank Naylor. Both of them will be at the hearing, I am told, so we can find out more about this new policy: What does it mean? What are the eligibility criteria for deferral or reamortization of loans?

We know that the terms of a Federal court decision that provided for a moratorium throughout some States on foreclosures has now come to an end because of the expiration of the effective date of that court order, so there is no longer—I am told—a judicially imposed moratorium in effect. The Farmers Home Administration may be free now to pursue the collection of delinquent Farmers Home loans.

Mr. President, I am not suggesting that they should not try to collect loans that are owed to the Government that are past due. What alarms me is the way in which the new policy is apparently being developed and implemented without adequate explanation to many of us who are going to be

asked questions about it and have obligations to try to determine funding levels for agencies that are involved in this. I am not sure the number of employees in the Farmers Home Administration offices in my State of Mississippi will be sufficient to answer the telephone calls that will be coming in to inquire about the new procedures that have to be followed or the appropriate way to fill out the new forms that are being sent to farmers.

Let me say to my colleagues who may be interested in this subject and those who are going to be participating in the hearing on Friday that I am now told that this notice will not be sent out as had earlier been planned to every delinquent borrower. The notice to take adverse action will not be sent out to everyone, even though it was planned to be disseminated in early January. Only those who have wrongfully or fraudulently misappropriated secured property or may have violated the terms of the security arrangements with the Farmers Home Administration will be given notice of an intent to take adverse action. Not all borrowers just because they may be $100 behind on an interest payment or on principal will be given such harsh notice. That is under review, I am told, and those borrowers will probably get another kind of letter advising them that the Farmers Home Administration still sees its role as one where they are trying to be helpful to farmers, helping them work out of their current financial difficulties. That is what I hope we will see reflected in this new policy, Mr. President.

I am encouraged by the response I did receive today from the Administrator of the Farmers Home Administration to my earlier letter. I ask unanimous consent, Mr. President, that a copy of this letter from Vance L. Clark, Administrator, be printed in the RECORD.

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

WASHINGTON, DC, *January 21, 1986.*

Hon. THAD COCHRAN,

Chairman, Subcommittee on Agriculture, Rural Development and Related Agencies, Committee on Appropriations, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: This is in reply to your letter of December 3, 1985, regarding the Farmers Home Administration (FmHA) regulations pertaining to delinquent borrowers, and I do apologize for the delay in responding.

Previous FmHA regulations required that FmHA terminate the release of proceeds from the sale of chattel security prior to an appeal of the action. The new regulations referred to in your letter were issued primarily as a result of court decisions.

The notice and attachments which you refer to in your letter are sent to the borrower not only to inform the borrower of the default but also provide information regarding the servicing alternatives available to attempt to cure the default. For a monetary default, a borrower may request such assistance as rescheduling, reamortizing, or deferring payments on the loan. Farm ownership and operating loans may be rescheduled at a lower interest rate (limited resource) if the borrower meets certain guidelines. In addition, the regulations provide for more involvement of the borrower in planning the use of proceeds from the sale of FmHA chattel security and thus enable the borrower to be better informed of the availability of various FmHA servicing authorities.

The regulations offer borrowers the opportunity to restructure their indebtedness. It is FmHA's intent to use all its authorities to assist borrowers to continue farming when a reasonable chance of success exists. We will not be able, however, to keep everyone in business. Some borrowers are so deeply in debt that they cannot be saved.

I regret, Senator, that since my arrival at FmHA we have not had the opportunity to meet personally. Yet, it was nice to chat with you by telephone when I visited Mississippi recently. I did appreciate your kind words, and I did enjoy my visit to your fine State. The farmers of Flora were indeed most hospitable.

I appreciate your interest and concern about the farm situation and look forward to discussing personally our policies with you.

Sincerely,

VANCE L. CLARK,
Administrator.

Mr. COCHRAN. Mr. President, the key sentence, as I see it, in this letter is this:

It is FmHA's intent to use all its authority to assist borrowers to continue farming when a reasonable chance of success exists.

I am reassured that this is the attitude of the Administrator, and I hope that as we further explore the policies and intentions of the agency at the hearings on Friday we will see that kind of attitude reflected in practice. We all know that the agency cannot keep every person in the country in the farming business but we do know that there can be a sensitive and understanding attitude reflected by the actions of the administrator and by those employed throughout the States by the Farmers Home Administration so that each Farmers Home Administration borrower will know that this Government is sensitive to his problems and it cares and is trying to help. I hope we can see that kind of attitude reflected.

Mr. President, I also ask unanimous consent that copies of the newspaper articles that I earlier described from the Washington Post, the Wall Street Journal and the Clarion-Ledger/Jackson Daily News be printed in the RECORD.

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

[From the Washington Post, Jan. 2, 1986]

U.S. TO SEND FARMERS FORECLOSURE WARNINGS: TWO-YEAR MORATORIUM ENDS

(By Keith B. Richburg)

The Farmers Home Administration, ending a court-ordered two-year moratorium, will begin notifying farmers next week that if they are delinquent on federal loans they must immediately take steps to repay or restructure those loans or face foreclosure of their farms.

Letters, titled "notice of intent to take adverse action," will be mailed out to any farmers who were at least $100 behind in loan payments at the end of December. About 90,000 farmers, a third of all those who took out FHA loans, are estimated to be behind in their payments.

The FHA, a division of the Agriculture Department, has oftentimes been the lender of last resort to America's cash-strapped farmers, and now holds about 12 percent of the nation's total farm debt.

The letters will tell the farmers that they are delinquent in their payments, and spell out seven steps the farmers can seek to take, including having the loan restructured, deferring some payments, combining loans and applying for new short-term, low-interest loans to help with quick cash-flow problems. The farmers will have 30 days to respond to the notices.

Vance L. Clark, the FHA administrator, said yesterday that the notices should not be interpreted as a decision to begin foreclosing on farms. Rather, he said, the letters will tell farmers that they are behind in their payments and will outline the available options.

"Foreclosure, that's the last thing that happens," Clark said. "There are a lot of options open to borrowers to preclude these foreclosures." He said that along with each notification he is sending a letter from himself telling each farmer that the FHA understands the farmers' plight and wants to help.

Still, Clark said, there eventually may have to be some farm foreclosure, bearing out the worst predictions of farmers and farm-state lobbyists. "Not everybody's going to make it this year. There's going to be some who have to leave the farm," Clark said.

The Farmers Home Administration was essentially barred from sending out notifications of foreclosures to farmers in November 1983, when a federal judge in North Dakota said the lending agency must first notify farmers of all other options open to them before moving forward with foreclosure proceedings.

That ruling, in a class-action case brought by farmers whose land was threatened forced the FHA to hold up new foreclosure notices while it drafted regulations giving farmers various options for handling their debts. Those regulations were published in the Federal Register in November.

"The judges said 'wait a minute, you have to tell them [the farmers] of other avenues,' so we cleaned up our act," Clark said. Before the judge's moratorium, which effectively ended yesterday, the FHA had foreclosed on hundreds of farms.

Rising production costs, a grain glut and falling farm prices—expected to go even lower because of new legislation signed by President Reagan to drive commodity prices down—all have taken a toll on thousands of American farmers, forcing many into massive debts and driving some out of business.

[From the Wall Street Journal, Jan. 2, 1986]

U.S. TELLS FARMERS TO MAKE PAYMENTS OR REARRANGE TERMS OF LOAN IN ARREARS

(By David Shribman)

WASHINGTON.—The Farmers Home Administration, signaling the end of a two-year moratorium on foreclosures, is telling farm-

ers to make payments on their federal loans or arrange new terms within a month's time.

The agency, which is an arm of the Agriculture Department, is notifying about 90,000 farmers that they must bring their loans up to date or agree to new loan conditions if they wish to avoid foreclosures. The agency said it couldn't estimate how many foreclosures would result but maintained that the action wouldn't bring major dislocations in rural communities.

"We are not massively foreclosing," said Kathleen Lawrence, deputy undersecretary of agriculture for small-community and rural development. "The policy of the department is still to show forbearance to farmers who have any chance whatsoever to recover."

Though more than a third of the 270,000 farmers who have borrowed money from the agency are in arrears, the Agriculture Department hasn't initiated any foreclosure proceedings for about two years. The department had been prevented from beginning such action by a court order stipulating that the government publish new regulations specifying the rights of borrowers.

Those new regulations were approved by the court and published in October, freeing the government to take action to collect the loan payments or foreclose on farms, which have been suffering from a level of economic distress unsurpassed since the Depression.

"You can assume the effect would be tough on farmers," said Republican Rep. Gene Taylor, whose Missouri district includes many cattle and dairy farms.

Agriculture Department officials emphasized that the Farmers Home Administration would seek to avoid foreclosures on the $8.5 billion in farm and rural housing loans it has made, adding that in some cases foreclosure proceedings can take as long as two years.

The department's action was first reported by the New York Times.

The notices, which are to be sent by certified mail, outline the steps delinquent farmers must take to avoid foreclosures. The options available include renegotiating farm loans on the basis of lower interest rates, agreeing to new deferred payment plans and settling on different collateral arrangements. "We're telling the borrowers that there are things they can do to avoid foreclosure," said Ms. Lawrence.

Even so, lawmakers from farm districts warned that the action would initiate a new series of rural protests.

"You're going to see a replay of what we saw a year ago, when people started making the case that the farm economy just isn't strong enough to sustain itself," said Democratic Rep. Richard Durbin, whose Illinois district includes corn and soybean farmers. "The Reagan administration believes it is just a matter of will out here for farmers to recover. It's much more than that."

[From the Clarion-Ledger/Jackson Daily News, Jan. 18, 1986]

FmHA TO PRESSURE DELINQUENT FARMERS

(By Wanda Cantrell)

Mississippi farmers who have seriously delinquent loans with the Farmers Home Administration will begin receiving notices late next week that they must settle with the federal lending agency.

Farmers will be required to notify FmHA of the location of collateral for their loans and to meet with federal officials to work out a repayment plan, the agency, considered the "lender of last resort," said Friday.

Some 40 percent of Mississippi's $1.4 billion FmHA loan portfolio is delinquent, said the agency's acting director Dan Mattox. There are about 13,000 Farmers Home borrowers in the state.

Mattox stressed that the new demands do not immediately herald foreclosure for the delinquent farmers, who have been protected from foreclosure for more than two years with a pending federal lawsuit in Oxford. "We want to do everything we can to help the farmer and not foreclose," he said.

Mattox said he has not heard from lawyers handling the case for FmHA, and that he has no intention of moving forward with foreclosures at this time.

After several years of not pressing delinquent borrowers, the federal lender is beginning to crack down, particularly on those suspected of fraud in abusing FmHA loan collateral and those who have paid no money—interest or principal—on the loans for three years.

But despite the lack of foreclosure, the new move could have a serious effect on whether some continue to farm. "Our borrowers are going to have to show that they can pay the debt they owe—and how—before they will be eligible for planting loans this year," Mattox said.

"They will have to cash flow these accounts now."

Farmers across the nation are facing FmHA's tightening of money as a result of the recent lifting a court-ordered foreclosure moratorium of 44 states, Mississippi is one of the six states not affected by the North Dakota class action case.

U.S. Department of Agriculture Undersecretary Frank Naylor said Friday that there are 65,351 delinquent borrowers who have a total of 225,073 loans as of Jan. 10, representing about 25 percent of all FmHA borrowers.

The highest delinquency rates continue to be in the Southeast, where farmers are more dependent on federal credit. Mississippi has one of the highest delinquency rates in the nation.

About 40 percent of Louisiana FmHA borrowers are delinquent, and 21 percent of Alabama borrowers are delinquent.

Mr. COCHRAN. Mr. President, I yield the floor.

ROUTINE MORNING BUSINESS

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

DEFICIT REDUCTION: CONGRESS MUST TAKE CHARGE

Mr. BAUCUS. Mr. President, the new year will be full of historic challenges. This will be the year of deficit reduction. This will be a year when the President's promise of soaring economic growth meets the reality of a $220 billion deficit. A year when priorities for tax reform, American competitiveness with our trading partners, and the need for a strong national defense will clash with the imperative to get our economic house in order.

Political commentators are calling this the year of "the great train wreck." The train, they say, is the Gramm-Rudman-Hollings Act, which has been set on automatic and is barreling down a track that leads to economic chaos.

I do not believe we are heading down the track of economic chaos. I believe we can take control of the deficit reduction process that we voted for in December. If we sit back and set the train on automatic pilot then, yes, the wreck will occur. Domestic programs will be slashed, commitments to the health, welfare, and social progress of the Nation will be abandoned and national security threatened.

I have long supported an across-the-board freeze on Federal spending. The purpose of the freeze was to put a halt to hemorrhaging spending increases long enough for Congress and the President to work together on a long-term deficit reduction plan which would have bipartisan support. In fact, an across-the-board freeze in which all spending programs would be constrained temporarily was the cornerstone of my reelection campaign in 1984.

I mention my support for an across-the-board freeze simply to point out that the American people are willing, if not eager, to see the deficit reduced as long as it is done fairly and the sacrifices are reasonable and across-the-board. And the American people will support politicians during an election year who are willing to vote for such plans.

Last year, Senators BIDEN, KASSEBAUM, GRASSLEY, and I offered such a comprehensive, 1-year freeze plan to the Senate. That plan was not accepted. Instead, the Senate adopted a budget resolution in August which promised deep reductions in the deficit to be enacted before the start of the new fiscal year which began on October 1.

Well, we all know what happened. October 1 came and went, and Congress did not complete the reconciliation bill which contained the savings and new revenues that we had resolved to enact. November and December followed, and still no reconciliation bill. Finally, we left town without acting on the only major piece of legislation that would have actually reduced the deficit.

I still believe that a bipartisan approach to deficit reduction is the only solution. And I am encouraged to hear that others are now starting to talk about the need to tone down the partisan rhetoric and have all the major players in the budget process sit down around a bargaining table and examine all the options for deficit reduction.

We must act cooperatively and decisively this year to achieve deficit re-

duction. If we do not, we might as well admit that we are walking away from the great responsibilities of representative government. We might just as well admit that we are powerless to control our own destiny and that we are willing to surrender the power of the purse because the choices are just too painful.

We have a choice if we go on that track. We can surrender to either the President, who is prepared to sacrifice everything else for his defense buildup, or we can surrender to the anonymous budget technicans in OMB, CBO, and GAO who will generate the formula for cuts without regard to national priorities at all.

Mr. President, I do not know of a single Senator who voted for the Gramm-Rudman-Hollings measure in order to avoid tough choices or to surrender the power of the purse.

This year, Congress must take control of the budget process or risk losing control of it altogether. We have already heard enough of the details of the President's upcoming "prescription for pain" to know that his budget for 1987 will be dead-before-arrival. I hope that we will begin immediately to develop a congressional alternative to the President's proposals so that we can calm the fears of the American people who still believe in a sensible and responsible Federal Government.

I was pleased to read in yesterday's Washington Post that the distinguished chairman of the Budget Committee, Senator DOMENICI, shares my belief that the best way to achieve deficit reduction is to get the political leadership in this town to sit down and start talking sense about the deficit.

I first proposed the idea of an economic summit in a resolution which I offered in August 1984. A bipartisan conference to tackle deficit reduction is needed now more than ever.

Senator DOMENICI's article speaks of the ghosts of budgets past, present, and yet to come. I am glad that his "ghost of budgets yet to come" did not point only to a year of partisan rancor and stalemate and the failure of leadership which guarantees that the train will topple off its tracks by the end of the year.

Instead, I share the vision that we can and must take charge of deficit reduction by having all parties come together to come up with a fair and balanced package. Senator DOMENICI's ghost of budgets yet to come points to a grand summit where everything is on the table, including the defense buildup and new revenues. Out of that grand summit emerges the blueprint for fiscal sanity in which we all can take credit for taking decisive action on the deficit and we all can accept the responsibility for the needed sacrifices.

The time finally has come to set aside the partisanship that has prevented meaningful action on the deficit. Cutting the deficit is not a Republican issue nor is it a Democratic issue. It is a national issue. How to cut the deficit will not be determined solely by the President or by Congress. It will be decided together.

If it takes a grand summit to confront the deficit head on, then I say let us give a grand summit a try. If it means realizing that new revenues are needed to meet the essential commitments of the Federal Government, then I say let us figure out where and how to do it to get the job done. If it means facing the need for sacrifice and compromise, then I say let us do it.

In the end, we all know that the only lasting fix to the deficit will be one that is perceived to be fair and balanced. Any other approach will ensure deadlock or will quickly unravel as the consequences become apparent.

The ghost of budgets yet to come showed us two views of the year ahead. Now it is up to us to wake up out of our dreams and to bring about the future that we plan to live in.

Mr. President, I ask unanimous consent that the article by Senator DOMENICI be printed in the RECORD.

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

[From the Washington Post, Jan. 21, 1986]

THE GHOSTS OF DEFICIT FOREVER

(By Pete V. Domenici)

In less than three weeks the automatic spending cuts of Gramm-Rudman-Hollings will be triggered unless a court challenge to the new law succeeds. The papers will be filled with the confusion of federal agencies trying to fulfill the law and the outrage of those program beneficiaries who see their activities threatened. Before the coming public panic consumes us, we should review where we are, how we got here, and where we are likely to end up in our struggle with the deficit.

As a prelude, I should note that I am extremely optimistic about the nation's economic potential. We have solved problems of the highest order. We have created millions of jobs for "Baby Boom" workers. We have embarked on a new era of entrepreneurship and rising per-capita incomes. A leanness and quickness characterizes the private sector.

The only cloud on the horizon, and a cloud of mammoth proportions in my view, is the inability of the government to control deficits. The extraordinary deficits we now face symbolize this impotence and also hold the substantive prospect of plunging the nation into an unprecedent economic recession—ironically, one that could well be avoided. The deficit, simply put, remains the foremost policy and political problem confronting the nation. If I may borrow from Dickens, I will call upon three ghosts to lead us on our budget odyssey: the ghosts of budgets past, present and yet to come.

I. BUDGETS PAST

Our Ghost of Budgets Past conjures up a scene of candidate Ronald Reagan speaking in Chicago in September 1980. He explains in some detail his four-part plan for the economy and the federal budget: 1) a 10 percent across-the-board tax cut for individuals in each of the next three years to increase take-home pay and the dismal national savings rate; 2) major changes in the corporate tax code aimed at reviving the staggering American economy; 3) an all-out attack on waste, fraud and abuse in government spending, coupled with a permanent shrinking of the government's programs, directed at saving tens of billions of dollars a year; and 4) a major increase in defense spending.

The president-to-be calmly explains that the increase in defense spending will be "affordable," because his other policies will yield a combination of new revenues to the government (from economic growth) and less domestic spending (from a shrinking of federal domestic programs.).

Our ghost next takes us to March 10, 1981. The president releases the details of his 1982 budget, which replaces the budget of former president Jimmy Carter. The budget is truly revolutionary. It calls for domestic spending cuts in fiscal year 1982 alone of $67 billion. Between FY 1981 and FY 1986, the domestic cuts would total $475 billion.

On top of unprecedented domestic spending restraint, the president fufills his second major campaign promise by requesting the largest single defense increase in the nation's history. For FY 1982, this increase would reach nearly $29 billion and would push defense spending from the FY 1980 level of $146 billion to $226 billion in just two years—an increase of 55 percent.

The budget also keeps the president's promise on taxes. It requests individual and corporate tax cuts of $54 billion in FY 1982 and $718 billion through FY 1986.

Above all, our ghost points to the line in the president's budget that shows that if all his policies were fully implemented, the federal budget would be balanced by FY 1984 and would be running a $28 billion surplus by 1986.

Two major points overlooked by many in that first, fateful budget will come back to haunt the nation. First, almost $75 billion in domestic cuts necessary for achieving a balanced budget in 1984 are not itemized and "will be identified later." Second, the economic projections underlying the budget assume real growth in the economy almost double the historical average for the past 12 years (4.6 percent projected compared to 2.5 percent actual for the 1972-84 time frame).

Finally, our Ghost of Budgets Past takes us to the private conference room of the Senate majority leader, Howard Baker, in early spring of 1981. In the room for an extraordinary meeting is the president, who has left the White House and journeyed to the Hill. The president leans across the table and tells the 12 Republican members of the Senate Budget Committee that he will not support a bipartisan attempt in that committee to freeze cost-of-living adjustments for Social Security recipients as part of a deficit-reduction plan. He asks them to join his opposing effort. In front of the senators is a sheet showing savings from a one-year freeze on the COLAs—$88 billion over five years, and more than $24 billion in the year 1986 alone.

The senators relent. They go back to committee and vote against the move to freeze

COLAs. Social Secrity, although larger than all domestic non-entitlement spending programs put together, is protected in future budget battles; it comprises almost 25 percent of the non-interest spending in the federal budget.

2. BUDGETS PRESENT

Our Ghost of Budgets Present arrives, looking weary and battered. He has watched three years of congressional deadlock; the deficits for the first four years of the Reagan administration have amounted to more than all the deficits accumulated by all other presidents in the nation's lifetime. America is amassing debt—corporate, individual and governmental—at a record pace.

Yet, no perceptible crisis is at hand. Unemployment has subsided below the 7 percent mark; inflation and interest rates are down and dropping further; the economy is perking along at about the historical average growth: 2.5 to 3 percent annually. Everyone thinks the deficit may be a problem, but the political will to tackle it head-on is fading. The short-term pain of policies that would really cut deficits overwhelms the short-term gain of voting to retain Congress' favorite programs.

Our Ghost of Budgets Present reveals an internal congressional staff memo showing that despite public displays of budget-cutting enthusiasm, Congress has allowed large spending increases since FY 1980; an increase of $132 billion (99 percent) in national defense; $169 billion in new spending for domestic entitlement programs (an increase of 60 percent), driven by new Social Security increases; and an additional $26 billion in domestic, discretionary spending (a 17 percent hike).

It turns out that many of the "cuts" were measured from baselines that assumed growth, so even with a cut there was frequently an actual increase in dollars. The memo also shows that revenues have dropped off from those original FY 1982 presidential projections by about $150 billion in FY 1986. Moreover, the gross national product forecast by that FY 1982 budget fell short of reality by $2.4 trillion for FY 1982-86! Almost nothing is "affordable" anymore, in the sense that word was used way back in September 1980.

Even worse, the restraint in spending that has occurred has spared programs that stress present consumption (pensions are a prime example) and hampered programs that stress investment in the future (research in nondefense scientific areas, basic physical infrastructure, education).

Interest payments on this debt are $200 billion annually and are the fastest growing element of federal spending. This means that America cannot make the basic commitment to the future that needs to be made in order to ensure the unparalleled prosperity to which all other indicators point.

We now move to February 1985. The president has emerged from his reelection campaign with one of the most overwhelming victories in America's history. Undeterred deficit-fighters in the administration and in Congress conspire to make one last fight to get deficits under control.

The president's budget asks once again for large domestic spending cuts, $180 billion over three years, with the elimination of more than a dozen major domestic programs as the center-piece of the plan. The budget also asks for a $30 billion increase in defense spending for FY 1986 alone, and rejects tax increases. It projects a deficit of $144 billion in FY 1988, twice as high as any deficit in the non-Reagan era, but a substantial move toward what economists are now calling "structural budget balance."

The ghost now takes us to a dramatic moment. It is May 9, well past midnight. The Senate has concluded debate on an unprecedented deficit reduction package, incorporating Social Security COLA freezes and eliminating several programs. It not only will meet the president's deficit reduction goal in FY 1986, it will yield substantially lower deficits by FY 1988.

The vote stands at 49-48 against the proposal. Sen. Pete Wilson of California arrives from a hospital, where he underwent emergency appendectomy surgery earlier. Against doctors' recommendations, he has come to the Senate in a wheelchair, an intravenous tube in his arm, to vote. He votes for the proposal. With the vote 49-49, Vice President George Bush, in his capacity as president of the Senate, votes for it. It passes, 50-49.

Although only a few suspect it at the time, that moment in the Senate chamber will be the high point for deficit cutting for the year. Our Ghost of Budgets Present speeds over a troubled summer. The budget finally hammered out between House and Senate falls far short of the Senate-passed version, in large part because the president finally opposes any change in Social Security COLAs. His decision dooms any significant congressional action.

Congress finds it impossible to pass almost any significant bills. Appropriations bills fail to move. Approaching is an autumn vote to extend the federal debt the government has run up. Sens. Gramm, Rudman and Hollings conceive a new deficit-cutting mechanism and attach it to the debt limit bill.

Our ghost now takes us to December 1985. Congress sends the president a farm bill that costs an estimated $50 billion during the next three years, about double what the president requested in his FY 1986 budget of nine months earlier. Congress finds it difficult to comply with even the watered-down budget it passed just four months earlier. Congress staggers through a chaos of short-term continuing appropriations and short-term debt extensions, all of which threaten to shut down the government.

Finally, Congress passes more spending bills, postpones action on a multibillion-dollar deficit reduction measure that the administration threatens to veto, and heads home. The president signs the farm bill into law. He signs all of the spending bills, even though they contain in the aggregate about $40 billion more in domestic spending than he wanted and about $30 billion less for defense. He signs the Gramm-Rudman-Hollings bill.

Within a fortnight, the Justice Department announces that it will join in attacking the constitutionality of Gramm-Rudman-Hollings. The president asks for $4 billion more spending for the Commodity Credit Corporation, sending up his formal request Dec. 23. A year that began with high hopes for deficit reduction fizzles into the winter rain of utter failure. Our Ghost of Budgets Present decides to become a consultant to corporations on the impact of Gramm-Rudman-Hollings.

3. BUDGETS YET TO COME

Our Ghost of Budgets Yet to Come offers us a choice. First he takes us to February 1986. The president and Congress have been given the size of the automatic cut order (called a sequester order) mandated by the Gramm-Rudman-Hollings bill for FY 1986. It will take a total of $11.7 billion from federal outlays, equally split between defense and nondefense programs.

This leaves defense spending in March 1986 about $40 billion less than the president's original request for the year. Nondefense programs will be cut in some cases below last year's level. Senators up for reelection later in the year are besieged by interest groups hit by the sequester.

Yet, this tiny cut pales in comparison to what may be necessary later in the year. Our ghost reveals internal staff documents that show deficits of more than $205 billion in FY 1987, a full $60 billion over the Gramm-Rudman-Hollings target of $144 billion. The president presents his budget in early February. It contains a request for $20 billion more in defense spending. It terminates scores of federal programs through direct cuts and privatization ideas. It rejects new taxes. It is kept alive by Congress mostly as a vehicle for repudiation.

Here our ghost presents two scenarios. Sadly, one is more likely than the other. The first scenario is the hope of many of us who voted for Gramm-Rudman-Hollings—a comprehensive compromise on the deficit. It goes like this:

(1) Late March 1986: the president and Congress, unable to come up with a budget for the 1987 year, agree to a "Grand Summit" on the budget. Tax reform plans in the Senate are temporarily laid aside in order to focus on deficit reduction.

(2) April 1986: After weeks of negotiations, Congress and the president agree on a historic deficit-cutting package, including fundamental reforms and reductions in domestic spending, a slowing of the defense buildup, and new revenues.

(3) May and June 1986: Congress passes new laws implementing the "summit" agreement and appropriations bills that are consistent with it.

(4) August 1986: the Congressional Budget Office and the Office of Management and Budget compare their spending updates and conclude that because of presidential and congressional action, the deficit targets of Gramm-Rudman-Hollings will indeed be met.

(5) The stock market surges, interest rates drop, and the economy takes off. America soars into the future.

But that scenario may be unlikely for many reasons, so our ghost provides a second scenario, feared by many of us who are familiar with the realities of both the budget and of the politics of 1986:

(1) Late March 1986: The president's budget has been rejected in all quarters. Congress tries to devise its own budget and fails. The president vigorously pursues his tax reform plan in the Senate, opposing any tax increase within the plan.

(2) April and May 1986: the Senate, with 30 members watching primary results that will select their opponents in the November elections, is stymied. Tax reform is stalled, the budget cannot move, and appropriations bills await some resolution of the deadlock. The House puts off action, claiming it cannot act until some initiative is taken by either the president or the Senate.

(3) June 1986: The Supreme Court rules Gramm-Rudman-Hollings constitutional.

(4) Summer 1986: As the stock and bond market and most of the rest of the world watch, America's government is nearly paralyzed. The size of the amounts needed to meet the $144 billion deficit target prohibit action: $30 billion from defense and from nondefense spending translate into as much as $75 billion in budget authority from de-

fense spending (or almost one-fourth of all new spending authority for defense) and about $45 billion from nondefense programs (or about one-third of all new budget authority in the appropriated, discretionary accounts).

(5) September 1986: Gramm-Rudman-Hollings in the amount of a $60 billion sequester goes into effect, causing grave concern among America's Western allies. Most Senate campaigns are now in the post-Labor Day "hot" period. Groups that participate in federal domestic programs, especially teachers and health professionals, descend on Washington in huge numbers. Many state governments begin to lay off large numbers of employees to try to compensate for cuts in state and local aid.

(6) October 1986: One month before the 1986 federal elections, the president decides that his position as commander-in-chief compels him not to sign the final sequester order because it would violate his oath of office to defend the nation's security. Already more than 100 lawsuits have been filed against the Gramm-Rudman-Hollings cuts by potential program beneficiaries.

(7) Mid-October 1986: Congress, faced with an unprecedented uproar, coupled with a plummeting stock and bond market, tries to devise a way to cope with the new crisis. Everyone attempts to find a way to get out from under the new law. Someone suggests that we need a budget forecast that shows a recession sometime in the next four quarters. The person who makes the suggestion is widely applauded as a genius, and soon the Gramm-Rudman-Hollings bill is suspended.

(8) November 1986: Huge numbers of incumbent senators and representatives of both parties are defeated at the polls, saddled with explaining their position on Gramm-Rudman-Hollings. Our Ghost of Budgets Yet to Come concludes his gloomy scenario by revealing an internal staff memo that shows deficits will be $200 billion or more as far as the eye can see.

I conclude this little budget journey through time by saying that the concept behind the second scenario is a real possibility if both the president and Congress refuse to compromise on major deficit-reduction options. The amount of deficit reduction needed to meet the Gramm-Rudman-Hollings targets, or to make any real dent in deficits regardless of any law, is very large.

If the nation's leadership fails to agree by late spring, especially in a year charged with important elections, the mechanisms of Gramm-Rudman-Hollings will take effect. To allow that to happen would be a national, and even international, tragedy.

MILITARY REFORM

Mr. GOLDWATER. Mr. President, as my colleagues are aware, Senator NUNN and I have carried on the work started by Senators John Tower and Henry Jackson to attempt to reorganize the military into more workable lines.

The September-October issue of Air University Review is almost entirely devoted to this subject, so I intend, at intervals, to put some of these writings into the RECORD so that my colleagues will have a better idea of how people wearing the uniform actually feel.

The first one that I will insert into the RECORD is written by Col. Thomas Fabyanic, entitled "The Cockpit Warning Light Reads 'Reform.'"

I ask unanimous consent that this article appear in my remarks.

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

THE COCKPIT WARNING LIGHT READS "REFORM"

(By Col. Thomas A. Fabyanic, USAF, Ret.)

Periodic reform is an absolute necessity for any institution that intends to maintain its viability in the face of extensive external change or prolonged internal degeneration. Even a cursory examination of history will unearth numberous examples of political, economic, social, and military institutions that failed to meet the challenge of adaptation. A detailed study of these institutions, moreover, would reveal that in some instances collapse occurred at the very time institutional self-assessments were rendering judgments of basic soundness.

In military instititions, the need for reform usually becomes fully evident only after a clear military crisis of major proportions. This sequence of events need not be the case, however, since the external and internal causative factors that would indicate the need for reform quite often are evident beforehand. To recognize them, one needs to understand fully the phenomenon of war and, equally important, how it might be affected by prevailing and emerging circumstances. Such awareness, regrettably, is not apparent in today's U.S. military establishment.

If one views war within a Clausewitzian framework consisting of society, its government, and its military, and then applies that structure to the profound changes that have been occurring in much of the Third World, the first of several reform challenges for the U.S. military becomes very clear. Far-reaching political, economic, and social changes—accompanied by rising expectations—are evident throughout Latin America, the Middle East, and Southeast and Southwest Asia. Evident also are the conflicts likely to result, as well as our seeming inability to deal with them militarily. It is obvious that our employment concepts for "low-intensity conflict" or "constrained operations" are virtually nonexistent, and it is equally apparent that the conventional force structure available to us for use is based on an unsubstantiated assumption that what deters the Soviets will function adequately anywhere. Moreover, there appears to be little recognition that without prior development of employment concepts this force structure will remain irrelevant, regardless of its potential and flexibility. Vietnam and Lebanon are the most obvious examples of what probably lies ahead; whether future historians will view them as the beginning of the end of America's military prowess or as turning points in the continuing effort to achieve unparalleled military competence will depend largely on how we assess them now.

A far greater challenge, however, is an internal one involving the degeneration of our military organizational structure. In the course of organizational evolution, we have experienced a loss of military function. Anyone familiar with the existing structure can see the deficiencies readily. The Office of the Secretary of Defense (OSD) has become an institution within an institution; it routinely involves itself in professional military matters such as strategic and logistical planning and operational issues to include strategy and tactics. Too much authority is vested in the Secretary of Defense. By law, the secretary is responsible for professional military matters; but with very few exceptions, the individuals holding that office have not demonstrated sufficient competence. In the words of one analyst, "they found on-the-job training imperative," and "few passed the primer stage before they were replaced." The power vested in the secretary and OSD explains, in part, the corresponding lack of influence by the Joint Chiefs of Staff. In effect, the latter have been removed from the chain of command and replaced by bureaucrats who, for the most part, have no professional responsibility for the defense of the nation. The net results of this prolonged degeneration are obvious; they cast long, bold, and dark shadows that stretch from Vietnam, to a desert landing site in Iran, and thence through the remnants of a city called Beirut.

The most serious internal challenge, however, concerns professional military competence. Our only real reason for being, which is war, is not understood by many officers. All too frequently war is viewed as a great engineering enterprise; and, as a consequence, we prepare for war as it appears on paper rather than as it is likely to occur on the battlefield. Crucial issues at times are turned over to civilian experts who, like the bureaucrats in OSD, have a no long-term, direct responsibility for the nation's security. Such actions are necessary because programs still dominate purpose in the Pentagon and program managers continue to hold sway over strategists. The "management mania," although somewhat subdued, remains with us. Moreover, it is likely to remain, in part, because of the military's willingness to pay 75 percent of tuition fees for its officers to receive advanced degrees in business, management, and public administration. Given all this presumed management expertise by the uniformed military, one is tempted to ask, for example, why our defense procurement practices are in such a shambles. Those difficulties, when viewed in the context of our previously mentioned operational inadequacies, make one wonder whether we have sacrificed our previous military competence for a measure of managerial incompetence.

Perhaps it is time to reestablish ourselves as a professional military organization, one that understands war and knows how to prepare for it, deter it, and, if necessary, fight it across a spectrum of conflict. Fortunately, we have some professional officers who possess an understanding of war, and it is they who are capable of meeting the challenges of adaption. My advice to them is "Burners, now"!

TEXTILE WEEK ESSAY BY TINA DURHAM OF EASLEY, SC

Mr. THURMOND. Mr. President, recently, Textile Week was celebrated throughout our country. That week long observance focused attention on the importance of the textile industry to the economic well-being of our Nation. Various activities and events were held across my home State of South Carolina where textiles account for 48 percent of the manufacturing jobs. In Pickens County, all high

school students were given the opportunity to write an essay pertaining to some aspect of textiles. Tina Durham, who attends Easley High School, won first place in this contest for her essay entitled "It Does Matter To Me." Tina is the daughter of Tommy and Sharon Durham, who are both long-time employees of Alice Manufacturing Co., in Easley.

I congratulate Tina for her well written essay and ask unanimous consent that it be printed in the RECORD.

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

"IT DOES MATTER TO ME"

(By Tina H. Durham)

The American textile industry, along with many other industries, is in desperate need of support from American citizens. Every individual in the United States relies upon the textile industry, whether directly or indirectly. For many years, there has been an ever-rising problem concerned with the trade of textiles. The foreign imports have increased so greatly until the American industries are worried about the role they will have in the future. The American people's freedom and power seem to be the only hope for these industries at the present.

"I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

—Pledge of Allegiance to the Flag

Our country was built upon these words and their meanings. It is only appropriate that we, as American citizens, should think of these words with honor and pride. When purchasing goods, the concern of the consumer should be centered around the Pledge of Allegiance.

Foreign trade is greatly affecting the American economy. Trade is no longer free or fair. As the foreign imports continue to increase, American jobs are being reduced. Every time a foreign-made product is purchased it decreases the demand for American-made products. The reduced demand for American-made products results in loss of jobs in this country.

When just one American job is lost due to an increase in imports, a chain reaction may follow. With the loss of a job, an individual loses the source of an income. This means he or she has no means of purchasing goods or services from others. As a result, other people are put out of work because they have fewer or no customers.

The wages people receive for thier services seem to be one of the major problems involved in American-made versus foreign-made. The American government has a set minimum wage, which is the least amount an employer can legally give an employee. In foreign countries, the wages are half as much or less than half as much. This means that they are able to produce more for less cost and, therefore, sell it for much less than the United States can.

These cheaper products are placed on shelves beside the higher American-made products. Some customers rarely look at anything other than the price of a product. Americans, to solve the job crisis, must start paying more attention to where a product is made rather than how much it costs. In the long run, Americans will end up the winners if they do so.

The support of the citizens in buying American-made goods will save American jobs and also save their own freedom. The future of the United States rests upon its citizens. The problem of foreign imports versus American-made products is a problem we must face and solve.

I am proud to say that it does matter to me, and I buy products made in the United States of America, one nation under God, indivisible, with liberty and justice for all.

LIBERTY HIGH SCHOOL HONORED FOR STATUE OF LIBERTY FUNDRAISING

Mr. SPECTER. Mr. President, on January 30, 1986, a group of very dedicated people are coming together at the Liberty High School in Bethlehem, PA, for a very special concert where the Oscar Mayer Corp. will present a donation of $250,000 for the restoration of the Statue of Liberty.

This event is the culmination of a project begun in January 1984, by Mr. Constantine "Gus" Loupos, a teacher at Liberty, who has been very instrumental in leading students of the Bethlehem Area School District in an effort to raise money for the Statue of Liberty's refurbishment.

So far, Mr. Loupos and his students in the Bethlehem area have raised some $30,000 for this effort. According to recent news reports, these students have raised more than any other students in the country.

As an incentive for the pupils to become involved in raising funds for Miss Liberty, the Oscar Mayer Corp. offered to donate 25 cents for every dollar raised by schoolchildren across the Nation.

Oscar Mayer has chosen to honor the Bethlehem School District for the amount of money it has raised and for the enthusiasm, commitment and involvement of the people involved in this fundraising effort.

At this time, Mr. President, I would personally like to recognize Mr. Loupos, his students, and those in the Bethlehem area who all have worked so tirelessly on this most important project.

I would like to thank Ms. Jean Cowden of the Oscar Mayer Corp. for honoring the Bethlehem School District, and also Ms. Sheila McCauley, director of the Liberty Centennial School Campaign for her exemplary work on this campaign.

As we all know, the Statue of Liberty is symbolic of the ideals on which this Nation was founded.

To have our schoolchildren—the future of our Nation—undertake such an endeavor as to raise $30,000 for the Statue of Liberty is most impressive.

I am indeed proud of all of the people who have sacrificed their time to donate their services for this noblest of causes.

THE BEST FOOTBALL TEAM IN AMERICA: THE UNIVERSITY OF OKLAHOMA

Mr. NICKLES. Mr. President, it is my pleasure to take this opportunity to congratulate the University of Oklahoma football team and coach Barry Switzer for winning their sixth national championship on New Year's Day.

The Sooners won by beating previously-unbeaten and No. 1 Penn State, 25 to 10, in the Orange Bowl.

Coach Switzer certainly deserves special recognition as this win brings to three the number of national championships he has won. He has brought great distinction to the Sooner football team, the University of Oklahoma, and our State. He is the winningest coach in college football.

Coach Switzer also won the national title in 1974 and 1975. The University of Oklahoma also secured the national title in 1950, 1955, and 1956 under Coach Bud Wilkinson.

Of course, the credit must be shared with the fine young athletes who make up the Sooners' team. Their brilliant teamwork and dogged determination against a tough Nittany Lion team made the national championship possible.

Among some of the noteworthy Orange Bowl statistics:

Lydell Carr's rushing total was the best against Penn State in a Bowl game;

Tim Lasher set an Orange Bowl record for most field goals kicked, he was successful on four attempts;

Tim also set a record for most points ever kicked against Penn State, 13.

I would also like to congratulate Penn State and Joe Paterno for their excellent season. They are a good football organization with a lot of pride and tradition. Knowing that they are an outstanding team makes the OU victory that much more significant.

My compliments to Coach Barry Switzer and the best football team in America: the University of Oklahoma.

UKRAINIAN INDEPENDENCE DAY

Mr. GLENN. Mr. President, today, January 22, 1986, marks the 68th anniversary of Ukrainian Independence Day. To millions of people in Ukraine, and to the thousands of Ukrainian Americans in Ohio and across the Nation, it is a day of special significance. On January 22, 1918 the independent republic was proclaimed. And while it endured but 3 short years, it is extremely important that this day and what it represents never be forgotten.

Ordinarily, the commemoration of an independence day is a cause for joy and celebration. But in this particular instance, there can be no such joy, and no such celebration. For the brutal fact of the matter is that Ukrainians still in the Soviet Union have been

ruthlessly deprived of the basic human rights and freedoms of an independent people.

The people of Ukraine have been struggling for over 60 years to secure that freedom and independence. The Soviets, in typical and blatant disregard for basic human rights, have been attempting to grind down the Ukrainian people's spirit and destroy their national identify. They have not been successful. Despite systematic and unrelenting attacks by the Soviets on their customs, language and religion, the Ukrainian people have yet to let their desire for fundamental freedoms be dimmed.

Last year we witnessed a very personal example of that yearning for freedom in the case of Miroslav Medvid. It is a blight on our national conscience that we returned Mr. Medvid to a fate unthinkable at the hands of the Soviet oppressor. To insure that this will never happen again I have joined with a majority of my Senate colleagues in supporting a resolution to create a Special Senate Panel on Asylum. Let us use the occasion of Ukrainian Independence Day to pass this resolution so that the panel may begin its important task of examining and revising United States asylum procedures.

In this fact-paced world which gives us so many examples of human suffering and human rights violations, be they from South Africa, Chile, Afghanistan or Cambodia, the example of the continued suffering of the Ukrainian people cannot be allowed to drop from our consciousness. Over 50 years ago a Soviet-manufactured famine in Ukraine resulted in the deaths of 7 million men, women, and children. Time cannot be allowed to dilute the enormity of that tragedy. As long as the people of Ukraine continue to suffer under the stifling jackboot of Soviet imperialism, our solidarity with them cannot fail.

Today then is a day to commemorate, to keep the hope-light burning for the millions of Urkrainians in the Soviet Union and throughout the world, and to say to them: We have not forgotten your cause. We share your hopes and dreams that someday you shall truly be a free people and nation.

UKRAINIAN INDEPENDENCE DAY

Mr. DIXON. Mr. President, today, January 22, 1986, marks the 68th anniversary of the proclamation of independence in the Ukraine.

For a brief period of 3 years, the Ukrainian nation and its people enjoyed self-determination and a national identity. Ukrainian culture and religious tradition flourished. The Ukraine enjoyed the fundamental right of territorial integrity.

In 1921, this period of Ukrainian freedom was abruptly ended by the outside intervention of the Soviet Union. Troops crushed the Ukrainian democracy and replaced freedom with repression and continuing persecution. We are witnessing the Sovietization of the Ukraine. Its people are denied even the opportunity to explore Ukrainian history and their ethnic heritage.

Those of us who enjoy freedom in this country must continue to recognize an independent Ukraine. We must demonstrate solidarity with its citizens, and keep the spirit of their aspirations alive. For these reasons, we recognize the 68th anniversary of Ukrainian indepencence.

LUCIA CHASE EWING, FOUNDER, AMERICAN BALLET THEATER

Mr. PELL. Mr. President, on January 9, 1986, one of the great figures in American dance died. Lucia Chase Ewing not only cofounded the world-renowned American Ballet Theater but devoted almost her entire adult life to building and nurturing this great dance company and national cultural treasure. Her dedication to her company and her devotion to the art of dance were her most remarkable qualities.

But she was also a warm and quiet family person whose parents had adopted Rhode Island as their summer home. From her early childhood, she came to the seashore at Narragansett for a change of pace from her life in the international dance community.

Lucia Chase Ewing was a brilliant, dedicated, and generous individual whose lifetime work in the field of dance has made life richer for all of us.

I would like to share the obituary of Miss Chase that recently appeared in the Providence Journal-Bulletin with my Senate colleagues and ask unanimous consent that it be printed in the RECORD.

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

[From the Providence (RI) Journal-Bulletin, Jan. 11, 1986]

LUCIA CHASE EWING DIES; LED AMERICAN BALLET THEATER TO WORLD RENOWN

(By Gerald S. Goldstein)

Lucia Chase Ewing, 88, of New York City and Narragansett, a ballerina who co-founded and co-directed the world-renowned American Ballet Theater, died Thursday at her Manhattan apartment.

Gracious, dignified and persevering, Mrs. Ewing was consumed with love for the ballet, both early in her career as a dancer and later, when over a 35-year span she built an international reputation for the New York company.

A glamorous, auburn-haired world traveler who performed actively until she was nearly 50 and danced character roles into her 70s, Mrs. Ewing co-founded the ballet company in 1940. She became co-director, with Oliver Smith, in 1945.

"It's a small circus," she said once in describing the life of a dance company director—but she attacked the job with a passion that lasted all her life.

As well, Mrs. Ewing loved her summer home in Narragansett, and often—even on damp, sunless days—could be seen walking the beach in front of the Dunes Club, where she was a member.

She came to Narragansett with maid, cook and butler, and was partial to giving small dinner parties on Saturday nights. She bought all the food at the tiny Ideal Market, as her parents had done before her in a family tradition that spanned 65 years.

During her tenure as co-director, the dance company attracted luminaries who won it a reputation as an innovator in American ballet. Among them were dancer Mikhail Baryshnikov and choreographers Jerome Robbins and Twyla Tharp.

Known professionally as Lucia Chase, Mrs. Ewing was a tireless campaigner for her art and her ballet company; during one four-month period the troupe visited 22 cities in 11 countries, prompting her to remark, "We're not particular where we go as long as we're out pioneering."

The pleasure her dance company brought to its audiences, both in this country and on international tour, was in contrast to the sorrow she experienced in her own life.

Her husband, carpet company heir Thomas Ewing Jr., died of pneumonia in 1933, seven years after they were married. In 1963, Mrs. Ewing's eldest son, Thomas III, 34, drowned when his sloop sank off Watch Hill.

Jealous of her private times at the seashore, Mrs. Ewing liked to say that she lived two lives—one as Lucia Chase, New York theater director, and the other as Mrs. Thomas Ewing Jr., low-profile Narragansett resident. So great was here desire to keep the two separate that she once threatened never to speak to a *Journal-Bulletin* reporter again because he refused, in a story featuring one of her historic properties in town, to leave out all references to the Lucia Chase of international ballet fame.

Despite here refined demeanor, Mrs. Ewing did not shrink from battle when she thought she had been wronged; once she sued the Town of Narragansette because she thought a property revaluation was unfair; eventually she won out-of-court concessions.

But she contributed to the town as well; she was one of a group of donors who helped buy what is now a public park on the ocean side of the post office.

Among the properties she owned in Narragansett was the historic, 100-acre Sunset Farm on Point Judity Road, where her millionaire husband once kept the polo ponies he brought in by rail.

Her summer home, "Moonraker," on Taylor Street was flanked by four other turn-of-the-century guest houses she owned: "High Tide," "Miramar," "Sans Souci" and "Seashell."

She inherited her love of the Rhode Island shore from her parents. She was a daughter of Mr. and Mrs. Irving H. Chase of Waterbury, Conn., who summered for years at Narragansett Pier.

Mrs. Ewing was a millionaire many times over. Her husband, the eldest nephew of carpet king Alexander Smith Cochran, inherited the company and left $7 million. Her family had wealth of its own, however, amassed through the Waterbury Clock Co.

Mrs. Ewing was known internationally for her fierce commitment to the Ballet Theater, now directed by Baryshnikov, who succeeded her in 1980. In a statement released after her death, he said of her:

"She was a realist, but she lived like an idealist, and in the darkest time she could force the sun to shine. She stood by us all with love and a will of iron and a heart like a lion."

Mrs. Ewing contributed much of her own money to the theater, and fought vigorously for backing from other sources.

"She was single-tracked on the ballet—it was everything to her," said a nephew, Irving Sheldon of Saunderstown.

Educated at St. Margaret's School and Bryn Mawr College, she left social life behind and moved to New York to study theater, voice and dance, eventually making a debut with the Mikhail Mordkin Ballet.

Among many awards she won was the Medal of Freedom, presented by President Carter at the White House in 1980.

Mrs. Ewing suffered a stroke in 1983 and had been unable to visit Narragansett since then, according to her secretary, Lois Doherty.

Mrs. Ewing is survived by a son, Alexander, of Millbrook, N.Y.; two sisters, Mrs. Edward T. Carmody of Middlebury, Conn., and Mrs. John Griffith Davies of Bourton-on-the-Water, Gloucestershire, England; and three grandchildren.

A funeral service will be held at 9:30 a.m. Monday at St. James Episcopal Church, Madison Avenue, New York City. Burial will be private.

U.S. APPEALS COURT RULING TO PERMIT JAPANESE AMERICAN WORLD WAR II INTERNEES TO SUE GOVERNMENT ACCENTUATES GREATNESS OF AMERICA

Mr. MATSUNAGA. Mr. President, on Monday, January 20, 1986, Americans of all races and religious faiths celebrated the birthday of a great champion of human rights by observing the first national holiday ever dedicated to the memory of a nonwhite citizen, Martin Luther King, Jr. In keeping with that same spirit of justice for all, on Tuesday, January 21, a day later, the U.S. Court of Appeals, here in the Nation's Capital, reversed the decision of the lower court and ruled that Japanese Americans detained in relocation camps during World War II and never compensated can sue the Federal Government for property losses sustained because of such detention.

The decision of the appeals court is good news not only for those Japanese Americans it affects but for our country as a whole. The majority ruling in this case affirms that justice delayed is justice denied—and injustice of the magnitude inflicted upon the World War II internees cannot be healed by time, without a national recognition of the wound to our own body politic itself. Implicit in this opinion is a recognition that the Federal Government erred. The real tragic mistake was the internment of 120,000 U.S. citizens and resident aliens for no reason other than their ethnic origin, although the error the appeals court recognized in its opinion was in the suppressing of evidence that contradicted claims of wartime expediency in earlier arguments before the Supreme Court. This judicial recognition of that injustice benefits all citizens because it reaffirms our great Nation's commitment to a government of justice and fair play for everyone, regardless of race, color or ethnic origin.

The appeals court ruling supports the 19 detainees who brought the suit, as well as those other Americans of Japanese ancestry who have never received any compensation for their losses incurred at the time of their internment. It is important to bear in mind, however, that this ruling does not affect reparations legislation currently pending in Congress, which is designed to accord official recognition of the injuries inflicted by unjustified and illegal Government action and to offer compensation to all those interned, including those who may have received as little as 10 cents on the dollar for lost property under the American-Japanese Evacuation Claims Act of 1948. I am most gratified that the appeals court has established the creation of the Commission on Wartime Relocation and Internment by Congress in 1980 as the starting date from which the statute of limitations should run. This should spur early congressional action on the bill to carry out the commission's recommendations. I heartily applaud the majority statement in the opinion that "it ill behooves the Government of a free people to evade an honest accounting" of this historic injustice. America is undeniably the land of the free and home of the brave, where the biggest dreams of the littlest people still come true.

IN CELEBRATION OF UKRAINIAN INDEPENDENCE DAY

Mr. RIEGLE. Mr. President, today I join with Ukrainians all over the world in celebrating the 68th anniversary of the Proclamation of the Independence of Ukraine. To mark this important event, I am honored to be a cochairman of the Ukrainian Congress Committee of America's annual Ukrainian Independence Day celebration, which will be held in Washington tomorrow.

On this date 68 years ago, the Independent Ukrainian National Republic was born. After centuries of living under czarist Russian domination, the Ukrainians people, through the act of January 22, 1918, rejected Russian colonial imperialism and established, by popular, democratic vote, their own independent republic. Freedom of speech, the press, religion, assembly and association, were among the rights guaranteed under the act. In addition, all minorities were given both national and personal autonomy.

Ukrainian independence, however, was shortlived, and within 3 years, the struggling nation was defeated by the stronger military forces of the Russian Bolsheviks.

In the 68 years since the defeat of the independent republic, life in Soviet-dominated Ukraine has been characterized by persecution, genocide, and a campaign of russification aimed at eliminating every vestige of Ukrainian cultural and religious life.

During 1932 and 1933, 7 million Ukraininans were purposefully starved to death in government-planned famines, while others were deported to slave labor camps in Siberia. In addition, certain Ukrainian religions were abolished and the Ukrainian language was removed from the educational system.

Despite these blatant violations of their rights, the brave Ukrainian people continue the struggle to regain the independence they once enjoyed. The past six decades have shown that all the military strength of the Soviet authorities can never succeed in crushing the spirit and the drive for freedom of the Ukrainian people.

The large Ukrainian-American community in my State of Michigan has been a source of continuing inspiration to those Ukrainians still struggling against Soviet oppression, and has helped keep the dream of freedom alive in the hearts and minds of their countrymen.

Today, we demonstrate our solidarity with the effort to ensure the human rights of the Ukrainian people. As part of that effort, we repeat our call upon the Soviet Government to honor its pledge under the Helsinki Final Act, to protect the human rights of all its people.

We must renew our pledge to speak out on behalf of the many Ukrainians who have been unjustly subjected to imprisonment, exile, or psychiatric incarceration for defending their cultural identity and religious beliefs.

American support for the restoration of Ukrainian liberation signifies not only our disdain for the injustice of Ukrainian subjugation by the Soviet Union, but also our firm commitment to the right of self-determination of all the peoples of the world. In the same way that the American people have shown their opposition to the apartheid policies of the South African Government which denies the rights of its nonwhite citizens, so too must we be clear and unwavering in our call for the restoration of human rights to the citizens of Eastern Europe's captive nations.

As Americans, whose freedoms are guaranteed by law, it is often difficult for us to conceive of the persecution and repression endured by Ukrainians and citizens of other captive nations.

The recent case of Ukrainian seaman Miroslav Medvid reminds us not only of their suffering but also of our responsibility to respond to the cry for help of those seeking freedom.

The controversy surrounding the true intentions of Seaman Medvid is not yet resolved. Nevertheless, his case serves as a poignant reminder of the countless numbers of Ukrainians whose struggle for freedom is far from over.

As a nation which has always provided refuge to people throughout the world fleeing oppression, I believe top priority must be given to both thoroughly investigating the Medvid incident, and establishing proper procedures for the handling of asylum cases. We must ensure that full consideration is afforded every individual seeking asylum in this country.

Mr. President, by repeatedly demonstrating our support for people struggling for their rights to live as free individuals, we give renewed meaning to the democratic principles on which our own Nation was founded.

Today's remembrance of the ongoing struggle in Ukraine is an important part of that effort, and I am proud to be a part of it.

PROBLEMS IN THE THIRD WORLD

Mr. BURDICK. Mr. President, as legislators, we know only too well that all the money in the world won't solve a problem unless that problem is properly defined.

Solutions to the environmental disasters and development problems in the Third World have eluded us for years. Despite an enormous expenditure of funds by international organizations and individual countries, many Third World nations are no better off than they were several decades ago. Indeed, in some cases, they are actually in worse shape.

To understand why aid programs have failed in the past, we must have a much better grasp of the true nature of the problems we face in the developing world.

The Cox newspapers recently published a superb eight-part series which makes an important contribution to our understanding of the complex issues involved. A team of Cox reporters spent nearly a year examining the causes of disasters in Africa, Asia, and Latin America. Their chilling reports make clear that human practices and policies are too often responsible for the disasters we label "acts of God." As the reporters discovered, precious aid resources are devoted to these emergencies as they occur, but that means little money or energy is left over for the kind of long-range planning which could have averted the disasters in the first place.

Mr. President, we simply cannot afford to waste increasingly limited aid funds on shortsighted, ineffective aid programs. For us, it is a budget question. For the Third World, it is a question of lives.

The Cox series serves as an excellent primer on the nature and scope of the problems in the Third World. The Atlanta Journal and Atlanta Constitution, as well as other Cox newspapers, began running the series in early December.

Inserted below is the initial overview story, but I strongly urge my colleagues to read the entire series. I ask unanimous consent that it may be printed in the RECORD.

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

"ACT OF GOD" OFTEN CAUSED BY ACT OF MAN—ALTERING THE ENVIRONMENT MAKES IT MORE VULNERABLE

(By Andrew Alexander and Jeff Nesmith)

WASHINGTON.—As the world grows more crowded, it is becoming more vulnerable to droughts, earthquakes and other so-called "natural disasters."

The result is that millions of people, mostly in poor countries, are living every day in increasing danger of being swept away by some event that will be dismissed as an "act of God."

But an in-depth study by Cox Newspapers—based on satellite imagery, specially constructed computer models, and interviews in 15 nations on five continents—has produced evidence that, more often than not, human deaths in events like an African drought, a Mexico City earthquake or a Bangladesh flood are not simply "natural disasters."

Rather, they result from acts of man—unrestrained population growth, shoddy construction, poor land use planning, overgrazing, overcultivation, deforestation—that are forcing people into areas where they are more vulnerable to calamities.

On television screens the tragedies are pathetic, often gripping, but they seem faraway. In fact, they affect us directly beause a disaster-prone world is an unstable world.

As former President Jimmy Carter says, a failure to understand the impact that hopelessness and despair can have on other people causes a "distortion" in our understanding of revolution and social upheaval.

Besides that, disasters are expensive. Repeatedly, we see dollars diverted from other causes to lessen the suffering from a disaster that might have been avoided.

The Cox inquiry found evidence that on a scale perhaps unparalleled in history, humans are altering the environment in ways that are making it more prone to disasters.

Long before the Ethiopian famine etched the listless gaze of starving children on the consciousness of America, a U.S. government official stationed in Addis Ababa sent this alarming internal report back to his superiors in the State Department:

"There is an environmental nightmare unfolding before our eyes. It is the result of the acts of millions of Ethiopians struggling for survival: scratching the surface of eroded land and eroding it further, cutting down the trees for warmth and fuel and leaving the country denuded, diverting streams to irrigate dry land and depriving others of their water source."

Vast regions of the country would become "permanent disaster areas," the American official warned, and masses of people would be forced to the edge of death.

That memorandum was written in 1978. Today, although hundreds of thousands are said to have died, experts fear the conditions could worsen again within the next few years.

DISASTERS OCCURRING MORE FREQUENTLY

Other key findings from the Cox Newspapers survey:

The frequency and severity of "natural" disasters are rising. The upward trend is expected to continue. Predicts noted disaster expert E.L. Quarantelli: "We're going to have more and bigger disasters."

Repeated warnings—like the one issued seven years ago from Ethopia—that could have diminished the impact of past disasters have gone unheeded. New warnings are being neglected today by decision-makers throughout the world, including those within the Reagan administration, despite predictions of more devastating and more frequent disasters.

The magnitude of disasters in developing countries is now so great that even larger amounts of foreign emergency assistance can't significantly mitigate them. "The problem is growing too fast for us to keep up," says a United Nations official. "It is beyond our ability to cope."

Disaster relief operations often are slow to respond, lack coordination, rely on inadequate or poorly trained staff, and sometimes end up doing more harm than good. Inappropriate relief aid, like powdered diet food sent to African drought victims or high-heeled shoes to earthquake sites, abounds. Yet there are no international guidelines to discourage it.

Although well-intentioned emergency aid often is not cost-effective because little of it is tied to relief projects aimed at preventing the calamity from recurring. Further, emergency assistance often is given on political—not humanitarian—grounds. It also tends to favor sudden disasters such as earthquakes, which kill quickly, while neglecting "creeping" disasters such as drought, which affect far more people.

"It is a paradox that in our technological age, with an enlarged capacity to manipulate nature, man's vulnerability to injury from natural hazard seems to be increasing," observes Bindi V. Shah of the London School of Economics.

Indeed, figures from a Swedish Red Cross study show that, worldwide, the average number of people affected by drought each year rose from 18.5 million in the 1960s to 24.4 million in the 1970s. The annual number of flood victims grew from 5.2 million to 15.4 million during the same period, while the average number affected by earthquakes jumped from 200,000 to 1.2 million. And those affected yearly by civil strife, which contributes to disasters such as the famine in Ethiopia, nearly quadrupled to 4 million between the two decades.

DECISION-MAKERS TO PEASANTS AT FAULT

"It is not only population growth and people's migration into disaster-prone areas that cause the increase in disasters," the Swedish Red Cross reported last year, "but new hazards created by people."

Recent studies indicate that these trends have continued into the 1980s.

"All the evidence in this office is that we are faced with more emergency situations

than we ever have been," says Marcus Thompson of Oxfam, the British relief organization.

But who is to blame?

Experts say nearly everyone, from powerful decision-makers to landless peasants. And that includes the media.

"Journalists often innocently accept the view that high winds and water killed so many thousand victims of a given cyclone," write disaster specialists Anders Wijkman and Lloyd Timberlake. "They do not dig to see why so many people were allowed to live in such dangerous houses exposed to a storm surge, indeed, why they could not live anywhere else."

"I think the media are not generally very responsible in the reporting of disasters," says Frederick C. Cuny, a respected disaster expert. "But I still blame it more on the [disaster relief] system, because the system hasn't looked at the problem and then done a good job of educating the press."

Late last August, as he talked to a reporter in his Dallas office, Cuny issued a private warning that had been repeated publicly for decades: "Mexico City is probably the most vulnerable city in the world to earthquakes. One of these days we're going to get a wave, everything will come tumbling down, and you guys will call it a natural disaster."

His prediction came true three weeks later, and he flew to Mexico to help. Sifting through the rubble, he concluded that the earthquake had been powerful enough to damage even the best-designed buildings, but he also saw the human hand in the "natural" disaster that killed more than 8,000.

"I would say probably 60 percent of those deaths could have been prevented had the construction work been done properly," he said afterward. "It's very much a man-made disaster."

Most disasters are preceded by warnings.

Geologists had recommended that plans for evacuation be prepared a month before November's volcanic eruption in Colombia triggered mudslides that killed more than 20,000.

CROWDED LIVING AREAS INCREASE RISK

The 5,000 who were washed away in Bangladesh last May by cyclone-induced tidal waves had been cautioned repeatedly against inhabiting the tiny, shifting "char" islands formed by silt collecting in the river deltas. But land shortage caused by high population had forced them there. After the storm, the survivors settled there once again, just as they did in 1970 after 300,000 perished in a similar storm.

The 150 Puerto Rican peasants buried when rains triggered a landslide in October lost their lives because population pressure and lack of affordable land had left them little choice but to build their shanty-town on a slope known to be unstable. Contributing to the tragedy were leaking water lines and septic tanks that saturated and loosened the ground, a problem authorities conceded had been recognized for 15 years.

Before Carter left office, his administration completed a massive three-volume "Global 2000" report projecting a polluted, crowded world at the end of the century, a world damaged by deforestation, desertification and erosion.

Although it was hailed throughout the world as a pioneering study, Global 2000 was greeted with hooting derision by the Reagan administration.

A similar warning was sounded this year by the World Bank, which declared that destruction of environmental systems is "assuming massive proportions" in many Third World countries.

In travels to five continents, Cox reporters found seeds of disasters to come.

On the Asian island of Borneo, a fire in a tropical rain forest—an unheard of event that received scant press attention in the West—burned 8.6 million acres two years ago, an area almost as large as Maryland and Delaware combined. Experts say a major cause was deforestation.

Few, if any, people died in the months-long blaze because the island is sparsely populated. But as part of a development program, Indonesia plans by the end of the century to relocate tens of thousands of citizens to Borneo from the overpopulated main island of Java. The government plans to clear more than 80 million acres of rain forest—an area larger than Georgia and Florida combined. In an interview, a top government minister conceded that by drying out the island environment, the deforestation could increase chances of another massive fire—this time in an inhabited area.

BANGLADESH WELLS ENDANGER ITS WATER

In the northeastern part of Bangladesh, one of the most densely populated countries on earth, so many wells have been drilled that water tables are dropping. Many experts predict that a critical shortage is imminent—crop losses and pockets of famine would be likely—yet action has been stymied for years by a dispute over the best solution.

Throughout Central America, the Caribbean and Mexico, population growth and stagnant economies will result in massive dislocations by the end of the century. Traced in a series of special computer models developed by Cox Newspapers for this series, the trends inevitably will turn up the pressure on America's southern borders.

In the Soviet Union, Kremlin planners desperately seek water to refill the Caspian Sea, which is drying up partly because too much of the water in its tributaries has been diverted for irrigation projects. In recent weeks, final approval was decreed for the initial phase of a massive project to divert and reverse part of the flow of rivers that empty into the Arctic. Some experts has warned that too much diversion could damage th Arctic ice cap and provoke regional and even global climatic changes.

And in Africa, Ethiopians continue to die amid what one relief worker fears may become a "cycle of famine."

Optimists like M. Peter McPherson, head of the U.S. Agency for International Development, believe that the current focus on Africa's problems will yield help and hope for the future.

But McPherson concedes that "right now, yes, we're losing ground."

UKRAINIAN INDEPENDENCE DAY

Mr. SARBANES. Mr. President, on January 22, 1918, the courageous people of the Ukraine proudly declared their independence as a nation. Exactly 1 year later, on January 22, 1919, the governing council of the Ukraine, the Rada, passed the Act of Union incorporating all the lands of the Ukraine into a single nation. January 22 has become an important symbol of the determination and strength of the Ukrainian people, providing all of us an opportunity to reflect upon the proud heritage of our fellow citizens, Americans of Ukrainian descent, and to renew our commitment to the principles of freedom for which Ukrainian Independence Day stands.

It is fitting that as we honor the declaration of Ukrainian independence, we should pay special tribute to the men and women of the Ukraine who today carry forward, at great personal sacrifice and in the face of terrible odds, the quest for human liberty. It is almost a decade now since the establishment of the Ukrainian Helsinki Watch Group; in the wake of the signing of the Helsinki Final Act, 10 Ukrainians joined together to declare their commitment to the full implementation of the Helsinki provisions, in the face of official harassment and repression in their native land.

The arduous work of defending human rights, often carried on in prison, today commands attention and sympathy the world over. The heroes of the movement are many. In some cases, their names are well known to us. Valentin Moroz, whom I have the honor to know, now lives among us; others—Lev Lukyanenko, Mykola Horbal, Mykola and Raisa Rudenko, Yosyf Zisels, and Vasyl Stus—are prisoners and aliens in their own land. In many cases, however, men and women whose names may never be known to us nonetheless perform heroic tasks. The name Myroslav Medvid will not soon be forgotten. Important legislation would require a full accounting of his tragic case, so that it can never be repeated.

There is a second tribute to be paid today to the hundreds of thousands of Americans of Ukrainian descent whose energies and talents have enriched our land, who have made valuable contributions to the growth of America through their participation in the arts, science, politics, business, and other endeavors. We in Maryland are very fortunate to have a large and active Ukrainian American community. Through their stable family life, their sense of community responsibility, and their social and religious activities, Ukrainians in Maryland have greatly enriched the quality of life in our State.

January 22, Ukrainian Independence Day, is therefore a day for tribute and reflection. We pay tribute to the dream of freedom, and to the courage of those who pursue it; we pay tribute to Americans of Ukrainian heritage for their enduring commitment to the principle of liberty which they have so amply demonstrated throughout their history and for the continuing contributions Ukrainian Americans have made to the strength, progress, and prosperity of our Nation. Let us reflect on the events of 68 years ago even as we honor the heroes of today.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

CONRAIL SALE AMENDMENTS ACT OF 1985

The PRESIDING OFFICER. The Senate will now resume consideration of the motion to proceed to the consideration of S. 638, which the clerk will report.

The assistant legislative clerk read as follows:

A motion to proceed to the consideration of S. 638, a bill to amend the Regional Rail Reorganization Act of 1973 to provide for the transfer of ownership of the Consolidated Rail Corporation to the private sector, and for other purposes.

Mr. PACKWOOD. Mr. President, I rise in support of the motion to proceed on S. 638, the Conrail Sale Amendments Act of 1985.

I believe the chairman of the Senate Commerce Committee, Senator DANFORTH, and my colleagues on the Commerce Committee have done an admirable and conscientious job in their thorough examination of the complex issues surrounding the return of Conrail to the private sector. I support the committee's bill which provides for the sale of Conrail to the Norfolk Southern Corp., the bidder recommended by Secretary of Transportation Elizabeth Dole.

Mr. President, I believe now is the time for the Senate to move forward and consider this matter. The Senate and House, through extensive committee hearings in both bodies, have thoroughly reviewed the issues presented. Before this matter even came to the Congress, Secretary Dole spent over 2 years studying this issue and developing her plan to sell Conrail.

One issue that has been the subject of much debate is the question of taxes. Unfortunately, while there are legitimate issues presented by this sale, the tax impact of this transaction has been the subject of a great deal of overstatement and, in certain instances, even misinterpretation.

For example, the claim has been made that Norfolk Southern will receive special tax treatment under this transaction. This claim simply is not true. Existing provisions of the Internal Revenue Code that govern a stock sale will apply in this case—there are no special tax breaks or special treatment in either S. 638 or the agreement between Norfolk Southern and the Department of Transportation. There is only one difference in this transaction, and that difference is unfavorable to Norfolk Southern: it must give up Conrail's net operating loss and investment tax credit carryovers.

Another exaggerated claim is the benefit to Norfolk Southern from use of excess depreciation; that is, depreciation that Conrail would not be able to utilize against its own income. However, a stand-alone Conrail, either through sale of tax benefits or the establishment of subsidiary corporations, would clearly take advantage of every available option to use this excess depreciation. Conrail has made abundant use of tax shelters in the past, and it would clearly do so in the future, with a longrun revenue loss comparable to any revenue impact of a purchase of Conrail by Norfolk Southern.

All of these issues are overshadowed by one point—who pays Federal taxes and who does not? The contrast here between Norfolk Southern and Conrail is dramatic. An independent Conrail is a tax shelter—it contributes nothing to the Federal Treasury. Conrail has never paid any Federal income taxes, and under the Morgan Stanley plan or any other stand-alone option, it will not in the future pay any taxes to the Federal Treasury.

Compare this to Norfolk Southern. Norfolk Southern is now and will continue to be a significant Federal taxpayer, but more importantly, Norfolk Southern pays the vast majority of all the Federal taxes paid by the entire railroad industry. In 1984, for example, Norfolk Southern paid over $150 million in Federal taxes; the net amount contributed by the entire industry was only about $172 million. Moreover, as a profitable member of the Norfolk Southern rail system, Conrail in the future will become a taxpayer itself.

In summary, I urge the Senate to move forward to the consideration of S. 638. This issue has been exhaustively studied and we have before us a sound public policy option—selling Conrail to Norfolk Southern.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I found the remarks of my distinguished colleague and friend from Oregon having to do with the tax aspects of the transaction to be of particular interest, and I think it is a subject to which I intend to reply in some detail but I do not believe it appropriate to do so in this moment.

I will be brief on that subject in my remarks today, and then at a later point I will address the issue more fully. But as a preparatory statement I would point out that there are some specific representations and agreements that are made as pertains to the handling of the tax aspects for this transaction as a part of the agreement. In some instances that would not be that important. When the U.S. Government is a party to the agreement, then it becomes particularly relevant.

This company, Conrail, has better than $2 billion in net operating loss carry-forwards, and there are some specifics that deal with the manner in which those funds are to be handled. They are very relevant. They are not unimportant considerations.

I will address that subject later in much greater detail, and point out that not all of what looks like gold glitters—quite the opposite. I think this agreement that we are called upon to approve by legislation does real harm to the whole concept of tax equity and tax fairness, and does provide for some tax special benefits written right into the deal. But, as I said, I do not want to discuss that now.

I want to discuss my colleague's question of whether or not we really ought to be proceeding at this point with this legislative proposal. Many of us have strong opposition to the entire issue as to whether the sale should be made. But that is not the main thrust of what I am about to say.

The issue at the moment is, should we or should we not proceed forward at this time to deal with the sale of Conrail?

You have to take into consideration in discussing that subject the fact that this Government which is very much in need of revenue has sitting out there an offer from Morgan Stanley $200 million over and above the Norfolk Southern deal, and the First Boston Corp., and Allen Co., have a proposal to come in with $400 million over the $1.2 billion.

I am not prepared to debate on the floor of the Senate the merits of the Norfolk Southern proposal, the merits of the First Boston and Allen Co., proposal, but I am prepared to maintain as strongly as I know how that when there is anywhere from $200 million to $400 million out there on the table available to the Government, we owe it to the taxpayers of this country to explore whether or not we can get not only that $200 million or $400 million but to explore whether or not it is not possible to obtain a figure substantially in excess of either the $1.2 billion, the $1.4 billion, or the $1.6 billion.

I should point out parenthetically that the manner in which the Government took bids in connection with this matter was most unusual if not unique. The Government obtained an appraisal. Normally, an owner selling some portion or all of their assets

would not then share that appraisal with the public.

But what happened in this instance is that the Government obtained the appraisal, immediately went public with that fact, and told the bidders what the appraisal was. As a consequence, eight bids came in, and to the best of my recollection, I think all eight of them were at the $1.2 billion figure. So you truly did not have a competitive bidding situation.

Beyond that fact, we must deal with the entire issue of antitrust. The antitrust department has indicated in phase 1 that they now think there may be some reason to permit the deal to go forward. They think that the Senate ought to continue considering this matter at the very same time that they proceed forward with an evaluation and examination of the balance of the antitrust issues which are truly the most important issues in phase 2.

The answer to that matter is that phase 2 will not be concluded for some time.

Let me share with my colleagues a letter just received, January 21, 1986, from the U.S. Railway Association. Because I think it is so important, I am going to read it in the entirety. It is not that long.

DEAR SENATOR METZENBAUM: Steve Berger asked me to respond to your January 17 inquiry about an assessment of the latest Norfolk Southern divestiture plan. We received a similar request from Congressman James J. Florio, USRA's reply to which is provided as an attachment. Submitted December 3, that reply is now out of date in certain ways which I will cover here.

Generally, the attachment describes the schedule for our review of the divestiture plan, the criteria enunciated by the Department of Justice for its assessment of the plan, and the information required by Justice, its consultants, and USRA in order to assess compliance with Justice's criteria. USRA could finish its study of the divestiture plan within four to six weeks after receiving the appropriate details of the plan from Norfolk Southern and the divestiture carriers, Guilford Transportation Industries and the Pittsburgh & Lake Erie.

Here we come to the critical language.

Unfortunately, despite the optimism expressed in our December 3 letter, the carriers have not yet provided Justice or USRA with the required information. We also are informed that Justice is about a month behind the original schedule for selecting its expert consultants and initiating their contract work. Justice now indicates that the consultant contract might be awarded during the first week of February.

The as yet available data and analyses thereof are essential for the application of Justice criteria. The attachment indicates several specific areas of concern with the earlier divestiture plans, as determined by both Justice and USRA analyses. Justice's estimate of the level of effort for its consultants to study the revised plan is 497 man days over approximately two months.

We will advise you periodically as to the status of information supplied by the carriers, and any other circumstances that might bear upon our work schedule as set forth above.

Sincerely,

JOHN WELLS,
Vice President and Staff Director.

What that letter says in essence is that they are trying to do an analysis but they cannot get the information from the carriers as to what the facts are, and the Justice Department has not even commenced the study that it has promised the Congress that it would complete.

There are many other major problems with respect to this proposed sale, and I intend to discuss each of them in some detail.

Let us start off with the fact that Conrail is a money-making operation. It has been since 1981. It recently was recognized as one of the best operated railroads in the country.

In 1984, Conrail earned over $500 million. In 1983, Conrail earned $313 million. In 1982, it earned $174 million. In 1981, it earned $39 million.

That is not bad, to go from $39 million to $313 million to over $500 million; 1985 from all reports was a good year. In the last quarter, I think the earnings were up 22 percent, according to my recollection.

What are we doing with that? We are saying that this very viable, efficiently operated railroad that is earning somewhere around $500 million a year we are going to give away. That is the only term I can use, we are going to give it away for $1.2 billion, and we are going to give them some goodies with it. We are going to give them $800 million in cash. That is not bad. One billion two hundred million dollars and you get $800 million in cash. That means your net costs are $400 million for a railroad earning $400 million or $500 million a year.

Then we are going to give them $250 million in excess assets in the pension fund. Under the laws we are familiar with, those pension funds have been and continue to be terminated to the extent of over $9 billion in the last 5 years during the Reagan administration.

Then we are going to give them $3.5 billion in depreciable capital assets. We are also going to give them something in the area of $2 billion of net operating losses, although there is some language with respect to that subject as I indicated to the distinguished Senator from Oregon earlier. There are some limitations with respect to the efficacy of the limitations that are provided for in the memorandum of agreement.

Some, including the Department of Transportation, have argued that Conrail's profit figures since 1981 are inflated because Conrail has not had to pay State taxes or industry-level wages.

But Conrail is paying industry-level wages now. In 1984, it paid out $60 million in additional dollars to its employees to bring them up to the industry standard. In 1985, Conrail deposited in escrow $12 million for the purpose of paying its State taxes.

The result: Conrail's performance for 1985 sets the record straight. After taking into account these new costs, Conrail made a net profit in 1985 of $440 million.

Think of it. For $1.2 billion, you get $800 million in cash, you get $440 million in profits, you get $250 million that you can pick up by terminating the pension fund, and you get $3.5 billion to depreciate.

You would not believe that such a deal was possible if it were not the reality that it is here on the floor of the U.S. Senate and we are being asked to approve it.

Conrail is continuing to turn in a strong financial performance, despite 1985's weaker business environment for the railroad industry. Its operating income performance far exceeded most other railroads and was comparable to Norfolk Southern. Conrail's 1985 earnings are only half the picture. In 1985, Conrail spent $562 million for capital projects and maintenance. Conrail's cash balance increased by $60 million to $910 million.

Unquestionably, Conrail's performance puts it right at the top of the class compared to all other major railroads in the country. Conrail is a viable, long-term contender.

I heard some argue yesterday on the floor of the Senate that Conrail could not continue to make it. Why? Why could not Conrail continue to make it? It is doing exceptionally well. It is keeping its capital expenditures up. It is making profits. It is a well-run operation. There is absolutely no reason why we should give away the Conrail properties to Norfolk Southern for a paltry $1.2 billion.

That is particularly true in view of the increased offer from Morgan Stanley of $1.4 billion and the fact that the Allen/First Boston group has an offer in at $1.6 billion.

Why in the world are we continuing this $1.2 billion Norfolk Southern offer with all of its attendant antitrust and labor problems when Morgan Stanley has an offer on the table that would pay the Government $1.4 billion up front in cash?

So that I may make my position clear with respect to the Morgan Stanley offer, there are some in this body that feel very strongly that the Morgan Stanley offer should be accepted. I am frank to say to you that I think we can get more than the $1.4 billion for this railroad. I am frank to say to you that I think the figure will go up considerably if we just give the free enterprise system an opportunity to act. I believe that what we ought to do is withdraw the matter from the

Senate at the present time, that the Secretary of Transportation should then take sealed bids, sealed bids setting out the terms and conditions under which the U.S. Government would be willing to sell this property, and I predict, as I predicted earlier that we could get more than $1.2 billion, I predict we can get substantially in excess of $1.4 billion.

There is another aspect of this giveaway that is worth noting. Most everyone knows that the Government would receive $1.2 billion for its interest in Conrail's common stock. What some people may not realize, however, is that $851 million of long-term debentures and 73 million shares of preferred stock which the Government holds would be canceled entirely. Conrail has never declared dividends on the stock nor paid interest in cash on the debentures. Its cumulative income has not reached the $500 million target points, but it will reach that target point in 1988.

Under continued Federal ownership, in 1988 Conrail will pay the Government nearly $300 million in interest and dividends and Conrail will pay $300 million more in 1989 and an additional $300 million in 1990.

I want to emphasize that. We are talking about picking up $1.2 billion and what a great idea that is. If nothing happens between now and 1988, we are going to have Conrail repaying the Government $300 million in interest and dividends, another $300 million in 1989, and another $300 million in 1990, or $900 million in that short period alone.

Thereafter, as long as Conrail remains profitable, it is obligated to pay the Government half its yearly income in interest and dividend payments until the debentures are retired in the year 2011.

Mr. President, that is a substantial amount of money. That is revenues that the Federal Government could put to use in reducing the deficit. But under this deal, the preferred stock and debentures would be canceled and all that money would be lost.

I think there is some irony in the fact that we got back into session yesterday and the first thing we did was have a White House conference in which the Republican leadership of the House and the Senate met with the President and talked about the challenge of balancing the budget and all of the cuts that will have to take place by reason of Gramm-Rudman-Hollings. Then, having said that, we return to the floor of the Senate to give away—and I mean literally give away—the best single income producer that the U.S. Government has in the arena of business operations.

We do not make that kind of money with respect to any other arm of Government, but we do with Conrail. And lo and behold, the editorial writers want us to give it away; my colleagues on the other side of the aisle want us to give it away; the President wants us to give it away; and everybody is excited about the fact that we are going to pick up $1.2 billion. But we are going to get $900 million by 1990 and under any and all circumstances, we are going to have a continuing source of income; we are not going to have to give away the $800 million that is like cash in the bank and we are not going to have to give away to a new buyer the $250 million that is in surplus in the pension fund and we are not going to have to give away the money gained by using the net operating loss carryforward as well as the right to depreciate $3.5 million in assets.

Conrail has a pension plan that could be liquidated for profit—cash—of $250 million. No matter how you look at this, here is a situation where the Federal Government put $7 billion into this property.

Consider this: The administration and Norfolk Southern argue that while Conrail may be profitable today, it is not in the long run a strong enough corporation to survive on its own. The U.S. Railway Association, Conrail's banker and independent overseer, sees the situation as opposite.

On July 29, 1985, USRA completed a Conrail sales study which said as follows:

> . . . All available evidence supports a finding that Conrail can generate positive cash flow for the foreseeable future. Traffic shortfalls compared to the forecast should not threaten Conrail's survival as long as the rail regulatory framework allows service to be shaped to meet the demands of the marketplace.

And again from the same report:

> Conrail's viability as an independent entity is reasonably assured.

According to USRA, Norfolk Southern's pessimistic view of Conrail viability is overstated. I quote again from the report:

> Norfolk Southern's 10-year outlook for Conrail—that negative cash flows would occur in serious magnitudes by the 1990's, culminating in the need for renewed Federal aid—was determined by U.S.R.A. to be rebuttable.

Morgan-Stanley, one of Wall Street's most respected investment houses, agrees with USRA's assessment of Conrail's future.

Morgan-Stanley has assembled a group of 41 sophisticated investors, including the New York Life Insurance Co., Columbia University and the Pennsylvania public school employee's pension fund, who are ready and willing to invest their money in Conrail. These investors know what they are doing.

If Conrail were not a viable operation, they would not be going to the public to raise money, they would not be investing their own money. They know that Conrail is going to continue to make money. That is the reason they are so willing to pay $1.4 billion instead of the $1.2 billion that has presently been offered.

Let us talk about another aspect of this matter not having to do specifically with dollars and cents. Let us talk about Conrail being a vital asset to the Northeast and Midwest regions of the country.

Over the past 4 years, for example, Conrail has taken business away from every other rail carrier in the region by the old-fashioned expedient of offering lower prices and better service.

Thanks largely to Conrail's good management, Conrail is now a first-class railroad. It has one of the lowest debt-to-equity ratios and one of the lowest operating ratios of any railroad in the industry. It also has the most modern physical plant and rolling stock in the industry.

I fail to see how this plan to sell Conrail—or more properly, to give it away—serves the interests of the Northeast and Midwest, or of the taxpayers of this country.

Yesterday, we heard on the floor of the U.S. Senate concerns expressed by one of those who could not be particularly considered an easterner. The distinguished Senator from South Dakota [Mr. PRESSLER] talked about the impact that the sale of Conrail would have on the regional railroads serving South Dakota and those States that are nearby.

What do we get in return for the Federal interest in Conrail? Why are we doing this? I do not see any reason to do it. One of the things that concerns me about going forward with this sale has to do with the matter of jobs. I stood on the floor of the Senate just before the last session ended and saw where we indicated our willingness to spend billions of dollars with respect to a program called OPIC. OPIC is a way of exporting American jobs around the world. We have no reservation about doing that. Here is a situation where we are making money—100 percent opposite from the OPIC situation—where we do not need any money to subsidize the railroad, where the railroad is making a profit, where, when we sell the railroad as proposed by this legislation, thousands of railroad workers in my region of the country will lose their jobs.

How many? Nobody seems to know.

Norfolk Southern estimates that 2,530 NS-Conrail positions will be eliminated in the course of consolidating NS and Conrail Operations.

The management of CSX Corp. has said that CSX would immediately lose approximately 4,000 jobs because of freight traffic diversions from its lines to the combined Conrail-N.S. System; 900 of these jobs would be in my own State of Ohio. Maryland, West Virgin-

ia, and Kentucky would also be particularly hard hit with job losses.

According to an estimate prepared by Morgan-Stanley, 8,130 jobs would be lost throughout the rail industry as a result of the proposed Conrail-NS merger.

In its July 29 report, USRA addressed the issue of job losses. The Association studied the estimates submitted by all of the railroads as well as the industrywide estimate prepared by Morgan-Stanley. USRA concluded that the Morgan-Stanley estimate of 8,130 jobs lost was probably too high, but, "* * * the concept of a rail labor impact greater than Norfolk Southern's job loss (predictions) * * * is generally valid."

Not a single rail labor union has endorsed the sale of Conrail to the Norfolk Southern. Those that have taken a position have endorsed the Morgan-Stanley alternative.

Transportation Department officials have been telling Norfolk Southern for months that it would have to improve its labor package to win this sale.

The fact is, Norfolk Southern has not improved its labor package.

This sale plan would provide Conrail's employees a combined payment of $375 million for their 15-percent share of Conrail's stock, and for wages deferred between 1981 and 1984.

That is not enough.

The value of the E.S.O.P., calculated on the basis of the amount Norfolk Southern is paying the Government per share of stock, is $212 million. Add to that the deferred wages of about $290 million per year between 1981 and 1984, and the total comes to $502 million, not including interest.

If you add in interest on the deferred wages compounded at a conservative rate of 10 percent, the total amount comes to $762 million.

The N.S. $375 million figure short changes the employees by $387 million.

In other words, Norfolk Southern plans to buy out Conrail's employees for less than half of what they are due. It is no wonder they oppose this sale so strongly.

Mr. President, I intend to address myself further to this issue during the balance of this afternoon but for the time being I believe I am prepared to yield the floor.

I ask unanimous consent that when I resume my remarks they may be included together and that there be no problem with respect to the two-speech rule.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. METZENBAUM. Mr. President, as we look at this proposed sale, I think we have to consider what else does the sale have to offer the American public. In addition to costing thousands of jobs in the Northeast and Midwest, the proposed sale would substantially reduce rail competition in the region.

Combining the Norfolk Southern and Conrail systems would produce a carrier of unprecedented size and power. The new system would control nearly 50 percent of the tonnage and nearly two-thirds of the freight rail revenues in the region.

That is a dominant position—the kind of position that inevitably encourages arbitrary rate increases and destroys a company's incentive to provide timely and efficient service.

I am not alone in my concern about the impact of the proposed sale on competition.

The Governor of my own State of Ohio is opposed to this sale. So is the Governor of Maryland.

Hundreds of communities throughout the Northeast and Midwest oppose the sale.

The list of shippers and corporations opposing the sale is several pages long.

Mr. President, I ask unanimous consent that a list of shippers and corporations opposing the sale be printed in the RECORD.

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

SHIPPERS FOR AN INDEPENDENT CONRAIL

Shippers for an Independent Conrail (SIC) is a coalition of companies dependent on Conrail for rail transportation. SIC supports the return of Conrail to the private sector as an independent and viable entity. The timing and method of this transformation must preserve or enhance rail competition.

Acme-Evans Co. Div., Air Products and Chemicals, Inc., Alabama By-Products Corp., Alabama Coal Association, Alcan Aluminum Corporation, Allied Corporation, American Crystal Sugar Company, American Iron and Steel Institute, American Maize-Products Company, American President Intermodal Co., Ltd.

Amoco Oil Company, Anderson & Anderson Contractors, Inc., Anker Energy Corporation, Baltimore Gas & Electric Co., Barbour Coal Company, Barnes & Tucker Coal Company, Bethlehem Steel Corporation, Boise Cascade Corp., Bradford Coal Company, Buncher Company.

Cabot Corporation, Clorox Company, ConAgra, Inc., Consumers Power Company, Copperweld Corporation, Dart & Kraft, Inc., Dexter-Carpenter Coal Sales Corp., Diamond Bathurst Inc., Diamond Crystal Salt Company, Drummond Coal Company, Inc.

Early & Daniel Company, Elkem Metals Company, Energy Trading Corporation, FMC Corporation, General Mills, Inc., Grafton Coal Company, GTE Service Corporation, Hepburnia Coal Company, Independent Bakers Association, Industrial Mining Company.

Inland Steel Company, Institute of Scrap Iron & Steel, Interlake, Inc., International Salt, Keystone Bituminous Association, LTV Corporation, Magnum Minerals, Inc., Mining & Reclamation Council of America, National Intergroup, Inc., National Piggy-Back Service.

National Starch & Chemical, New England Electric System, Ohio Mining & Reclamation Assn., Ohio Oil Gathering, Olin Chemicals, BPS Coal Company, Peabody Holding Company, Pennsylvania Coal Mining Assn., Pennsylvania Power & Light, Pennwalt.

Perdue Farms, Inc., Pfizer Inc., PPG Industries, Inc., Rail-Van Consolidated, Reading Anthracite Coal Company, Robbins Manufacturing, Inc., Rochester PiggyBack Services, Rohm and Haas Company, Sunkist Growers, Inc., Tidewater Grain Company, U.S. Steel Corporation, Universal Foods, Inc., Witco Chemical Corporation.

COALITION FOR A COMPETITIVE CONRAIL

ASARCO, Inc., Adventure Coal Company, Alabama Coal Association, Allegheny Resources, Alltransport Inc., American Box Co., American Crystal Sugar Co., American Iron & Steel Institute, Anderson & Anderson Contractors, Inc., Anker Energy Corp.

Arch Mineral Corporation, Assured Freight, Inc., Attorney General Charlie Brown, Attorney General Hubert H. Humphrey, III, Avery Coal Co., Inc., Avonmore Rail Loading, Inc., Barbour Coal Co., Barnes & Tucker Co., Baxter Co. Customhouse Brokers, Inc., Bethenergy, Inc.

Big B Mining Co., Blue Diamond Coal Company, Bologna Coal Company, Boston Edison, Bradford Coal Company, Bridgeton Municipal Port Authority, Bucano International Traffic Mgt., Buckeye Industrial Mining Co., C&K Coal Co., Cabot Corporation.

Calabresi International, Inc., Camelot Coal Company, Campbell Fuels, Inc., Canterbury Coal Co., Canterra Coal Inc., Carpentertown Coal and Coke Co., Center Valley Coal Co., Central Vermont Railroad, Inc., Centroport Surveyors, Inc., Charms Co.

Chemtech Industries, Chicago & Northwestern Transp. Co., Chicago South Shore & South Bend RR, Clorox Company, Coal Association Inc., Coal Hill Mining Co., Inc., Coal Power Corporation, ConAgra Flour Milling Company, Concorde Shipping, Inc., Connecticut Grange.

Consumers Power Company, Cooney Brothers Coal Company, Cooperstown & Charlotte Valley RR, Coordinated Caribbean Transport, Inc., Crescent Brick Co., Inc., Culmtech, Limited, Cumberland Elkhorn Coal & Coke, Inc., Cumberland Steel Co., Darmac Coal, Inc., Delaware Otsego System.

Delta Coal Sales, Inc., Dexter-Carpenter Coal Sales Corp., Diamond Shamrock Coal Company, E. M. Brown Inc., E. P. Bender Coal Co., Economic Development Council of Northwestern Pennsylvania, Elkem Metals Company, Energy Supply, Inc., Energy Trading Corp., Erny's Fertilizer Services, Inc.

Falco Coal Company, First Century Corporation, Full Service Forwarders, Inc.,

Gard Mining, Inc., General Mills, Inc., Gerard F. Tujague, Inc., Gilscot Forwarding Company, Inc., Glen Irvan Corporation, Governor Anthony S. Earl, Grand Trunk Western Railroad Co.

Greater Baltimore Committee, Greater Philadelphia Chamber of Cmc., H. Kieffer Trucking, H.B. Coals, H.D. Shrader Trucking Company, Hagerstown-Washington Co. Chamber of Commerce, Hall's Coal Company, Inc., Hansen Storage Company, Hansloban Coal Company, Harmon Mining Co.

Hawkins Coal Co., Hawley Fuel Coal Co., Inc., Hepburnia Coal Co., Heritage Resources, Inc., Hess & Fisher Engineers, Inc., Hickman, Williams & Company, Hotard Transfer, Hungerford & Terry, I.C. Industries, IUE Coal Sales Co.

Illinois Coal Association, Illinois Grange, Indiana Farmers Union, Intercoastal Warehouse Corp. of Louisiana, Iowa Farmers Union, J & B Products Corp., J. Taliancich & Associates, J.G.H. & Associates, Inc., Jill Mining Company, Inc., John A. Biewer Lumber Co.

John B. Harris, Inc., K & J Coal Co., Inc., K.C. Strader Trucking Company, KMA Enterprises, Inc., Kenerco Coal Sales, Kent Coal Company, Kentucky Farmers Organization, Kentucky May Coal Co., Kentucky River Coal Corp., Kentwood Spring Water.

Kerr Steamship Co., Keystone Steel & Wire Co., L & R Fuels, Inc., LTV Corporation, LaBelle Processing Company, Lackawaxen & Stourbridge Railroad, Lacour Warehousing, Inc., Ladish Company, Inc., Lafayette Springs Enterprises, Inc., Land Use Corporation.

Leaf River Forest Products Inc., Leckie Smokeless Coal Co., Lukens Steel Company, M.A. Hanna Company, Magnum Minerals, Inc., Manville Corp./Manville Svc. Corp., Maple Leaf Coal Company, Marblehead Lime Co., Maryland Chamber of Commerce, Maryland Grange.

Mayor Bruce C. Hagen, Mayor David L. Jannetta, Mayor George M. Wyckoff, Jr., Mayor George V. Voinovich, Mayor Harold Washington, Mayor John Fedo, Mayor Richard G. Campbell, Mayor Richard L. Dunning, Mayor Steven B. Carlson, Mayor Thomas P. Ryan, Jr.

Mayor William Donald Schaefer, McDonald Land & Mining Co. Inc., Metro Drayage & Service Co., Mid-City Cartage Co., Mining & Reclamation Council of America, Minnesota Agri-Growth Council, Minnesota Corn Processors, Minnesota Farmers Union, Mississippi Chemical Corp., Mittercon International.

Moon's Enterprises, Moshannon Falls Mining Co., National Farmers Union, National Grange, National Refractories & Minerals Inc., Navarrete Forwarding Co., Inc., Nebraska Farmers Union, New England Electric System, New Jersey State Grange, New Orleans Distribution Trucking, Inc.

New York Cross Harbor Railroad, New York State Grange, New York Susquehanna & Western RR, Newmont Svcs., Ltd. (Newmont Mining Sub.), North Dakota Farmers Union, Northern Counties Coal Co., Inc., Nutra-Flo Chemical Co., Ohio Mining & Reclamation Ass'n, Ore-Ida Foods, Inc., Oyster Shell Products.

P. and N. Coal Co. Inc., P.V. Burke & Associates, Inc., P.A. Master Corn Growers Ass'n, Inc., PBS Coals Inc., Patrick & Associates, Paul W. Capelle, City Manager of Willard, Peerless Eagle Coal Co., Pennsylvania Coal Marketing, Inc., Pennsylvania Coal Mining Assn., Pennsylvania Farmers Union. Pennsylvania Mine Services, Inc., Pennsylvania State Chamber of Cmc., Pennwalt Corporation, Philip P. Rowan, Director of Economic Devel., City of Bridgeton, Piazza & Associates, Inc., Pinsly Railroad Company, Pioneer Lumber Inc., Pittsburg & Shawmut Railroad Co., Portside Terminal Services, Power Operating Company, Inc.

Princess Susan Coal Company, Producers Liaison, Inc., Quality Coal Company, Quality Crushing & Screening Inc., R.H. Keen & Company, Inc., RBS, Inc., Railway Labor Executives' Assn., Raintree, Inc., Randall Fuel Co., Inc., Raynham Farms.

Reading & Bates Coal Co., Red Star Coal Co., Representative Richard A. Geist, State of Pennsylvania House, Ringgold Coal Mining Co., Robbins Manufacturing, Inc., Rochester & Pittsburgh Coal Co., Scurfield Coal Sales, Inc., Shawville Coal Company, Inc., Skelly and Loy, Sky Haven Coal, Inc.

Slater Steels, Inc., South Dakota Farmers Union, South East Coal Company, Inc., South Jersey Port Corporation, South Louisiana Port Commission, Southeastern Motor Freight, Inc., Spring Church Coal Co., Spring Fork Coal Company, Springmeier Shipping Co., Stanford Coal Company.

State Rep. Michael J. Madigan, Speaker, IL House of Representatives, State Rep. John D. Cherry, Jr., State Sen. J. William Lincoln, State Sen. James J. Rhoades , Co-Chair of Pennsylvania Coal Caucus, State Sen. Mark S. Single, State Sen. Philip J. Rock, President, Illinois Senate, State Sen. Vincent J. Fumo, Strishock Coal Company, Summers Fuel, Inc., Sunshine Fuel Company.

Swistock Associates Coal Crop., TCI Trucking, Inc., Tangi-Transport, Texas Industries, Inc., The McKenzie Company, the Railroader, Thomas Coal Sales Inc., Tonawanda Island Railroad, Inc., Trans Gulf Trucking.

Twinstar Leasing, Ltd., Unionvale Coal Company, United States Steel Corporation, Universal Foods Corporation, Vance Coal Company, Inc., Vermont Railway Inc., Vertac Chemical Corp., W. R. Zanes & Co of Louisiana, Inc., W.V. Surface Mining & Reclamation Assn, Walter N. Heine Associates, Inc.

Warren C. Hartman, Contractor, West Virginia Coal Association, West Virginia Coals, Inc., Wildcat Coal Co., Williamsport-Lycoming Chamber of Commerce, Windber High Standard Coal Co., Wisconsin Assn. of Manufacturers and Commerce, Wisconsin Farmers Union.

(Mr. DURENBERGER assumed the Chair.)

Mr. METZENBAUM. Mr. President, the American Iron and Steel Institute, representing the entire steel industry, is against this sale.

General Mills, GTE Corp., LTV Corp., Monsanto and 147 other companies, associations, and communities have formed a Coalition for a Competitive Conrail, dedicated to fighting the sale of Conrail to the Norfolk Southern Railroad.

Now, why? Why all of this economic power concentrated in opposing the sale of Conrail to Norfolk Southern?

The answer is simple. It is because these States, communities, and companies are scared to death of the market power that a Norfolk Southern-Conrail combine would exercise.

And for good reason.

Last January, after 6 months of study, the Antitrust Division of the Justice Department concluded that a sale of Conrail to the Norfolk Southern Railroad would "have a significant adverse effect on competition." The Department announced that it would oppose the merger "unless its competitive problems are remedied through a prior or concurrent divestiture of assets" owned by Conrail and/or Norfolk Southern.

On the surface, that looked pretty positive. But, unfortunately, it left open the question of what would be divested—and to whom.

Norfolk Southern subsequently negotiated divestiture agreements with two railroads—Pittsburgh and Lake Erie and Guilford Transportation Industries.

These are not, to put it mildly, powerful competitors.

The Pittsburgh and Lake Erie has not in recent years made a profit. The company lost $11.6 million last year, $23.5 million in 1983; and $12.6 million in 1982.

In 1984, the Guilford system made a profit of $5.1 million. That was the only positive sign in the last 4 years.

But are these the railroads that the Justice Department envisioned as viable competitors to a Conrail and Norfolk system, which together earned $982 million in 1984?

Last summer, Norfolk Southern negotiated agreements with Guilford and the Pittsburgh and Lake Erie. Under the terms of these agreements, Norfolk Southern would have divested the absolute minimum amount of trackage needed to comply with the Justice Department order.

Even so, Guilford estimated that it would receive additional gross revenue of $161 million from operations over its new lines.

But an August 30, 1985, study prepared by the staff of the Interstate Commerce Commission found these assumptions to be, and I quote, "generally without merit." According to the report, Guilford underestimated its projected $63 million rehabilitation costs, and even with the necessary rehabilitation, Guilford's operating facilities would be inferior to those of Norfolk Southern-Conrail.

Again, I quote directly from the ICC staff report:

> Guilford will not be able to maintain competitive schedules on the trailer or flatcar traffic at Chicago.

Continuing the quote:

> Guilford's revenue gain is overstated by $25 million. Guilford is a highly leveraged company and must generate sufficient cash flow to service its debt. Guilford will be perilously close to being unable to meet all of its annual fixed charges.
>
> In the long run it does not appear that Guilford will be a financially viable carrier.

With respect to the Pittsburgh and Lake Erie Railroad, the report had this to say.

Even if all of PLE's projections are accepted, PLE admits that it cannot service all of its substantial debt using revenues from rail operations. Substantial income from the sale of, and use of, non-rail assets is needed to cover debt payments. PLE's proposed operating ratios are highly optimistic.

In concluding, the ICC staff report said, "P&LE is not now a financially viable carrier and its acquisition of the new lines will not enable it to reverse its already precarious financial position."

The Assistant Attorney General for Antitrust agreed with the ICC finding. In a letter to the Secretary of Transportation dated September 25, 1985, he stated:

Based on the information we have obtained to date . . . It does not appear that the proposed divestiture will establish a rail carrier in the designed corridor capable of providing long-term, viable competitive service. And, he stated there is:

No assurance that Guilford will provide the sort of competition with the merged NS/Conrail that would be necessary in order to eliminate the problems created by the sale of Conrail to NS.

In response to the Assistant Attorney General's findings, Norfolk Southern developed a second divestiture plan, which too, was found to be unacceptable.

Finally, on its third try, Norfolk Southern came up with a plan that the Justice Department could live with. On November 19, the Assistant Attorney General announced that this third proposal, "appears on its face to address the competitive concerns that must be addressed."

But the Assistant Secretary's announcement does not hide the fact that this third plan is as flawed as the first two plans.

It merely confirms the fact that supporters of the Norfolk Southern purchase have attempted, bit by bit, to hack away at competitive concerns, by providing half a loaf each time the merger appears endangered because of concerns about competition.

The fact is, this merger has not, nor will it be required to face the normal public scrutiny required of a typical railroad merger. By virtue of a highly unusual provision in this bill which grants future immunity to this transaction from antitrust and other laws, such scrutiny will likely never occur.

Because of this immunity, there is substantial likelihood that the limited analysis by the Justice Department may be the only scrutiny of the sale's competitive effect ever provided.

In fact, the effort to have this transaction approved by Congress, based only on the Justice fix, without analysis of the competitive effects by the courts, or by agencies like the ICC or USRA that are familiar with railroads, creates the appearance of an effort to move the merger through Congress precisely to avoid the intense scrutiny a proposal of this magnitude requires.

In that sense, Mr. President, I believe further discussion of the entire Justice review process may be enlightening.

Let us start with the initial standard used by the Justice Department. Former Antitrust Chief Paul McGrath said the merger could go forward if Conrail could be replaced in the market by one or more railroads which could provide "long term, viable, and competitive rail service."

This was the first major compromise with the public interest.

Normally, mergers are governed under the Clayton Act. Section 7 of that act bars mergers where the effect "may be to substantially lessen competition." The requirements of our antitrust laws are not satisfied by the fact that Norfolk Southern is creating two minimal competitors through the divestiture of some of its assets.

That is not the point.

Under the antitrust laws, the question is: What will competition look like after the merger? Will a market with a Norfolk Southern/Conrail combination, CSX, and a Guilford/P&LE combination be significantly less competitive than the current market? The answer is clearly yes, and without the antitrust immunity, this merger would never survive judicial scrutiny.

The fact is these divestitures do not even retain the current level of rail competition in the Northeast-Midwest region.

Let me cite one example: According to the most recent proposal, both Guilford and Norfolk Southern are going to be competing for business at the important St. Louis gateway. Norfolk Southern will keep Conrail's current east St. Louis yard, a new, modern, efficient facility. Guilford will be stuck with the decrepit Madison yard. This yard will take substantial sums to rehabilitate, and even then it will not equal the newer facility in terms of location and access.

If the Justice Department were really interested in preserving competition, it would give Guilford the Conrail yard, and make Norfolk Southern, with its superior resources, refurbish the inferior Madison yard.

But the Justice Department did not do so.

Why?

Because, departing from the mandate of the Clayton Act, justice is not trying to preserve competition. Justice is meeting a much weaker standard. It is merely attempting to create a railroad which can minimally compete in the area.

In its initial review, the Justice Department eliminated from further consideration any market where Norfolk Southern and Conrail did not service 50 percent of the market. This rule has never been validated by the ICC nor the courts for railroad merger analyses.

Second, markets where a third carrier other than Norfolk Southern or Conrail had a monopoly were eliminated. The Justice Department never provided a satisfactory explanation for this decision.

Notwithstanding the obvious flaws associated with this analysis, the Justice Department still identified 39 counties where this merger would be harmful to competition.

The antitrust division has given a tentative OK to divestiture plan No. 3. but even its proponents claim, in their most optimistic projections, that it will solve competitive problems in markets totaling only $214 million.

Restating the facts, even if the Justice Department's market elimination screens were proper, and even if the new firms are true competitors, the new divestiture plan will mitigate the harm to competition for less than half the business affected by this merger.

The attorney general from my State of Ohio, Anthony Celebrezze, identified 14 counties in Ohio which were completely ignored by the Justice Department. Several other State attorneys general reported similar results.

Even in the 15 problem counties where new service is provided, the new service is clearly no equal to that provided by the current competitive environment.

Of these 15 counties, only 8 will be served directly by Guilford or P&LE.

With respect to the other seven, Guilford and the P&LE will have to depend on switching, trackage, and car-haulage agreements.

With whom? You guessed it—Conrail/Norfolk Southern.

Unquestionably, these types of agreements are inferior to the single-line service that Norfork Southern/Conrail will provide.

Indeed, the major justification put forth by the supporters of this merger is the increased single-line service which Norfolk Southern/Conrail will be able to provide its shippers.

If single-line service is so much better than interhauling and switching, how can anyone expect Guilford and P&LE to compete with Conrail/Norfolk Southern?

And there is more.

These minimal switching services which Norfolk Southern has agreed to provide Guilford and P&LE only last for 5 years. What happens to competition after that?

Trackage rights are clearly no substitute for real competition. The needs of the tenant—tiny Guilford or P&LE—will always come second to the needs of the owner—Norfolk Southern. The opportunities for Norfolk Southern to intimidate its tenants into going along with new rate increases are obvious.

I know that a number of my colleagues want to vote for this bill, but are genuinely concerned about the antitrust aspects of the sale. Many were unprepared to vote for the bill without some indication from the Justice Department that the divestitures would pass muster. They claimed, and rightly so, that to pass the legislation last summer would have been like buying the proverbial pig in a poke. But the fact is, we still do not know how this merged and divested rail system will work.

I asked my staff to review some open questions about the divestiture with top antitrust division officials.

Has Justice verified that the new lines to be acquired or used by Guilford and P&LE are of sufficient quality to provide competitive service? The answer ws no.

This question is to be answered in the so-called phase II Justice Department investigation.

What about the quality of the yards to be sold? Again, to be determined in phase II.

What about the total costs of the divestiture to Guilford and P&LE?

That is right: We do not know yet.

What will be the impact of these costs on the debt structure of these weak, faltering entities?

You guessed it, see phase II.

A key element in the divestiture plan is the opening of the Detroit market to Guilford. To operate in that city, Guilford will acquire a portion of the Oakwood yard "sufficient to allow it to assemble its trains and interchange traffic with other carriers."

How much of the yard, must Guilford share with its rival, Norfolk Southern?

Again, this will be determined in phase II.

In order to compete throughout the Midwest corridor for valuable automotive traffic, Guilford will have to purchase specialty equipment, presumably from Norfolk Southern.

Can they do so? At a reasonable cost?

The antitrust division does not know.

To meaningfully commpete in the key St. Louis and Chicago gateways, Guilford must have access to the facilities of the St. Louis terminal railroad and the Chicago belt railway. Norfolk Southern says it will use its "best efforts" to secure this access.

Can it be obtained at a competitive cost?

Of course, we do not know.

Guilford and P&LE claim they can offer service at competitive speeds.

Has Justice verified this yet? No.

P&LE is being granted trackage rights only on secondary lines. NS claims that "they are suitable for the type of operation intended by P&LE."

What type of operation are they talking about?

A competitive one?

Has DOJ verified this?

Not until phase II.

There is no question that the Antitrust Division has been pressured into putting its best face on a proposal about which they know very little. There are so many questions yet to be resolved in phase II, one wonders what the point was to phase I.

In view of the fact that phase II is still a long way off, let me state some of the facts which we do know about this plan.

As I stated previously the ICC concluded that the P&LE has no capacity to incur new debt. But, the ability to take on such debt is critical if P&LE expects to be a viable competitor. How else will it upgrade its facilities? How else will it increase its capacity if needed to undercut a Norfolk Southern price hike?

Guilford proposes to service local customers on its long-distance trains. This will slow down its trains, resulting in inferior long-distance service to NS/Conrail.

Conrail's line through New York is more direct than Guilford's.

Guilford claims that it "will operate through freight trains on its lines with schedules that will be fully competitive with NS/Conrail operations."

Let us check the facts.

Chicago—New York intermodal service NS/Conrail, 11 trains daily; Guilford, 2.

Chicago corridor general freight service: NS/Conrail, 30 trains; Guilford, 2.

St. Louis corridor general freight service: NS/Conrail, 26, trains; Guilford, 2.

Mr. President, these remarks only highlight the major competitive problems which I have been able to identify on the basis of the limited available information about this third divestiture plan. Heaven only knows what might be found in an independent review, either by an antitrust court or by the ICC.

But the sad fact is, there has been none of the scrutiny to which any merger of this size would normally be subjected. The entire antitrust consideration process has been shrouded in secrecy.

The Antitrust Division now proposes to begin the phase II study process.

But the Department does not plan to issue a determination until next year, presumably after Congress approves the sale.

Today, we are putting the cart before the horse. We are acting on this sale bill, knowing full well that it may be illegal under the antitrust laws of the United States.

If we move forward with this legislation, if we approve this sale today, or next week, or next month, does anyone really expect that the Justice Department will have the initiative or the will to kill it based on antitrust considerations?

I, for one, do not. I do not believe the Justice Department, which is only one department in this administration, will buck the President and the Congress, and act to kill the sale on the basis of the antitrust concern.

Mr. President, our consideration of this matter is premature. We have a right to know how much more money we can obtain by selling Conrail. We have a right to know whether the $200 million more offered by Morgan Stanley and the $499 million more offered by Boston Corp. and the Allen Co. is the most that can be obtained. We have a right to know what is the best offer that is possible. And we have a right to know what the new railroad operation will be like, how many jobs it will cost, what impact it will have with respect to competition in the area.

This move to go forward with respect to the sale of Conrail at this time is premature, much too premature.

Mr. WEICKER. Mr. President, I rise today to support the motion to proceed to S. 638, a bill to approve the sale of Conrail to the Norfolk Southern Corp. I believe the time has come for Congress to act on this vital piece of legislation to provide a permanent solution to the uncertainty that has plagued rail shippers and employees in my region for years.

Mr. President, I am one of the 25 or 30 Senators in this distinguished body who was here and witnessed the bankruptcy of the Penn Central Railroad; the turmoil that bankruptcy imposed on its shippers and consumers; and the problems Congress faced in restructuring this vital transportation system. As a member of the Commerce Committee at that time, I helped write the legislation which was to become the Regional Rail Reorganization Act of 1973. This act, known as the 3R Act, established the United States Railway Association [USRA] and charged the association with establishing a quasi private sector system which would provide rail service to the Northeast and Midwest. In 1976, Congress passed the 4R Act, the Railroad Revitalization and Regulatory Reform Act of 1976, which implemented the final system plan. Later, in 1980, Congress passed the Staggers Rail Act that deregulated the railroad industry and in 1981 we passed the Northeast Rail Service Act [NERSA] to provide additional assistance to Conrail's profits. All of these laws have helped Conrail reestablish itself as a carrier capable of providing rail service.

Today, with extensive sacrifices by rail labor, Federal Assistance, the benefits of Government ownership, and the able stewardship of Conrail Management, Conrail has become a profit-

able operation. And, as provided for in the Northeast Rail Service Act, the Secretary of Transportation is authorized to return Conrail to the private sector in a way that best ensures the financial viability of the railroad, preserves service and, consistent with the first two, maximizes return to the Federal Government. After conducting a thorough and extensive sale process, Department of Transportation Secretary, Elizabeth Dole, has recommended that the Government sell Conrail to the Norfolk Southern Corp.

I support the Secretary's recommendation and believe Norfolk Southern will provide a strong, stable future for Conrail. On the day of closing, Norfolk Southern will present the U.S. Government with a check for at least $1.2 billion. Norfolk Southern does not leverage any cash out of Conrail to make the purchase and it has agreed to a series of protective covenants that limit the amount of money that may be taken out of Conrail. Norfolk Southern stipulates minimum levels of investment in Conrail's fixed plant and essentially leaves Conrail operating much as it is now.

However, a Norfolk Southern sale has positive benefits particularly for New England and Connecticut for the following reasons:

First. The Norfolk Southern purchase of Conrail creates the potential to dramatically increase North-South traffic by rail instead of by truck. This increase in rail traffic would significantly benefit my State since Connecticut has steadily lost its ability to ship or receive goods by rail from the South. A Norfolk Southern/Conrail combination can provide a fast and economical single line service for rail shippers from Connecticut to points in the South.

Second. The sale of Conrail to Norfolk Southern enhances the expansion of Guilford Transportation Services from the Northeast to major markets in the Midwest. The Department of Justice has insisted on divestitures of lines west of Buffalo, NY to Guilford Transportation Industries, Inc., a Conrail competitor. Guilford has served Connecticut shippers well since its Boston and Maine subsidiary took over 150 miles of lines Conrail chose to no longer operate for freight service in Connecticut. An expanded and strengthened Guilford will be good for Connecticut and New England since it will be able to provide service from this region all the way to Chicago and St. Louis on the west, Washington on the south, and Montreal on the north.

The expansion of Guilford Transportation Industries also means that for the first time since before the Penn Central merger, New England will have two viable competitive rail operators serving its region, enhancing the options for New England shippers and the region's own economic infrastructure.

Third. The alternative proposals to purchase Conrail bring nothing but purchase money to the deal. Norfolk Southern, on the other hand, has an excellent reputation for managing railroads and its purchase of Conrail brings the prospect of expanded rail traffic to the Northeast region of our country. Norfolk Southern does not own any nontransportation companies. Instead, it concentrates its energies and resources specifically on transportation. We have seen much too much retrenchment of rail service in New England not to be concerned about the longevity of the basic system.

Fourth. As a strong supporter of rail labor, I believe a sale to Norfolk Southern is the best guarantee of long-term employment for Conrail employees. As a stand alone entity, Conrail has continued to prune its work force in order to maintain its viability. In addition, Conrail employees have made enormous sacrifices throughout Conrail's march to profitability. Their battle is not over. Last year, Conrail laid off 3,200 employees, nearly 10 percent of its work force. Norfolk Southern estimates that only approximately 1,200 jobs will be affected by the purchase of Conrail. A stand alone Conrail faces a continued strain of rationalizing its system and continuing abandonments even in its best years. A Norfolk Southern/Conrail combination, with its inherent strength and commitment to rail service, is the best guarantee that jobs will be preserved.

Mr. President, today we have before us the opportunity to approve a sale which will generate new rail traffic and provide Conrail with a long-term partner committed to the business of railroading. This sale will also increase rail competition in the Northeast by expanding Guilford Transportation Industries, Inc. and enhancing the Pittsburgh and Lake Erie Railroad Co. I urge my colleagues to support S. 638 and the sale of Conrail to the Norfolk Southern Corp.

Mr. THURMOND. Mr. President, I rise in support of the Transportation Department's proposal to sell Conrail to the Norfolk Southern Corp.

Mr. President, I have looked repeatedly at this proposal from the perspective of both a Senator from South Carolina and as chairman of the Judiciary Committee. Like many Senators, I have evaluated this transaction from the viewpoint of my constituents, in order to understand who would be made better off and worse off in my State by the proposed railroad merger. I have heard from many people on both sides of the issue, and I have determined that the proposed merger would yield healthy, beneficial economic results for South Carolina. So I am in favor of it from the perspective of a Senator from South Carolina.

As chairman of the Judiciary Committee, I have had an opportunity to evaluate this proposal from the perspective of the committee with jurisdiction over antitrust issues. The proposed transaction is a very large merger of two railroads which compete directly with each other in certain areas. As such, the proposal carries certain antitrust implications, The Secretary of Transportation has understood this from the outset, for it was she who submitted the merger proposal to the Justice Department for antitrust review. The Justice Department has conducted that review during the last year.

As we all know, the Judiciary Committee has devoted considerable attention to the antitrust issues, even though the legislation authorizing the merger was not referred to the Judiciary Committee. As the committee with responsibility for overseeing the enforcement of the antitrust laws and overseeing the Justice Department, it has been appropriate for the Judiciary Committee to inquire into the Justice Department's antitrust review of the Conrail sale. Our inquiry was begun pursuant to an agreement with the distinguished chairman of the Committee on Commerce, Science and Transportation, Mr. DANFORTH. From the beginning, the scope of the Judiciary Committee's inquiry has been limited to the Justice Department's work on the antitrust problems associated with the sale.

For some time now, those who oppose the sale have cited, as a reason to delay Senate consideration of the matter, the Justice Department's continuing review of the antitrust aspects. In my view, it is now time for the Senate to get on with its debate and vote on this legislation. The hearing record on the antitrust aspects of the sale is complete and extensive; that record establishes that the Justice Department's work on the merger has been—and will be—thorough, proper, independent, and reliable. The Justice Department has identified some significant antitrust concerns with the merger, but the Justice Department now anticipates that the antitrust implication will be resolved in a manner totally consistent with antitrust law and competition policy. Therefore, the Senate can feel confident that the antitrust problems attending this merger will be remedied, and should move on to consideration of the transportation policy implication of the proposal.

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

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

Mr. PRESSLER. Mr. President, I would like to speak on the subject of Conrail. I oppose the sale in its present form and hope that we can find an alternative method of selling it which will provide competition. I would like to recount some of the struggles that I have had in getting an answer from the Justice Department about the antitrust impact, and discuss the regional railroad issue as it pertains to the Midwest and other regions of the country.

About a year ago, I raised a number of questions in the Commerce, Science, and Transportation Committee regarding the antitrust issue. Of special concern to me was the fact that the Pittman analysis had been used by the Justice Department in advising the ICC, the Interstate Commerce Commission, regarding the Santa Fe/Southern Pacific merger in the western part of the United States. The Pittman analysis was a Department of Justice method for analyzing the anticompetitive impact of a railroad merger that was developed by a Department of Justice economist, Dr. Russell Pittman. The Pittman methodology was used by the Department of Justice in its study of the Sante Fe/Southern Pacific merger, which it opposes as anticompetitive.

However, the Justice Department used a different economic analysis regarding the Conrail sale. And I asked a number of pointed questions to which I was promised answers, which I have never received. Subsequently, I wrote and other Senators wrote, and there were long delays in getting an answer on the antitrust issues or in getting an adequate explanation of why one economic model had been used to analyze the Santa Fe/Southern Pacific merger in the western part of the United States but the same Justice Department, the same people, used a different analysis in the Conrail/Norfolk Southern study.

Following my remarks today I will insert for the record additional materials which explain the differences between these different methodologies and describe their significance in more detail.

Subsequently, I asked a nationally well-known private transportation firm, Rubie Associates, to analyze the Norfolk Southern/Conrail merger using the Pittman analysis in exactly the same way it was applied in the Santa Fe/Southern Pacific merger. When that was done there were quite different results, especially as the issue relates to the impact on regional railroads and on regional shippers.

Thus, to me, as I look at it from my part of the country—and I think throughout the West and the Midwest and the South—a key issue is the issue of regional railroads or regional trucking firms or regional transportation groups connecting into a Conrail monopoly. I believe that much of the debate thus far has centered on the amount offered in the sale, whether more money can be gotten out of Morgan Stanley or another offer, and what the tax advantages and disadvantages are. But to the United States as a whole there is a real issue at gateways—that is, where a smaller railroad connects with a bigger one—with traffic diversion problems, and other issues relating to the anticompetition aspects of this merger. And that is true of smaller regional and short-line railroads across the United States.

When we passed the Staggers Rail Act deregulation paved the way for some fundamental changes in the railroad industry. Many of those changes have proved to be wise, but some have proved to be not so wise. But we did breathe life into railroads that probably would not be here today without it. Many of those same railroads will experience severe financial setbacks if the Norfolk Southern bid goes through. We will essentially wipe out many of the good things Staggers provided. And I, for one, get especially concerned when those railroads that will be set back are operating in my State. For the Chicago & North Western, and many others, this transaction would be one giant step backward from the advances made over the past few years.

When S. 638 was before the Commerce Committee, I offered an amendment that would have given some protection to the regional railroads.

It was my feeling at the time that some of the railroads were getting special agreements with Norfolk Southern in return for key support. The amendment was an attempt to treat all of the regional and small railroads equally. On the morning of the vote, the Department of Transportation and the Norfolk Southern circulated letters stating that negotiations were underway with the other small railroads and hinted that agreements were close to being reached. This, of course, was not the case and none of these railroads concerns were ever addressed.

In addition, an amendment was viewed and referred to by the Department of Transportation as an attempt to repeal parts of the Staggers Act, and a reinstitution of regulation. My amendment was defeated in the Commerce Committee.

Subsequently, weeks and months passed. And the Justice Department of Transportation still did not come through with specific answers on the antitrust area. I think my colleagues from Pennsylvania did an excellent job yesterday outlining some of those unanswered antitrust questions. They go to the heart of my concern with this sale.

I would like to see the Government get out of the railroad business. I think private enterprise can do a better job of running this railroad. I also think that we are in an era where we will see prosperity of the railroads again. I am seeing prosperity on the short-line railroads that feed into the major railroads.

So progress is being made. But a great mistake that we could make is to allow a monopolistic carrier take control of the east coast. That is precisely what the sale of Conrail to Norfolk Southern would do.

As we look around the United States, I think it is important to remember that the trucking industry and the railroad industry are both very important in terms of moving grain, timber, machinery, and products of all sorts. There is a strong feeling that we should preserve the railroad lines and indeed strengthen them in many cases. But this will not happen if we have a monopoly carrier east of the Mississippi.

I believe I could say there is almost unanimous agreement among the shippers, regional railroads, and labor groups west of the Mississippi that the Conrail sale in its present form should not go forward because of the antitrust questions, because of the gateway and traffic diversion problems, and because of the prices that will be charged or could be charged by this monopolistic carrier. There will not be competition.

Earlier this year I pleaded with the Department of Transportation to come up with some kind of a gateway agreement or diversion, with some assurances so that we could be in a situation where there could be assurances to regional railroads, in the West, and in the South, and in the Midwest—assurances that these smaller railroads would not be subject to predatory pricing practices. No agreements were forthcoming.

It is for that reason that I shall offer an amendment when and if we proceed to that stage of this debate.

Let me say I am one of those Senators who tomorrow at 1 o'clock will not be voting for cloture because I believe that until we have this fundamental answer on antitrust we should not go forward.

That is not said in any obstructionist way. I have not, during my time in the Senate or in the House, engaged in filibuster tactics. I have not engaged in obstructionist tactics. Perhaps one should do more of that kind of thing around here. But I have not done so because of a firm belief that the process should work, and we should go forward. But in this case, the Department of Transportation and the Justice De-

partment are saying to us, go ahead, go forward, and we will provide you with the antitrust analysis and other details later. That is not the way Congress should act.

We should have that analysis before we go forward. But if cloture is invoked, and we are forced to proceed forward, I shall offer an amendment on the traffic diversion issue. I would like to describe that amendment.

This amendment is designed to protect small and regional railroads from unfair market dominance and other anticompetitive pressures which could be exerted by a combined Norfolk Southern-Conrail [NS/CR]. The amendment would apply only to the extent that the ICC finds anticompetitive or unfair market control has been exercised by NS/CR.

The amendment is designed to protect smaller railroads in the Midwest and the West, it also applies to small railroads within the immediate NS/CR region. It does not apply to the larger railroads such as CSX, Burlington Northern, Union Pacific, and so forth.

In effect, the amendment simply gives the affected railroads a cause of action before the Interstate Commerce Commission if within 10 years of the consummation of the sale the ICC finds that these small or regional railroads have experienced traffic diversions of 3½ percent or greater, due to the anticompetitive impact of the sale. That is 3.5 percent or greater. If the diversions are caused by fair competition or some other nonmonopolistic force, no remedy will be available. The remedy under the plan would be to allow the affected railroad, following an ICC investigation and determination, to purchase at fair market value enough track or trackage rights from NS/CR to allow for adequate competition in the affected region.

The philosophy behind this amendment is quite simple: The rail system of the Midwest or the Western part of the country, as well as the smaller Northeastern carriers, should not be sacrificed for the sole benefit of a single railroad.

We do not believe this transaction should be made at the expense of other railroads. But, if Department of Transportation figures are accurate, this amendment should never have to be used.

Indeed, I hope the Department of Transportation will support my amendment because they say that the percentage of diversion will be much less.

The DOT estimates that "[t]he diversion figures for the Midwestern carriers are all below the 2-percent figure, both in the base case and the liberal case estimates," and that the "[i]mpact on the Western carriers is de minimus, both in absolute and percentage terms."

So, this amendment should not pose a problem, assuming these estimates are accurate. Indeed, we have made the numbers extremely conservative. The amendment would require diversions in excess of 200 percent of the DOT's most liberal case estimate before it could be used by railroads outside the immediate Norfolk Southern/Conrail region.

I hope that the Department of Transportation will support my amendment because they say that in the most extreme case diversions will not exceed 2 percent. The diversion figures are all below the 2-percent figure in the most liberal case estimates. My amendment gives them 3½. I hope that the managers of the bill will embrace my amendment, become cosponsors, and say we will take it without a rollcall vote if, indeed, they believe what the Department of Transportation says.

We have used the 3½-percent diversion figure because it represents the point at which the very existence of some of the smaller railroads is actually threatened. Additionally we have made it very clear that the diversions must be caused by anticompetitive factors arising from Norfolk Southern-Conrail mergers. Diversions for other reasons simply will not be considered by the ICC.

This amendment is a result of a sincere desire on our part to avoid a potential catastrophic situation in railroads in other parts of the country. Conrail originally became the ward of the Federal Government because of the large number of railroad failures in the Northeast.

Let me say as a Member of the House of Representatives in those days, I well remember the great railroad problems in the Northeast. I am glad Conrail has shown a profit and has turned around. I believe it is in the national interest that it be sold. I am not an obstructionist to that cause. But I say selling it under the present plan will head us back in the same direction because it will have regional railroads failing elsewhere in the country, and in particular in my part of the country.

Conrail originally became a ward of the Federal Government because of the large number of railroad failures in the Northeast. It would indeed be ironic if by finally turning this system over to the private sector and getting the Government out of the railroad business we set the wheels in motion for larger railroad failures in other parts of our country, thereby starting the process all over again.

Our amendment will provide for protection against that happening. It would not require any reregulation of the industry. Indeed, it may never have to go into effect if DOT figures are accurate, it will never need to be used.

Regardless of how you decide to vote on the merits of this bill, we hope you will be able to support this amendment as a reasonable means of protecting railroads outside of the Norfolk Southern-Conrail region. I ask my colleagues' support for this extremely important amendment and invite them to join as a cosponsor.

There are a number of other issues before us.

I might also say that I have joined in sponsoring another amendment with my colleague, the senior Senator from Illinois [Mr. DIXON]. This amendment involves the antitrust questions, questions that have not yet been resolved and which I mentioned earlier. When S. 638 reaches the Senate floor if cloture is invoked, we intend to offer this amendment to provide an opportunity for independent and thorough review of the antitrust issues without delaying the sale.

The amendment simply makes the sale subject to the antitrust laws and ensures that interested parties have a chance to have the issues hear in Federal court.

The current bill exempts the sale of Conrail from review by the Interstate Commerce Commission which has reviewed every other merger involving profitable railroads and it provides no opportunity for judicial review of antitrust issues.

A letter prepared by Senator Dixon and cosigned by myself and others points this out. The letter says in part:

As even the Department of Justice admits, however, the sale of Conrail to Norfolk Southern raises serious anticompetitive concerns. On January 25, 1985, then Assistant Attorney General McGrath wrote Secretary Dole that, "without appropriate divestitures, the proposed merger would violate both Clayton Act and Interstate Commerce Act merger standards. The merger would have a significant adverse effect on competition for the transport of commodities to and from a number of locations in several States."

The letter continues:

Norfolk Southern, negotiating with the Justice Department in closed sessions, has proposed three different divestiture plans in an attempt to resolve the antitrust concerns. The first plan was studied by the staff of the Interstate Commerce Commission and found to be woefully inadequate. The second plan was also quickly found wanting. Now there is yet a third plan, the details of which are still not in the public domain.

I would say before the Senate votes on this matter, we should certainly know what that antitrust plan is. We do not.

There are still real doubts as to whether the carriers scheduled to acquire lines from the proposed Conrail-Norfolk Southern combine, the very marginal Guilford and Pittsburgh and Lake Erie railroads, can provide meaningful competition. Even if they could, the current divestiture proposal still leaves unresolved many significant competition issues. If, as we believe, they cannot,

passage of S. 638 will mean that Congress has effectively endorsed creation of a monopoly.

Further, shippers and railroads that will be severely adversely affected by the sale to Norfolk Southern have been provided virtually no opportunity to have their views considered. The ordinary process of ICC review, with full information, and the ability to present and cross examine witnesses has not been utilized, even though a merger just as large as the proposed Conrail-Norfolk Southern transaction, the Santa Fe-Southern Pacific merger, is now undergoing ICC review.

I might emphasize this. The Santa Fe-Southern Pacific merger is being handled in an entirely different manner, an entirely different way. A very curious situation, indeed.

Going back to Senator DIXON's excellent letter:

Our amendment will provide affected railroads, shippers, ports, and other interested parties with the opportunity that has so far been denied them. It creates a mechanism for full, independent consideration of the antitrust issues. If Norfolk Southern's latest divestiture plan actually does resolve all antitrust problems, such a review will not delay the sale. If there are, as we believe, still major anticompetitive problems that must be resolved, this amendment provides the opportunity for creating an appropriate remedy without further Congressional action.

The Justice Department acknowledges that it does not have sufficient in-house expertise to evaluate fully the latest divestiture plan. Further, they have not yet even picked a consultant to help it evaluate the proposal, and the details of that proposal have not yet been made public.

We do not believe the Senate has the information before it that would permit it to find that the antitrust issues have been resolved. The very least the Senate should do, therefore, is to ensure that S. 638 provides for independent evaluation of the unresolved antitrust issues, and a judicial mechanism for their resolution.

We strongly urge your support for this essential amendment. The antitrust concerns raised by the proposed sale of Conrail to Norfolk Southern are far too serious to be totally exempted from administrative or judicial review.

The remarks I have just made have been taken from the letter signed by Senator DIXON, myself, and other Senators, and I think they point up the need for that amendment but also point up the need for continued consideration.

Mr. President, earlier this year I informed the chairman of the Commerce Committee that I was prepared to go forward on Conrail at a time when the Justice Department had promised that we would have an adequate written answer on the antitrust letter that I had sent. I still have not received that answer or any analysis comparable to that used in the Santa Fe/Southern Pacific case. For that reason, I feel that the word of the Justice Department and the Department of Transportation to me personally was broken. Therefore, I shall not support the cloture motion.

Mr. President, in concluding, let me say that even if the Department of Justice does not believe that the anticompetitive issues are important, I can tell you that there are many railroads in the Midwest and around the country that literally consider it to be a matter of life or death, a matter of survival or nonsurvival. It is that important if a predatory monopoly is allowed to exist. That is the way these railroads feel.

I have received numerous letters from shippers and railroads and people interested in transportation from around the country saying that we should make that point clear.

It is curious that even though some agencies do not consider it important, the affected railroads and shippers certainly do.

I recall that in some of the first Commerce Committee hearings we held on this issue, our distinguished colleague from Nebraska, Senator EXON, and I asked the Department of Transportation witnesses time and time again whether a Norfolk Southern-Conrail merger would have an adverse impact on the Midwest. The consistent answer was that it would not.

I might add with some amusement that even the materials we have received here on our desk, prepared by the Department of Transportation, state that my State of South Dakota would have no adverse impact. I say this with some amusement because I certainly get a different message from my State and the Railroads which service my State. Just the opposite feeling is held by the Chicago and North Western Railroad, as well as by short line operators, as well as by truckers, and as well as by shippers. So there is a distinct difference. And quite frankly, I tend to trust those in my State. I urge my colleagues to take a close look at the materials supplied by the Department of Transportation and compare notes with transportation officials and railroads in your own State. My guess is that you will find two very different stories in most cases.

Since the time that Senator EXON and I asked those questions in the Commerce Committee, things mysteriously have seemed to change considerably. Railroads, shippers, and labor organizations throughout the Midwest and West have come out in strong opposition to the merger of these two rail giants. In addition to the feeling in my State, a strong sentiment from Western and Midwestern States has come out in opposition to the merger because of the severe impact it would have on those States.

Mr. President, I hope the Senate would consider that while we may solve the problem of getting Conrail sold by moving forward on this bill, we will be creating a whole host of new problems unless we handle the sale correctly.

I am for the sale, if it is done right. I would be prepared to hesitatingly vote for the Morgan Stanley alternative because it promises more competition. I hope that in this legislation, as it wends its way through the House and Senate, there will be gateway and traffic diversion protections similar to the ones in the amendment that I will be offering on diversion.

I challenge the Department of Transportation to support my diversion amendment since they say no more than 2 percent of the traffic would be diverted. My amendment would not kick in until 3.5 percent is diverted.

I ask that the managers of the bill on both sides consider cosponsoring my amendment, because it falls within a safe range. It would never be used if the figures provided to us by the Department of Transportation are accurate.

I urge my colleagues to support that amendment, because it would provide competition in railroads, it would save the regional railroads; it would help truckers and other transportation modes that feed into Conrail.

Mr. President, I ask unanimous consent to submit the materials to which I earlier referred into the RECORD at this point.

The additional materials include:

First. The excellent testimony of Mr. Andrew C. Robertson of Reebie Associates. Mr. Robertson's testimony describes in some detail the differences between the Pittman methodology applied by the Department of Justice in the Sante Fe/Southern Pacific merger; and the much less rigorous analysis and methodology applied by the Department of Justice in the proposed Conrail/Norfolk Southern merger.

Second. A cover letter from Mr. Robertson which outlines his work, along with two very short but very illustrative attachments which, first, give a State-by-State snapshot of the anticompetitive impacts of this merger, and second, a summary discription of the major statistical differences between the two different Department of Justice methodologies.

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

The material follows:

TESTIMONY OF ANDREW C. ROBERTSON BEFORE THE SENATE COMMERCE COMMITTEE

My name is Andrew C. Robertson. I am employed by Reebie Associates located at 200 Railroad Avenue, Greenwich, CT 06830. I have participated in several rail merger analysis projects over the past five years including UP-MP-WP, GTW-MILW, ATSF-SP, and most recently USDOT's sale of Conrail. I have submitted testimony before the Interstate Commerce Commission on behalf of Grand Trunk Western concerning their anticipated losses to NS-CR and the viabili-

ty of NS' proposed divestitures to P&LE and GTI. I am thoroughly familiar with the marketing and antitrust issues that surround the NS-CR case.

INTRODUCTION

In March 1984, the Department of Justice (DOJ) submitted testimony before the Interstate Commerce Commission addressing the anti-competitive impacts of the proposed Santa Fe-Southern Pacific (SF-SP) railroad merger. The testimony of DOJ economist, Dr. Russell Pittman, was based on an analysis of the combined market shares of SF and SP. Reebie Associates provided market share information to Dr. Pittman. As Dr. Pittman's primary contact with our firm, I am very familiar with his methodology and analysis.

In May, Reebie Associates was asked by RBC Associates to use the Pittman-DOJ methodology to produce a comparable market share analysis of the proposed Norfolk Southern-Conrail (NS-CR) consolidation. In my testimony, I will briefly outline the Pittman-DOJ analytical approach. I will then use the market data produced by his analytical approach to support five conclusions:

1. By Dr. Pittman's standard of merger affected tons, the scope of the anti-competitive impact of NS-Conrail is much larger than that of SF-SP.

2. NS-Conrail will control many more market areas than ATSF-SP, primarily in the Northeast and Midwest.

3. Many commodities most severely impacted by NS-Conrail such as coal, iron ore, pulp and corn are not protected from rail monopolies by motor carrier competition.

4. Many NS-Conrail markets identified as problems by the Pittman-DOJ methodology are not addressed by the Pittsburgh & Lake Erie-Guilford divestiture plan.

5. The Pittman-DOJ methodology appears to differ significantly in form and substance from that used in the DOJ's evaluation of NS-Conrail.

PITTMAN-DOJ METHODOLOGY

Market definition

Dr. Pittman used Business Economic Areas (BEAs) to define geographic areas in his analysis. These areas were established by the Department of Commerce to correspond to the economic areas surrounding major centers of industrial and commercial activity. BEAs have been used extensively in every recent rail merger case.

In the Pittman-DOJ methodology commodities are defined by Standard Transportation Classification Code (STCCs) at the five digit level of detail. This level of detail is precise enough to separately identify industries that share similar transportation requirements.

Market share test

Dr. Pittman's anlaysis is designed to identify every case where intramodal competition in the rail market would be significantly affected by a merger. Dr. Pittman employed a market share screen known as the "10-10-50 Test" in his examination of the SF-SP rail merger. By this test, in the analysis of the NS-CR consolidation:

NS market share is greater than 10%
and
Conrail market share is greater than 10%
and
NS-CR combined market share is greater than 50%.

Dr. Pittman's methodology would identify as a "problem" market "problem" market a case where for a particular commodity flowing between two BEAs, NS' share of rail traffic is 25% between two BEAs, NS' share of rail traffic is 25% and Conrail's share is 40% with a combined share of 65%. As both NS *and* CR have at least 10% shares and together over 50% of the rail market, this hypothetical case would meet Dr. Pittman's standard. This rule is applied to markets defined by origin-destination traffic lanes, total inbound flows to destinations, and total outbound flows from origins.

The Pittman-DOJ methodology separately identifies these markets where either NS or CR have total control from those where NS and CR are competitive. Although, a market where a NS share of 92% is combined with a CR share of 8% would not meet the 10-10-50 test, Dr. Pittman considers these exclusively served markets to be "potential" problems.

Market shares are assigned to NS or CR if they participate in a rail movement as an origin, destination or overhead carrier. Therefore, NS would have a share of the traffic moving from N&W in Virginia to B&M in Massachusetts or by a joint FEC-SOU-GTW route.

Market share reports

In Dr. Pittman's testimony, he produced eight tables to provide different perspectives of the competitive impacts of SF-SP. I have used Dr. Pittman's exact report formats with the 1983 ICC Rail Waybill Sample and 1982 TRANSEARCH truck and barge data to reproduce the Pittman-DOJ analysis for the NS-CR case.

Six reports use the "10-10-50" Test" to identify problem markets for three geographic orientations.

By Origin-Destination Traffic Lane e.g. traffic *from* Cleveland *to* Chicago—Tables I-II.

By Destination e.g. traffic *into* Cleveland—Tables IV-V.

By Origin e.g. traffic *out of* Cleveland—Tables VI-VII.

For each of these geographic orientations, there is a separate "sort" of the data to focus on the *commodities* and *locations* most impacted by the NS-CR combination.

Dr. Pittman also designed two reports (Tables VIII-IX) to identify markets where combining railroads either alone or in combination have 100% market share.[1] These reports rank the locations and commodities dominated by NS or Conrail.

MARKET ANALYSIS

I have examined the market share reports and testimony developed by Dr. Pittman for SF-SP and the comparable market share reports created for NS-CR. My comparison of the data supports the conclusion that the NS-CR combination, by several measures of market power, is more significant than the SF-SP merger. Furthermore, the proposed divestitures to P&LE and GTI fail to address several markets that rely on NS and Conrail competition.

I have appended to this testimony, the first two pages of each of my eight market share reports (Attachment 1). I will use these reports to illustrate my analysis of the impacts of NS-CR.

Origin-destination pairs with high NS-CR shares

Tables I and II identify the origin-destination markets where NS and Conrail rail shares meet the "10-10-50 Test". Table I identifies the locations most affected by the combination. Review of the report's first two pages shows that of the twenty-six origin-destination pairs most affected by NS-CR, 12 are not addressed by the proposed P&LE-GTI divestitures. I have examined every traffic lane in Table I and have identified the origin-destination markets that cannot be served by the P&LE/GTI new lines. Of the 22.1 million affected tons in this report, only 44% can possibly be routed by the expanded P&LE/GTI systems.

In some cases, the new lines of GTI and P&LE do not serve affected market pairs e.g. Chicago to Lansing. In others, they cannot offer service that is independent of NS or CSX e.g. Ft. Wayne to Baltimore. In my analysis, I have assumed that GTI/P&LE will have access to the broad range of NS-CR shippers in their new divested markets. This is a very liberal assumption when considering the very limited scope of NS' line divestitures in key markets such as Chicago, St. Louis, and Indianapolis. The second largest impacted traffic flow—coal from Wheeling to Cleveland—will probably be unaffected by the divestitures because NS ensured that P&LE did not gain access to coal mines near Wheeling and utilities in Cleveland.

Table II identifies the commodities with the most affected tonnage when the "10-10-50 Test" is applied to origin-destination pairs. The principal affected commodities, viz. coal, grain, scrap, plastic pellets, paper and motor vehicle parts are all similar in their reliance on rail transportation. Review of the "Truck/Barge" shares show that rail has little significant intermodal competition for most of the affected commodities.[2]

Destinations with high CR/NS rail shares

Tables IV and V show the results of the application of the 10-10-50 Test to total commodity movements *into* a market area. Table IV identifies Cleveland, Evansville, Washington, Boston and Wheeling as the areas where NS and Conrail compete most vigorously for terminating traffic. In Cleveland, there are 37 affected commodities with over 10,000 tons. Intermodal competition is important (i.e. truck-barge share over 50%) for only eight of those commodities.

The GTI and P&LE divestitures do not serve the Washington and Evansville markets. It is more difficult to estimate the potential strength of GTI and P&LE in markets they do serve. Review of the "Other Rail Share" traffic terminating in Boston indicates that Guilford has limited shares for most affected commodities. GTI's weak market position in its present markets such as Boston, Philadelphia and New York and P&LE's weakness in Pittsburgh make it difficult for them to serve as an effective replacement to Conrail.

Table V identifies the commodities most affected by NS-CR control of destination traffic in key market areas. Many of the same commodities identified in the origin-destination analysis appear in this table. Table V shows that NS and CR in combination will have dominant market positions for several large commodity movements.

Combined NS-CR share (percent)

Coal into Cleveland 64

[1] Dr. Pittman's methodology makes no provision to identify markets that do not meet the "10-10-50 Test" or this 100% market control test. For example, a market where Conrail has a 90% share and NS has a 5% share would not be picked up by the Pittman-DOJ methodology.

[2] The source of barge and truck market information, TRANSEARCH, does not fully describe intermodal competition at the 5-digit STCC level of commodity definition chosen by Dr. Pittman.

Paper into Cleveland	85
Corn into Baltimore	70
Steel into Lansing	91
Plastics into Boston	63

These very high shares show the large scale of the proposed NS-CR system. They also indicate that GTI and P&LE must be able to attract a substantial amount of traffic if they are to serve as a meaningful competitive check to NS-CR.[3]

Origins with high CR-NS rail shares

Tables VI and VII show the origin markets that meet Dr. Pittman's "10-10-50 Test". The results differ from the destination markets because of the different mix of rail freight consuming and producing industries in each market and CR's and NS's access to their industries.

Table VI shows that Cleveland origin traffic will be most affected in terms of tonnage. Detroit is not served by GTI or PLE and will be highly dependent on NS-CR for traffic to the East and South. The P&LE was given very little additional trackage in Pittsburgh to complement its relatively weak market position. Both PLE and GTI serve Toledo but only via highly circuitous routes. P&LE was given enhanced access in the Wheeling and Youngstown areas. However, NS chose to retain access to every major traffic generating point on the divested lines. In sum, the new divested lines will have a limited benefit in several of the most impacted origin market areas.

Table VII shows that the NS-CR combination will eliminate intramodal competition at the origin for several rail dependent commodities. NS-CR will have over 50% shares of at least thirteen origin commodity movements of over 1,000,000 tons.

Corn from Toledo, Columbus and Lafayette, IN.

Sheet Steel from Pittsburgh, Youngstown and Cleveland.

Motor Vehicle Parts from Detroit.

Cyclic Intermediates from Houston.

Steel Pipe from Cleveland.

Soybean Cake from Champaign, IL.

Steel Bars from Celevland.

Broken Stone from Toledo.

As most of these commodities are heavily dependent on rail transportation, Conrail and NS are now the only competitive alternatives available to many "affected" shippers. To be truly competitive, P&LE and GTI's new systems will have to serve a much broader market than their traditional bases in the steel and paper industries respectively.

Origin-destination pairs served exclusively by NS-CR

The Pittman-DOJ methodology focuses in those markets where there is clear evidence of serious intramodal competition. The Department of Justice has traditionally been less concerned about instances of present monopoly control deeming them to be unaffected by a new combination of competitors. Dr. Pittman separately identified these cases in his Tables VIII and IX.

Table VIII shows the origin-destination markets currently controlled by NS and/or Conrail. Review of the first two pages of the table show that Conrail has complete control of many important rail markets. If NS acquires Conrail it would, in turn, become the monopoly carrier in many parts of the Northeast. The data also show that a combination of NS and Conrail market shares in several markets such as Cleveland to Wheeling and Toledo to Cleveland will result in the elimination of "potential" NS and CR competition. It should be noted again that the Pittman DOJ methodology only selects markets where NS-CR share is 100%. If their combined share reaches only 94% or 97%, they would be screened from Tables VIII and IX.

Table IX identifies the commodity movements now controlled by NS or Conrail. The combination of NS and Conrail monopoly markets will have the most immediate impact on the coal, stone, steel and grain industries. The combined NS-CR route structure will also include many of the important service routes for piggyback shipments as well.

COMPARISON OF NS-CR AND SF-SP MARKET IMPACTS

The comparison of the NS-CR and SF-SP rail combinations cannot be based solely on review of quantitative market share data such as that assembled by Dr. Pittman. Indeed, the Pittman methodology is not definitive as there are several other useful measures of the antitrust implications of a rail merger. There are many subjective issues differentiating NS-CR from SF-SP that cannot be portrayed in market share reports. However, the Pittman market share analysis is as comprehensive as any other presented in previous rail merger cases. A straight comparison of the NS-CR and SF-SP share data produced by the Pittman-DOJ methodology is an objective way to identify many of the differences and similarities between the two cases.

EXHIBIT 1

Origin and destination markets most affected by SF-SP merger

	Tonnage affected
Origin:	
Houston	10,800,440
San Francisco	8,427,520
Los Angeles	7,280,135
Kansas City	4,672,340
Fresno	4,054,860
Chicago	3,430,860
Seattle	2,726,530
Fort Dodge	2,559,230
Beaumont	1,641,850
Portland	1,011,870
Detroit	877,160
Phoenix	842,070
Baton Rouge	717,800
Amarillo	704,469
Dallas	583,755
Stockton	567,995
Reno	549,694
Wichita	523,525
San Antonio	470,710
Minneapolis	469,270
Denver	369,250
Davenport	338,900
Lake Charles	331,970
Missoula	323,450
Appleton	309,000
Total	54,584,653
Destination:	
Los Angeles	25,254,976
Chicago	10,127,110
Houston	8,912,315
Phoenix	3,298,410
San Francisco	2,390,440
Dallas	1,983,078
San Diego	917,550
Tyler, TX	816,670
Beaumont	793,340
New York	662,350
Oklahoma City	593,894
Boston	512,740
Fresno	492,240
Kansas City	491,370
Philadelphia	334,020
Stockton	259,750
El Paso	214,220
Amarillo	199,030
Waco	149,960
Memphis	120,790
Portland	73,795
Grand Rapids	73,270
Greenville	73,030
Minneapolis	69,140
St. Louis	65,400
Total	58,878,888

EXHIBIT 2

Origin and destination markets most affected by NS-CR merger

	Tonnage affected
Origin:	
Cleveland	9,043,977
Detroit	8,689,947
Pittsburgh	5,439,257
Toledo	5,141,018
Youngstown	2,964,961
Wheeling	2,955,790
Chicago	2,755,866
Houston	2,727,120
Columbus	2,572,180
Champaign	2,368,844
Lafayatte	1,985,998
Springfield	1,749,198
Buffalo	1,506,113
Fort Wayne	1,341,007
Rocky Mount	1,178,443
Anderson	975,415
Kokomo	964,866
Duluth	926,877
Lima	887,479
Roanoke	853,110
Charleston, WV	823,367
St. Louis	816,331
Richmond	783,157
Savannah	773,110
Memphis	746,318
Total	60,969,749
Destination:	
Cleveland	32,545,920
Evansville	9,885,115
Washington	7,996,423
Boston	4,353,400
Wheeling	3,483,650
Baltimore	3,368,495
Indianapolis	2,799,365
St. Louis	2,159,843
Lansing	2,133,579
Columbus	1,888,059
Chicago	1,498,514
Buffalo	1,345,939
Toledo	1,296,822
Pittsburgh	1,083,766
Cincinnati	1,018,272
Detroit	973,138
Champaign	748,176
Hartford	592,689
Fort Wayne	554,913
Kansas City	531,947
Harrisburg	485,690
Kokomo	381,683
Atlanta	291,134
Philadelphia	175,163
Albany	262,783
Total	81,854,478

* * * * *

[3] The impact on Eastern coal-fired utilities will be particularly severe. The reliance of 50 power plants on NS and CR competition is confirmed in a recent study for the Interstate Commerce Commission Coal Fired Utilities Dependency on Rail Carriers as a Transport Delivery Mode.

Twenty-five destination markets most impacted by NS-CR. Six market areas have over 1,000,000 affected tons in the Pittman analysis of SF-SP. The same methodology identifies fifteen NS-CR market areas with over 1,000,000 affected tons. The 25 largest NS-CR market areas have in total 81.9 million affected tons or 139% of the top 25 SF-SP destination markets.

Origins (Table VI). The comparison of Exhibits 1 and 2 for origin traffic again shows that NS-CR will have a larger impact than SF-SP in terms of affected tons. Fifteen NS-CR origin markets are greater than 1,000,000 tons; only ten SF-SP markets are at that level. NS-CR affected tonnage in the top 25 origin areas is 111.7% of the total for SF-SP's top 25 origin markets.

The map in Exhibit 3 portrays the origin and destination markets with over 1,000,000 tons affected by NS-CR or SF-SP. Clearly NS-CR's impacts are more concentrated geographically than those of SF-SP. However, many more markets are affected by NS-CR.

Exhibit 3 not reproducible for the RECORD.

Exclusively Served Markets. Table VIII in Pittman's testimony identifies the origin-destination traffic lanes that would be controlled by SF-SP. They are concentrated in the region stretching from San Francisco to El Paso.

The pattern of NS-CR controlled traffic lanes is less clear. However, there is a high concentration in the Northeast where Conrail is today the dominant carrier.

One simple comparison of the potential monopoly power of NS-CR versus SF-SP can be made. Dr. Pittman's SF-SP Table VIII has 180 pages; my NS-CR Table VIII has 335 pages.

Commodity impacts

Dr. Pittman's Tables II, V, VII, and IX examine the commodities most affected by a rail merger.

Traffic Lanes (Table II). Dr. Pittman identified two commodities with over 1,000,000 affected tons in traffic lanes were SF and SP compete: corn and plastic pellets. Coal, corn, crushed stone, and steel scrap meet that criterion in the NS-CR analysis. The traffic lane movements of coal affected by NS-CR total over 11.7 million tons, more than the total combined tonnage for the 40 largest affected commodities in Dr. Pittman's Table II.

Destinations (Table V). Exhibits 4 and 5 identify the commodities at origin or destination most severely impacted by SF-SP and NS-CR respectively. The four commodities most affected at destination by NS-CR—coal, paper, corn and sheet steel—have combined tonnage almost equal to all ten of the largest commodities affected by SF-SP at destination.

Origins (Table VII). The ten commodities most affected by NS-CR at origin have over 43 million impacted tons—over 242% larger than the comparable total for SF-SP's ten largest affected commodities. In both SF-SP and NS-CR cases, the commodities most affected by rail mergers are, not surprisingly, those most dependent on the rail mode.

Exclusively Served Markets (Table IX). Dr. Pittman's testimony identifies coal, copper ore, corn, sodium compounds and cement as the commodities most vulnerable to SF-SP control. Coal, crushed stone, piggyback traffic, iron ore and steel scrap are the commodities most vulnerable to possible NS-CR control. However, while only two SF-SP commodities have over 1,000,000 affected tons. 18 NS-CR commodities have over 1,000,000 tons.

COMPARISON OF DOJ ANALYSES OF NS-CR AND SF-SP CASES

The Department of Justice chose an analytical approach in the NS-CR case that differed markedly from that employed by Dr. Pittman in the SF-SP case. At this point, the limited documentation available from the DOJ describing their NS-CR analysis makes it impossible to fully understand every facet of their approach. As a rule, it seems that the DOJ in NS-CR used a very fine screening process in order to arrive at findings that support a divestiture recommendation. Dr. Pittman offered very few prescriptive conclusions in his testimony. Indeed, the Department of Justice has yet to make a definitive ruling on SF-SP.

The DOJ analysis of NS-CR was in every way more limiting than that used by Dr. Pittman.

The DOJ's geographic area in NS-CR was the county; Pittman used larger Business Economic Areas.

In NS-CR, DOJ analyzed only origin and destination markets, Pittman also studied origin-destination traffic lanes.

In NS-CR, DOJ screened out market areas controlled by another railroad eg. BN in eastern Montana; Pittman did not use this screen.

DOJ screened small markets (under $2 million) from consideration in NS-CR; there was no volume screen in SF-SP.

If DOJ found one major shipper supporting NS-CR, e.g. Ford Motor in Wayne County, it screened out that county; Pittman had no comparable exclusion rule.

Present NS or CR monopoly markets eg. New York City were excluded by DOJ; Pittman examined exclusively served markets separately.

An intermodal competition screen was used in NS-CR; Pittman used evidence of intermodal competition as a check but not as a screen.

EXHIBIT 4

COMMODITIES MOST AFFECTED BY SF-SP MERGER

[Tons in thousands]

At origin	Affected tons	At destination	Affected tons
Sorghum	2,534	Corn	2,028
Corn	1,816	Liquid sulphur	1,796
Beer	1,712	Fiberboard	1,762
Pulpwood	1,615	Sodium compounds	1,547
Barites	1,350	Plastics	1,417
Wine	1,079	Lumber	1,074
Glycols	700	Newsprint	1,067
Coke	641	Broken stone	928
Soybean cake	605	Beer	854
Cement	508	Sorghum	806
Top 10 total	12,560		13,279

EXHIBIT 5

COMMODITIES MOST AFFECTED BY NS-CR MERGER

[Tons in thousands]

At origin	Tons	At destination	Tons
Corn	8,378	Coal	4,114
Sheet steel	7,650	Paper	3,900
Auto parts	5,141	Corn	3,280
Steel ingots	4,765	Sheet steel	2,916
Set-up autos	4,550	Plastics	2,742
Paper	4,421	Steel scrap	2,506
Cyclic intermediates	2,138	Steel ingots	2,107
Steel pipe	2,117	Iron ore	1,994
Pulp	2,082	Auto parts	1,829
Corn syrup	1,844	Steel bars	1,630
Top 10 total	43,086		27,010

I do not have enough evidence to determine whether the DOJ's analysis of the NS-CR combination is better or worse than Pittman's SF-SP analysis. Certainly, the DOJ analysis in the NS-CR case differs radically from Dr. Pittman's. The use of counties, the $2 million volume screen, and shipper support (rather than opposition) to NS-CR has the inevitable effect of greatly reducing the scope NS-CR's anti-competitive impacts. Without additional documentation and a fuller explanation of their rationale, the analytical approach chosen by DOJ to study NS-CR remains open to question. The skepticism that surrounds the DOJ's findings on NS-CR can only be removed by a more complete explanation of the DOJ's approach and recommendations. In addition, the Department must explain why such radically different approaches were taken to analyze two rail mergers.

REEBIE ASSOCIATES,
Greenwich, CT, June 11, 1985.

Hon. LARRY PRESSLER,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR PRESSLER: Per your request, I am forwarding to you copies of the anti-competitive impact analysis reports that I developed for RBC Associates.

These reports replicate the approach taken by Dr. Russell Pittman, the Department of Justice's economist who reviewed the anti-trust implications of the Santa Fe-Southern Pacific merger (ATSF-SP). In brief, Dr. Pittman's approach analyzes market share data to identify the markets where two railroads compete today and, after consolidation, would control at least 50% of the rail market.

I have produced eight tables that analyze the combined market shares of Norfolk Southern (NS) and Conrail in several different ways. The Pittman-DOJ methodology clearly identifies the commodities, origin markets, destination markets and origin-destination markets that would be controlled by NS if it acquired Conrail.

I have examined both the ATSF-SP reports produced by the Department of Justice and the NS-Conrail reports that we produced using the Pittman-DOJ methodology. Several observations can be made:

1. When using Pittman's measurement of affected tons, the scope of the anti-competitive impact of NS-Conrail is much larger than ATSF-SP.

2. Many commodities most severely impacted by NS-Conrail such as coal, iron ore, pulp and corn, are not protected by motor carrier competition from rail monopolies.

3. NS-Conrail will control many more market areas than ATSF-SP, especially in the Northeast and Midwest.

4. Many markets identified as problems by the Pittman-DOJ methodology are not addressed by the Pittsburgh & Lake Erie-Guilford divestiture plan.

5. The results of the Pittman-DOJ methodology differ significantly in form and substance from the supporting documentation used in the DOJ's evaluation of NS-Conrail.

Please find enclosed a brief explanation of the Pittman-DOJ methodology used to prepare these reports. If I can be of any further assistance, please do not hesitate to call me.

Yours truly,

ANDREW ROBERTSON.

ATTACHMENT 3—POTENTIAL COMPETITIVE PROBLEMS MISSED BY USING DEPARTMENT OF JUSTICE'S LESS RIGOROUS METHODOLOGY

COMMODITIES MISSED BY DEPARTMENT OF JUSTICE

State	Origin tons plus destination tons	Sample products
Alabama	1,555,898	Iron or steel, tin mill products.
Arizona	86,861	Carrots.
California	106,474	Cantaloupes frozen fruit.
Connecticut	282,297	Paper waste, rough lumber.
Florida	1,105,197	Canned fruit juice.
Georgia	1,911,395	Cereal, lime, synthetic rubber.
Idaho	260,835	Potatoes, onions.
Illinois	8,180,107	Trucks/tractors, wheat bran, corn.
Indiana	16,227,267	Iron/steel, paper, copper alloys.
Iowa	35,760	Sugar, car bodies.
Kansas	113,860	Canned food.
Kentucky	371,905	Motor vehicle parts, tissue.
Louisiana	286,889	Pulp, wrapping paper.
Maine	263,143	Paper tissue, corn starch, soybean.
Maryland	3,988,769	Corn, soybean.
Massachusetts	4,245,260	Lumber, pulp, feed.
Michigan	2,635,461	Motor vehicles, pulp, beer.
Minnesota	1,047,067	Ground wood, motor vehicle parts.
Missouri	3,084,488	Motor vehicle parts.
Montana	46,440	Talc.
Nebraska	26,480	Brick/blocks.
New Mexico	18,140	Wood mouldings, aluminum/alloys.
New York	1,994,842	Fiber paper, wheat, copper alloys, paper.
North Carolina	943,130	Iron/steel, flour, tissue, saw logs.
Ohio	26,990,531	Rough lumber, beer, tires, iron/steel, corn, car parts.
Oklahoma	92,420	Gypsum plaster.
Oregon	158,193	Potatoes, doors.
Pennsylvania	7,647,959	Automobiles, beer, iron/steel, veneer.
Rhode Island	5,600	Aluminum or alloy.
South Carolina	470,423	Lime, iron/steel, truck/tractors.
South Dakota	10,200	Broken stone.
Tennessee	1,252,032	Tissue.
Texas	1,248,229	Pulp, aluminum.
Vermont	342,480	Paper waste.
Virginia	1,555,898	Plastic, sugar, feed.
Washington	292,203	Pulp, canned vegetables.
West Virginia	3,646,472	Iron/steel, coke.
Wisconsin	265,781	Motor vehicle parts, trucks/tractors, rock salt.
Wyoming	19,080	Frozen vegetables.
Washington, DC (impacts on Maryland, Virginia, West Virginia.)	8,461,175	Coal, paper, lime.

ATTACHMENT 5—MAJOR STATISTICAL DIFFERENCES BETWEEN WHAT DEPARTMENT OF JUSTICE DID IN SF/SP AND NS/CR

KEY FINDINGS

Taken together these findings make three important points:

(1) The number of commodities and locations affected by the NS/CR merger are greater than the Justice Department claims. Total problem tons are probably much greater, however, Justice has never indicated how many tons their study covers.

(2) Even assuming the so-called "divestiture" solution will work, the data demonstrates that it will solve less than one half of the competitive problems created by a NS/CR merger.

(3) The competitive problems created by NS/CR are far greater than those created by SF/SP, yet Justice spent more time studying SF/SP and used a much more rigorous analysis.

Tables I and II—Origin-destination pairs (traffic lanes)

(1) 56% of the 22.1 million problem tons identified will not be affected by the "divestiture" solution even if it works as planned.

(2) Traffic lane movements of coal affected by NS/CR total over 11.7 million tons, more than the *total combined tonnage* for the 40 largest affected commodities in SF/SP.

Tables IV and V—Destinations

(1) 6 destination markets have over 1 million problem tons in SF/SP, compared to 15 destination markets with over 1 million problem tons in NS/CR.

(2) The 25 largest NS/CR destination markets have a total of 81.9 million problem tons or 139% of the top 25 SF/SP destination markets.

(3) The four commodities most affected at destination by NS/CR—coal, paper, corn and sheet steel—have combined tonnage almost equal to all ten of the largest commodities affected by SF/SP at destination.

Tables VI and VII—Origins

(1) 10 origin markets have over 1 million problem tons in SF/SP compared to 15 origin markets with over 1 million problem tons in NS/CR.

(2) The 25 largest NS/CR origin markets have a total of 60.9 million problem tons or 111.7% of the top 25 SF/SP origin markets.

(3) The 10 commodities most affected by NS/CR at origin have over 43 million impacted tons—over 24% larger than the comparable total for SF/SP's ten largest affected commodities.

Tables VIII and IX—Monopoly control

(1) SF/SP's Table VIII has 57 pages while the NS/CR Table VIII has 335 pages.

(2) 2 SF/SP commodities have over 1 million problem tons subject to monopoly control, while NS/CR has 18 such commodities over 1 million tons.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. GLENN. Mr. President, I rise in opposition to the Senate's consideration of Conrail legislation, S. 638, at this time. I say "at this time" because I think most people would like at some time to see the Government out of the railroad business, but they want to do it in a way that is practical and fair and preserves competition. We are being asked by the proponents of a Norfolk Southern purchase of Conrail to rush to judgment without the benefit of a deliberate and thorough consideration of the anticompetitive impact of this merger by either the Justice Department or the Interstate Commerce Commission.

As my colleagues well know, a full year ago, the Department of Justice found that the acquisition of Conrail by Norfolk Southern would violate the antitrust laws and stated that divestitures must be made to provide long-term viable competition before they—Department of Justice—would approve the transaction. Upon examining Norfolk Southern's first divestiture plan, the Assistant Attorney General for Antitrust, Douglas Ginsburg, found it to be inadequate in providing long-term viable competitive service. That was a year ago.

The Department of Justice subsequently stated in its press release of November 19, 1985, that the latest divestiture plan "appears on its face to address the competitive concerns" raised by the acquisition. Very significantly, however, Assistant Attorney General Ginsburg went on to say in the fine print, so to speak,

It is appropriate for the division and an independent consultant to begin the very detailed study of the plan that will be required before I can conclusively advise the Attorney General whether the proposed divestiture addresses the competitive concerns raised by this transaction.

Mr. President, I could not agree more with the Assistant Attorney General. I believe that this type of detailed study must be completed and subjected to very careful review by the Senate Committee on the Judiciary before the Senate considers S. 638.

In addition, I am troubled by the fact that this proposed merger has bypassed all the traditional review mechanisms for railroad mergers and consequently, interested States and other parties have not had the opportunity to participate and make their views known.

I realize that the original legislation creating Conrail exempts the sale from the usual review process. But in writing that legislation, perhaps we did not thoroughly consider that the sale may be to another railroad. Since this sale is proposed to another large railroad, perhaps we should follow the thorough procedures applicable to railroad mergers and acquisitions. The abbreviated review process has cut States, shippers, and other interested parties out of the decisionmaking process. Their only opportunity to be heard has been through their congressional representatives.

My point is that we should not rush to voting on this without thoroughly considering their views. They are the ones most directly affected.

Mr. President, I do not stand alone. Prior to the Justice Department's tentative approval of the new divestiture plan, the attorney general of the State of Ohio, Anthony Celebrezze, and 15 other States' attorneys general—15 of them—publicly opposed the Norfolk Southern merger because of its wide anticompetitive impact. They had looked at it carefully from the standpoint of how it was going to affect their States.

In testimony presented before the House Judiciary Committee on October 17, 1985, Attorneys General Neil Hartigan of Illinois, LeRoy Zimmerman of Pennsylvania, and Anthony Celebrezze of Ohio described in some detail the anticompetitive impact of the proposed Norfolk Southern-Conrail merger. They pointed out the deficient procedures used by the U.S. Government in evaluating the proposed sale.

I invite my colleagues, particularly those who are former attorneys general, to review this statement carefully. I believe we have a number of former attorneys general in the Senate. Senator BINGAMAN, Senator DANFORTH—floor manager of this bill—Senator EAGLETON, Senator SLADE GORTON, Senator WARREN RUDMAN, and Senator

ROBERT STAFFORD—I believe they are all former attorneys general. I doubt very much that they would, while they were in their States acting as attorney general, have recommended as the Justice Department has done that we go ahead while they are still studying the issue before them. Yet that is what has happened in this particular situation.

The main point that the State attorneys general made when they came in and testified was that there had to be a better study and that Justice had to give their opinion—Justice and/or the Interstate Commerce Commission.

They were concerned about something else. They were concerned that consideration of this merger was being made on a different basis from consideration of other mergers and other business transactions, that those procedures were being bypassed.

Subsequent to the release of Norfolk Southern's final divestiture plan, those 16 attorneys general plus 8 more attorneys general have expressed their opposition to the Senate's consideration of the merger at this premature time. And they make a special point of that. They do not say that they are against a merger into the indefinite future; they say we do not know enough about it to make that long-reaching decision at this time. So they say it is premature. Indeed, Mr. President, in a December 2, 1985, letter to our distinguished majority leader and minority leader, the 22 attorneys general wrote:

> The Department of Justice repeatedly has found that the merger would violate both the Clayton Antitrust Act and the Interstate Commerce Act. A determination of whether the latest—November 19—in a series of three proposed divestiture plans ameliorate these anticompetitive consequences can only be determined after careful study and review by the affected States and the Department's independent consultant.

This is still part of the quote:

> Even the Department of Justice's Antitrust Division has declined to give its unequivocal approval of the sale until after its independent consultant has completed its own study of Norfolk Southern's third divestiture plan.

That is very clear, Mr. President. The attorneys general urge that the Senate postpone floor consideration until after this independent consultant's investigation is completed and until interested States and their parties have an opportunity to study the latest divestiture proposal and comment on it. That is just the height of common sense, it seems to me, that we do exactly that.

I ask unanimous consent that the December 2, 1985, letter be printed in the RECORD in its entirety at the conclusion of my remarks.

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

[See exhibit 1.]

Mr. GLENN. Mr. President, I agree with the attorneys general. I want to point out what my distinguished colleague from Pennsylvania [Mr. SPECTER] reported to us yesterday. The Department of Justice has not even hired their independent consultant yet. I repeat that: The Department of Justice has not even hired their independent consultant yet. I invite my colleagues to read yesterday's RECORD, where Senator SPECTER included a January 21, 1986, letter to him from the Assistant Attorney General Ginsburg.

Mr. Ginsburg reported that the divestiture plan has been given to all affected States, but I doubt that they have had time to review and comment on it. Mr. Ginsburg also reports that information was only requested on January 8 from Guilford [GTI] and the Pittsburgh & Lake Erie [P&LE] Railroads—information about employment, financing, and equipment that is crucial for the detailed study of the final divestiture plan. So the Department of Justice does not have all the information it needs to approve this sale and yet, Mr. President, they tell the U.S. Senate it should go ahead and approve it. What kind of governmental nonsense is that?

Mr. President, I am particularly concerned about the impact of this proposal in my home State of Ohio. In September, the Ohio Department of Transportation released a report that went into great detail on the impact of the pending Conrail sale on Ohio's freight rail transportation system and its economy. Ohio would be particularly affected because the overlap in rail service currently provided by Conrail and Norfolk Southern is greater than in any other State. I repeat, if this legislation passes and the merger is completed, Ohio would be more affected than any other State in the Union so we are very concerned about this. That is the reason Ohio went ahead and did a separate study—to make sure that we knew how this was going to impact on Ohio.

The Department of Justice identified what they considered problem markets where competition would be most seriously affected. Half of these markets are located in Ohio. However, the study identified additional Ohio markets that are vulnerable to anticompetitive effects of the merger. These concerns were not addressed to Ohio's satisfaction by the divestiture plans submitted to the Department of Justice.

Mr. President, shippers throughout the country are also expressing concern about the anticompetitive impact of a Norfolk Southern takeover of Conrail. For example, last November 22 the National Industrial Transportation League, which directly or indirectly controls the routing of approximately 80 percent of the Nation's commerce, endorsed a public sale of Conrail and stated in a letter to all Members of the Senate that the current proposal to sell Conrail to Norfolk Southern Corporation did not meet its criteria.

I ask unanimous consent that a letter of December 3, 1985, from the National Industrial Transportation League be included in the RECORD following the conclusion of my remarks.

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

[See exhibit 2.]

Mr. GLENN. Mr. President, in my home State of Ohio many shippers actively oppose the merger with Norfolk Southern just because of its anticompetitive impacts. These include such firms as: Buckeye Industrial Mining Co. of Lisbon; Carpentertown Coal & Coke Co. of Medina; CITGO Petroleum Corp.; Early & Daniel Co. of Cincinnati; J.G.H. & Associates of Maineville; M.A. Hanna Co. of Cleveland; National Refractories & Minerals, Inc. of Columbiana; Ohio Mining & Reclamation Association of Columbus; Procter & Gamble of Cincinnati; Rail-Van Consolidated of Worthington; and RBS, Inc. of Cincinnati. As days go by, we hear more and more from these other Ohio companies.

Mr. President, the input I have received from Ohio and other States, businesses and other interested parties underscores a serious concern that I have with this proposal. The procedures employed for this proposal differ significantly from the rigorous scrutiny traditionally employed for rail mergers. The only formal scrutiny of the current proposal has been a study by the Department of Justice, and as explained in the attorneys general's letter this review did not use the most accurate and generally accepted method of describing geographic competition. It was inconsistent with the standard analyses employed by the Department in other rail merger cases.

Consequently, the Department's report may significantly understate the anticompetitive effects of the merger. That is particularly valid in Ohio, probably the State most affected by the Norfolk Southern purchase of Conrail.

Mr. President, there is another aspect I would like to use as an example of why the Department of Justice review is inadequate. It is crucial that the Department of Justice thoroughly review the Conrail sale to ensure effective competition, but I would point out the success of the sale depends on the ability of two smaller railroads, Guilford Transportation Industries [GTI], and the Pittsburgh & Lake Erie Railroad, to provide viable competition. Yet grave doubts remain about the financial ability of the Guilford and PL&E to acquire the divested Norfolk Southern lines and effectively compete

with a Norfolk Southern-Conrail giant.

I must take this opportunity to compare the situation to the Department of Justice's recent handling of the LTV-Republic Steel merger. As a condition of the merger, the Department of Justice insisted that LTV sell off its Enduro plant at Massillon, OH, with some 700 employees, in order to maintain competition in the steel industry. The Department approved the purchase of Enduro to an undercapitalized buyer and now there is less competition because the plant is closed, the workers are unemployed. How is that for competition under the guidance and leadership of the Department of Justice?

Mr. President, I would refer to an article in the January 30, 1986 edition of Business Week called "LTV-Republic: Did Justice Blow It?"

I ask unanimous consent that that article be printed in its entirety at the conclusion of my remarks.

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

[See exhibit 3.]

Mr. GLENN. Mr. President, we are on the threshold of rushing to approve a merger, the impact of which we are only beginning to identify and appreciate. We do not have a pressing deadline. We certainly do not have an emergency which compels us to rush this legislation through the Senate. What is the hurry, I would ask? Things have been going along well. If we had all the information, I might be leading the charge here along with the distinguished Senator from Missouri to say that we will get the Government out of the railroad business. But here we have the Department of Justice, which has not even completed the analysis that they wish to make with an outside consultant before they even are willing to make the recommendation to the Attorney General of the United States, in the same letter saying they recommend the Senate go ahead with its action.

Now, what kind of topsy-turvy nonsense is that? Is that the way to set up a railroad system that is going to affect the long-term aspects of commerce and shipping in the United States? The point is we do not have a pressing deadline. We do not have an emergency which compels us to rush this legislation through the Senate. We must stop what may in retrospect come to be viewed as an irresponsible approval of the largest railroad combination in the Nation.

The magnitude of the anticompetitive problems which have been identified and the complexity of the analysis required to review this merger demands careful and thoughtful review by experts at the Justice Department, the Interstate Commerce Commission, and by our own Judiciary and Commerce Committees before consideration by the Senate. To do less would be abdicating our legislative responsibilities. So I certainly urge my colleagues to postpone consideration of this legislation.

Mr. President, as I went through my comments, I referred to several other references, and I would like to go back and refer to some of them again.

I talked earlier about the reports that the attorneys general made when they came to Washington and what they proposed before the House committee. Sixteen attorneys general came from States around this Nation—not all of them just in the East, not all of them in the area primarily affected. They came from as far away as Nebraska, Minnesota, and North Dakota, as well as a majority of the Eastern States that would be directly affected by this legislation.

I will read just a few excerpts from the report they made. They talked about the merger's magnitude. They said:

The proposed sale of Conrail by the Department of Transportation to the Norfolk Southern Corporation is of unprecedented magnitude. It will create the nation's largest railroad, with 32,000 miles of tracks extending through 23 states. It will eliminate head-to-head competition between the Norfolk Southern and Conrail throughout many of our states. It will have a devastating effect on the Midwest, the Northeast, and the South.

That is a direct quotation. These are 16 of our State attorneys general.

The second item they took up was on antitrust immunity, and I quote from that section:

The proposal is unprecedented in another way. The authorizing legislation would immunize the merger from the antitrust laws, despite the fact that the merger will create a "mega-carrier" with devastating impact on railroad competition in the Eastern and Midwestern regions of our country.

The Department of Transportation's proposed legislation would shortcircuit all the hearing and review procedures that the Congress has carefully built into the Interstate Commerce Act (Chapter 13 of Title 49, U.S.C.) to assure that rail mergers do not violate fundamental antitrust principles. Under current law, all proposed rail mergers are subjected to a full-scale adjudicatory hearing, where interested parties have an opportunity to present evidence and to cross-examine the proponents of the merger. A complete hearing record is compiled upon which the ICC must base its decision to approve or disapprove the proposed transaction. As an added safeguard, the ICC's decision is subject to judicial review.

None of these protections will apply in this case. Instead, the proposed legislation would confer absolute antitrust immunity upon both Norfolk Southern's purchase of Conrail and Norfolk Southern's future operation of Conrail as part of the giant Norfolk Southern system.

Mr. Chairman, there is no emergency or pressing national need which justifies such a drastic and unprecedented proposal.

I am still quoting from the report. I will repeat the last sentence:

Mr. Chairman, there is no emergency or pressing national need which justifies such a drastic and unprecedented proposal. Conrail is not a failing company that can only be saved by a sale to a major competitor. To the contrary, Conrail is a thriving, profitable carrier. By the end of 1985, Conrail will have had five consecutive profitable years. Conrail had a net income of $210 million for the first six months of this year and expects to have $995 million in cash on hand at the end of the year. A study by the independent U.S. Railway Association concludes that there is every reason to expect Conrail's record of profitability to continue.

It is clear that a transaction of this scope and magnitude merits closer scrutiny than the Norfolk Southern-Conrail merger has received to date. This Subcommittee's efforts have been highly successful in illuminating many of the heretofore unnoticed competitive problems with the proposed merger. However, the limitations inherent in the hearing process prevent it from fully replacing the rigorous analysis and judicial review which railroad mergers historically have received.

The Federal Government "bailed out" the bankrupt Penn-Central and other Northeastern railroads and created a viable Northeastern railroad system under the aegis of Conrail. Congressional approval of a Conrail-Norfolk Southern merger without an appropriate ICC evidentiary hearing would be the equivalent of legislatively sanctioning the acquisition of Chrysler by General Motors or of Lockheed by General Electric after the Federal Government's loans and guarantees resulted in the successful rehabilitation of these companies.

Secretary Dole's objective to see Conrail transferred to the private sector is commendable and one which we endorse. Such a laudable goal alone does not, however, justify a sale that will have enormous anticompetitive impacts in violation of basic antitrust principles.

In contrast to the rigorous scrutiny to which rail mergers are traditionally subjected, the only formal scrutiny of the current proposal has been a cursory study by the Department of Justice. This review did not use the most accurate and generally accepted method of describing geographic competition, and it was inconsistent with the standard analyses used by the Department in other rail merger cases. Consequently, the Department's report significantly understates the anticompetitive effects of the merger.

Mr. President, all that is a quotation from the testimony that was given by the attorneys general when they were before the congressional committee in the House.

I go to a third area of concern in the report of the attorneys general. They talk in their testimony about deficiencies in the analysis of the Department of Justice. I quote from that portion of their testimony:

The Antitrust Division of the Department of Justice concluded, based on a superficial analysis, that "the proposed [Norfolk Southern-Conrail] merger would violate both Clayton and Interstate Commerce Act merger review standards." (January 29, 1985 letter from J. Paul McGrath to the Secretary of Transportation.) Assistant Attorney General McGrath further noted that "the merger would have a significant adverse effect on competition for the transport of

commodities to and from a number of locations in several states, with the greatest adverse effect occurring at locations along an east-west rail corridor running between Buffalo and Pittsburgh in the east and St. Louis and Chicago in the west."

As significant as those findings, are, it is clear that the Justice Department seriously understated the likely impact of a Norfolk Southern-Conrail merger. In its January 29, 1985 letter to Secretary Dole, the Antitrust Division identified only 10 counties—five in Ohio, two in Michigan, two in Indiana, and one in New York—that would suffer effects from the proposed Norfolk Southern-Conrail merger so adverse as to warrant the government's opposition to the transaction on antitrust grounds. Separate analyses by competing railroads throughout the country have identified substantially more. For example, one study identified 53 Business Economic Area (BEA) pairs that under the formula traditionally used by the Department would be considered "highly concentrated markets" where the merger would be likely to "substantially lessen competition."

This disparity is a result of several deficiencies in the Antitrust Division's analysis. First, the Antitrust Division, without explanation, made no use of the Herfindahl-Hirschman Index ("HHI") in this case. The HHI, of course, is a formula used to measure the degree of concentration of a particular market. It was endorsed by the Department in both the 1982 and 1984 Merger Guidelines, and has been consistently used by the Department in analyzing the competitive effects of proposed mergers. In its Norfolk Southern-Conrail analysis, however, the Department employed a "50-10" test, whereby it examined only those geographic markets where (1) each of Norfolk Southern and Conrail currently has at least 10% of the rail transportation on movements in or out of the market, and (2) the railroads together have 50% or more of such traffic.

The exclusive use of the "50-10" test fails to recognize a substantial number of market areas which would be significantly affected by the proposed combination, since the "50-10" test would ignore all markets in which either Norfolk Southern or Conrail does not have a 10% share, regardless of the share of the other party.

So the report made by the attorneys general when they were before the House committee listed those basic three areas of disagreement. I ask unanimous consent that the report be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is ordered.

(See exhibit 4.)

Mr. GLENN. Mr. President, I should like to go on with a few excerpts from the Ohio Department of Transportation report.

Probably, from what I have seen so far, I believe that the State of Ohio, expressing its very deep concern about the impact that this proposed legislation would have on our State, has commissioned what turned out to be the most detailed study, as far as I know, that any State has conducted with regard to this merger.

I would just excerpt a few things from the Ohio Department of Transportation report, because it is almost like a book it is so complete; so I would not want to either put the whole thing in the RECORD nor would I want to try to read it here today. It would take more than a day just to read it into the RECORD. Let me read some excerpts from that report.

On the negative side, the sale of Conrail to NS could adversely affect Ohio's transportation system and its economy in the following ways:

The reduction in competition could result in higher rates and lower service quality for Ohio shippers.

A combined NS/Conrail, without accounting for divestiture or traffic diversion, would have considerable market control in Ohio: about 64 percent of the route miles in Ohio would be owned by NS/Conrail; 45 percent of all rail stations would be served only by NS/Conrail; 58 percent of all rail shipments from Ohio would be originated by NS/Conrail; and 48 percent of all rail shipments to Ohio would be terminated by NS/Conrail. Though 8 counties in Ohio have been identified by the department of Justice as particularly vulnerable to anticompetitive effects of an NS/Conrail merger, reduced competition in 10 other counties also is of concern.

Consolidation of redundant yards, terminals, and operating lines would result in elimination of positions. NS projects 801 positions will be eliminated in Ohio associated with abandonments and consolidations.

The diversion of traffic from CSX and Grand Trunk Western to NS/Conrail would contribute to reduced service, line abandonments and employment layoffs by CSX (Chessie) and Grand Trunk.

CSX Corporation, owner of Chessie System, Ohio's other major carrier, projects reduced service, line abandonments and an immediate loss of 900 Chessie jobs in Ohio, primarily the result of NS/Conrail's ability to shut CSX out of current joint movements with Conrail. Grand Trunk projects a 10 percent loss in business, which could cause abandonments and service reductions in Ohio. NS places potential revenue losses at 90 percent below CSX's projections and 60 percent below Grand Trunk's projections.

Mr. President, that is just one part of the Ohio report. I will not go ahead reading more into this. Obviously, we need to take a long, long look at this proposed legislation before we pass it. One of the things that I come back to, one of the major points I would like to make, is that the Justice Department itself, charged with looking into the competitive aspects of this merger, charged with looking into the maintenance of competition, has refused to say exactly what they think about this until they do further study. And they have said this in a letter as recently as yesterday, which Senator SPECTER read into the RECORD yesterday. Yet they recommend that the Senate go ahead and make its determination as to whether this merger should take place.

I repeat what I started out with, that I am not against getting the Government out of the railroad business. I am not against it in any way. I think most Members of this body feel the same way. But to rush into this thing without doing the studies required to see what anticompetitive impact this will or will not have, and when the Justice Department has not completed their findings on this, we are moving to consider something that is going to have a major impact on the United States of America, on our transportation system, and one that will be a long time in existence. So what we do, we better do very carefully.

I see no big rush to judgment on this. I am not trying to put it off forever. But the Justice Department, in the letter that they sent over yesterday and which Senator SPECTER put in the RECORD, indicated that they could probably have their research done and make their conclusions this spring. Let me quote that part of the letter directly. It says:

> We hope to complete the process and make a recommendation to the Attorney General by late March or early April about whether the new divestiture proposal will do in fact what it appears to do on its face—provide long-term viable and competitive rail service to the areas identified in our January 29 and March 26, 1985 letters to Secretary Dole.

Mr. President, there is absolutely no reason why we should consider this legislation before the Attorney General of the United States is able to give us his best judgment and that of his Department on what the antitrust provisions of this legislation are likely to be. So I am very much opposed to this legislation going through at this time—I repeat, just at this time. I am not against considering it later or once they made their recommendations, but right now we are rushing to judgment on something that we do not know what the impact on it will be. And I do not want to see the U.S. Senate proceed on that basis.

Mr. President, I yield the floor.

EXHIBIT 1

December 2, 1985.

Hon. ROBERT DOLE,
Majority Leader, Senate, Washington, DC.
Hon. ROBERT C. BYRD,
Minority Leader, Senate, Washington, DC.

DEAR SENATORS DOLE AND BYRD: Pending before the Senate is S. 638, a bill which would authorize the sale of Conrail to Norfolk Southern and thus create the nation's largest railroad with 32,000 track miles extending through 23 states. The proposed legislation would immunize the merger from the antitrust laws and would eliminate the usual and customary review of the merger by the Interstate Commerce Commission and the courts.

We urge you to defer floor consideration of this legislation until after the Department of Justice's independent consultant has completed its study of the antitrust implications of the sale and Norfolk Southern's latest divestiture proposal, and until interested States and other parties have had an opportunity to study the latest proposal and testify with respect to the proposal and the report of the Department's independent consultant.

On October 17, 1985, sixteen State Attorneys General submitted Joint Comments to the House Judiciary Committee's Subcommittee on Monopolies and Commercial Law opposing the Norfolk Southern proposal on

antitrust grounds.[1] The proposed sale clearly will have a profound impact on our national rail system, and on shippers, receivers and consumers throughout the country.

The Department of Justice repeatedly has found that the merger would violate both the Clayton Antitrust Act and the Interstate Commerce Act. A determination of whether the latest (November 19) in a series of three proposed divestiture plans ameliorates these anticompetitive consequences can only be determined after careful study and review by the affected states and the Department's independent consultant. Even the Department of Justice's Antitrust Division has declined to give its unequivocal approval of the sale until after its independent consultant has completed its own study of Norfolk Southern's third divestiture plan.

We support the goal of the Administration and the Congress that Conrail be returned to the private sector. There is no pressing national need, however, to justify restructuring our nation's rail system and immunizing the largest railroad merger in the United States from the usual and customary process less than one month after a complex divestiture plan is proposed and before that plan can be evaluated by the affected states and the independent consultant retained for that purpose by the Department of Justice.

Thank you for your consideration of these views.

Very truly yours,

NEIL F. HARTIGAN,
Attorney General of Illinois and
21 State Attorneys General Cosigning.

EXHIBIT 2

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE,
Washington, DC, December 3, 1985.

MEMBERS,
U.S. Senate, Washington, DC.

DEAR SENATOR: The National Industrial Transportation League would like to take this opportunity to inform you about its members' recent policy actions on the disposition of Conrail.

The League is a voluntary organization of shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with the purchasing of transportation services. It is the only way nationwide organization representing shippers of all sizes and commodities using all modes of transportation to move their goods in interstate and international commerce. Its members, directly or indirectly, are responsible for the routing of about 80% of the nation's commerce.

The League has long been concerned about assuring adequate rail service to, from, and within the northeast and midwest. It has played an active role in the creation of Conrail as well as in helping to provide the mechanisms to assure the railroad's return to the private sector. It has provided its members and the shipping public with extensive educational opportunities to explore the ramifications of the various purchase offers reviewed by the Department of Transportation, Department of Justice, Congress, and others. It has acted as a clearinghouse to provide the shipping public with reliable information about the current transfer process.

While Congress intended in the Northeast Rail Service Act to expedite Conrail's return to the private sector, its circumvention of the Interstate Commerce Commission's traditional review process has left shippers and regional carriers without the degree of input to address critical operational issues they normally would have in major merger or consolidation proceedings.

League members strongly believe that competition is the key to creating a national rail transportation system which meets the nation's present and future commercial and defense needs. In fact, at its recent annual meeting, held November 19 to 21, the membership adopted the following merger policy:

"B-18. Railroad Mergers. The League supports the attachment of reasonable conditions to ICC approval of railroad merger applications that would retain and/or enhance competition through: (1) direct physical access by competitive carriers to industrial facilities affected by a merger or mutually accepted reciprocal switching charges; (2) grants of trackage rights; and, (3) required maintenance of, or opening of, economically viable interchange points."

Based on this concern with competition, the members also adopted the following position on Conrail's return to the private sector:

"The League supports a public sale of Conrail to enhance competition, maintain service, and develop the financial viability of the railroads in the northeast."

League members do not believe that the current proposal to sell Conrail to the Norfolk Southern Corporation meets these criteria. They would urge your serious consideration of their recent actions as a means of resolving the current stalemate facing the shipping community.

The League looks forward to working with you and your staff on this important national policy issue. If you have any questions or wish to discuss the matter further, please do not hesitate to contact my office.

Sincerely,

JAMES E. BARTLEY,
Executive Vice President

EXHIBIT 3

[From Business Week, January 1986]

LTV-REPUBLIC: DID JUSTICE BLOW IT?

(By Zachary Schiller)

The scene is familiar in the Midwest: Another steel mill in another steel town is silent. Outside, jobless workers are circulating a petition demanding the reopening of their plant. But Enduro Stainless Inc., in Massillon, Ohio, is no ordinary industry casualty. Just last year it was a money-making stainless steel operation with a well-known name. Then the lawyers arrived.

The Massillon plant was part of Republic Steel Corp. when Republic and LTV Corp. merged in 1984. In a whirl of controversy over the deal, the Justice Dept.'s Antitrust Div. approved the merger on the condition that LTV sell off Enduro and another plant in Gadsden, Ala. Spinning off the plants, the antitrust lawyers reasoned, was the best way to maintain competition in the steel industry. Instead, the antitrusters may have sealed the fate of the plant by approving its purchase by an undercapitalized buyer.

FLIP-FLOP

None of the theories about antitrust law sounds very convincing in Massillon these days. Enduro isn't contributing much to competition anymore. And the Antitrust Div. is fending off criticism that it bungled the most closely watched merger of the Reagan Administration. The criticism comes from all sides of the debate now raging in Washington over antitrust policy. Hard-core antitrusters are saying the spinoff problems and LTV's own precarious finances support their contention that the LTV-Republic merger should never have been approved. Others, such as Commerce Secretary Malcolm Baldrige, say it is folly to force companies to sell off assets to make mergers work.

The Republic-LTV marriage caused problems in Washington from the start. Shortly after it was announced, the Assistant Attorney General then in charge of the Antitrust Div., J. Paul McGrath, said the deal violated antitrust rules. Within weeks he had been publicly second-guessed by Baldrige and the President, who declared the deal an example of one that should not be blocked. Within weeks, McGrath reversed himself.

Justice staffers say the pressure to move the deal along didn't end once McGrath had approved the merger. It continued while the division reviewed the potential buyers for the two plants set for divestiture. Some industry sources say the buyer for the Massillon plant that Justice eventually approved, a company controlled by investor Robert Newstat, was a bad choice from the start. At the time, Newstat owned CDH Metals Inc., a major metals distribution company. Just after acquiring Enduro, Newstat sold CDH, and a few weeks later it filed for Chapter 11 bankruptcy reorganization. An LTV controller recently said in a legal filing that Newstat's company "never had the financial capability to effectively compete in the first place." What's more, some steel executives say Newstat's financial difficulties were well known. His problems with Enduro, says one industry source, "should have been foreseen, given his track record of the last several years."

Some antitrust staffers agree that McGrath overlooked some red flags. In approving the sale, in fact, McGrath overruled a staff recommendation against it. "The staff believed the financial problems of Newstat and his group were more serious than the people above us believed," says Eric F. Kaplan, who worked on the case until he left Justice last year. McGrath, who returned to private law practice early this year, says he doesn't remember much about the Newstat purchase but says he may have overruled his staff.

Once Newstat gained control of Enduro, he got into a bitter dispute with LTV that has both sides in federal court wrangling over a complex agreement under which LTV is to supply Enduro with raw materials. Newstat's lawyers say LTV charged too much and delivered poor quality steel. LTV admits it eventually stopped supplying Endura with steel entirely but says it did so

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[1] The Joint Comments were submitted on behalf of the following Attorneys General: Charles M. Oberly (Delaware), Neil F. Hartigan (Illinois), Thomas J. Miller (Iowa), Robert T. Stephan (Kansas), David L. Armstrong (Kentucky), William J. Guste, Jr. (Lousisana), Stephen H. Sachs (Maryland), Hubert H. Humphrey, III (Minnesota), Robert M. Spire (Nebraska), Stephen E. Merrill (New Hampshire), Nicholas Spaeth (North Dakota), Anothory J. Celebrezze, Jr. (Ohio), LeRoy S. Zimmerman (Pennsylvania), Arlene Violet (Rhode Island), Charlie Brown (West Virginia) and Bronson C. LaFollette (Wisconsin). A copy of the Joint Comments filed with the House Judiciary Committee's Subcommittee on Monopolies and Commercial Law is enclosed. Subsequent to the House Subcommittee hearing, Francis X. Bellotti, Attorney General of Massachusetts, submitted to the Subcommittee his written Comment in Opposition to the Proposed Sale of Conrail to Norfolk Southern. A copy of Attorney General Bellotti's Comment is also enclosed.

only after Newstat had piled up more than $21 million in unpaid bills.

COLD COMFORT

In late November, Endura laid off its 700-person work force, blaming LTV for its problems. But Ken D. Saltz, president of the United Steelworkers' local in Massillon, places much of the blame on the Antitrust Div. Says Saltz: "We're outraged at the sale being allowed. . . . We took their word for it, and a lot of our benefits and livelihood are dependent on that."

It isn't much comfort to Saltz's members, but the Endura workers aren't the only ones whose lives have been changed by the LTV-Republic merger. On Dec. 13 a federal judge turned down an 11th-hour bid from an employee stock-ownership plan for the Gadsden plant that had Justice's lukewarm backing. Then the judge approved Justice's original choice for Gadsden: Akron-based Brenlin Group, which operates 14 metal-bending companies with sales of $240 million. Brenlin's chief executive, David L. Brennan, plans to get the financially troubled operation into the black by having LTV lay off the entire 2,000-person work force. Then he would reopen the plant the next day as a nonunion shop and slash the steelworkers' wages by $6 an hour. A strike is likely. If one does materialize, it will be just one more addition to the sad legacy of the LTV-Republic merger.

EXHIBIT 4

JOINT COMMENTS OF THE ATTORNEYS GENERAL OF THE STATES OF ILLINOIS, DELAWARE, IOWA, KANSAS, KENTUCKY, LOUISIANA, MARYLAND, MINNESOTA, NEBRASKA, NEW HAMPSHIRE, NORTH DAKOTA, OHIO, PENNSYLVANIA, RHODE ISLAND, WEST VIRGINIA, AND WISCONSIN

Mr. Chairman and members of the Subcommittee, I am Neil Hartigan, Attorney General of the State of Illinois. I am accompanied today by my colleagues LeRoy Zimmerman of Pennsylvania, and Anthony J. Celebrezze, Jr. of Ohio. We are also presenting the views of the following Attorneys General: Charles M. Oberly (Delaware), Thomas J. Miller (Iowa), Robert T. Stephan (Kansas), David L. Armstrong (Kentucky), William J. Guste, Jr. (Louisiana), Stephen H. Sachs (Maryland), Hubert H. Humphrey, III (Minnesota), Robert M. Spire (Nebraska), Stephen E. Merrill (New Hampshire), Nicholas Spaeth (North Dakota), Arlene Violet (Rhode Island), Charlie Brown (West Virginia) and Bronson C. LaFollette (Wisconsin).

They share our belief that the proposed Norfolk Southern-Conrail merger is (1) anticompetitive; and (2) unnecessary to the return of Conrail to the private sector; and that it would (3) result in a radical restructuring of the American railroad industry; and (4) cause substantial economic harm to our states; (5) would not be sanctioned by the ICC if presented for approval as required for all other railroad mergers; and should not be (6) immunized from the antitrust laws.

At the conclusion of our joint remarks, I will address the specific anticompetitive harm to Illinois, General Zimmerman will discuss the specific adverse effects on the Northeast and Pennsylvania, and General Celebrezze will comment on the effects on Ohio. We are also submitting for the record a statement of Louisiana Attorney General William Guste detailing the impact in Louisiana.

We commend this Subcommittee for conducting this series of hearings to specifically examine the antitrust issues involved with the proposed merger. As the chief antitrust enforcement officers in our respective states, my colleagues and I share this Subcommittee's profound respect for our free enterprise system and the benefits conferred by a competitive marketplace.

We are here today, Mr. Chairman, to urge the Congress to reject the extraordinary and unnecessary proposed legislation to permit the largest railroad combination in American history.

I. MERGER'S MAGNITUDE

The proposed sale of Conrail by the Department of Transportation to the Norfolk Southern Corporation is of unprecedented magnitude. It will create the nation's largest railroad, with 32,000 miles of tracks extending through 23 states. It will eliminate head-to-head competition between the Norfolk Southern and Conrail throughout many of our states. It will have a devastating effect on the Midwest, the Northeast, and the South.

II. ANTITRUST IMMUNITY

The proposal is unprecedented in another way. The authorizing legislation would immunize the merger from the antitrust laws, despite the fact that the merger will create a "mega-carrier" with devastating impact on railroad competition in the Eastern and Midwestern regions of our country.

The Department of Transportation's proposed legislation would shortcircuit all the hearing and review procedures that the Congress has carefully built into the Interstate Commerce Act (Chapter 13 of Title 49, U.S.C.) to assure that rail mergers do not violate fundamental antitrust principles. Under current law, all proposed rail mergers are subjected to a full-scale adjudicatory hearing, where interested parties have an opportunity to present evidence and to cross-examine the proponents of the merger. A complete hearing record is compiled upon which the ICC must base its decision to approve or disapprove the proposed transaction. As an added safeguard, the ICC's decision is subject to judicial review.

None of these protections will apply in this case. Instead, the proposed legislation would confer absolute antitrust immunity upon both Norfolk Southern's purchase of Conrail and Norfolk Southern's future operation of Conrail as part of the giant Norfolk Southern system.

Mr. Chairman, there is no emergency or pressing national need which justifies such a drastic and unprecedented proposal. Conrail is not a failing company that can only be saved by a sale to a major competitor. To the contrary, Conrail is a thriving, profitable carrier. By the end of 1985, Conrail will have had five consecutive profitable years. Conrail had a net income of $210 million for the first six months of this year and expects to have $995 million in cash on hand at the end of the year. A study by the independent U.S. Railway Association concludes that there is every reason to expect Conrail's record of profitability to continue.

It is clear that a transaction of this scope and magnitude merits closer scrutiny than the Norfolk Southern-Conrail merger has received to date. This Subcommittee's efforts have been highly successful in illuminating many of the heretofore unnoticed competitive problems with the proposed merger. However, the limitations inherent in the hearing process prevent it from fully replacing the rigorous analysis and judicial review which railroad mergers historically have received.

The Federal Government "bailed out" the bankrupt Penn-Central and other Northeastern railroads and created a viable Northeastern railroad system under the aegis of Conrail. Congressional approval of a Conrail-Norfolk Southern merger without an appropriate ICC evidentiary hearing would be the equivalent of legislatively sanctioning the acquisition of Chrysler by General Motors or of Lockheed by General Electric after the Federal Government's loans and guarantees resulted in the successful rehabilitation of these companies.

Secretary Dole's objective to see Conrail transferred to the private sector is commendable and one which we endorse. Such a laudable goal alone does not, however, justify a sale that will have enormous anticompetitive impacts in violation of basic antitrust principles.

In contrast to the rigorous scrutiny to which rail mergers are traditionally subjected, the only formal scrutiny of the current proposal has been a cursory study by the Department of Justice. This review did not use the most accurate and generally accepted method of describing geographic competition, and it was inconsistent with the standard analyses used by the Department in other rail merger cases. Consequently, the Department's report significantly understates the anticompetitive effects of the merger.

Even so, the Department concluded that a Norfolk Southern-Conrail merger would violate both the Clayton and Interstate Commerce Acts without proper divestitures. But, as we discuss later, the divestitures proposed thus far—to Guilford Transportation and the P&LE Railroad—are completely inadequate.

A sale of Conrail to Norfolk Southern would constitute a radical and unnecessary departure from the long-term approach established by Congress to replace regulation with competition in the railroad industry. For example, the Staggers Act, 49 U.S.C. § 10101a (1985), states a congressional policy "to allow, to the maximum extent possible, competition and demand for services to establish reasonable rates for transportation by rail. . . ." Congress reaffirmed this policy in enacting the legislation which provides for the sale of Conrail as a single entity. The preservation of rail competition was a fundamental objective of the Regional Rail Reorganization Act of 1973, the Railroad Revitalization and Regulatory Reform Act of 1976, and the Northeast Rail Service Act of 1981. The House Report accompanying the Northeast Rail Service Act, 45 U.S.C. § 761 et seq. (1981), states:

"A balanced and competitive transportation system is essential to the entire country, and in selling the assets of Conrail the Secretary must not harm the delicate and competitive balance of the transportation systems of the country." H.R. Rep. No. 153, 97th Cong., 1st Sess. 9 (1981).

Since the Staggers Act was enacted in 1980, however, the number of Class 1 railroads has decreased from 31 to 21, with three mergers now pending. Shippers are therefore faced with the loss of both regulation and competition in the battle to maintain reasonable rail rates. It is in this context that the Norfolk Southern-Conrail merger must be evaluated.

Congress clearly did not envision such increased concentration and reduced competition when it promulgated its merger policy, which is generally unfavorable to mergers. Section 7 of the Clayton Act, the primary statute under which mergers have been

challenged, is intended to prevent restraints of trade in their incipiency. Thus, Section 7 prohibits mergers and acquisition where "in any line of commerce in any section of the country the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." 15 U.S.C. § 18 (1980) (emphasis supplied). The Supreme Court recognized that Section 7 reflects an "intense congressional concern with the trend toward concentration" in the United States economy. *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 363 (1963). Further, the Court held in *Philadelphia National Bank* that "if concentration is already great, the importance of preventing even slight increases in concentration and so preserving the possibility of eventual deconcentration is correspondingly great". 374 U.S. at 365 n. 42.

III. DEFICIENCIES IN DEPARTMENT OF JUSTICE ANALYSIS

The Antitrust Division of the Department of Justice concluded, based on a superficial analysis, that "the proposed (Norfolk Southern-Conrail) merger would violate both Clayton and Interstate Commerce Act merger review standards." (January 29, 1985 letter from J. Paul McGrath to the Secretary of Transportation). Assistant Attorney General McGrath further noted that "the merger would have a significant adverse effect on competition for the transport of commodities to and from a number of locations in several states, with the greatest adverse effect occurring at locations along an east-west rail corridor running between Buffalo and Pittsburgh in the east and St. Louis and Chicago in the west."

As significant as those findings are, it is clear that the Justice Department seriously understated the likely impact of a Norfolk Southern-Conrail merger. In its January 29, 1985 letter to Secretary Dole, the Antitrust Division identified only 10 counties—five in Ohio, two in Michigan, two in Indiana, and one in New York—that would suffer effects from the proposed Norfolk Southern-Conrail merger so adverse as to warrant the government's opposition to the transaction on antitrust grounds. Separate analyses by competing railroads throughout the country have identified substantially more. For example, one study identified 53 Business Economic Area (BEA) pairs that under the formula traditionally used by the Department would be considered "highly concentrated markets" where the merger would be likely to "substantially lessen competition."

This disparity is a result of several deficiencies in the Antitrust Division's analysis. First, the Antitrust Division, without explanation, made no use of the Herfindahl-Hirschman Index ("HHI")[1] in this case. The HHI, of course, is a formula used to measure the degree of concentration of a particular market. It was endorsed by the Department in both the 1982 and 1984 Merger Guidelines, and has been consistently used by the Department in analyzing the competitive effects of proposed mergers. In its Norfolk Southern-Conrail analysis, however, the Department employed a "50-10" test, whereby it examined only those geographic markets where (1) each of Norfolk Southern and Conrail currently has at least 10% of the rail transportation on movements in or out of the market, and (2) the railroads together have 50% or more of such traffic.

The exclusive use of the "50-10" test fails to recognize a substantial number of market areas which would be significantly affected by the proposed combination, since the "50-10" test would ignore all markets in which either Norfolk Southern or Conrail does not have a 10% share, regardless of the share of the other party.

For example, the Department identified Champaign, Illinois as a problem origin only for the commodity soybean oil. It identified Fort Wayne, Indiana as a problem destination for five commodities, not one of which was soybean oil. Yet, according to data compiled by CSX, Norfolk Southern carries 96.2% of all traffic from Champaign to Fort Wayne, and Conrail is responsible for the remaining 3.8%. Despite the fact that Norfolk Southern and Conrail have 100% of the rail market at this point pair, the Department did not identify it as a problem.

Second, the Department understated the anticompetitive effects of the proposed Norfolk Southern-Conrail combination because it deviated from its traditional practice of using a "point pair analysis"—that is, using actual flows of traffic between and among geographic points as the measure of railroad market share. Point pair analysis has been an important element of the government's evaluation of proposed mergers for some years.[2]

In the Norfolk Southern-Conrail analysis, the Department limited itself to consideration of traffic flows to particular locations and traffic flows from particular locations, and made no attempt either to correlate the two or to measure the true scope of the competitive foreclosure involved. For example, the Department did not identify Chicago as a problem origin or destination for any commodities, since no railroad dominates the traffic at this major gateway. However, a shipper in Chicago faces highly concentrated markets when he desires to transport commodities to certain cities. According to CSX-compiled data, Norfolk Southern carriers 9.6%, and Conrail 56.7%, of the traffic from Chicago to Pittsburgh. From Chicago to Cleveland, the combined market shares are greater; Norfolk Southern, 6.9%; Conrail, 75.4%. Even more concentrated is the market from Chicago to Buffalo, where Norfolk Southern carries 11.2% of the traffic, and Conrail has 80.3%. An analysis which only considers origin and destination points in isolation cannot be adequate, since the product which railroads sell is the movement of commodities from one point to another.

It is telling that the Department did not rely solely upon a "50-10" origin/destination analysis in the Santa Fe/Southern Pacific merger which is currently pending before the ICC. In that case, Dr. Pittman, the Department's economic expert, employed point pair analysis in which he applied the Department's Merger Guidelines. When questioned about the disparity between the Department's analysis in that case and in the Norfolk Southern-Conrail case, he conceded "I think I included some products by using both kinds of analysis, which it's conceivable that the Conrail analysis omitted unwisely." Santa Fe Southen Pacific Corporation—Control—Southern Pacific Transportation Company, Finance Docket 30400 at 13025 (emphasis supplied).

Application of the Santa Fe/Southern Pacific methodology to the Norfolk Southern-Conrail merge produces dramatically different results from those detailed in the Department's January 29 letter to Secretary Dole. A nationally known transportation consulting firm, which has often been retained by the Department, applied Dr. Pittman's Santa Fe/Southern Pacific methodology to the Norfolk Southern-Conrail merger. The study found that the Department had overlooked nearly 100 million tons of railroad traffic which would be adversely affected by the Norfolk Southern-Conrail combination.

Third, the Antitrust Division's analysis also discarded any market area in which the "major shipper" did not object to the Norfolk Southern-Conrail combination. This represents yet another significant deviation from the Department's historic pattern of railroad merger analysis. While the views of the major customers of a proposed combination are relevant, it is not appropriate for the Department to conclude that no competitive problem exists in a particular market simply because a large customer failed to object to a merger. The Department's economic expert in the *Santa Fe* case agrees. Dr. Pittman testified that "the fact that a shipper supports the merger is not the be-all and end-all, but it is relevant information, yes." Santa Fe/Southern Pacific, supra, at 13182.

Major customers are often in unique positions of strength vis-a-vis their suppliers, and are therefore not significantly affected when the level of competition is reduced. For example, major shippers may have plants throughout the country and may be able to counter the market power of a Norfolk Southern-Conrail combination by leveraging shipments from other plants, while smaller shippers must depend upon the antitrust laws to protect them from the acquisition and use of such power.

Fourth, the Department used a $2 million revenue cut-off level in determining problem markets. This cut-off removes from consideration numerous smaller markets where individual shippers or receivers are especially dependent upon rail service.

Fifth, the Department did not consider the competitive effect of traffic diversions from other railroads because it found that "it is extremely difficult to estimate the size of future diversions." In fact, the United States Railway Association found that the proposed Norfolk Southern-Conrail combination would divert hundreds of millions of dollars of traffic from several regional railroads.

Our objective in detailing the inadequacies in the Department of Justice's evaluation is to stress that there are enormous anticompetitive effects that the proponents of the merger have not even begun to address. The proposed divestiture and track-sharing remedies proposed by Norfolk Southern do not even touch on these effects. In fact, the anticompetitive effects of the merger are so fundamental and perva-

[1] The HHI is calculated by summing the squares of the individual market shares of each company in the relevant (geographic and product) market. For example, the HHI for a market with four firms, each possessing 25% of the market, would be $25^2+25^2+25^2+25^2=2500$. The Department considers a market with a post-merger HHI above 1800 to be highly concentrated.

[2] "Point pair" analysis refers to the measurement of the market shares of various carriers who transport commodities from one location, or "point", to another. The Department has in the past used cities, counties, and Business Economic Areas ("BEAs") as its "points" for purposes of such analysis. For example, the Department recently concluded that United Air Lines' proposed acquisition of certain Pacific routes from Pan American would reduce competition in the United States-Tokyo markets. It recommended that the Department of Transportation require divestiture of a route between Tokyo and one of three U.S. cities. (Department of Justice Press Release, September 17, 1985).

sive that it is difficult to visualize how they can be fixed.

IV. INADEQUACIES OF DIVESTITURE PROPOSAL

Ironically, the proposed solution to the limited problems identified by the Department—that is divestiture of certain lines to the Guilford and the P&LE—is not adequate to cure even the limited problems identified by the Department. Neither the Guilford nor the P&LE will be able to provide viable, long-term competitive rail service. The detailed ICC staff study on the viability of Guilford and P&LE, dated August 30, 1985, concludes that neither railroad will remain financially viable. The ICC forecast for Guilford is that "in fact, after a very marginal first year, Guilford will be unable to service its debt, and this deficiency will grow in each of the succeeding years. In the long run, it does not appear that Guilford will be a financially viable carrier." ICC Staff Divestiture Study at p. 9. The forecast for the P&LE is even more bleak. "It must be noted that, even if all of P&LE's projections are accepted, P&LE admits that it cannot service all of its substantial debt using revenues from rail operations. . . . In conclusion, P&LE is not now a financially viable carrier and its acquisition of the new lines will not enable it to reverse its already precarious financial position." *Id.* at pp. 9-10.

The Department of Justice is in agreement with the ICC staff study findings. In a letter of September 25 to Secretary Dole, the Department concluded that the divestitures to Guilford and the P&LE will not establish long-term viable competitive service to the Norfolk Southern-Conrail mega-carrier. The Department's findings were based on managerial, operational, and financial inadequacies of the Guilford and the P&LE.

After the Department released its September 25 letter, Norfolk Southern hastily announced that it was changing the divestiture plan for Guilford. Instead of selling Guilford the old Nickel Plate Line to St. Louis, Norfolk Southern announced that it would provide trackage rights to Guilford from points in Indiana and Ohio to East St. Louis. This revised plan will do little or nothing to solve the fundamental inadequacies of the whole divestiture scheme.

The Justice Department itself is not satisfied with the new proposal. Assistant Attorney General for Antitrust Douglas Ginsburg stated in a news conference that it did not appear that the new proposal addressed all his "concerns and questions." The new plan provides that Guilford can only carry "overhead" traffic. In other words, Guilford can carry traffic from Buffalo to St. Louis, but has little authority to pick up or deliver anything in between. Thus, while this substitute line may be somewhat faster and in less need of repair, it really does not provide Guilford any new markets.

In fact, the second proposal may well be somewhat worse from a competitive standpoint since Guilford will not own the track and will be dependent on cooperation from Norfolk Southern in order to provide what minimal competition it can muster. For example, if the tracks are crowded and there is a question of whose train and traffic is to get priority—Guilford or Norfolk Southern—it does not take an expert in railroad operations to know who will get the better service.

These are serious questions, and we believe they should be reviewed in depth before any action is taken. Once before, we were told by Norfolk Southern and Guilford that a perfect divestiture proposal existed, and now somehow, after criticism by the ICC and the Antitrust Division, we find that it was not so perfect, and there is an attempt at another last minute cure that is of highly questionable merit. The proposed Norfolk Southern-Conrail merger will restructure and determine the future of our nation's rail; the implications are far too important to rush to judgment on the basis of a continuum of last minute fixes.

The simple fact is that these small railroads cannot in any effective manner counter the substantial market power of a combined Norfolk Southern-Conrail. They would be attempting to compete in an extremely weakened financial state, with inferior, out-moded and out of repair equipment. In a business in which speed and reliability are the hallmarks of service to customers, these deficiencies spell disaster.

In contrast, the United States Railway Association has determined that Conrail is a viable railroad, and will continue to be for the foreseeable future. According to USRA: ". . . all available evidence supports a finding that Conrail can generate positive cash flow for the foreseeable future. Traffic shortfalls compared to the forecast should not threaten Conrail's survival as long as the rail regulatory framework allows service to be shaped to meet the demands of the marketplace." USRA Staff Report at p. 2-2.

Further, Conrail is not only viable, but has been an especially effective competitive force since its inception. For example, Conrail has withdrawn from the historically collective rate bureaus, the only railroad to have done so. Shippers have testified as to the aggressive nature of Conrail's pricing policies which directly resulted from the crumbling of the "equalized joint rate" system and its constraint of independent and, therefore, competitive prices.

V. CONCLUSION

It would be a tragic error for Congress to become an instrument in the largest and most anticompetitive railroad merger in history. There is simply no sound rationale for selling Conrail to Norfolk Southern. Conrail is a viable, independent railroad, and the Department of Transportation should maintain Conrail as a competitive force. We applaud the congressional intent to return Conrail to the private sector. However, it is not necessary to destroy the competitive railroad transportation environment in the Northeast, the Midwest, and the South to accomplish that objective.

(Mr. COCHRAN assumed the chair.)

Mr. DANFORTH. Mr. President, Senator GLENN has made a most comprehensive statement. I do not agree with it, of course, but I do want to compliment him for the care and the attention he has given this issue. I would take exception to several of his conclusions.

Repeatedly, the Senator from Ohio characterized what we are doing as a rush to judgment. I do not believe that that is a reasonable characterization of this bill. In fact, it is the very opposite of a rush to judgment. The process of selling Conrail did not begin a month or two ago and it did not begin a year or two ago. It began in 1981 when Congress decided, in the so-called NERSA bill, that we would sell Conrail. That set in motion a process which led us to where we are today.

As part of that process, the Department of Transportation first hired a consultant, Goldman Sachs, then solicited bids from over 100 possible bidders for Conrail, then received 15 different bids and screened them.

The Norfolk Southern proposal was put together approximately 2 years ago and was submitted to the Department of Transportation on June 19, 1984. It has been studied and restudied by the executive branch and by the Congress not for a few weeks or a few months, but since June 19, 1984.

The Department of Transportation has studied this question comprehensively, the Treasury Department has studied it, and the Justice Department has studied it. The Assistant Attorney General in charge of the Antitrust Division, Mr. Ginsburg, testified before the Judiciary Committee that no other acquisition of this type, no other acquisition that he knows of, has received the kind of comprehensive attention and the kind of time that the Conrail proposal has received.

That is what the Assistant Attorney General tells us.

With respect to whether or not this is premature, the Justice Department has studied this, and they say that they do not see the antitrust problems. Their concerns have been satisfied. The Assistant Attorney General in charge of the Antitrust Division has said to the Congress go ahead. Do not delay any further. Yes, we have a consultant hired. What is the reason for the consultant to be hired? To review the factual bases on which the Justice Department reached its conclusion in the nature of, as Assistant Attorney General Ginsburg put it, dotting the i's and crossing the t's.

It is the nature of a closing at the end of a transaction to make sure that all the facts are as represented.

Furthermore, we have provided in the legislation, and also in the memorandum of intent between Norfolk Southern and the Department of Transportation, that if at the end the Justice Department turns out not to be satisfied, then the Department of Justice has veto power over this transaction—veto power.

Mr. President, I do not know of any other case in history where the Department of Justice has been given veto power for a railroad merger. It does have it in this case.

If we act—if we pass the legislation—still the Department of Justice has veto power if its antitrust concerns are not in fact met by the technical review that will be made.

The Senator from Ohio, senior Senator from Ohio, said, well, why rush? There is no hurry. Mr. President, there is a hurry. There is a hurry. What is the hurry? Norfolk Southern made a good-faith offer based on a solicitation of bids made by the Depart-

ment of Transportation which offer expired on December 21, 1985. The deadline has already been exceeded.

The offer was solicited. The offer was received. The offer was studied. And nothing happened. Nothing happened. December 31 went by, and Congress could not act.

So Norfolk Southern said, well, we will give you another 3 months. We will give you another 3 months at least to see if there is any action on the floor of the Senate—3 months. We will extend the original offer.

Now we have until March 31. Will they extend it again? Who knows? But I would not count on it, Mr. President. I would not count on it.

If I were a member of the board of directors of Norfolk Southern attempting to plan for the future of my railroad, I would not extend forever this offer. Some say there is some uneasiness on the part of some of the directors of Norfolk Southern. I would not know.

But, Mr. President, I do know this: There are those throughout this country who occasionally raise the question of whether the Federal Government can accomplish anything. We cannot even sell a railroad. Here is a process that has been going on 5 years. We cannot even sell a railroad. Is there any reason to question the prevailing sentiment in this country that the Government just does not function very well?

Mr. President, to put the question before us in perspective, there are three possibilities that are before us—three possibilities which I would like to describe today.

One possibility is to do nothing. One possibility is to sell Conrail so that it will become a stand alone railroad, and not affiliated with any other railroad—just out there owned by stockholders standing on its own feet. That was the so-called Morgan Stanley proposal—a stand alone Conrail.

The third possibility is the bill that is before us which is the sale to a very successful, very healthy railroad, and to affiliate Conrail with Norfolk Southern.

Those are the three possibilities: Do nothing, leave it as it is, create a stand alone railroad just out there doing its own thing, not affiliated with anybody else, or create a consolidation of Conrail and Norfolk Southern—three possibilities.

Mr. President, there are some people—I know the junior Senator from Ohio is one—who believe we should do nothing. They believe that Conrail should not be privately owned. They believe that the private sector should not be running the railroad, and that this should be a Government-owned, Government-run operation. Why do with the private sector what can be done in the public sector? So they oppose any sale. They oppose the Norfolk Southern sale, they oppose the Morgan Stanley sale, and they want the Government to continue operating Conrail.

Mr. President, I do not believe that is the majority position in the U.S. Senate. I know that it was not the majority position of those who testified before the Senate Commerce Committee. Witness after witness, people who were in favor of the Norfolk Southern sale, people in favor of the Morgan Stanley arrangement, experts, railroad people, financial people, one after another came before the Commerce Committee, and they were asked the question: Between the three possibilities, Norfolk Southern, Morgan Stanley, and doing nothing, which is the worst of the three? And their answer was the worst of the three is to do nothing. Sell it to Morgan Stanley, create a free-standing railroad, but do not leave it as it is. Do not leave it in the Government's hands. And we received that advice time and time again from witnesses throughout the spectrum of opinion on this matter.

Mr. President, if that is the choice we are going to make to do nothing, flying in the face of the advice of all the witnesses, there are a couple of ways of doing nothing. One is to defeat the bill. We can do that. We can defeat the bill; vote it down.

The other method, of course, is not even to get to the bill. Let us kill it. Let us filibuster it, filibuster the motion to proceed, filibuster the bill itself, post-cloture filibuster, and all of these have been threatened. One is now being carried out. Filibuster the bill. That accomplishes the first of the three alternatives because delay, infinite delay, unending delay, delay for the next month or two, delay until we get into a tax bill or into the budget process, into Gramm-Rudman, delay means opting for the status quo, opting for Government ownership over private ownership, Government management over the private management. That is the decision we will be facing tomorrow when we vote on cloture. It is a decision on delay. It is a decision on the status quo. I would submit that a vote against cloture tomorrow is a vote against both the Morgan Stanley and the Norfolk Southern proposal.

So, Mr. President, that is the first option, to do nothing. Government ownership.

The second is the Morgan Stanley proposal, what I would characterize as the fast buck, stand-alone scheme.

Mr. President, in order to understand the Morgan Stanley proposal, in order to judge the viability of a stand-alone Conrail, I would like very briefly to recount the recent history of Northeast freight rail transportation.

Remember, the question is the viability of a stand-alone Conrail, stand-alone Northeast rail transportation company, not affiliated with Norfolk Southern, standing alone.

What has been the history of railroads over the past 20 years? The history has been this: Between 1967 and 1973, eight Northeast railroads, including the Penn Central, went under, went bankrupt. Eight stand-alone Northeast railroads, including Penn Central, went bankrupt.

Why did they go bankrupt? Because rail tonnage in the Northeast quadrant of our country has steadily declined over the last 20 years.

Between 1966 and now, freight rail tonnage in the Northeast quadrant of our country has declined at an annual rate of 3.6 percent.

In 1985, Conrail's tonnage declined 5.5 percent. A steady decline in business in rail transportation in the Northeast part of our country created the bankruptcy of eight railroads, created the bankruptcy of the Penn Central. I ask the Senate what are the prospects for a stand-alone Conrail in the future?

It was this decline that created Conrail in the first place. It was this failure of stand-alone rail transportation in the Northeast part of our country that got the Federal Government into this act in the first place. Mr. President, if you want to get Uncle Sam back in the railroad business again, if you want to get a second Conrail created a few years down the line, sell it to Morgan Stanley. Tell yourselves that this is $200 million more cash for the Treasury. Big deal. We have done the Government a favor. Right? We have taken Conrail off of our hands for 2 or 3 years before it goes under again.

The existence of Conrail in the first place was created by the conditions that still exist, conditions which inevitably lead to bankruptcy of stand-alone railroads.

What does Morgan Stanley intend to do with the railroad that it acquires? It intends to sell it. It intends to make a buck. It has put together a group of some 41 investors, some private, some educational, fine instutions. My alma mater is one of the underwriting group. I wish it well. I contribute to it every year. But I do not understand, Mr. President, why the people of the United States should be contributing to it.

What Morgan Stanley intends to do is to form an underwriting group, take the stock and hold it for a very limited time and sell it. To whom? Who knows? Who knows who will own the stock? Anybody, Carl Icahn, for all we know, will end up owning the stock.

You know, something very interesting was said yesterday by the junior Senator from Pennsylvania, Senator SPECTER. He made the argument that the assets of Conrail are worth more than the purchase price, meaning be-

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cause the purchase price was established by competitive bidding, meaning that the assets of Conrail, liquidated assets of Conrail, are worth more than Conrail as a going railroad.

Mr. President, what does that say? What does that say? Throw something like that out to the public to create a railroad where the assets are worth more than the railroad as a going entity? It is the open invitation to the corporate raider. That is what it is. It is what the corporate raider, what the Carl Icahns of this world, look for, a Conrail, an attraction. Sugar for the ants.

That is what we are putting out there.

But what do they intend to do, these underwriters, these managers? They intend to bleed Conrail of cash. That is their plan. The plan of Morgan Stanley, the submitted plan of Morgan Stanley—this is not conjecture; this is their program publicly stated—is to bleed Conrail of cash.

How so? They propose to take at least $230 million of Conrail cash to settle past labor concessions that have been made by Conrail employees.

Norfolk Southern has proposed to settle the past labor disputes also with Norfolk Southern cash, not with Conrail cash. The Morgan Stanley proposal is to take it right out of Conrail, $230 million plus cash out. That is part of the deal.

Secondly, they propose to make an offering to buy from the Conrail employees all or part, whatever the employees want to sell, of the 15 percent of Conrail stock that is held in an employee stock option plan, an ESOP. They propose to buy that, to offer to buy that 15 percent, for cash.

Whose cash? Not Morgan Stanley's. Not Princeton University's. Not CSX, or the other members of this investor group, not their cash. Conrail's cash. $230 million for past labor concessions, and an additional amount up to whatever it takes to buy 15 percent of the stock in the ESOP.

Further, they propose to pay out annual dividends of approximately $118 million.

Mr. President, you start with a rail transportation system in the Northwest that has a history of failure and bankruptcy. You put it out there as a stand-alone railroad. Then you start bleeding it for cash—bleeding it. That is the Morgan Stanley proposal: Let us bleed Conrail.

However they want to finance it, where are they going to get all this cash that is going to go flowing out from Conrail? Where will this hundreds of millions of dollars of cash come from? Well, they have proposals to raise it.

First, they say that they are going to increase shipper rates by 5 percent, approximately 5 percent, per year. We have heard expressions of concern about shippers on the floor of the Senate. Well, shipper rates would be increased by 5 percent per year.

Second, they propose to eliminate 1,500 jobs per year through 1989—1,500 Conrail jobs out through 1989.

Third, they propose to downsize the system. The whole program of Conrail since it was created has been to downsize the system. We have thrown such bouquets in the direction of Conrail management, "Oh, thank you for the wonderful job you have done." They have had a fire sale. They have been selling off.

We worry about railroads losing their service, shippers losing their service, laying off employees. Conrail has made this into an art form. But Morgan Stanley says not enough of an art form; why, they still have 14,000 miles of track. Too much, says Morgan Stanley. Let us get it down from 14,000 to 8,000, to 9,000 miles.

After we do that—after we pay out all this cash in dividends, after we pay out all this Conrail cash for settling of employee claims, after we pay out all this Conrail cash to buy up ESOP stock, after we shrink the system yet more, after we increase shipper rates yet more—what is the remaining responsibility of Morgan Stanley and the investor group? Well, their remaining responsibility for the health of the railroad, Mr. President, was very aptly, concisely stated by Mr. Thomas Saunders, a partner in Morgan Stanley and Company, who testified before the Senate Commerce committee. Here is what Mr. Tom Saunders of Morgan Stanley testified about the remaining responsibility of Morgan Stanley and the investor group for the health of this railroad:

When we do the first sale to the public, we will leave town.

Mr. President, my analysis is this: The issue before the Senate is not whether a year and a half of study is too little; not whether the Department of Justice has hired too few consultants; not whether $200 million more cash would flow to the Treasury from one transaction to another. The question before the Senate is the health of rail transportation in the United States.

The Senator from South Dakota and others expressed concern about their parts of the country and what is going to be done about diversion and will there be loses and will people lose jobs and will shippers be inconvenienced. I cannot conceive anything worse for shippers, not only in the Northeastern part of this country but all over the country, than to take a stand-alone railroad, put it in a situation where eight other railroads have gone bankrupt, proceed to bleed it of cash, and then, in the immortal words of Mr. Saunders, "leave town." It is a recipe for disaster.

Mr. President, if we do nothing, if we keep Conrail, if we do nothing by a decision to delay this and debate it forever until time runs out for Norfolk Southern as it will eventually if we decide to do nothing, we have created a permanent drain on the Treasury of the United States. We have already been subsidizing this railroad. Between 1977 and 1984, the Federal Government has spent $3.4 billion to subsidize Conrail's operations and capital investments. It has also paid $606 million to Conrail employees whose jobs are eliminated. It has been a history of subsidy to keep it afloat and we could continue to do that.

Or instead, we can take the third option. We can combine Conrail with a strong, viable, profitable, well-managed railroad, Norfolk Southern. We can combine what otherwise, in a stand-alone fashion, is weakness with strength. We can allow the two systems to complement each other. And we can also provide competition, as was done in the divestiture agreements in order to provide for shipper choice in the Northeastern part of this country.

Mr. President, the criteria before us do not include, in my opinion, how many consultants we hire, how many hearings we hold, how long this agonizing inquiring and studying period should be continued. There is only one criterion. The one criterion is the future of rail transportation throughout the United States, but particularly in the Northeastern quadrant. And there is not the slightest doubt in my mind that that future is eminently well served by the passage of the bill before us.

Mr. DOLE. Mr. President, I ask unanimous consent to have printed in the RECORD a letter dated January 21, 1986, from President Reagan relating to the pending matter in which he states that the bill deserves favorable action now.

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

THE WHITE HOUSE,
Washington, January 21, 1986.

Hon. ROBERT DOLE,
Majority Leader,
U.S. Senate, Washington, DC.

DEAR MR. LEADER: The first bill that the Senate will take up this session is S. 638, which authorizes the sale of the Federal Government's 85 percent stock interest in the Consolidated Rail Corporation (Conrail) to the Norfolk Southern Corporation. Now is the time to sell Conrail, to the bidder that has offered the best deal for shippers, consumers, rail labor, and all those who depend upon continued service from a financially strong Conrail. I urge your support for this bill when it comes to the Senate floor.

In 1981, the Congress directed the Secretary of Transportation to return Conrail to the private sector. The Norfolk Southern offer to purchase Conrail will guarantee the financial strength of the railroad, maintain Conrail's service in the Northeast, and

maximize the financial return to the government. Norfolk Southern has agreed to a stringent set of divestiture requirements as a condition of the purchase. Through these divestitures regional railroads will be strengthened, major markets and rail gateways will be opened, and there will be the first competitive east-west long-haul alternative in twenty years.

In addition to these transportation benefits, successful completion of the sale to Norfolk Southern will bring the government a minimum of $1.2 billion in cash at closing. This payment will help us reduce the Federal deficit in fiscal year 1986. Sale of Conrail to the Norfolk Southern Corporation also will get the government out of the railroad business, fulfilling the specific privatization mandate of the Congress. The terms of the sale include, however, public interest covenants, which will protect Conrail's financial strength and service during the post-sale period.

The Senate Commerce Committee, under the leadership of Senators Danforth and Hollings, held extensive hearings on the sale to Norfolk Southern and reported S. 638 with strong bipartisan support. This bill deserves favorable action now.

Sincerely,

RONALD REAGAN.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Did my colleague from Ohio wish me to yield for a moment?

Mr. METZENBAUM. Yes, Mr. President, if he would be good enough to do so, I would appreciate it.

Mr. DIXON. I ask leave to do that, Mr. President.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise not to respond in chief to the arguments of my distinguished colleague from Missouri. There is one slight comment I would like to make with respect to his reporting facts. He indicated that my position is that Conrail should not be sold. My position is not that it should not be sold but that if and when it is to be sold, we want to be certain that the conditions are right and appropriate. We want to be certain that there is continued competition.

We want to be certain that the Government gets the maximum dollar obtainable and not the $1.2 billion that is provided for herein, maybe not even the $1.4 billion that Morgan Stanley has offered, and also the questionable bid of First Boston Corp. and Allen Co. of $1.6 billion.

My feeling is that the Secretary of Transportation should again take sealed, closed bids. I unappropriately used the word "again" because sealed, closed bids have not been taken previously.

My point is again that she should take bids but this time they should be sealed, they should be closed, they all should be opened at the same time and in advance terms and conditions should be spelled out in order that the interests of all parties concerned can be protected. That includes labor, that includes those who use the services of the railroad, that includes the people who really have the major financial interests in the railroad and that is the taxpayers of this country. And so I would be willing to explore and very well may come forth with an amendment directing the Secretary to do just that.

It is premature for us to try to move forward with the $1.2 billion offer that is before us, particularly when there is a $1.4 billion offer that is sitting out there. It is premature to do so before the Justice Department has been able to respond as to all of the questions that are still pending and are not to be addressed until phase 2 of the Justice Department investigation is completed.

But I did want to clarify that fact for the Senator from Missouri. Having said that, I will not talk further at this point but yield the floor to my distinguished colleague from Illinois.

Mr. DIXON. Mr. President, may I say before I make my remarks that I am so often impressed by the fact that many fine speeches are made on the floor of the Senate, regrettably, when there are so few of us here to hear the remarks. While I disagree generally with the statements made by my distinguished friend and colleague and neighbor from across the Mississippi River, the junior Senator from Missouri [Mr. DANFORTH], I have been present throughout his remarks and observed that they were made extemporaneously based upon his knowledge of the circumstances as he interprets them as the distinguished chairman of that committee.

I was very much impressed by the very fine manner in which he made that very excellent speech expressing his point of view. While I thoroughly disagreed with many of those points. I want my friend and colleague to know that I was singly impressed with the very fine way in which he has presented his case.

Mr. President, I am on the floor today because a motion to proceed to S. 638, the Conrail Sale Amendments Act is before the Senate. As the Senate considers whether or not to move forward on this bill, I think it is worth taking some time to consider a few of the issues it raises.

First, there are strong reasons for arguing against acting on S. 638 at this time because the bill is not yet ready to be acted on and we do not yet have the kind of information that will enable us to make an intelligent decision on the legislation. Further, since the investor group led by Morgan Stanley has increased its offer to $1.4 billion, $200 million more than the Norfolk Southern has bid for the Government's 85 percent interest in Conrail, it can be argued that it is a mistake to take up legislation that does not provide the Treasury with that kind of return. In fact, the difference between the Morgan Stanley bid and the Norfolk Southern bid is far more than $200 million when the Morgan Stanley stock warrants and the tax consequences of the two offers are considered.

If there were no antitrust concerns and the two offers provided similar or identical returns to the Government, it might make sense to take up the Conrail sale legislation now and let the Senate choose between the two offers. But there are major antitrust concerns and the Norfolk Southern bid is financially inferior to the Morgan Stanley proposal.

Morgan Stanley has, as I stated before, raised its offer to $1.4 billion. We are now facing a budget deficit this year that could exceed $220 billion. On March 1, under the terms of the Gramm-Rudman-Hollings deficit reduction statute, there will be cuts in numerous Federal programs that will total $11.7 billion. By April, we will be taking up a budget that will attempt to reduce this year's appalling deficit to $144 billion next year. This means that we will be attempting to reduce the deficit by over $60 billion, and perhaps over $70 billion, in a single year. S. 638, in this context does seem to be a fatally flawed legislative vehicle. It costs the Government at least $200 million—actually much more than that—and raises the most serious kind of antitrust problems.

The Morgan Stanley proposal, it seems to me, represents a much better basis for Senate action on the Conrail sale matter. It maximizes the Government's return from the sale and avoids any competitive problems.

The higher Morgan Stanley bid conclusively demonstrates that the Department of Transportation's bidding process was misguided. That process clearly did not produce a bid of the value of the Morgan Stanley proposal. The Department's sale recommendation, therefore, does not represent a proper basis for the Senate's action on this issue.

S. 638 as it now stands leaves major antitrust issues unresolved and provides the Federal Government with a woefully inadequate return for the billions of dollars it has invested in Conrail. It proposes that the Government sell its interest in Conrail to the Norfolk Southern Corp. I have the greatest respect for that railroad. I know its reputation, and I share the view that it is one of the best-run railroads in the United States. However, the Norfolk Southern bid is financially inferior to the Morgan Stanley proposal and it raises extremely serious antitrust concerns that do not arise under the Morgan Stanley offer. The antitrust consequences of a Norfolk Southern purchase of Conrail could be devastat-

ing, and are worth discussing in some detail.

Mine is not an isolated view. It is shared by railroads within the Conrail region, by railroads that connect with Conrail, by thousands of shippers, by railroad labor, by 24 State attorneys general, by a number of States in the Northeast and Midwest, by the great majority of America's newspapers and other media that have examined this issue, by the staff of the Interstate Commerce Commission, by the staff of the U.S. Railway Association, and by the U.S. Department of Justice.

The antitrust concerns raised by this proposal are made even more serious because Conrail is Government-owned. You would think the Government would take special care that the transfer of its property to the private sector was handled in accordance with the antitrust laws. That should be the Government's responsibility. Yet, S. 638 "deems" the transaction approved by the Interstate Commerce Commission, treating this transaction in a different fashion from every other merger of profitable railroads in our history. Further, the Justice Department admits it is applying different standards in the Conrail-Norfolk Southern case than it is in another major railroad merger now pending before the Interstate Commerce Commission—the Santa Fe-Southern Pacific merger. Finally, the Justice Department is now considering—at this time, as we are considering this issue—the third proposed Norfolk Southern divestiture plan, a plan no other interested party has had a chance to review, analyze or test through the adversary proceedings normally available in these cases.

These serious procedural inadequacies create the appearance of a conflict of interest for the Government. The United States owns Conrail, but instead of bending over backward to see that the antitrust law that applies to evey other railroad merger is honored in this case, S. 638 applies special standards for Conrail, and the Department of Transportation, together with the Department of Justice, conducts its review in a manner that denies the interested parties any semblance of due process.

In the Santa Fe-Southern Pacific case, the railroads filed numerous telephone book-sized volumes detailing the merger transaction, the proposed operating plan, and other considerations. Other parties had the right to appear before the Interstate Commerce Commission, to submit their own information, and to cross-examine Santa Fe-Southern Pacific witnesses on issues raised by the transaction.

I think this is a fair procedure, Mr. President, and one that should be followed in the Norfolk Southern-Conrail case. What is more, it is possible to give interested parties their "day in court" and to thoroughly review all antitrust concerns without taking an undue amount of time. The Santa Fe-Southern Pacific case was filed on March 23, 1984. The Interstate Commerce Commission, under the law, has up to 31 months to make its decision. As I understand it, however, the ICC will actually make its decision in the first half of this year. That is within 1 year or 15 months of the time it was filed.

I do not believe that is an inordinate amount of time for a transaction of that scope and complexity, and I am convinced it is essential to provide the kind of fairness and equity that has been so sadly lacking in the way the proposed sale of Conrail has been handled to date.

It is worth remembering that the Department of Justice has found that the size of the competitive problems in the Norfolk Southern-Conrail case is larger than the problems raised by the Santa Fe-Southern Pacific merger. It would seem to follow, therefore, that the Justice Department would do what it is doing in the Santa Fe case before the Interstate Commerce Commission—oppose the merger. However, that is not what the Justice Department is doing. Applying different standards than in the Santa Fe case, Justice now says that the latest Norfolk Southern divestiture plan "appears on its face to address the concerns" Justice had with the previous two divestiture proposals.

The Justice Department, however, was unwilling to make a final judgement on the issue, and instead planned on referring the issue to a consultant. However, the Department seems to be having a considerable amount of trouble in picking a consultant—it has not yet done so—so it is not at all clear if and when a consultant's report and a final Department of Justice recommendation will ever become available.

Mr. President, there are strong reasons for arguing for delaying consideration of S. 638 until the consultant's report is available and until all interested parties have had a chance to review it. There were too many problems with the previous divestiture proposals to warrant going forward on the basis of a preliminary recommendation on the third divestiture proposal. If the Senate needs to act now, it should act on the basis of the Morgan Stanley proposal, which would make the antitrust issues academic.

The first Norfolk Southern divestiture proposal was the only one submitted early enough to be given any kind of complete review. The result of that review was that the Norfolk Southern proposed divestiture plan was found to be hopelessly inadequate to resolve the competitive problems.

Agreement between Norfolk Southern, on the one hand, and Guilford and the Pittsburgh and Lake Erie, on the other, on the first package of divestitures was reached on February 25th of last year, only 2 days before the Senate Commerce Committee hearings on the Norfolk Southern proposal. By August of 1985, the staff of the Interstate Commerce Commission, in a report prepared on behalf of the House Energy Commerce Committee, concluded that the divestitures would not work. The ICC staff found that:

> P&LE is not now a financially viable carrier and its acquisition of the new lines will not enable it . . . to reverse its . . . position.
>
> Guilford has overestimated the operating efficiencies it will achieve. . . . Consequently, its net revenues from operations will be substantially less than it projects . . . after a very marginal first year, Guilford will be unable to service its debt. . . in the long run it does not appear that Guilford will be a financially viable carrier.

R.L. Banks, the Department of Justice's consultant, reached similar conclusions. In its preliminary report, it concluded that the viability of Guilford and the P&LE and their ability to be effective competitors was questionable.

Last September 25, Norfolk Southern released its second divestiture proposal. There was little opportunity for interested parties to review this plan, and the public was given very little information about it. The result, however, was the same. The divestiture proposal was found to be inadequate. Douglas Ginsburg, the Assistant Attorney General for Antitrust, stated that:

> It does not appear that the proposed divestiture will establish a rail carrier * * * capable of providing long-term, viable competitive service * * *. From our standpoint, we must be satisfied that divestiture will create not just a railroad that will be viable * * * but one that will be an effective competitor in the problem markets.

The third divestiture plan, Mr. President, was released last November, As in the case with the second proposal, interested parties have had little or no information on which to base their analysis of the proposal, and no opportunity to be heard on the plan. Justice stated that the third plan "on its face" appeared to meet the department's concerns. However, the Assistant Attorney General for Antitrust also stated that he planned on having a consultant undertake the "very detailed study of the plan that will be required before I can conclusively advise the Attorney General whether the proposed divestiture addresses the competitive concerns raised by this transaction."

Given the history of the first two divestiture proposals, the extremely serious nature of the competitive issues involved, and the fact that S. 638 does nothing to remedy the antitrust problems, only the Morgan Stanley proposal provides the basis for Senate action

now. Full consideration of S. 638 as it is currently written would only be appropriate when the Justice Department is ready to give the Department of Transportation and the Congress its formal recommendation, and when the Congress has heard from the Interstate Commerce Commission and the United States Railway Association on the latest divestiture proposal, at least informally. Congress greatly benefited from the Commission staff's earlier effort, and I think they should be given the opportunity to review this plan as well.

If there was a consensus among all the interested parties that the third proposal solved all the competitive problems, it might be appropriate for the Senate to begin debate on the sale of Conrail as recommended in S. 638, but that is not the case. Many of the parties interested in the first two divestiture proposals believes that the third proposal shares the same basic problems.

Each is dependent on the same divestiture carriers—Guilford and the Pittsburgh and Lake Erie, and both of those railroads are small and very weak financially. P&LE is virtually insolvent, and exists at the mercy of its creditors. Between 1982 and 1984, the company lost $24 million from its rail operations and $47.7 million overall. Interstate Commerce Commission staff analysis showed that, in 1984, P&LE had a working capital deficit of more than $65 million, failed to pay principal or interest on its borrowings, and was unable to meet its fixed charges. By every measure of profitability, liquidity, efficiency, and productivity, P&LE is scarcely surviving at all. Implementation of this third divestiture plan is probably well beyond P&LE's means.

Guilford is not much better off. Notwithstanding its claims of a financial turnaround, the railroads that now form Guilford reported a net loss from 1982 to 1984 of nearly $30 million, even after employee wage holddowns, and Government subsidies. In 1984, the first full year of Guilford's merged operation, its net railway operating income declined, its fixed charge coverage declined, and its operating ratio worsened.

Further, this plan, like the others, seems to fail to meet the most basic of the Justice Department's requirements: Plan No. 3 fails to provide for competitive rail service in 15 of the 30 counties Justice identified. And even in the 15 counties where service is provided, in only 8 is it provided directly. In the others, the plan relies solely on trackage rights, reciprocal switching, and haulage agreements.

Such arrangements present problems of their own. They are permissive. They offer no assurance that any service will ever be provided in the cities they cover. The agreements governing these indirect service arrangements last for only 5 years. Further, they involve costly, time-consuming, multicarrier operations that can result in competitively inferior service.

It is doubtful, therefore, that either Guilford or the P&LE will be able to compete successfully against the faster, more efficient, and more direct Conrail-Norfolk Southern trains.

With respect to Guilford, a few examples make the point. Guilford claims it will attract 78 percent of its new business from intermodal traffic, while admitting that its service will be slower and its rates higher than Conrail's. While Guilford is granted theoretical access to midwestern auto plant and utilities, it is not given access to the traffic moving into those facilities. Its competitors have such access and can provide the single carrier service that Norfolk Southern says shippers prefer and that it claims as one of the principal benefits of a Conrail-Norfolk Southern merger. Further, up to 70 percent of Guilford's total revenues from shippers served through trackage rights and switching will go to Conrail-Norfolk Southern for trackage and switching charges.

Norfolk Southern's own description of P&LE's proposed service demonstrates its inadequacy. Norfolk Southern stated "all of the lines over which trackage rights have been obtained are secondary lines, but they are suitable for the type of operation intended by P&LE."

I understand the Senate leadership has received a letter signed by 22 State attorneys general, including the distinguished attorney general from Illinois, Neil Hartigan. That letter points out:

> There is no pressing national need, however, to justify restructuring our Nation's rail system and immunizing the largest railroad merger in the United States from the usual and customary process less than 1 month after a complex divestiture plan is proposed and before that plan can be evaluated by the affected States and the independent consultant retained for that purpose by the Department of Justice.

The letter urges the Senate—

> To defer floor consideration until after the Department of Justice's independent consultant has completed its study of the antitrust implications of the sale and Norfolk Southern's latest divestiture proposal, and until interested States and other parties have had an opportunity to study the latest proposal and testify with respect to the proposal and the report of the Department's independent consultant.

Mr. President, I ask unanimous consent that a copy of the attorneys general's letter be included in the RECORD at the conclusion of my remarks.

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

(See amendment No. 1.)

Mr DIXON. Mr. President, this is by no means a complete description of the problems that have been uncovered with respect to the third divestiture plan, Mr. President, but it does demonstrate the need to carefully analyze the new divestiture proposal before acting on S. 638's recommendation to sell Conrail to the Norfolk Southern Railroad.

As many of my colleagues know, Conrail was formed in 1976 from the remains of seven bankrupt eastern railroads. Congress recognized at the time that the new railroad being formed—Conrail—was anticompetitive and violative of the antitrust laws. However, Congress felt it had no choice. Preliminary review of plans to create two or three railroads out of what was to become Conrail were shown to be too expensive, and attempts to sell parts or all of the trackage to other railroads were either spurned or fell through. Because Conrail is somewhat anticompetitive in structure, however, does not mean we should return the railroad to the private sector in a way that makes that problem even worse.

Let me state again that I support returning Conrail to the private sector. I want to do that in fiscal 1986. However, as I stated before, S. 638 is fatally flawed, both because of the problems it recommendations raise, and because of the fact that the bill does nothing to mitigate those problems.

I do not see how Congress can hope to adequately consider the very serious antitrust questions involved before we have the information on this latest divestiture proposal and before interested parties have had a chance to analyze it or comment on it. The sale of Conrail deserves to be handled in as fair and equitable a way as the Santa Fe-Southern Pacific transaction is being handled. It is not getting that kind of consideration now.

Mr. President, in conclusion, I hope my colleagues will consider making the Morgan Stanley proposal the basis for Senate consideration of the Conrail sale issue if it is felt necessary to go forward with sale legislation at this time.

The Morgan Stanley proposal offers the Senate an opportunity to avoid any possible competitive concerns—keeping Conrail independent ensures the maintenance of the current level of competition. It also provides the Government with a far superior return on its investment than the Norfolk Southern proposal. Using the Morgan Stanley proposal, instead of the unwise and inadequate S. 638 proposal, would demonstrate that the Senate is concerned about the antitrust issues, and that it is concerned about the sales price. Using the Morgan Stanley proposal as the basis for our consideration would save the Senate time and ensure enactment of sale legislation early this year.

EXHIBIT No. 1

December 2, 1985.

Hon. ROBERT DOLE,
Majority Leader,
U.S. Senate, Washington, DC.
Hon. ROBERT C. BYRD,
Minority Leader,
U.S. Senate, Washington, DC.

DEAR SENATORS DOLE AND BYRD: Pending before the Senate is S. 638, a bill which would authorize the sale of Conrail to Norfolk Southern and thus create the nation's largest railroad with 32,000 track miles extending through 23 states. The proposed legislation would immunize the merger from the antitrust laws and would eliminate the usual and customary review of the merger by the Interstate Commerce Commission and the courts.

We urge you to defer floor consideration of this legislation until after the Department of Justice's independent consultant has completed its study of the antitrust implications of the sale and Norfolk Southern's latest divestiture proposal, and until interested States and other parties have had an opportunity to study the latest proposal and testify with respect to the proposal and the report of the Department's independent consultant.

On October 17, 1985, sixteen State Attorneys General submitted Joint Comments to the House Judiciary Committee's Subcommittee on Monopolies and Commercial Law opposing the Norfolk Southern proposal on antitrust grounds.[1] The proposed sale clearly will have a profound impact on our national rail system, and on shippers, receivers and consumers throughout the country.

The Department of Justice repeatedly has found that the merger would violate both the Clayton Antitrust Act and the Interstate Commerce Act. A determination of whether the latest (November 19) in a series of three proposed divestiture plans ameliorates these anticompetitive consequences can only be determined after careful study and review by the affected states and the Department's independent consultant. Even the Department of Justice's Antitrust Division has declined to give its unequivocal approval of the sale until after its independent consultant has completed its own study of Norfolk Southern's third divestiture plan.

We support the goal of the Administration and the Congress that Conrail be returned to the private sector. There is no pressing national need, however, to justify restructuring our nation's rail system and immunizing the largest railroad merger in the United States from the usual and customary process less than one month after a complex divestiture plan is proposed and before that plan can be evaluated by the affected states and the independent consultant retained for that purpose by the Department of Justice.

Thank you for your consideration of these views.

Very truly yours,

NEIL F. HARTIGAN,
Attorney General of Illinois,
(Twenty-three State attorneys general cosigning).

[1] The Joint Comments were submitted on behalf of the following Attorneys General: Charles M. Oberly (Delaware), Neil F. Hartigan (Illinois), Thomas J. Miller (Iowa), Robert T. Stephan (Kansas), David L. Armstrong (Kentucky), William J. Guste, Jr. (Louisiana), Stephen H. Sachs (Maryland), Hubert H. Humphrey, III (Minnesota), Robert M. Spire (Nebraska), Stephen E. Merrill (New Hampshire), Nicholas Spaeth (North Dakota), Anthony J. Celebrezze, Jr. (Ohio), LeRoy S. Zimmerman (Pennsylvania), Arlene Violet (Rhode Island), Charlie Brown (West Virginia) and Bronson C. LaFollette (Wisconsin). A copy of the Joint Comments filed with the House Judiciary Committee's Subcommittee on Monopolies and Commercial Law is enclosed. Subsequent to the House Subcommittee hearing, Francis X. Bellotti, Attorney General of the Massachusetts, submitted to the Subcommittee has written Comment in Opposition to the Proposed Sale of Conrail to Norfolk Southern. A copy of Attorney General Bellotti's Comment is also enclosed.

Mr. DIXON. I yield the floor, Mr. President.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, tomorrow the Senate will decide whether to shut off debate and move to the consideration of S. 638, the Conrail sale amendments. S. 638 contains the amendments to existing law to implement the Secretary of Transportation's plan to sell the extensive Conrail System to Norfolk Southern.

I do not fault the Secretary's procedure. the Secretary and the Department of Transportation worked very hard to come to the conclusion they did. But I do disagree with the conclusion. I favor returning Conrail to the private sector. I do not think the Government ought to be in any business that it absolutely does not have to be in.

Conrail is a profitable, vibrant and competitive freight rail carrier. Conrail made $440 million last year and, according to the U.S. Rail Association, will remain profitable over the next 5 years or more. A profitable and competitive company belongs in the private sector. The issue before the Senate is under what terms this railroad will be returned to the private sector.

Mr. President, in 1981, Congress passed the Northeast Rail Services Act which empowered the Secretary of Transportation to engage an investment adviser and seek a buyer for Conrail. The act provided Conrail with operating benefits not enjoyed by other railroads. Conrail could abandon unprofitable lines and reduce its employment more quickly than other railroads. Conrail did not have to pay State and local taxes. With these advantages, if Conrail still could not turn a profit, then it would be sold in pieces.

Conrail, under the leadership of Stanley Crane, fooled a lot of people. It took advantage of the Northeast Rail Services Act and the deregulatory provisions of the Staggers Act to become a leader in the industry for innovative service. It shed its status as a ward of the State.

Mr. President, Conrail no longer needs the exemptions from standard railroad operating procedures it has had since 1981. It should operate like any other railroad. Conrail no longer needs to be carried on the Federal Government's books. In fact, Conrail is now in a position to pay back some of the investment made in it over the years.

So, Mr. President, we should return Conrail to the private sector. But the question is how should we do it.

My colleagues should carefully consider the proposition we have before us. We are considering the fate of rail freight service in the Northeast and Midwest, not for the next 5 years, but for decades. If we make a mistake, there will be no turning back. This administration is not going to subsidize rail service of any kind if they can avoid it. The same administration that recommends the death of Amtrak and rail passenger service in the Nation, once rid of Conrail, will not rescue rail freight service, no matter what the economic impact.

Mr. President, the Senate has before it a request by the Secretary of Transportation to ratify a merger of two of the Nation's major railroads. The merger we are asked to ratify will result in the creation of the Nation's largest railroad and reduce the number of major carriers in the Eastern United States from three to two.

The Senate and the Congress is put in an unusual position by this proposition. The Interstate Commerce Commission is usually the forum for settling issues of this kind. The Commission is expected to have the personnel, expertise, and procedures to decide mergers and their impact on other carriers and shippers. But in 1981, the Congress, in a budget reconciliation measure, decided that Conrail was a special case and that Congress would decide its fate. And, so we have before us a merger proposal.

Mr. President, the Secretary of Transportation chose this merger route as a means of returning Conrail to the private sector. There were other interested buyers. There was the option of offering the Government's holdings to the public.

I acknowledge that she worked very hard, very diligently, and we had a lot of communications on this side. I respect her decisionmaking, but not the decision. She chose the merger route.

I thought about this a long time before I decided to take the stand that I have.

The Senate Commerce Committee, with only one member from the Conrail region, substantially approved the Secretary's plan and reported it to the Senate. Now the full Senate has to decide if this merger is in the public interest and whether the sale to Norfolk Southern is the best we can do as a means of privatizing Conrail once and for all.

Mr. President, I am opposed to the sale of Conrail to Norfolk Southern. I believe the proposal is flawed in three fundamental respects.

First, the Senate is asked to approve a merger without benefit of the information as to its competitive impact. This information would be available to the Interstate Commerce Commission if it were deciding the matter. The Senate also is asked to insulate this merger from the antitrust laws. Once the Senate and the Congress has acted, no further inquiry or legal challenge will be in order. I do not believe that we should ratify a merger of this size and complexity without a full understanding of how competing carriers and communities will fare.

Mr. President, proponents of this sale will say that the Justice Department has given its blessing to this merger and has conducted an inquiry comparable to an ICC proceeding. We are asked to ratify the work of two agencies of the executive branch which in this instance is subsituting for the work of an independent agency. It is important to note why the Congress in 1981 decided to exempt this transaction from ICC approval. The Congress in 1981 thought they would be selling a loser and wanted the ability to do it quickly. In addition, the Congress in 1981 did not comtemplate that the sale of Conrail would come in the form of a wholesale restructuring of eastern railroads. Indeed, the Conrail of 1981 is not the Conrail of today. We are not selling a hopeless loser; we are returning to the private sector a healthy, profitable railroad.

Mr. President, the sale to Norfolk Southern will lead to the loss of competition and jobs. Norfolk Southern is a solid, well-run railroad. Its decisions to streamline its operations and facilities will be based, I am sure, on the same sound business practices that earned it its reputation. No vaguely worded so-called public interest covenant will inhibit it from running a sound business. And it should not. I ran a big company. We never did a merger with someone in the same business where we did not try to eliminate redundancy and reduce overhead. This merger, by its very nature, will lead to the consolidation of facilities.

The sale to Norfolk Southern will exacerbate the lack of competition faced by shippers in New Jersey. New Jersey is a captive State; shippers who use rail, use Conrail. Shippers have options outside the State, but if eastern railroads are reduced from three to two, those options will be eliminated or reduced. That will mean higher rates for New Jersey shippers.

Mr. President, the Justice Department's inquiry into this merger and its divestiture proposal did absolutely nothing for the State of New Jersey. If you were captive before the Justice Department began its work, you were captive when they finished.

The second major flaw in this proposal is the impact it will have on the port of New York and New Jersey. Conrail is the only major railroad serving this port, one of the largest and most significant in the world. Competition up and down the Atlantic coast for import/export traffic which moves overland by rail is intense.

Norfolk Southern's focus in on Southern ports, particularly Norfolk. There is certainly nothing wrong with a Southeastern railroad enhancing the competitive position of Southern ports. But, what will be the impact on the competition among ports if Norfolk Southern is the major carrier in both the North and the South? The concern for potential diversion of traffic to Southern ports has caused the Port Authority of New York and New Jersey, of which I am a former commissioner, to abstain from associating itself with the endorsement of the Norfolk Southern sale by the departments of transportation of New York State and New Jersey.

The third major flaw in this proposal is the return to the taxpayers offered by Norfolk Southern. I have never considered the price offered for Conrail as important as maintaining reliable freight service for shippers and communities. But that is not to say that the price should not be examined closely to insure that the $7 billion investment made by the taxpayers is compensated to the maximum extent possible.

Mr. President, Norfolk Southern has offered $1.2 billion for Conrail. Its offer is identical to offers made by nonrailroad interests, such as Marriott and Alleghany. It is $200 million below the latest offer by the investor group assembled by Morgan Stanley. Is the Norfolk Southern offer adequate? The answer to that question lies in the answer to another. Namely, does not a railroad, when buying another railroad, realize advantages not enjoyed by a nonrailroad investor or group of investors? Is not Conrail simply worth more to Norfolk Southern than to Marriott or Alleghany? The synergy of combining Conrail and Norfolk Southern, opening markets to Norfolk Southern now only available to a competitor, should have yielded a higher offer at the outset of the bidding. The fact that Norfolk Southern only matched Marriott and Alleghany's bid indicates that the price was set by the seller and not the buyer.

Mr. President, I have a particular concern regarding the covenant affecting the Philadelphia corporate headquarters of Conrail. Last February, I held a meeting with Norfolk Southern, shippers, labor, and others affected by this sale. I asked Norfolk Southern to broaden and strengthen the covenant regarding maintaining its headquarters, and the employees therein, in Philadelphia. They agreed to consider such a strengthened provision. Yet the legislation before us today has not changed one iota from the covenant as it appeared last February. It appears that the opponents of Norfolk Southern are right: The only way to insure that Conrail's employees, many of them my constituents, remain in Philadelphia, is to keep Conrail as Conrail in Philadelphia.

Mr. President, I am opposed to this merger and the procedures under which we are considering it. We simply do not have a full understanding of the competitive impact of this sale. We are selling Conrail as if it were a loser and there were some crying need to get this basket case off the Federal dole. That is not an intended pun. That is not the case and the Senate should not be stampeded into taking an action we will regret for years to come.

Therefore, Mr. President, I will oppose S. 638, the Conrail sale legislation as presently drafted. If cloture is invoked, I will support amendments which might change some of its more objectionable features. In addition, I am considering offering an amendment which will offer some legal recourse to my State and region should the port diversion and competitive imbalance I foresee come to pass.

Mr. President, a public offering of the Government's holdings in Conrail is possible. Competing public offerings underscore the willingness of the public marketplace to facilitate the return of Conrail to private hands. While I have not embraced any particular public offering, I will consider supporting one, if offered, as an expression of my conviction that there is a better, more competitive and more financially sound means of selling Conrail than the Secretary's plan.

The public offering is one route that should be considered. There are others, such as having Conrail repay some of its debt to the Federal Government during a period in which a sound definitive privatization plan can be worked out. The bottom line is that Secretary Dole should take this matter back to the drawing board and bring to Congress a plan the Northeast and the Nation can live with.

Conrail is a vital link in the economy of New Jersey. New Jersey has over 1,200 miles of Conrail track and over 2,000 Conrail employees. Since the creation of Conrail, New Jersey has been totally dependent on it for rail freight service. As a captive State with no major competing service to Conrail, we have a lot at stake.

Mr. President, I have surveyed shippers, labor, shortline railroads, and locally elected officials in my State. There is great trepidation concerning this merger. Labor in New Jersey fears the loss of jobs; shippers fear the loss of competition; the ports of New York, New Jersey, and Philadelphia fear the diversion of cargo to Southern ports;

and communities fear the loss of the only railroad they have. I am aware of a number of concessions negotiated between Norfolk Southern and the New Jersey Department of Transportation, but there is no written, enforceable agreement between the State of New Jersey and Norfolk Southern at this point.

Mr. President, it will be said that we should sell Conrail to Norfolk Southern now, because failure to do so will postpone the day of decision. I am all for making a decision, but I would especially like to make the right decision. For those of us in States which will have to live with the consequences of this decision, this is not a question of philosophy or ideology. It is a cold hard matter of economics and the calculus of transportation in our region. We should choose, but choose wisely. I cannot choose Norfolk Southern.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TOBACCO REFERENDUM

Mr. HELMS. Mr. President, this has been cleared on both sides.

I send a bill to the desk and ask unanimous consent for its immediate consideration and action thereon.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2013) to delay the referendum with respect to the 1986 through 1988 crops of flue-cured tobacco and to delay the proclamation of national marketing quotas for the 1986 through 1988 crops of burley tobacco.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. METZENBAUM. Mr. President, a parliamentary inquiry. As I understand it, there is a motion pending by the Senator from Ohio, and I have no objection to the Senator from North Carolina proceeding. I just want to be certain that the position with respect to my pending motion will not be affected in any way.

The PRESIDING OFFICER. The Chair advises that consideration of the bill under current circumstances, by unanimous consent, would not affect the motion of the Senator from Ohio.

Mr. METZENBAUM. And upon completion of the action with respect to the unanimous consent request of the Senator from North Carolina, the Senate will be in the same position as it was prior to his request?

The PRESIDING OFFICER. The motion of the Senator from Ohio will recur on disposition of the matter of the Senator from North Carolina.

Mr. METZENBAUM. I thank the Chair.

I ask the Senator from North Carolina if he will be good enough to advise as to whether it is a fact, which I believe it to be, that the only purpose of this legislation is to delay for 30 days the balloting and 45 days certain notices. Is that correct?

Mr. HELMS. That is correct.

Mr. METZENBAUM. And there is no other substantive change being made in the legislation?

Mr. HELMS. That is correct.

Mr. BYRD. Mr. President, reserving the right to object, I will not object, but for the record I say that this has been cleared on this side of the aisle. Mr. FORD has been contacted. He supports the action we are about to take.

I ask unanimous consent that following the determination of the pending consent matter, Mr. FORD's name be added as a cosponsor of the measure.

Mr. HELMS. Senator FORD is a cosponsor. He is a principal cosponsor of the bill.

Mr. BYRD. I just want to be sure that is shown, and I state it for the record.

There being no objection, the Senate proceeded to consider the bill.

Mr. HELMS. Mr. President, this legislation allows the Secretary of Agriculture to delay for up to 45 days the producer referendum for the 1986 through 1988 crops of flue-cured tobacco. The mail referendum is currently scheduled for January 27-30, 1986, and ballots will be mailed to eligible voters on Friday, January 24. This delay is a simple administrative, technical matter, but it cannot be accomplished "administratively," and requires legislation.

Also included in this legislation is a 30-day delay in the announcement of the 1986 burley tobacco national marketing quota, from February 1, 1986 to not later than March 1, 1986.

This legislation is necessary because of the temporary delay in final passage of the budget reconciliation conference report. The conferees dealing with the tobacco program reform and cigarette tax measures have reached agreement and signed the conference report. Hopefully, Congress will settle the other objectionable issues and pass the reconciliation bill very soon.

The reason for delaying the flue-cured referendum is that if and when the reconciliation bill is enacted—including the tobacco program reforms—the Secretary of Agriculture will be required to determine a new quota, and the quota announced prior to that time will be null and void. Thus, a "second" referendum would probably have to be held. We think that holding two referendums would be unnecsary, costly, and further confusing to the farmers and the general public.

The same reasons for delaying the flue-cured referendum also apply to the announcement of the burley quota. Current law requires a referendum to be held every third year within 30 days after the Secretary announces quotas for the next 3 years. The burley quota is scheduled to be announced on February 1, so that "30-day time clock" would begin then. With the pending legislation, we would delay the announcement until March 1.

The bottom line, Mr. President, is that this legislation simply delays two items in current law because of pending legislation. It does nothing else. It saves the Government money and reduces confusion for the farmers. There is no reason anyone should oppose its adoption.

Mr. President, I ask unanimous consent that an editorial from the Winston-Salem Journal of January 19, 1986, supporting the delay in the flue-cured tobacco referendum, by printed in the RECORD at this point.

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

PUT OFF REFERENDUM

Wise farmers won't buy a pig in a poke. The same wisdom dictates that flue-cured tobacco growers know the kind of federal program they will have before they vote on it.

At this point, they do not know and the referendum is scheduled for Jan. 27-30. Congress created the uncertainty by adjourning for Christmas without completing action on tobacco legislation. Clearing up the confusion should be a first order of business when the solons reconvene on Tuesday.

The first step should be to put off the balloting. Even if agreement on tobacco program revisions could be reached within a week, there wouldn't be sufficient time to inform farmers on details of how this year's crop will be affected. A postponement of at least 30 days certainly seems called for.

Next, Congress should get down to business on the tobacco bill. Farmers need to know what to expect in the way of quotas, price supports, assessment fees and the like. As long as they are in the dark, they are handicapped in arranging finances and other crop plans.

That is not to say action should be rushed and ill-considered. It could hardly be hasty, since key provisions of the legislation have been discussed for months on end. Still, the issues involved are serious, with major implications for tobacco farmers in the years ahead, and should be thoroughly understood.

The central point of the proposals, largely drafted by Sen. Jesse A. Helms, R-N.C. in his role as Senate Agriculture Committee chairman, is participation by manufacturers. That represents a sharp change from the way the program has worked in the past. Helms prevailed over Rep. Charles G. Rose III, D-N.C., in a long, time-consuming wrangle. Rose wanted to finance the tobacco program with a portion of cigarette tax

revenues. He contended Helms' plan made too many concessions to manufacturers.

Under its terms, manufacturers would buy at a substantial discount surplus leaf stocks over a period of eight years. In return for sharing the cost of the program, manufacturers would have a voice in setting production quotas and price supports. Growers would have less say-so, and would end up even more at the mercy of the market.

The prospect may not be attractive, but it may be better than any alternative so far suggested. The burdensome surplus has raised the assessment fee, imposed to relieve taxpayers of financing the program, to intolerable levels. Last year it was 25 cents per pound; without program changes, it could be around 50 cents this year.

Obviously, setting the fee should be deferred until legislation is passed. The delay has been recommended by the board of directors of the Flue-Cured Tobacco Cooperative Stabilization Corp., which also urged that the referendum be put off. To do so would help farmers see clearly what they are voting on, and could spare the expense of a second vote if a new tobacco program called for it.

For guidance in starting the crop, Stabilization officials suggested farmers plan on an average support price of around $1.44 per pound. As changes in the law are contemplated, the figure should be close to the final amount. Last month, an effective cut of 4.7 percent in the production quota was announced by Agriculture Secretary John R. Block.

The year began with one ray of hope in the gloomy tobacco outlook. Stabilization, which handles leaf acquired under price supports, had 66 million pounds less on hand than at the beginning of 1985. At that, its warehouses held 746 million pounds of surplus tobacco.

"That is the trend we want to see," said John H. Cyrus, tobacco chief for the State Department of Agriculture. "But the thing we hope will bail us out is for Congress to pass the law calling for the buy-out manufacturers."

Until the decision is made, farmers can't wisely vote on the program. Putting off the referendum should be a first order of business when Congress meets on Tuesday.

Mr. McCONNELL. Mr. President, during consideration of this proposal to delay the announcement of the 1986 burley referendum, I think it is important to clarify an issue raised by the U.S. Department of Agriculture with respect to establishment of the 1986 price support level for burley.

In the last session of this Congress, a 1-year price support reduction measure for burley was included in a bill to extend then-current dairy legislation. This legislation was passed and signed by the President and, as a result, burley tobacco markets were able to open in a timely fashion. The reason for the temporary price support reduction was simple: a major revision of the method for determining future levels of price support was included in the budget reconciliation package, but this legislation had no chance of being enacted before the 1985 burley markets opened. It was never our intention that the 1985 price support level would be a benchmark for all future levels of price support if our basic legislation was never enacted. To the contrary, the amendment offered by me and my distinguished colleague from Kentucky, Senator FORD, sought to solve a temporary problem with a temporary solution.

Mr. FORD. Will my colleague yield?

Mr. McCONNELL. I am happy to yield.

Mr. FORD. I thank my friend for yielding. Mr. President, it appears that the USDA is seriously misinterpreting the intent of our burley price support amendment of last November. Our legislation was offered so as to provide farmers an opportunity to market their 1985 crop in an orderly and timely fashion, since reconciliation did not appear to be moving fast enough to take care of the problem. It was never our intention to penalize farmers for the Congress' inability to act and to base future price supports on the $1.488 price support level which was included in the temporary 1985 crop legislation. This would be extremely unfair to growers in my State and neighboring States. It is my clear understanding that if the Tobacco Reform Act of 1985 is not enacted in some form, the $1.78 level of price support should be the benchmark for all future burley price support determinations beginning with the 1986 crop. I hope that the Department will take another look at this issue in light of the fact that the announcement date will be extended upon passage of this bill.

The PRESIDING OFFICER. The bill is 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 (S. 2013) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2013

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 317(d) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314c(d)) is amended by inserting after the third sentence the following new sentence: "Notwithstanding the foregoing sentence or section 312(c) of this Act, the referendum with respect to national marketing quotas for Flue-cured tobacco for the 1986 through 1988 marketing years may be conducted not later than the earlier of (1) thirty days after any proclamation of the national marketing quota for Flue-cured tobacco for the 1986 marketing year made after the date of enactment of this sentence, or (2) March 15, 1986.".

SEC. 2. Section 319(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(a)) is amended by inserting after the second sentence of the third paragraph the following new sentence: "Notwithstanding the foregoing sentence, the proclamation of national marketing quotas for Burley tobacco for the 1986 through 1988 marketing years may be made not later than March 1, 1986.".

Mr. HELMS. 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.

CONRAIL SALE AMENDMENTS ACT OF 1985

The Senate continued with the consideration of the motion to proceed to consider the bill (S. 638).

Mr. GORTON. Mr. President, as a member of the Committee on Commerce, Science, and Transportation, I signed favorably the report recommending the sale of Conrail to Norfolk Southern. Since the report of that committee, I have fundamentally changed my mind on this subject, and wish to discuss it with my colleagues here in the Senate before tomorrow's vote on cloture on the motion to take up the proposition.

Although I have changed my mind on the merits of the issue, I do intend to vote in favor of cloture tomorrow. I believe firmly that not every subject which comes before this body ought to be the subject of a filibuster, much less a filibuster on the motion to take up a bill. Orderly procedure requires that that kind of opposition be limited to only the most vitally important and most major of national issues.

While I now disagree with both the majority leader and the chairman of my own committee on the appropriate disposition of this subject, I do think it is the right of the majority leader to bring it up and have it discussed on its merits, and for the Senate to deal with the issue on its merits. This is by no means an assurance that I would vote for cloture on the bill itself, however it simply means that the subject which should be discussed is the proposal itself, not whether or not we should be discussing that proposal.

On the merits of the proposal itself we clearly have three possible courses of action. The chairman of the committee has discussed them eloquently, though he has ended up with a different set of priorities than have I.

One course of action, and in some respects the simplest, is to leave Conrail under the ownership of the Federal Government, to continue the course of action which has occupied the last several years. I do not believe the Federal Government is the appropriate owner of a railroad system. I am convinced that if the Federal Government owns it over a period of years, it is less likely to be successful than it would be in the private sector.

I am afraid that at some point or another we will have the spectre of a strike essentially against the Federal Government, nominally, since it is a corporation owned by the Federal Government, and that we will run into many of the classic problems faced by the Federal Government when it is en-

gaged in a major private business in competition with other private enterprises.

We, of course, have before us in this bill two other alternatives for the sale of Conrail. One is to Norfolk Southern and one to a consortium headed by Morgan Stanley. The chairman of the committee thinks the former of those two alternatives is preferable. I now come to the conclusion that the latter of those two alternatives is preferable.

Assuming that we are to go ahead with some sale, Mr. President, it seems to me that there are a number of goals which we should attempt to attain to the maximum extent possible.

The first, of course, is that Conrail, when it goes back into the private sector, do so under circumstances under which it will be a success. That success can be measured in two fashions. First, of course, it should be a success in providing needed rail services to the many millions of people and the many thousands of businesses which will be dependent upon those services. Second, that success should be measured by whether or not Conrail can operate in the black, at a profit, while replacing capital equipment and continuing to provide services to shippers and consumers throughout its service area.

Our second goal, of course, is a broader goal than the first. That is that rail services at reasonable rates be provided not only to the people in the immediate service area of Conrail, but to all of the people of the United States who will be served by it, directly or indirectly. That, in turn, implies competition, implies choice among competing rail services on the part of as many people as possible.

The third goal of any such sale is to maximize the return to the Government of the United States. The taxpayers of the United States have already spent many billions of dollars on saving what was formerly the Penn Central, transforming it into Conrail, making it spectacularly successful.

Unfortunately, neither of the proposed sales meets all of those goals with equal facility. Even though I am now in favor of the Morgan Stanley sale, it is appropriate and just to say that Conrail, itself, is likely to be financially stronger as a division of or under the ownership and control of Norfolk Southern than it is as an independent railroad.

I hope that any relative weakness under Morgan Stanley is not too great. If we simply look at the financial security and the low possibility of an attempt to return to Federal Government ownership, or even to a subsidy on the part of the Federal Government, it may well be that the Norfolk Southern purchase proposal is the best.

On the other hand, it is clear, beyond the ability to debate the question seriously, that competition will be hurt by that sale, by the consolidation of two major eastern American railroads into one. I no longer regard as adequate the modest divestitures which are being required as part of the sale. Many people both in the Northeastern part of the United States and outside of that area, including the States of the present Presiding Officer and my own, will be affected by a lessening of competition that will result from a sale to Norfolk Southern as against any proposed sale which will keep Conrail independent.

Finally, of course, with the new offer from Morgan Stanley, the returns, both direct and indirect, to the Treasury of the United States, seem to argue in favor of the Morgan Stanley sale.

Both the immediate cash price and the tax benefits or absence of tax benefits to potential purchasers indicate that by a measure of several hundred million dollars, the Treasury of the United States would be better off in the immediate future if the Morgan Stanley offer is accepted.

These considerations, as I say, are not all on one side of the equation by any means. Reasonable Members of this body may disagree as to the weight of authority on one side or another. It is my feeling, however, that the advantages of a somewhat higher price and somewhat greater tax benefits for the people of the United States, and the perhaps more important advantages of the continuation of competition, not only between rail and other forms of transportation but among railroad companies themselves, outweigh the slightly or somewhat greater financial security for a Conrail which is a division or subsidiary of Norfolk Southern.

It is certainly my fervent hope, since there are not too many major rail systems in the United States at the present time, that we can retain at least the degree of competition among railroads that we have at the present time. Further consolidation, in this case and in the case of presently privately owned railroads, is not the appropriate solution.

I do feel, as I said at the beginning of these remarks, Mr. President, that it is appropriate for this body to discuss these issues, but it seems to me also more than appropriate that we follow a course of action different from that recommended by the Commerce Committee several months ago.

As a consequence, I intend at the present time, at least, to vote in favor of cloture on the motion to take up the bill, but in favor of alternative methods of dealing with this problem when we are discussing the bill as a whole. It may well be, Mr. President, that the best solution at the present time would be to re-refer this bill to the Commerce Committee to consider the rather different offer which Morgan Stanley has now made and to allow the Judiciary Committee somewhat more time to consider the serious antitrust questions which have been raised so eloquently by the junior Senator from Pennsylvania.

That could be done, it seems to me, in return for an agreement that the bill would come to the floor at a time certain in 1 month to 6 weeks without any filibuster on a motion to take up the proposal.

I have made that suggestion to some Members on both sides of the debate. It has not yet been accepted. Whether I will make such a motion on a debatable basis with a vote to follow awaits some further consultations with other Members interested in this proposal but troubled by the proposal of the Commerce Committee itself.

In any event, Mr. President, I do want to announce formally that I am not in favor of the sale of Norfolk Southern, that I do believe in full and free debate on this issue, and that I do believe there is now an alternative which is measurably preferable to the Norfolk Southern sale.

Mr. INOUYE. Mr. President, I rise in strong support of the motion to proceed to the consideration of S. 638, the Conrail Sale Amendments Act of 1985.

As a longtime member of the Commerce, Science, and Transportation Committee, I am all too familiar with the history of Conrail. Since 1973 when the Regional Rail Reorganization Act established the framework for Conrail, Congress has exercised a stewardship responsibility over the structure and ownership of the railroad. Twelve years and $7 billion later, we finally have an opportunity, through S. 638, to ensure the future strength and viability of rail service in the Northeast and Midwest, to return rail service to nongovernmental ownership, and to do so without fear of ever having to use taxpayer dollars to bail out the Conrail system again.

During the course of the Commerce Committee deliberations on the Conrail sale, the attractiveness of the Norfolk Southern proposal became increasingly more apparent. Norfolk Southern's offer to purchase Conrail reflects more than a century's dedication to the business of providing reliable and efficient rail service. Unlike many other rail holding companies, Norfolk Southern has not invested substantial sums outside the transportation field. Norfolk Southern and the areas served by the railroad have benefited from this commitment. In the 2-year period between 1982 and 1984, Norfolk Southern located over 330 industries on its lines. These industries have made capital investments in excess of $4.2 billion and provided employment for over 17,000 workers. The

statistics for the first three quarters of 1985 are equally impressive.

In addition to its expertise in the field of railroading, Norfolk Southern brings to Conrail the opportunity to open its rail operations to new markets and thereby strengthen a declining industrial base which has contributed to Conrail's severe downsizing. Between 1977 and 1984, Conrail has abandoned 3,754 miles of track and eliminated 43,932 jobs. Conrail's continued practice of downsizing raises serious doubts about the long-term viability of a stand-alone Conrail.

Today we have the opportunity to consider legislation which would ensure the long-term viability of rail service in the Northeast. In the interest of the 37,911 Conrail employees, the shippers who rely on the remaining 15,468 miles of track, and the American taxpayers, we have an obligation to consider S. 638. I, therefore, urge my colleagues to support the motion to proceed on the consideration of S. 638.

Mr. ROCKEFELLER. Mr. President, I rise to comment on the motion to proceed to Calendar Order No. 215, S. 638, the Conrail sale legislation. Mr. President, since the Commerce Committee—on which I serve—took up this legislation last year, I have been concerned about both the merits of the legislation and the process involved in the sale.

Mr. President, I will say, forthrightly, that I am opposed to S. 638 in its present form and support the Morgan Stanley alternative. My preference is to reserve the bulk of my comments for when the Senate turns to this bill on the merits, but I will comment briefly at this point.

When the Commerce Committee voted in April to report S. 638, I thought that our hearings had failed to produce information sufficient to justify approval of the Secretary of Transportation's decision. At that time I detailed my objections to the committee's bill in minority views to the Commerce Committee's report.

In sum, I did not believe that the administration and Norfolk Southern had met the burden it should—to prove with reasonable certainty that at least the same, if not an improved level of service, efficiency, and competition would result from a combination of Conrail and Norfolk Southern. From the standpoint of West Virginia, I thought there was sufficient evidence to doubt that any improvement in these areas would result, and a substantial likelihood that the combination of Conrail and Norfolk Southern would give damaging marketpower to one carrier in important West Virginia coal markets.

From the standpoint of the whole Nation, I thought that the serious concerns about competition and the disruptive effects of a Norfolk Southern/Conrail combination on shippers, bulk commodity producers—coal and grain—and other railroads should have caused the Commerce Committee and the Senate to find a more acceptable alternative. We now have available to us an alternative—the Morgan Stanley proposal—which would build upon the outstanding financial basis Conrail has attained in the last 5 years and return it to the private sector without the anticompetitive and disruptive impact foreseen in a combination with Norfolk Southern.

Mr. President, fundamentally, the Norfolk Southern bid for Conrail has changed very little since the Commerce Committee reported its bill. Indeed, where many had raised doubts, those doubts were substantiated by independent analysis and to some extent by the Justice Department. Where questions remained unanswered and documents had not been provided, many remain outstanding. Where concerns about the initial competitive analysis of the Justice Department have been raised, these remain uncorrected and unaddressed.

Despite the many twists and turns the Norfolk Southern proposal has taken over the last 9 months, despite the numerous revisions required to meet even the incomplete but negative assessment of competition from the Justice Department, despite the mountain of paper that has been generated, S. 638 remains a fundamentally flawed proposal.

Mr. President, one thing has changed fundamentally since the Commerce Committee reported its bill late last April. Morgan Stanley & Co., representing over 40 sophisticated, intelligent, and expert investors, has come forward with not only a bid to match Norfolk Southern's, but a bid that exceeds Norfolk Southern's cash offer by $200 million. Furthermore, not only would the Morgan Stanley bid significantly exceed the financial return to the Government in terms of cash and tax aspects of the sale, but they would also keep the railroad independent, match every covenant established by the Secretary of Transportation, and offer labor a superior financial deal.

Mr. President, as we consider the motion to proceed to the Norfolk Southern proposal, I will say to the Senate I think there are compelling reasons why the American people would be better served by returning the bill to the Commerce Committee. But at the same time, I think in the long run, the Nation will be well served by returning Conrail to the private sector. To meet that second obligation, it makes sense to sell the railroad at a time when the railroad is in peak condition and when its future is bright, and at a time when the Government is in desperate need of the revenue.

Mr. President, I have reached the conclusion that we should reject the Norfolk Southern bid for Conrail. To meet the congressional mandate to sell the railroad and the congressional desire to decide the issue, I think we should sell Conrail to the Morgan Stanley group. But in order to reach that conclusion, I do not intend to delay things. I think we should fully and fairly debate the options and make a judgment.

I am confident, Mr. President, that the Congress will eventually exercise common sense and good judgment and reject the inferior financial bid of Norfolk Southern, together with its several anticompetitive flaws. I am equally confident that the Congress will decide to sell Conrail to the Morgan Stanley investor group, as the financially superior and fully competitive deal on the table.

Mr. President, at this time, I have not made a final decision on how I will vote on the motion to close debate on the motion to proceed to this bill. Based on my desire to sell the railroad, I will vote to proceed if I believe, at the time of the vote, the leadership of the Senate and the floor managers will allow adequate time on the merits of the proposal to consider all views and to deal in a straightforward way with several necessary amendments. But if I sense a rush to push the bill through the Senate, I will vote no and recommend to my colleagues that they send it back to the Commerce Committee for further consideration.

Mr. President, I am hopeful that we can resolve this issue this year and sell Conrail through the public offering proposal of the Morgan Stanley investor group. For now, however, I will yield the floor.

Mr. ZORINSKY. Mr. President, the past year's discussion of the sale of the Consolidated Rail Corp. [Conrail] has revolved around a number of issues, and I believe my colleagues are familiar with the fundamental questions involved in the sale of this rail network. However, one facet of the proposal under consideration today, which I believe has not received adequate attention, is the impact of this transaction on States, such as Nebraska, which are not directly served by Conrail. I would like to take the opportunity to state that Midwesterners would feel the effects of a Norfolk Southern/Conrail combination, and that these effects would be negative. Indeed, many from the Midwest, my home State of Nebraska included, fear the effects of this legislation—private citizens, private corporations, and elected officials alike. The most detailed objections in my State have come from the Nebraska Department of Roads.

On June 17, 1985 the Nebraska Department of Roads announced its

strong opposition to the proposed sale of Conrail to Norfolk Southern Co. At the same time, it endorsed the alternative of a stand-alone Conrail such as that proposed by Morgan Stanley & Co.

The Department of Roads reached this decision based upon its consideration of five goals to be achieved by selling Conrail: To promote rail competition, to maintain local rail service, to promote financial stability of the railroad industry, to minimize employment loss, and to minimize government expenditure—I share these goals.

What changes have occurred since June 17 to alleviate concerns about Norfolk Southern's proposal to purchase Conrail? Very little. In fact subsequently findings have only strengthened the case against a Conrail-Norfolk Southern merger. What changes have taken place since June to increase the attractiveness of the Morgan Stanley bid? Plenty, foremost of which was announced on January 16, 1986. On that date, the Morgan Stanley investor group increased its bid to purchase the Government's interest in Conrail by $200 million—bringing the total offering to $1.4 billion.

The following is a brief summary of the analysis conducted by the Nebraska Department of Roads, and a synthesis of subsequent events and studies that have led me to stand by their findings in opposing the sale of Conrail to Norfolk Southern, and in supporting the stand-alone Morgan Stanley proposal.

The first goal articulated by the Department of Roads was to promote rail competition. The Department concluded that a sale to Norfolk Southern would be anticompetitive and have a negative effect on rail service well beyond the combined service areas of the proposed merger.

What has occurred since June to shed further light on this antitrust issue? On October 17, 1985 the attorney general of Nebraska, together with 15 of his fellow attorneys general joined to officially oppose a sale to Norfolk Southern, based primarily on the anticompetitive aspects of such a merger.

The attorneys general pointed out that the antitrust analysis of the administration was flawed from the beginning. Typically, before a railroad merger such as that proposed by S. 638 would be approved, it would be analyzed by the Interstate Commerce Commission, and all sides would have ample opportunity to be heard. Unfortunately, S. 638 explicitly excludes such a thorough study.

Rather than the ICC, the Justice Department conducted the study on the antitrust aspects of the proposal. The Nebraska Department of Roads concluded that this study was "incomplete, and not consistent either with its analysis of other rail mergers, nor with its standard merger guidelines. Certainly, the implications upon competition in the Midwest have not been evaluated by any agency." To this day, there has still been no Federal evaluation of anticompetitive implications on the Midwest. However, State after State have conducted evaluations of their own and concluded that the effects would be substantial.

Even without vigorous scrutiny, the Justice Department concluded that a Norfolk Southern-Conrail merger would violate both the Clayton and Interstate Commerce Acts without proper divestitures.

Three times, Norfolk Southern attempted to satisfy the Justice Department by proposing divestiture plans. While the third attempt received tentative approval, any final Justice Department opinion awaits further study by independent consultants, and in the meantime details of the plan have not yet been made public.

In addition to the flaws of the Justice Department analysis and problems inherent in the divestiture plan, this proposed mega-merger is inconsistent with the Staggers Act. As the aforementioned 16 attorneys general stated, "A sale of Conrail to Norfolk Southern would constitute a radical and unnecessary departure from the long-term approach established by Congress to replace regulation with competition in the railroad industry." I have been and remain a supporter of business deregulation where feasible. However, it is clear to me that deregulation will only work when regulations are replaced by viable competition.

The second principal goal of the Nebraska Department of Roads was to maintain adequate local service. Last June, Nebraska officials declared that "the attempt to build a NS/Conrail giant will force smaller regional railroads to react to the loss of revenue and traffic by curtailing service, deferring maintenance and abandoning line. Therein lies a serious adverse impact of the NS/Conrail proposal on local rail service."

Norfolk Southern indicated that it expects to realize revenue gain from traffic diversions of $233.9 million annually. The majority of these diversions will come from Midwest carriers like C&NW, IGC, Soo-Milwaukee and Grand Trunk.

What has transpired since June to alleviate concerns about rail traffic diversions? Of the four aforementioned railroads, Norfolk Southern has been successful in negotiating agreements with only the Soo/Milwaukee. The potential impact on the remaining three railroads remains potentially damaging to the Midwest's economic base.

Many, including the Nebraska Department of Roads, are also concerned with minimizing employment loss. In June the Department announced its preference for a stand-alone Conrail to a sale to Norfolk Southern because a stand-alone would cause virtually no loss of employment.

In July, Morgan Stanley signed labor agreements with the Railway Labor Executives Association [RLEA] and the Brotherhood of Railway, Airline and Steamship Clerks [BRAC], and have since been endorsed by other labor organizations. With the additional $200 million offered by Morgan Stanley on January 16, 1986, labor stands to be in an even better position than when they originally endorsed a public offering.

In its analysis, the Nebraska Department of Roads was particularly concerned with the financial stability of the railroad industry, and carefully scrutinized the viability of an independent Conrail versus a Conrail merger with Norfolk Southern. The Department concluded that Conrail was a well-functioning, competitive railroad with excellent earnings, and had a promising future as a stand-alone operation. In addition, the Department questioned the premise of the U.S. Department of Transportation that another railroad's "deep pockets" were needed to ensure the long-term financial security of Conrail.

Conrail's earnings have continued to improve. Conrail recently announced its 1985 earnings at $440 million. Because Conrail paid industry-scale wages only for the second half of 1984, an "apples to apples" comparison between 1984 and 1985 would make 1985 a record profit year. In addition, the Morgan Stanley investor group's recent bid increase speaks well to the issue of Conrail's viability.

Nebraska's concerns with financial stability go beyond concern for the stability of Conrail and extend to a concern with the economic stability of the entire railroad industry. The Department of Roads pointed out in June that "a NS/Conrail merger will cause greater financial burdens for many railroads, particularly regional carriers in the Midwest. The economic stability will be severely threatened because of the major traffic diversions." Although even last June Norfolk Southern was attempting to alleviate some of the anticompetitive problems by offering a divestiture plan, the Department of Roads pointed out that "divestiture of unwanted lines to carriers with limited resources could very well overextend these carriers causing further problems in the Midwest and Northeastern States." After three divestiture proposals, the possibility that those railroads receiving divested lines will be overextended remains as likely and controversial as ever.

I, like many fellow Nebraskans, am concerned with minimizing public and

governmental costs. Investment by the taxpayers of this country has been considerable. Over $7.5 billion was spent buying, rehabilitating, and consolidating rail systems, upgrading and purchasing rolling stock, and managing the process.

In addition to greater tax revenues that will be forthcoming from a publicly owned Conrail than from a Norfolk Southern/Conrail merger, the additional $200 million offered by Morgan Stanley is hardly insignificant. Admittedly, $200 million in additional revenues pales in comparison with the Federal deficit, yet it would certainly be foolish to ignore any additional revenues at this critical time.

For all these reasons, I urge my colleagues to oppose a Norfolk Southern/Conrail merger, and to support the Morgan Stanley alternative for a stand-alone Conrail.

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 which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

SCIENCE INDICATORS—MESSAGE FROM THE PRESIDENT—PM 99

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

I am pleased to transmit to you a report of the National Science Board entitled *Science Indicators/The 1985 Report.* This report is the seventh in a continuing series in which important aspects of the status of American science and engineering are examined.

The importance of scientific and engineering research to the well-being of our Nation is widely recognized. Science and engineering play a vital role in maintaining our Nation's defense and increasing its economic productivity.

I commend the report to the attention of the Congress and those in the scientific endeavor.

RONALD REAGAN.

THE WHITE HOUSE, *January 22, 1986.*

REPORT OF THE NATION'S PROGRESS IN AERONAUTICS AND SPACE—MESSAGE FROM THE PRESIDENT—PM 100

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

The enclosed report of the Nation's progress in aeronautics and space during calendar year 1984, a record of high achievement, is transmitted to you in accordance with Section 206 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2476).

Many departments and agencies of the Federal Government contributed substantially to this outstanding record, but the major participants are the National Aeronautics and Space Administration (NASA) and the Department of Defense (DOD) as set forth in the 1958 Act.

Department of Defense efforts in aeronautics and space in 1984 were broad and far-reaching and included programs in military satellite communications crucial for deterring and containing hostilities, a variety of programs in aeronautics to modernize and advance defense helicopters and Vertical/Short Takeoff and Landing Aircraft (V/STOL), and, of course, support at various military facilities for launching space vehicles, both civilian and military, and tracking their operations. Also, DOD consolidated research and technology on defense against ballistic missiles under the Strategic Defense Initiative Organization to provide programs and guidance for future decisions with respect to such defenses.

NASA activities in 1984 began to reflect our new commitment to encouraging private U.S. enterprise in space pursuant to Executive Order 12465 and our National Policy on the Commercial Use of Space. NASA activities also in 1984 continued to reflect the legislative mandate of the 1958 Act: to pursue activities for peaceful purposes for the benefit of all mankind, to provide widest dissemination of information resulting from such activities, and to undertake our national reach into space in cooperation with other nations and groups of nations. Our continuing commitment to this mandate was given special emphasis in 1984 when I announced to you and to the Nation on January 25 a plan of action to establish a permanently manned Space Station in the 1990's. I invited other countries to participate in this endeavor which, I believe, will spotlight the incredible potential of space waiting to be used for the betterment of mankind.

My 1984 goal to build a Space Station is a logical extension of U.S. voyages and operations, both national and international, made possible by the Space Shuttle, the vehicle of our current Space Transportation System. We used both transportation systems to place into orbit a broad array of applications satellites in 1984. Among these were satellites to observe Earth and search out its resources, assess and monitor food production, and keep watch for natural disasters so that human lives and property could be protected against them in a timely fashion.

A highlight in 1984 was our demonstration of the ability to manufacture more perfect products in the gravity-free space environment and offer those products for sale and use on Earth.

Another major highlight of U.S. air and space operations in 1984 was the dramatic demonstration of the ability of our astronauts to recover, repair, and redeploy malfunctioning spacecraft. This capability promises substantial savings in both time and money.

Our reach into air and space in 1984 brought us a rich bounty of information essential for developing new technologies for human advancement on Earth and for ensuring the Nation's continued primacy in air and space research. In our reach for the stars, knowledge continues to be both the key and the quest. As this report reveals, it is a grand search in which we all share, one that enriches and advances our Nation and all peoples everywhere.

RONALD REAGAN.

THE WHITE HOUSE, *January 22, 1986.*

SCIENCE AND TECHNOLOGY REPORT—MESSAGE FROM THE PRESIDENT—PM 101

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

I am pleased to submit to the Congress the sixth *Science and Technology Report,* as required under the National Science and Technology Policy, Organization, and Priorities Act of 1976, as amended. This is also the first biennial report, covering the years 1983 and 1984.

Continued strong support for our Nation's science and technology has been and will continue to be a policy of this Administration. The goals of this support are enhanced national security, improved quality of life, and increased industrial competitiveness. Today, more than ever before, we

must use our technological resources aggressively in order to retain international leadership.

This report highlights recent achievements in federally supported science and technology. It also presents areas of major emphasis for Federal action as we move forward in the coming years. Our challenge for the future is to draw upon our unique strength in basic science and accelerate the development of technology and products that will benefit our society.

RONALD REAGAN.

THE WHITE HOUSE, *January 22, 1986.*

MESSAGES FROM THE HOUSE

AT 12:04 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 268. Concurrent resolution providing for a joint session of Congress to receive a message from the President on the State of the Union.

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-2211. A communication from the Chairman of the National Capital Planning Commission, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2212. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, a report on the system of internal accounting and internal controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2213. A communication from the Acting Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2214. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the annual report of the Commission under the Government in the Sunshine Act for calendar year 1984; to the Committee on Governmental Affairs.

EC-2215. A communication from the Secretary of Defense, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during fiscal year 1985; to the Committee on Governmental Affairs.

EC-2216. A communication from the Chairman of the Federal Labor Relations Authority, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2217. A communication from the Chairman and Members of the Railroad Retirement Board, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2218. A communication from the Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2219. A communication from the Director of the Federal Emergency Management Agency, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2220. A communication from the Panama Canal Commission, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2221. A communication from the Acting Chairman of the Consumer Product Safety Commission, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2222. A communication from the Governor of the Farm Credit Administration, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2223. A communication from the Chairman of the National Endowment for the Arts, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2224. A communication from the Secretary to the Postal Rate Commission, transmitting, pursuant to law, a notice of the filing of proposed changes in third-class preparation requirements and order designating officer of the Commission and fixing procedural dates; to the Committee on Governmental Affairs.

EC-2225. A communication from the Administrator of General Services, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2226. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-114 adopted by the Council on December 17, 1985; to the Committee on Governmental Affairs.

EC-2227. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-122 adopted by the Council on December 17, 1985; to the Committee on Governmental Affairs.

EC-2228. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-115 adopted by the Council on December 3, 1985; to the Committee on Governmental Affairs.

EC-2229. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-121 adopted by the Council on December 17, 1985; to the Committee on Governmental Affairs.

EC-2230. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-120 adopted by the Council on December 3, 1985; to the Committee on Governmental Affairs.

EC-2231. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-119 adopted by the Council on December 17, 1985; to the Committee on Governmental Affairs.

EC-2232. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-118 adopted by the Council on December 3, 1985; to the Committee on Governmental Affairs.

EC-2233. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-117 adopted by the Council on December 3, 1985; to the Committee on Governmental Affairs.

EC-2234. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-116 adopted by the Council on December 3, 1985; to the Committee on Governmental Affairs.

EC-2235. A communication from the Inspector General, General Services Administration, transmitting, pursuant to law, the semiannual report of the Inspector General for the period April 1 through September 30, 1985; to the Committee on Governmental Affairs.

EC-2236. A communication from the Chairman of the Merit Systems Protection Board, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2237. A communication from the Chairman of the Merit Systems Protection Board, transmitting, pursuant to law, an annual report on the Board's review of their accounting systems for fiscal year 1985; to the Committee on Governmental Affairs.

EC-2238. A communication from the Director of the National Science Foundation, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2239. A communication from the Chairman of the Postal Rate Commission, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2240. A communication from the President of the Overseas Private Investment Corporation, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2241. A communication from the Chairman of the International Trade Commission, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2242. A communication from the Director of the Federal Mediation and Concil-

iation Service, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2243. A communication from the Director of the Federal Mediation and Conciliation Service, transmitting, pursuant to law, an annual report on the evaluation of the accounting methods of the Service for fiscal year 1985; to the Committee on Governmental Affairs.

EC-2244. A communication from the Inspector General, Department of Agriculture, transmitting, pursuant to law, notice of a computer matching program; to the Committee on Governmental Affairs.

EC-2245. A communication from the Director of the National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the 1984 annual report on the NOAA pension plan; to the Committee on Governmental Affairs.

EC-2246. A communication from the Secretary to the Postal Rate Commission, transmitting, pursuant to law, a notice of proposed rulemaking; to the Committee on Governmental Affairs.

EC-2247. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2248. A communication from the Secretary of Labor, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2249. A communication from the Administrator of the Small Business Administration, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on Labor and Human Resources, with an amendment:

H.R. 2417. A bill to amend the Public Health Service Act to revise and extend the program of assistance for health maintenance organizations (Rept. No. 99-229).

By Mr. HATCH, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 1762. A bill to amend the Public Health Service Act to revise and extend the program of assistance for health maintenance organizations (Rept. No. 99-229).

By Mr. ROTH, from the Committee on Governmental Affairs:

Special Report entitled "Federal Government's Security Clearance Programs", prepared by the Permanent Subcommittee on Investigations (Rept. No. 99-230).

● Mr. ROTH. Mr. President, on behalf of the Senate Committee on Governmental Affairs, I submit a report of its Permanent Subcommittee on Investigations entitled, "Federal Government's Security Clearance Programs."

The Investigations Subcommittee, under the very able leadership of the ranking minority member, Senator SAM NUNN, examined the ability of the Federal Government to effectively insure the integrity of those individuals who have access to classified information. The investigation focused on several instances where individuals holding high Government security clearances had sold some of this country's most highly guarded secrets to agents of hostile intelligence services.

In its findings, conclusions, and recommendations for corrective action, the subcommittee report urges the executive branch to substantially reduce the number of individuals who hold security clearances. The report finds that, under current manpower restrictions, the Government simply cannot adequately guarantee the integrity and trustworthiness of the more than 4.6 million Americans who today hold security clearances.●

● Mr. NUNN. Mr. President, we all hope and pray that the recent summit conference in Geneva has laid the foundation for improved relations between the United States and the Soviet Union.

But, no matter how beneficial these talks prove to be in the long term, the more immediate threat of Soviet espionage will remain serious. As hearings by the Senate Permanent Subcommittee on Investigations demonstrated last spring, it is increasingly apparent that the Soviet Union and its surrogates have embarked on a massive espionage venture in this country with which they plan to obtain as much of our classified information as they can.

In a report entitled, "Federal Government Security Clearance Investigations," made public today, the Investigations Subcommittee summarizes the 4 days of hearings held last April 16-18 and 25 and puts forward findings, conclusions, and recommendations for corrective action.

Filed by Senator WILLIAM V. ROTH, JR., the chairman of the subcommittee, the report recounts information contained in the 1341-page hearing volume containing the testimony of 22 witnesses, 26 exhibits, and 18 written statements submitted for the hearing record.

Copies of the 21-page report are available in room 193 of the Russell Senate Office Building.

As the ranking minority member of the subcommittee, I directed the 12-month investigation by the minority staff that led to the hearings. With the cooperation and concurrence of Chairman ROTH and his staff, the investigation probed into virtually every aspect of the Government's personnel security programs, policies and practices.

The hearings that followed constituted one of the most comprehensive examinations in recent years of the effectiveness of the Government's efforts to test the integrity of its employees and to combat espionage.

One of the immediate results of the investigation and hearings has been a renewed interest in and concern about personnel security programs. In calling attention to shortcomings in the security clearance system, the subcommittee has demonstrated to Congress, the executive branch, the press, and the public the need for reform.

Already, certain of the subcommittee's findings, first put forward by Chairman ROTH and myself last June, have been endorsed by key policymakers in the executive branch. For example, Chairman ROTH and I called for fewer security clearances and improved and more frequent background checks. Accordingly, a report issued on November 21, 1985, by the Pentagon's Security Review Commission made these two proposals its top recommendations for corrective action.

Several other recommendations by Chairman ROTH and myself have also been embraced by the Security Review Commission.

Similarly, the Investigation Subcommittee report filed today reiterates the importance of reducing the number of clearances while making more thorough—and more frequent—those clearance inquiries which are necessary. In example after example, the subcommittee's hearings showed that the security clearance system is not working well because too many people have clearances based on scanty and outdated background information.

The pressure to grant clearances with insufficient and untimely inquiry stems from the fact that more than 4 million persons have some form of security clearance and Government does not have the resources to look into the backgrounds of so many people. In one of the major recommendations of the subcommittee's report, we call upon President Reagan to issue an Executive order directing that Government agencies and defense contractors substantially cut the number of security clearances within 2 years with a goal of a 50-percent reduction.

The reduction in cleared personnel should be accompanied by a significant decrease in classified documents. Government classifiers should stamp secret and top secret only on those documents which deserve it. The overclassification of information remains a serious problem within the Government.

In what I consider to be a timely insight, the subcommittee report warns that unless the White House moves to improve personnel security methods throughout Government the Congress will undertake the task. My view is that it would be far preferable if the executive branch, under the guidance of the President's National Security Adviser, set out to reform the counter-

espionage system. But if the needed reforms are not initiated by the White House, Congress will be forced to do it—and a major overhaul of something as complex as the security clearance system is not the sort of task the Congress is suited for. Instead, the White House should face this challenge in cooperation with Congress.

The National Security Council has the authority and the responsibility to get the process of reform moving forward. But the NSC has been reluctant to carry out this responsibility. That reluctance should be discarded. The Nation's secrets should be guarded more effectively and the Congress is impatient with further delay.

Noting that "a system that must certify to the reliability of everyone ends up certifying to the reliability of no one," the subcommittee report also points out that the security problems caused by Soviet-inspired spying could be eased if Government investigated fewer clearance applicants—but did a better job of it and on a continuing basis. Reinvestigations, which are conducted rarely on previously cleared personnel, should be done at 2- and 4-year intervals, the report says.

Mr. President, I ask unanimous consent that all of the report's 22 findings, conclusions, and recommendations be printed at this point in the RECORD.

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

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

1. The government's personnel security program should be devoted to accurately detecting potential security risks as well as efficiently clearing large numbers of personnel.

2. The number of personnel holding clearances for access to highly sensitive information must be reduced. Our current system cannot adequately insure the continued integrity and reliability of the 4.3 million Americans who today hold security clearances. Furthermore, hearing testimony strongly suggested that many of those 4.3 million have no actual need for a security clearance. Clearance requests have reached unmanageable numbers, resulting in diluted investigative resources and background investigations of diminished quality. The President should issue an executive order directing that government agencies and contractors substantially cut the number of security clearances within 2 years with a goal of a 50% reduction. As an added incentive, those agencies and contractors who make the largest cuts should be given priority on remaining clearance requests.

3. Complementing the reduction in clearances, there must also be a significant effort to insure that information is classified only where truly necessary to maintain the national security. Although the Subcommittee's investigation did not focus in detail on the problem of overclassification, the 1984 report of the Information Security Oversight Office, released shortly after the Subcommittee's hearings, confirmed that "overclassification" of information remains a problem within the government.

4. The National Security Council should promptly complete its review of the personnel security programs. Although the National Security Council has been charged with initiating needed reforms in personnel security, this had not been accomplished at the time of the hearings. Given the critical importance of these reforms to our national security, the National Security Council should act promptly and without further delay, to carry out this responsibility. Absent such action, Congress will be forced to consider enacting legislation to replace, revise, and consolidate the dated executive orders which now govern the government's security clearance programs.

5. An executive body should be established with personnel security oversight responsibilities for the entire government similar to those which the Information Security Oversight Office now holds for the classification of information. This organization should specify and enforce uniform government-wide standards for security investigations and adjudications for both personnel and facility clearances. Standard requirements for formal training for both investigators and adjudicators should be established.

6. Congress must also focus on problems dealing with classified information in the legislative branch. For the most part, there are no established standards or procedures. Personal offices and Committee practices vary widely in terms of their handling of clearances and classified material. There are few, if any, checks in this system. We believe an overall review of security procedures in the legislative branch should be conducted by the Rules Committee in consultation with the Intelligence Committee with a goal of recommending improvements where needed. We commend the Senate Intelligence Committee's efforts in this area and recommend the review of their practices and procedures as a model for such improvements. Senators Roth and Nunn have addressed this issue through preliminary letters to the Senate leadership.

7. A more thorough quality background investigation should be conducted on those individuals with Secret clearances who have access to highly sensitive information. Hearing testimony established, without dispute, that the national agency check, currently used as the basis for most Secret clearances, is woefully inadequate as a background investigation. Some effort should be made to review and perhaps restructure the massive Secret clearance category with a view of prioritizing those clearances actually affecting the most critical and sensitive information.

8. There should be regular periodic reinvestigations of personnel with Secret and Top Secret clearances. Timely reinvestigation should be considered as important and be accorded as much priority as the initial background investigation. Cleared employees, at both government and contractor levels, should be required to complete periodic updated personnel security questionnaires. Some responsibility for updates should be shifted where possible to the users' security departments.

9. More realistic sanctions, such as debarment, suspension, and the imposition of monetary fines, should be meted out to employers of cleared personnel, including defense contractors, if they knowingly or through negligence violate personnel security regulations. Greater emphasis should be placed on the use of these sanctions in an effort to increase the accountability of contractors for security violations.

10. Legislation should be enacted which would allow security clearance investigative agencies such as the Defense Investigative Service and the Office of Personnel Management to obtain needed background information from criminal justice agencies at the state and local level as well as private corporations. Currently, they are often refused needed information due to interpretations of a variety of laws, including state privacy acts, the federal privacy act, and the Fair Credit Reporting Act. S. 1347, introduced in the Senate by Senators Nunn and Roth on June 25, 1985, is designed to correct this problem.

11. An interagency group should be formed to develop a more effective means for conducting personnel security investigations regarding immigrant aliens and recently natualized citizens who apply for security clearances. U.S. agencies which assist in clearance investigations abroad should recognize the critical importance of this task to national security and prioritize their efforts accordingly.

12. Responsible government agencies should increase efforts in the area of personnel security research to develop appropriate investigative strategies and procedures and to identify, where possible, areas of personnel vulnerability. Hearing testimony indicated that, at least in the Defense Department, there has been no significant dedication of resources for furthering study in this area, despite its growing importance to our national security.

13. Congress should consider the need for legislation clearly specifying that the Merit Systems Protection Board is authorized to review employment, as opposed to security, decisions. The Board, whose expertise does not encompass questions of national security, should not be engaged in the denial or reinstatement of security clearances.

14. The government should determine the feasibility of utilizing available technology for the encoding of classified documents to prevent their unauthorized duplication and removal. If feasible, this technology should be implemented as soon as possible on, at the least, a prioritized basis determined by the sensitivity and vulnerability of the material involved.

15. Continuing security awareness programs on behalf of federal agencies and industrial contractors should be given the highest priority. These programs should emphasize the harsh realities and grave personal consequences of espionage in an attempt to dispel popular misconceptions of espionage as an often glamorous and intriguing adventure.

16. Within the Department of Defense, all industrial clearance adjudication, including Special Access Programs (SAP) or Sensitive Compartmented Information (SCI) procurements, should be consolidated. According to hearing testimony, the present division of adjudication authority generates inconsistency, unpredictability and duplication of effort within the Department of Defense clearance system.

17. Under current rules, contractors who reduce security costs have a competitive advantage in the bidding process. Current Federal Acquisition Regulations should be reviewed to determine whether they can be modified to segregate security costs from those overhead rate determinations used for the award of contracts. Testimony suggested that the current inclusion of security costs in overhead gives contractors a "disincentive" to strengthen and improve security programs.

18. Defense Investigative Service (DIS) and Office of Personnel Management (OPM) investigators are not currently authorized to use the National Crime Information Center (NCIC) data bank. Law enforcement agencies routinely use that data bank to quickly obtain updated criminal record information. The Attorney General should proceed with arrangements for both the Defense Investigative Service and Office of Personnel Management to be granted access to the National Crime Information Center by the Board of Governors. Use of the Center would greatly facilitate access to state criminal records which are often otherwise unavailable for use in clearance investigations.

19. Government agencies and contractors should emphasize and strictly adhere to the "need to know" standard in submitting clearance requests. Greater responsibility should be delegated to the employers of cleared personnel, including contractors, to "prescreen" individuals submitted for clearances. In order to strengthen their incentive to eliminate unnecessary clearances, the costs of investigations conducted by the Defense Investigative Service should be charged to the appropriate DOD service or agency, similar to the system now employed by the Office of Personnel Management. Contractors should be charged for the cost of any DIS investigations requested beyond established quotas for those requests. Under current rules, costs of Defense Investigative Service investigations are covered by the DIS budget, rather than by those agencies requesting the investigations.

20. The requirements for cleared personnel and facilities vary in response to federal budget priorities. To meet uneven demand, the Office of Personnel Management and the Department of State have instituted plans of contracting with experienced outside investigators who can be called upon during surge periods, thus delivering adequate investigative products without unnecessarily expanding the permanent federal work force. All agencies responsible for conducting personnel security investigations should examine the feasibility of, and consider, following this procedure during surge periods.

21. Currently, only three professional employees in the Department of Defense are responsible for policy operations for what amounts to the largest personnel security program in the free world. More realistic staffing would help eliminate the need to periodically create oversight committees to propose reforms of the program. The office in DOD dealing with personnel security policy should be given enhanced status and adequately staffed and funded so that it can effectively oversee the DOD personnel security program.

22. In keeping with these recommendations, the Subcommittee commends the work of the Department of Defense Industrial Security Review Committee as set forth in its December 1984 report. The Committee's analysis of the Defense Industrial Security Program was extremely helpful to the Subcommittee in identifying and examining major shortcomings within the program. The Subcommittee recommends that the Department of Defense review and implement where feasible the Committee's recommendations for improvement of the Industrial Security Program, with particular emphasis on those portions dealing with the enhancement of personnel security investigative standards; the reduction of industrial clearances; increased and improved security requirements for industrial contractors—including strict monitoring of afterhours access; and revision of the industrial security inspection system.●

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. ROTH:

S. 2004. A bill to require the President to submit to the Congress an annual report on the management of the executive branch of the Government; to the Committee on Governmental Affairs.

S. 2005. A bill to amend the Inspector General Act of 1978; to the Committee on Governmental Affairs.

By Mr. ROTH (by request):

S. 2006. A bill to amend the Contract Disputes Act of 1978 and title 31, United States Code, to facilitate the collection of claims against Federal Government contractors; to the Committee on Governmental Affairs.

By Mr. ROTH (by request):

S. 2007. A bill to amend the Office of Federal Procurement Policy Act to provide authority to test innovative procurement methods and procedures; to the Committee on Governmental Affairs.

By Mr. ROTH (by request):

S. 2008. A bill to improve the Federal procurement system by providing an alternative simplified procurement method for competitively negotiating procurements of less than $5 million; to the Committee on Governmental Affairs..

S. 2009. A bill to authorize the Secretary of the Treasury to issue regulations to require that wages and salaries of Federal employees be paid by electronic funds transfer or any other method determined by the Secretary to be in the interest of economy or effectiveness, with sufficient safeguards over the control of, and accounting for, public funds; to the Committee on Governmental Affairs.

S. 2010. A bill to eliminate or change statutory requirements preventing the reduction of paperwork burdens and regulatory simplification; to the Committee on Governmental Affairs.

S. 2011. A bill entitled the "Drug Enforcement Administration Excepted Service Act of 1986"; to the Committee on Governmental Affairs.

By Mr. MATSUNAGA:

S. 2012. A bill for the relief of Isamu Yasutomi; to the Committee on the Judiciary.

By Mr. HELMS (for himself, Mr. McCONNELL, Mr. FORD, and Mr. EAST):

S. 2013. A bill to delay with respect to the 1986 through 1988 crops of Flue-cured tobacco and to delay the proclamation of national marketing quotas for the 1986 through 1988 crops of Burley tobacco; considered and passed.

By Mr. LEVIN (for himself, Mr. GRASSLEY, Mr. GORE, Mr. PRYOR, Mr. SARBANES, and Mr. BURDICK):

S. 2014. A bill to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes; to the Committee on Governmental Affairs.

By Mr. TRIBLE (for himself and Mr. DENTON):

S.J. Res. 256. A bill designating August 12, 1986, as "National Neighborhood Crime Watch Day"; to the Committee on the Judiciary.

By Mr. CHILES (for himself, Mr. PELL, Mr. BYRD, Mr. TRIBLE, Mr. KENNEDY, Mrs. HAWKINS, Mr. PROXMIRE, Mr. LAUTENBERG, Mr. DOMENICI, Mr. CHAFEE, Mr. SIMON, Mr. BOREN, Mr. HOLLINGS, Mr. BRADLEY, Mr. DODD, Mr. DOLE, Mr. BURDICK, Mr. MOYNIHAN, Mr. HATCH, Mr. RIEGLE, and Mr. THURMOND):

S.J. Res. 257. Joint resolution to designate the first Friday of May each year as "National Teacher Appreciation Day"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROTH:

S. 2004. A bill to require the President to submit to the Congress an annual report on the management of the executive branch of the Government; to the Committee on Governmental Affairs.

GOVERNMENT MANAGEMENT REPORT ACT

● Mr. ROTH. Mr. President, I am introducing today the Government Management Report Act of 1986, a measure which would provide for the President of the United States to submit an annual report, with his budget, on the major activities undertaken and planned to improve the management of the executive branch of Government.

I believe this legislation is necessary to ensure that the Congress is fully and currently informed about administration plans and activities designed to ensure that our Federal programs are managed effectively and that every taxpayer's dollar is put to its maximum and appropriate use. This report would also serve as the basis for a closer partnership between the legislative and executive branches on efforts to strengthen Government management.

President Reagan has placed increased emphasis on management issues. In September 1982 he established the Cabinet Council on Management and Administration, the first Cabinet-level White House group devoted specifically to management issues. He also established Reform '88, a comprehensive program to improve, consolidate, and streamline the Government's management systems. After 3 years, according to the Office of Management and Budget, this program has already resulted in substantial progress in increasing the efficiency of Federal operations, while building the management systems for the future.

The Congress has also taken an active interest in management reform in recent years through legislation such as the Paperwork Reduction Act of 1980, the Debt Collection Act of 1982, and the Federal Managers' Financial Integrity Act—all of which

were reported by the Governmental Affairs Committee which I chair.

The Office of Management and Budget said in its February 1985 management report:

> The Federal system works best when there is a cooperative Executive-Legislative effort to address national concerns in a balanced way. Jointly agreed upon action has proven to be the strongest and most effective means of implementing change. The need for such joint action applies to management reform, as well as to other activities of the Federal Government.

It is in the interest of furthering the partnership on management reform that I offer this legislation today.

The report required by this bill would not be another document to be quietly forwarded to Congress and end up collecting dust in some committee staffer's in-box. Rather, I see this report as the basis for annual hearings before the Government Affairs Committee on the state of Government management and what is being done to ensure that our Government has the leadership, the systems, and the organization to meet the challenging times ahead.

For many years, we have relied on the President's budget as our fiscal blueprint. That document has served as the starting point for our budget deliberations. Each year the Budget and Appropriations Committees hold hearings based on this report. The President also submits his economic report and the Joint Economic Committee holds overview hearings. We have now come to a time when Government management has become sufficiently important that it is ready to take its place alongside the budget and the economy as subjects meriting the same systematic and thorough attention.

In 1984, the Congress mandated in the Deficit Reduction Act a report by the President on how he had responded to recommendations made by outside organizations, including the Grace Commission, to improve Government management. The report issued last February by OMB not only addressed the legislative requirement, but also informed the Congress of other improvement efforts being undertaken. For the first time we had a full picture of the President's management program.

OMB plans to continue reporting annually on management at the time the budget is issued, but we have no assurance beyond the Agency's promise that this report will be issued in future years, and we have no voice in deciding what the report will contain. The Deficit Reduction Act required only a single report. My bill would ensure that we have such a report every year. Moreover, it outlines the specific subjects on which OMB would report, including the provision of a summary of major management improvement initiatives and a discussion for each initiative of its purposes, the progress and problems in implementation, the impact on Agency operations in terms of additional costs incurred, cost savings already achieved and projected, resulting improvements in Federal program efficiency or productivity, and resulting improvements in service delivery.

This bill strikes a balance between keeping the reporting requirements as simple and flexible as possible and assuring that the information provided will be useful to Congress in effectively overseeing executive branch management improvement activities. It also assures that the President's report will cover all management activities and present, insofar as possible, a balanced summary of both the problems and accomplishments in management.

Three years ago, OMB instituted a management review process, parallel to the budget process, wherein OMB officials meet annually with the management staff of each of the 20 or so largest Federal agencies to discuss an agenda of management reforms for the coming year. Following these meetings, the agencies submit management improvement plans for OMB review and approval. These plans then are the blueprints for Agency action the following year. OMB also tracks progress using an automated system throughout the year.

The annual hearings triggered by the report required by my bill would not set up so systemmatic a process, but it would give Congress an opportunity, similar to that exercised by OMB with executive agencies, to ensure that appropriate actions are being taken to see that we have the Government management that the Nation expects and deserves.

I urge your support for this legislation and swift enactment by the Congress.

Mr. President, I request 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. 2004

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 "Government Management Report Act of 1986".

SEC. 2. (a)(1) Chapter 11 of title 31, United States Code, is amended by adding at the end thereof the following new section:

"§ 1115. Annual management report

"(a) With each budget of the United States Government submitted under section 1105 of this title, the President shall submit to the Congress a report on the management of the executive branch of the Government with respect to the most recently completed fiscal year, the current fiscal year, and the fiscal year for which the budget is submitted. Each such report shall include—

"(1) an overview of the general management improvement goals of the President for the executive branch of the Government during such fiscal years;

"(2) a summary of the management problems and issues for the executive branch of the Government, and the major management improvement initiatives and accomplishments for the executive branch of the Government, involving—

"(A) program delivery systems;

"(B) human resources management;

"(C) productivity;

"(D) information resources management;

"(E) financial management;

"(F) procurement and grants management;

"(G) property management; and

"(H) any other relevant subject areas; and

"(3) for each initiative summarized in paragraph (2), a description, where feasible and appropriate, of—

"(A) the purpose of the initiative;

"(B) the progress and problems in the implementation of the initiative; and

"(C) the impact of the initiative on agency operations, including—

"(i) any additional costs which have been incurred as a result of the implementation of the initiative;

"(ii) any cost savings which have been achieved or which are projected as a result of the implementation of the initiative;

"(iii) any improvements in Federal program efficiency or productivity which have resulted from the implementation of the initiative; and

"(iv) any improvements in the delivery of services which have resulted from the implementation of the initiative;

"(4) proposals for legislative or other action to improve the management or organization of the executive branch of the Government, including proposals to remove statutory impediments to the improvement of the management of the executive branch of the Government; and

"(5) a summary of each significant new management policy for the executive branch of the Government which has been adopted or which is planned for the current fiscal year or the fiscal year for which the budget is submitted, and a discussion of the reasons for such policy.".

(2) The analysis for Chapter 11 of such title is amended by adding at the end thereof the following:

"§ 1115. Annual management report.".

(b) Section 719 of such title is amended—

(1) by redesignating subsections (g) through (i) as subsections (h) through (j), respectively; and

(2) by inserting after subsection (f) the following new subsection:

"(g) Within 90 days after the President has submitted a report under section 1115 of this title, the Comptroller General shall prepare and transmit to the Congress a statement analyzing such report. The statement shall include—

"(1) an evaluation of the items contained in such report which the Comptroller General considers to be of particular interest to the Congress;

"(2) a specification of any questions or issues raised by such report which the Comptroller General considers to require further clarification;

"(3) an analysis of the extent to which such report complies with the requirements of section 1115 of this chapter; and

"(4) recommendations, if any, for improvement of the management or organization of

the executive branch of the Government, including modification or repeal of statutory impediments to efficient and effective management.".●

By Mr. ROTH:

S. 2005. A bill to amend the Inspector General Act of 1978; to the Committee on Governmental Affairs.

INSPECTOR GENERAL ACT AMENDMENTS

● Mr. ROTH. Mr. President, in 1978 the Committee on Governmental Affairs, which I chair, secured the enactment of legislation establishing independent offices of inspector general in many of the larger Federal departments and agencies. In 1982, on the basis of hearings before the committee, I proposed and the Senate adopted an amendment to the Defense authorization bill which established a statutory inspector general for the Defense Department. Most recently, the Congress incorporated under the Inspector General Act of 1978 the State Department inspector general as part of administrative provisions in the Foreign Relations Authorization Act enacted in August 1985.

Eleven Cabinet departments and six major agencies now have statutory inspectors general. The IG's have overall responsibility for coordination and leadership of internal auditing and investigative activities in these agencies and are required to report periodically to their agency heads and the Congress concerning significant problems, abuses or deficiencies and the progress of corrective action. The statutes creating these offices contain a number of specific provisions designed to insure that inspectors general have the independence and authority necessary to carryout their responsibilities.

Although the establishment of statutory offices of inspector general was initially opposed by every department and agency affected, the usefulness of these offices is now widely recognized. President Carter described them as "Perhaps the most important new tools in the fight against fraud * * *". President Reagan has called them "Our first line of defense in attacking fraud, waste, and abuse."

One of President Reagan's first initiatives in the management area was to establish a President's Council on Integrity and Efficiency to coordinate IG activities and strengthen their capabilities. According to the President's fiscal year 1986 management report, IG efforts since March 1981 have resulted in:

Nearly 67,000 allegations of fraud, waste, and abuse;

Over $46 billion put to better uses, including $26 billion in questioned costs upheld as a result of audits conducted by the Defense Contract Audit Agency and commitments by agencies to recover funds, call loans, and cancel guarantees, totaling $6 billion;

More than 10,000 successful prosecutions, including over 2,000 in the last 6 months of 1984 alone; and

Almost 9,400 administrative sanctions or agency actions against Federal employees, contractors, and grantees.

The success of the statutory inspectors general has been possible because of several fundamental improvements mandated by the legislation creating their offices. Under the IG statutes, responsibility for internal audits and investigations was placed in a single central unit in each agency headed by an inspector general. Before, uncoordinated audit and investigative units were often scattered throughout an agency. There are specific statutory provisions designed to insure a high degree of independence and to provide the IG with sufficient authority to carry out his or her responsibilities. By law, the inspector general has direct access to the agency head and significant findings are required to be reported to both the agency head and the Congress.

Recently, as part of his management legislative initiatives, the President submitted proposed legislation which would standardize inspector general authorizing legislation and make other technical and administrative changes to the 1978 act. The legislation I am introducing today, the Inspector General Act Amendments of 1985, incorporates these provisions.

Given the success of the inspector general concept, however, my bill goes one step further. The existing IG legislation covers only 17 of the large departments and agencies. There are about 40 smaller entities—such as executive agencies, regulatory boards and commissions, and Government corporations, with internal audit or investigative units which have no statutory authority or independence; an even larger number have no internal audit or investigative units at all.

To strengthen internal audits and investigations in the small agencies which have such units, I have included provisions in this bill designed to extend the benefits of the inspector general concept to smaller Federal executive agencies, regulatory boards, and commissions, and Government corporations which do not have statutory IG's. The bill does not affect the Justice and Treasury Departments and the Postal Service. The need for IG's in these organizations will be addressed separately.

Strong internal audit is especially needed at smaller agencies because their operations usually are not closely watched by Congress, the press or the public. In the absence of an independent internal audit unit, there is greater risk that serious problems and deficiencies will not be reported to the agency head and no assurance such problems will become known outside the agency.

Under existing laws and procedures, agency heads are responsible for providing adequate audit coverage of the programs they administer. However, this responsibility has simply not been carried our at many—if not most—smaller agencies. A May 1984 GAO report, based on responses to a questionnaire survey of Federal entities without statutory inspectors general, concluded that:

Some agencies are not complying with OMB Circulars A-50 and A-73, which address audits of Federal operations and programs and audit followup; and with GAO's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." Some agencies have no audit coverage; at others the internal auditor does not report to the head or deputy head of the agency; and at several agencies that have more than one audit or investigative unit, there are no procedures for coordination.

Since the GAO report is based on responses to a questionnaire, the deficiencies cited are essentially those acknowledged by the agencies responding. An in-depth review might well have disclosed even further problems and deficiencies.

For example, even though the Securities and Exchange Commission is responsible for monitoring the performance of private sector accounting firms in order to help protect investors against fraud and abuse, internal auditing deficiencies at that agency have been particularly flagrant. Until very recently, in fact, SEC did not even have a single internal auditor to review its own operations.

As long ago as 1976, the General Accounting Office criticized SEC because the agency did not have an internal audit unit; however, no action was taken to remedy the situation. In 1980, during the course of a second GAO review of SEC audit operations, an internal audit division with a small staff was established. By 1983, although the internal audit unit continued to exist on paper, its staff had been reduced to zero. The unit now has a small staff again, but only because of a specific directive in SEC's appropriation act requiring such action.

The bill I am introducing would significantly improve internal audits and investigations in small Federal agencies without requiring additional expenditures or personnel. Specifically, the bill would strengthen the independence and authority of internal audit units by:

First, requiring the head of the agency to consolidate all internal audit and investigative units into a single unit reporting directly to the agency head;

Second, providing that the head of the internal audit unit have the same powers and duties as the statutory IG's; and

Third, requiring that the agency head communicate the reasons to Con-

gress in the event the head of an internal audit unit is removed or involuntarily transferred.

The bill represents another important step in improving management and reducing fraud and abuse in Federal programs and activities, and I encourage my colleagues to give it their support.

I ask unanimous consent that the text of this bill and a section-by-section analysis be printed in the RECORD.

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

S. 2005

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 "Inspector General Act Amendments of 1986".

CONFORMATION OF AUTHORITIES OF INSPECTORS GENERAL

SEC. 2. (a) Section 2(1) of the Inspector General Act of 1978 is amended—

(1) by striking out ", and the Department of State";

(2) by inserting "and" before "the Veterans' Administration";

(3) by inserting "the Department of Energy, the Department of Health and Human Services," after "the Department of Education,";

(4) by inserting "the Department of State," after "the Department of Labor,"; and

(5) by striking out "the Community Services Administration,".

(b) Section 9(a)(1) of such Act is amended—

(1) by striking out subparagraph (I);

(2) by redesignating subparagraphs (J) through (N) as subparagraphs (K) through (O), respectively;

(3) by redesignating subparagraphs (E) through (H) as subparagraphs (G) through (J), respectively; and

(4) by inserting after subparagraph (D) the following new subparagraphs:

"(E) of the Department of Energy, the Office of Inspector General as established by section 208 of the Department of Energy Organization Act);

"(F) of the Department of Health and Human Services, the Office of Inspector General (as established by title II of Public Law 94-505);".

(c) Section 11 of such Act is amended—

(1) by inserting "Energy, Health and Human Services," after "Education," each place it appears in paragraphs (1) and (2);

(2) by striking out "Community Services," in paragraph (1); and

(3) by striking out "the Community Services Administration," in paragraph (2).

(d)(1)(A) Section 208 of the Department of Energy Organization Act is repealed.

(B) The table of contents in the first section of such Act is amended by striking out the item relating to section 208.

(2) Title II of Public Law 94-505 is repealed.

UNIFORM SALARIES FOR INSPECTORS GENERAL

SEC. 3. (a) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"Inspector General, Department of Commerce.

"Inspector General, Department of the Interior.

"Inspector General, Department of State.

"Inspector General, Agency for International Development.

"Inspector General, Environmental Protection Agency.

"Inspector General, General Services Administration.

"Inspector General, National Aeronautics and Space Administration.

"Inspector General, Small Business Administration.

"Inspector General, Synthetic Fuels Corporation.".

(b) Section 5316 of such title is amended—

(1) by striking out the paragraphs relating to—

(A) the Inspector General of the Department of Commerce;

(B) the Inspector General of the Department of the Interior;

(C) the Inspector General of the Agency for International Development;

(D) the Inspector General of the Community Services Administration;

(E) the Inspector General of the Environmental Protection Agency;

(F) the Inspector General of the General Services Administration;

(G) the Inspector General of the National Aeronautics and Space Administration; and

(H) the Inspector General of the Small Business Administration; and

(2) by adding at the end thereof the following new paragraph:

"Deputy Inspector General, Synthetic Fuels Corporation.".

(c) Section 122(a)(5) of the Energy Security Act is amended—

(1) by striking out "level III of the Executive Schedule under section 5314" and inserting in lieu thereof "level IV of the Executive Schedule under section 5315"; and

(2) by striking out "level IV of such schedule under section 5315" and inserting in lieu thereof "level V of such schedule under section 5316".

OATH ADMINISTRATION AUTHORITY

SEC. 4. Section 6(a) of the Inspector General Act of 1978 is amended—

(1) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively; and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an investigator or such other employee of an office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;".

REPORTING ON UNRESOLVED RECOMMENDATIONS

SEC. 5. Section 5(a)(3) of the Inspector General Act of 1978 is amended to read as follows:

"(3) an identification of each significant recommendation which was described in previous semiannual reports and which has not been resolved;".

REQUIREMENTS FOR INTERNAL AUDIT UNITS IN CERTAIN AGENCIES

SEC. 6. The Inspector General Act of 1978 is amended by inserting after section 8A the following new sections:

"REQUIREMENTS FOR CERTAIN INTERNAL AUDIT UNITS

"SEC. 8B. (a) Any internal audit unit established in a Federal entity shall be responsible for the conduct of audits and investigations of the programs and operations of such entity in accordance with the requirements of this section.

"(b) On or after the effective date of the Inspector General Act Amendments of 1985, any appointment to the position of internal audit unit head of a Federal entity shall be made by the entity head of such entity in accordance with the laws and regulations governing appointments in the civil service.

"(c) Within 180 days after the effective date of the Inspector General Act Amendments of 1985, the entity head of each Federal entity in which more than one internal audit unit has been established shall consolidate such units into a single internal audit unit.

"(d)(1) Except as provided in paragraph (2), the entity head of a Federal entity may transfer to an internal audit unit of such entity other units or components of such entity, or functions, powers, or duties of such units or components, if such entity head determines—

"(A) that such units, components, functions, powers, or duties are properly related to the functions of such internal audit unit; and

"(B) such transfer would further the purposes of this section.

"(2) An entity head may not transfer to an internal audit unit any program operating responsibilities.

"(e) Each internal audit unit head of a Federal entity shall report to and be under the general supervision of the entity head of such entity or, to the extent such authority is delegated, the officer next in rank below such entity head, but shall not report to, or be subject to supervision by, any other officer of such entity. Neither the entity head of such entity nor the officer next in rank below such entity head shall prevent or prohibit the internal audit unit head from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation.

"(f) If an internal audit head is removed from officer or involuntarily transferred to another position or location, the entity head concerned shall promptly communicate the reasons for any such removal or involuntary transfer to both Houses of Congress.

"(g)(1) The provisions of section 4 shall apply to the internal audit head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment.

"(2) The provisions of section 5 shall apply to the internal audit unit head of a Federal entity and the entity head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment and the head of an establishment, respectively.

"(3) The provisions of section 6 shall apply to the internal audit unit head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment and the head of an establishment, respectively.

"(4)(A) The provisions of section 7 shall apply to an internal audit unit head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment.

"(B) The provisions of section 7 shall apply to any employee of a Federal entity in the same manner as such provisions apply to an employee of an establishment.

"(h) For purposes of this section and section 8C:

"(1) The term 'entity head' means the director, administrator, president, chairman, or other chief officer of a Federal entity.

"(2) The term 'Federal entity' has the same meaning as is given to the term 'agency' in section 552(e) of title 5, United States Code, except that such term shall not include—

"(A) an establishment (as defined in section 11(2) of this Act);

"(B) the Executive Office of the President;

"(C) the Department of Justice;

"(D) the Department of the Treasury;

"(E) the Central Intelligence Agency;

"(F) the United States Postal Service;

"(G) the General Accounting Office; or

"(H) any entity in the judicial or legislative branches of the Government (including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

"(3) The term 'internal audit unit' means an office, unit, or other component of a Federal entity which carries out audits or investigations for the purpose of reviewing the progams and operations of such entity, but does not include an office, unit, or other component of such entity which carries out audits or investigations as an integral part of the programs or operations of such entity.

"(4) The term 'Interagency Committee' means the Inspector General Interagency Committee established under section 8C.

"(5) The term 'internal audit unit head' means the director or other chief officer of an internal audit unit.

"INSPECTOR GENERAL INTERAGENCY COMMITTEE

"SEC. 8C. (a) There is established the Inspector General Interagency Committee, which shall consist of five Inspectors General who are appointed under section 3 and who are designated by the President to serve on the Interagency Committee.

"(b)(1) The Interagency Committee shall conduct a study with respect to—

"(A) the extent and effectiveness of internal audit and investigative activities at Federal entities, with particular attention to Federal entities in which internal audit units have not been established; and

"(B) the most appropriate and efficient methods of assuring effective audits and investigations at Federal entities.

"(2) Within one year after the date of enactment of this section, the Interagency Committee shall prepare and transmit to the President and the Congress a report describing the findings of the study conducted under paragraph (1) and containing such recommendations as the Interagency Committee considers appropriate.

EFFECTIVE DATE

"SEC. 7. This Act and the amendments made by this Act shall take effect on January 1, 1986.

INSPECTOR GENERAL ACT AMENDMENTS OF 1986—SECTION-BY-SECTION ANALYSIS

SECTION 1

This section states the title of this bill: "The Inspector General Act Amendments of 1986."

SECTION 2

This section of the proposed amendments incorporates the Office of Inspector General of the Departments of Energy and Health and Human Services into the Inspector General Act of 1978, conforming their authorities and responsibilities to those of the other Inspector General (IG) offices established by the Act. Incorporating the IG offices of the Departments of Energy and Health and Human Services into the Inspector General Act of 1978 will eliminate the statutory position of Deputy Inspector General at both departments. This section also repeals the previous statutory provisions under which the offices of Inspector General at Energy and at Health and Human Services functioned, since they would now be covered by the Inspector General Act. In addition, references to the Community Services Administration Inspector General are deleted from the Inspector General Act because that agency was abolished in 1982.

SECTION 3

This section provides that all statutory Inspectors General will be compensated at the Executive Level IV rate, regardless of the agency in which they serve. Under present laws, statutory IGs are compensated at different rates even though their duties are essentially the same. The bill also provides that the statutory Deputy Inspector General at the Synthetic Fuels Corporation will be compensated at Executive Level V.

SECTION 4

This section authorizes Office of Inspector General personnel to administer oaths when necessary in the performance of their duties. During the conduct of investigations, it is often necessary for IG personnel to take voluntary sworn statements. Most IG offices have authority to administer oaths for this purpose but a few do not. This amendment makes the authority uniform and provides it for all IG offices. It would not authorize IG personnel to subpoena testimony.

SECTION 5

This section is a technical amendment to the semi-annual reporting requirements in the Inspectors General Act of 1978. The amendment provides that the Inspector General must identify each significant recommendation which remains unresolved and has been described in previous semiannual reports.

SECTION 6

This section provides authority and responsibilities for internal audit and investigation units in Federal entities not now covered by the Inspector General Act of 1978. The 1978 Act is amended to:

Consolidate in a single internal audit unit the conduct of audits and investigations in those Federal agencies having more than one audit office;

Provide that the internal audit unit head shall be appointed by the Federal entity head in accordance with civil service laws and regulations;

Insulate the internal audit unit from program operating responsibilities;

Require that the internal audit unit head report to the Federal entity head or the officer next in rank below such entity head;

Require that, if the internal audit unit head is removed from office or involuntarily transferred, the cognizant Federal entity head will report the reasons to both Houses of Congress;

Give the internal audit unit heads of such Federal entities the same authorities and responsibilities as the existing statutory Inspectors General with regard to (1) conduct, supervision, and coordination of audits and investigations, (2) preparation and submission of semiannual reports, (3) access to records, subpoena power and related authorities, and (4) receipt and investigation of complaints or information from Federal entity employees concerning waste, mismanagement, and possible violations of law;

Defines the terms used in this section, including "Federal entity" which is the same as "agency" as defined in section 552(e) of title 5, United States Code, but excludes departments and agencies already having a statutory Inspector General, the Justice and Treasury departments, the Central Intelligence Agency, the U.S. Postal Service, and legislative and judicial branch entities; and

Establishes an Inspector General Interagency Committee, consisting of five Inspectors General appointed by the President, to study and make recommendations regarding (1) the extent and effectiveness of audit and investigative activities at Federal entities and (2) the most appropriate and efficient methods of assuring effective audits and investigations at such entities.

SECTION 7

This section makes this Act, and the amendments made by this Act, effective January 1, 1986.●

By Mr. ROTH (by request):

S. 2006. A bill to amend the Contract Disputes Act of 1978 and title 31, United States Code, to facilitate the collection of claims against Federal Government contractors; to the Committee on Governmental Affairs.

CONTRACT DISPUTES AMENDMENTS

● Mr. ROTH. Mr. President, I am introducing, by request, the Contract Disputes Act Amendments of 1986. This bill makes certain technical amendments to the Contract Disputes Act of 1978 designed to eliminate needless litigation and expedite the claims settlement process.

The Contract Disputes Act is the basic statute governing the submission of contract claims to the Government and the resolution of disputes arising from such claims. Since its enactment in 1978, the administration has identified a number of relatively minor problems with the act which the legislation I am introducing today is designed to remedy.

This bill is one part of a series of eight bills which comprise the administration's antifraud enforcement initiative. This package, in turn, is one of several management legislative initiatives which the President outlined in a message to Congress—PM-71—on July 31, 1985.

I welcome the President's initiatives to strengthen the Government's ability to detect and prosecute fraud and this particular proposal to improve the operation of the Contract Disputes Act.

I ask unanimous consent that a copy of the bill and a section-by-section analysis be printed in the RECORD.

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

S. 2006

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 "Contract Disputes Amendments of 1986".

SEC. 2. The first sentence of section 6(a) of the Contract Disputes Act of 1978 (92 Stat. 2384; 41 U.S.C. 605(a)) is amended by inserting ", not later than 18 months after the dates on which the claims accrue," before "for a decision".

SEC. 3. Section 10(a)(3) of the Contract Disputes Act of 1978 (92 Stat. 2388; 41 U.S.C. 609(a)(3)) is amended by striking out "twelve months" and inserting in lieu thereof "90 days".

SEC. 4. The Contract Disputes Act of 1978 (92 Stat. 2383; 41 U.S.C. 601 et seq.) is further amended—

(1) by redesignating sections 15 and 16 as sections 16 and 17, respectively; and

(2) by inserting after section 14 the following new section 15:

"COLLECTION OF CLAIMS AGAINST CONTRACTORS; PROVISIONAL RELIEF

"SEC. 15. (a) If a contracting officer finds in a decision issued by the contracting officer under section 6(a) that a contractor owes the Government any amount under a contract or, in such a decision, requires performance under a contract, the contractor shall pay such amount to the Government or commence the required performance within the 90-day period beginning on the date the contractor receives such decision unless the contractor commences an appeal under section 7 or an action under section 10 within such period.

"(b) If a contractor fails to pay an amount owed the Government or to commence performance as required in subsection (a), the Government may file an action in an appropriate district court of the United States to recover the amount owed or to compel the required performance.

"(c)(1) Any appropriate district court of the United States may grant the Government provisional relief in the case of a decision made by a contracting officer under section 6(a) with respect to a claim of the Government against a contractor—

"(A) upon the petition of the Attorney General of the United States or a designee; and

"(B) if the court finds that there is a reasonable likelihood that the contractor will take an action which will hinder, delay, or frustrate any payment of the claim or any performance required in the contracting officer's decision with respect to the claim.

"(2) A petition for provisional relief may be filed under paragraph (1) at any time after the decision of the contracting officer referred to in such paragraph has been issued and without regard to whether the contractor referred to in such decision has commenced an appeal under section 7 or an action under section 10.

"(d) A decision of a contracting officer under section 6(a) and the procedures followed by a contracting officer in making such decision may not be reviewed by a court in an action to enforce such decision brought under subsection (b) or in an action for provisional relief brought under subsection (c).".

SEC. 5. Section 3716(c) of title 31, United States Code, is amended—

(1) by striking out "or" at the end of clause (1);

(2) by striking out the period at the end of clause (2) and inserting in lieu thereof a semicolon and "or"; and

(3) by inserting at the end thereof the following new clause (3):

"(3) a claim which is subject to the Contract Disputes Act of 1978 (92 Stat. 2383; 41 U.S.C. 601 et seq.).".

SEC. 6. (a) The amendment made by section 2 shall take effect with respect to claims accruing on or after the date of enactment of this Act.

(b) The amendments made by section 3 and 4 shall take effect with respect to decisions issued by contracting officers of the Federal Government under the Contract Disputes Act of 1978 on or after the date of enactment of this Act.

CONTRACT DISPUTES ACT AMENDMENTS OF 1986—SECTION-BY-SECTION ANALYSIS

Section 2 would amend 41 U.S.C. Sec. 605 to require contractors to submit all claims to a contracting officer for resolution within eighteen months of when they accrue. Currently, there is no deadline for submission and, therefore, contractors may wait years before requesting payment, thereby making adjudication of disputes much more difficult. An analogous provision applying to navy shipbuilding contracts was included in the 1985 DOD Authorization bill, P.L. 98-525, Sec. 1234, 98 Stat. 2604. (41 U.S.C. Sec. 605.)

Section 3 amends 41 U.S.C. Sec. 609 to clarify the statute of limitations for appeal of a contracting officer's decision. Currently, a contractor has 90 days to appeal the decision to a board of contract appeals, but has 12 months to appeal to the Court of Claims. This inconsistency of time periods would be eliminated by requiring either appeal to be made within 90 days. (41 U.S.C. Sec. 609.)

Section 4 adds a new section 15 to the Contract Disputes Act. Subsection (a) of new section 15 requires a contractor to pay any money which the contracting officer finds is owed the government within 90 days of the contracting officer's decision, unless an appeal is taken. Expressly providing that failure to take an appeal requires immediate payment should improve enforcement of such final judgments. Under subsection 15(b), the government would also be given the right to proceed in district court to collect such sums. Subsection 15(c) gives the government additional authority to seek injunctive relief to protect the assets of a contractor in the event that an award by the court to the government has not yet been paid pending appeal. (41 U.S.C. Sec. 605.)

Finally, subsection 15(d) makes clear that in a suit by the government to enforce such a judgment, the district court judge may not review the underlying decision of the contracting officer (since that was the decision which the contractor chose not to appeal). This amendment will clarify the law and prevent the contractor from relitigating issues in the enforcement proceeding which he failed to appeal in the underlying action on the merits.

Section 5 overturns a recent decision of the Armed Services Board of Contract Appeals, *DMJM/Norman Engineering Co.*, ASBCA No. 28154, 84-1 BCA 17,226, which held that the government must follow the procedures set forth in the Debt Collection Act before using its common law right of offset to collect amounts due. Under the accepted common law right of offset, the government has the right, as does any creditor, to offset money due it (e.g., pursuant to a prior court judgment) before paying a debt to a contractor. (No notice or due process is required for common law offset; all necessary rights were provided when the government adjudicated its underlying right to the money.)

Prior to the Norman Engineering decision, this right had been routinely used and never challenged. However, since enactment of the Debt Collection Act in 1982 and the more recent Norman Engineering decision, contractors have challenged this offset right, asserting that the government must follow the administrative offset provisions established in the Debt Collection Act, 31 U.S.C. Sec. 3716. These procedures include (1) notice of the claim and the intention to offset; (2) "an opportunity to inspect and copy the records of the agency related to the claim;" (3) an opportunity to review of the agency's decision relating to the claim; and (4) an opportunity to make a written agreement with the agency on the terms of repayment. Contractors made particular use of this theory to demand access to all records relating to the contract, in effect using it as a right of discovery. This amendment would ensure that the Debt Collection Act does not hinder government efforts to collect money due for inadequate contract performance. (31 U.S.C. Sec. 3716.)●

By Mr. ROTH (by request):

S. 2007. A bill to amend the Office of Federal Procurement Policy Act to provide authority to test innovative procurement methods and procedures; to the Committee on Governmental Affairs.

S. 2008. A bill to improve the Federal procurement system by providing an alternative, simplified procurement method for competitively negotiating procurements of less than $5 million; to the Committee on Governmental Affairs.

PROCUREMENT TEST ACT AND THE SIMPLIFIED COMPETITIVE ACQUISITION TECHNIQUE ACT

● Mr. ROTH. Mr. President, I am introducing, by request, two bills designed to simplify and improve the Federal procurement process. These bills were submitted to Congress by the Administration last year as part of the President's management legislative initiatives. (See PM-71, July 31, 1985.)

The first bill, the Simplified Competitive Acquisition Techniques Act of 1985, is designed to create a simplified, accelerated, competitive acquisition system for purchasing goods and services up to $5 million. This would shorten the time required for such purchases from 260 days to 85 days. The second bill, the Procurement Test Act of 1985, would grant the Director, Office of Management and Budget, additional authority to test innovative procurement methods and procedures, and would allow the Director to conduct the tests without regard to existing statutory restrictions.

Mr. President, I request unanimous consent that the bills, section-by-section analysis, and other accompanying materials furnished by the administration be printed in the RECORD.

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

S. 2007

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 "Procurement Test Act of 1985."

SEC. 2. Sec. 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413) is amended to read as follows—

TEST OF INNOVATIVE PROCUREMENT METHODS AND PROCEDURES

(a) The Director of the Office of Management and Budget may develop innovative procurement methods and procedures to be tested by selected executive agencies. The innovative procurement methods and procedures tested under this section shall be consistent with the policies set forth in section 2. In developing any program to test innovative procurement methods and procedures under this section, the Director shall consult with the heads of executive agencies to ascertain the need for such programs. A program to test innovative procurement methods and procedures may not be carried out unless approved by the heads of the executive agencies selected to carry out such programs; such approval by the heads of the agencies shall not be unreasonably denied.

(b) Subject to the provisions of this section, the conducting of any programs to test innovative procurement methods and procedures shall not be limited by any lack of specific authority to take the action contemplated, or by any provision of law or any rule or regulation which would prohibit the conducting of the proposed testing program or any part of it.

(c) Before instituting any test program, the Director shall—

(1) develop a plan for such program which identifies, to the extent practicable—

(A) the purposes of the program;

(B) the executive agencies or components of executive agencies to carry out such program;

(C) the categories and types of products or services to be procured under such program;

(D) the procedures to be followed in conducting the program;

(E) the duration of the program;

(F) the methods to be used to analyze the results of the program;

(G) a description of any aspect of the program for which there is a lack of specific authority; and

(H) a citation to any provision of law, rule, or regulation which would prohibit the conducting of the program or any part of the program as proposed;

(2) publish the program in the *Federal Register;* and

(3) provide notification of the proposed program to each House of Congress at least 60 days in advance of the date any program proposed under this section is to take effect, setting forth the information required by subsection (c)(1)(A) through (H).

SEC. 3. This Act shall become effective 60 days after enactment and shall remain in effect for a period of 3 years.

PROCUREMENT TEST ACT OF 1985—SECTION-BY-SECTION ANALYSIS

This Act amends the Office of Federal Procurement Policy Act to provide authority to test innovative procurement methods and procedures without requiring separate congressional action. Current OFPP testing authority requires congressional action to waive statutes and discourages agencies from testing innovative methods which affect politically-sensitive statutes. This Act allows the Director of OMB to conduct the tests without regard to existing statutory restrictions and provides that the tests will not be limited by any specific lack of authority.

Section 1 states that this Act may be cited as the "Procurement Test Act of 1985".

Section 2 amends Section 15 of the Office of Federal Procurement Policy Act to provide a new and different authority for testing innovative procurement methods and procedures.

Paragraph (a) gives authority to the Director of OMB to develop innovative procurement methods and procedures to be tested by selected executive agencies. They must be consistent with the policies and procedures set forth in Section 2 of the OFPP Act. The Director is required to consult with the heads of the executive agencies to ascertain the needs for the test programs and to obtain the approval of the heads of the agencies selected to carry out the program before the program can be tested. It further provides that the approval of the testing authority by the heads of the agencies shall not be unreasonably denied.

Paragraph (b) provides that neither lack of authority nor a restrictive provision of law, rule or regulation will prevent conducting any program to test innovative procurement methods and procedures.

Paragraph (c) sets forth the contents of the plan which the Director must develop for each test program. These include:

(A) the purposes of the program;

(B) the executive agencies or components of executive agencies to carry out such program;

(C) the categories and types of products or services to be procured under such program;

(D) the procedures to be followed in conducting the program;

(E) the duration of the program;

(F) the methods to be used to analyze the results of the program;

(G) a description of any aspect of the program for which there is a lack of specific authority; and

(H) a citation to any provision of law, rule, or regulation which would prohibit the conducting of the program or any part of the program as proposed.

The program must be published in the *Federal Register,* and notification must be provided to each House of the Congress at least 60 days before the date the program is to take effect. The notice must set forth the information required by the plan.

Section 3 provides that the Act will become effective 60 days after enactment. It also provides that the testing authority is granted only for a 3-year period.

S. 2008

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 "Simplified Competitive Acquisition Technique Act of 1985."

DECLARATION OF POLICY

SEC. 2. (a) It is the policy of the Congress to promote economy, efficiency, and effectiveness in the procurement of goods and services by the executive branch of the Federal Government by establishing a simplified competitive acquisition technique, which may be used for acquisition, by competitive negotiation, of goods and services estimated to cost less than $5 million.

(b) The Simplified Competitive Acquisition Technique should be characterized by the following features:

(1) Full and open competition;

(2) A shortened acquisition cycle;

(3) Inclusion of the time schedule for the acquisition in the request for proposals;

(4) A clear, concise statement of work or product description;

(5) Synopsis in the Commerce Business Daily with shortened notice time periods, and notices published on an expedited basis in a separate section of the Commerce Business Daily;

(6) Limitations on length of requests for proposals, number of evaluation criteria, and length of offeror's technical proposal;

(7) Evaluation based strictly on evaluation criteria stated in the solicitation and limitations on discussions with offerors;

(8) Award on the basis of most advantageous offer to the Government, as certified by the contracting officer;

(9) Contracting officer as final selecting official, with such authority, responsibility, and accountability given only to highly qualified contracting officers;

(10) Procurement audit on a post-award basis; and

(11) Opportunity for resolution of protest by the contracting officer before filing protest with the Comptroller General.

FINDINGS AND PURPOSE

SEC. 3. (a) Congress finds that the procurement process has become overly complex, that too many procurements are noncompetitive, and that procurement authorities and responsibilities are fragmented and eroded.

(b) The Congress finds, therefore, that economy, efficiency and effectiveness in the procurement of goods and services by the executive agencies will be improved by establishing a new, simplified competitive acquisition technique for acquisition of goods and services estimated to cost less than $5 million.

(c) The purpose of this Act is to provide the legislative authority necessary to establish a simplified competitive acquisition technique.

PROCUREMENT NOTICE

SEC. 4. (a) Section 18 of the Office of Federal Procurement Policy Act (41 USC 416) is amended—

(1) By amending the first sentence in subsection (a)(3) to read as follows:

"Except as provided in paragraph (4), whenever an executive agency is required by paragraph (1)(A) to furnish a notice to the Secretary of Commerce, such executive agency may not—"; and

(2) By adding new paragraphs (4) and (5) at the end of subsection (a), to read as follows:

"(4) Whenever an executive agency conducts a procurement under the provisions of the 'Simplified Competitive Acquisition Technique Act of 1985' (P.L. ——) and the agency is required by paragraph (1)(A) to furnish a notice to the Secretary of Commerce, such executive agency may not—

"(A) Issue the solicitation earlier than 5 days after the date on which the notice is published by the Secretary of Commerce; and

"(B) Establish a deadline for the submission of all proposals in response to the notice required by paragraph 1(A) that is earlier than the date 15 days after the date the solicitation is issued.

"(5) The provisions of subsection (a)(4) shall not apply to procurements which are subject to agreement under the Trade Agreements Act of 1979 (19 USC 2511-2518)."

(b) Section 8 of the Small Business Act (15 USC 637) is amended—

(1) By amending the first sentence in subsection (e)(3) to read as follows:

"Except as provided in paragraph (4), whenever an executive agency is required by paragraph (1)(A) to furnish a notice to the Secretary of Commerce, such executive agency may not—"; and

(2) By adding new paragraphs (4) and (5) at the end of subsection (e), to read as follows:

"(4) Whenever an executive agency conducts a procurement under the provisions of the 'Simplified Competitive Acquisition Technique Act of 1985' (P.L. ——) and the agency is required by paragraph (1)(A) to furnish a notice to the Secretary of Commerce, such executive agency may not—

"(A) issue the solicitation earlier than 5 days after the date on which the notice is published by the Secretary of Commerce; and

"(B) Establish a deadline for the submission of all proposals in response to the notice required by paragraph 1(A) that is earlier than the date 15 days after the date the solicitation is issued.

"(5) The provisions of subsection e(4) shall not apply to procurements which are subject to agreements under the Trade Agreement Act of 1979 (19 U.S.C. 2511-2518)."

(c) Nothing in this Act shall relieve the contracting officer of responsibility for programs under the Small Business Act other than that covered by section 8(e) (3) and (4).

PROCUREMENT PROTEST SYSTEM

SEC. 5. Title 31 of the United States Code is amended—

(a) By adding at the end of Section 2552 the following paragraph:

"Protests against procurements conducted under the 'Simplified Competitive Acquisition Technique Act of 1985' (P.L. ——) shall be filed first with the agency contracting officer; nothing in this section shall affect the right of the interested party to file a protest with the Comptroller General or to file a protest with the General Services Board of Contract Appeals under section 111(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(h)) after the agency contracting officer has issued a decision on the protest."

(b) By amending the first sentence of Section 3556 to read as follows:

"This subchapter does not give the Comptroller General exclusive jurisdiction over protests, and nothing contained in this subchapter shall affect the right of any interested party to file a protest with the contracting agency (except that protests against procurements conducted under the 'Simplified Competitive Acquisition Technique Act of 1985' (P.L. ——) shall be filed first with the agency contracting officer) or to file an action in a district court of the United States or the United States Claims Court."

AUTOMATED DATA PROCESSING DISPUTE RESOLUTION

SEC. 6. Section 111 of the Federal Property and Administrative Services Act of 1949 (40 USC 759) is amended—

(a) By adding at the end of subsection (h)(1) the following sentence:

"Protests against procurements conducted under the 'Simplified Competitive Acquisition Technique Act of 1985' (P.L. ——) shall be filed first with the agency contracting officer; nothing in this subsection shall affect the right of the interested party to file a protest with the board under this subsection or to file a protest with the Comptroller General after the agency contracting officer has issued a decision on the protest."

(b) By amending the last sentence of subsection (h)(6)(C) to read as follows:

"In addition, nothing contained in this subsection shall affect the right of any interested party to file a protest with the contracting agency (except that protests against procurements conducted under the 'Simplified Competitive Acquisition Technique Act of 1985' (P.L. ——) shall be filed first with the agency contracting officer) or to file an action in a district court of the United States or the United States Claims Court."

PREAWARD AUDIT

SEC. 7. Notwithstanding any other provision of law, agencies shall not obtain a preaward audit for procurements conducted under the provisions of the "Simplified Competitive Acquisition Technique Act of 1985" (P.L. ——).

EFFECTIVE DATE

SEC. 8. This Act shall take effect 120 days after enactment.

A PROPOSAL TO IMPROVE FEDERAL ACQUISITION

IMPORTANCE OF FEDERAL ACQUISITION

Government acquisition is big business. In FY 1984, over $180 billion was spent directly by Federal agencies to purchase goods and services. Further, Government agencies and industry spent additional billions in administrative activities related to these purchases. Because of the large sums involved, the efficiency, economy, and effectiveness of the Government's acquisition system has a significant impact on the Nation's overall productivity and well-being.

BACKGROUND

The acquisition system that has evolved over the years has become increasingly complex and unwieldy. To be effective, acquisitions must be performed in a businesslike manner, with the foremost objective being the timely acquisition of needed goods and services at the lowest reasonable prices. This end result must be stressed, otherwise, the protests, disputes, delays, and unnecessary expenses now being incurred by both the Government and the business community will continue.

The Federal acquisition system has been studied often during the past two decades, and steps have been taken to improve it. Many of these improvement efforts have been successful. The system, however, remains cumbersome, with a myriad of built-in checks and balances causing undue delays without sufficient corresponding benefits. Many of the same problems have persisted for years; e.g.:

1. *Acquisitions Take Too Long.* The acquisition process is so complex that users of products and services sometimes do not get what they need when they need it. While the time required to process a specific acquisition varies with the procedures used and the type of product or service required, administrative lead-times of 27-to-37 weeks are not uncommon for acquisitions in the $1-$5 million range. Such long lead-times add to the uncertainty, risk, and expense of contracts.

2. *Too Many Acquisitions Are Non-Competitive.* Non-competitive acquisitions are usually faster (but often more expensive) than competitive actions. If a product or service is needed in less than the normal lead-time of 27-37 weeks, the acquiring agency often decides to sacrifice competition to obtain timely delivery. Over 53 percent of the FY 84 contract outlays ($96 out of $182 billion) was awarded on a non-competitive basis. While time was not the only factor contributing to this large percentage of non-competitive awards, it was a major factor.

3. *Authorities and Responsibilities Are Fragmented.* Over the years, the authorities and responsibilities of the Government's contracting officers have been eroded. These authorities and responsibilities have been weakened, to a large extent, by excessive or duplicative management reviews and approvals. In many organizations, the flow of acquisition authority and responsibility is not clear, and there is often a lack of accountability for results.

RECENT LEGISLATION

Competition has been, and continues to be, the keystone of the Federal acquisition process. Much new legislation has been passed in the last 2 years aimed at enhancing competition. Specific statutes enacted during 1984 alone include: (1) the Competition in Contracting Act of 1984 (Public Law 98-369, July 18, 1984); (2) the Defense Procurement Reform Act of 1984 (Public Law 98-525, October 19, 1984); and (3) the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Public Law 95-577, October 30, 1984). These statutes contain specific requirements for enhancing competition by mandating actions dealing with acquisition planning, competition advocates, breakout acquisition center representatives, and pre-qualification of sources. While these actions will improve competition, they will not specifically address the problems concerning long procurement lead-times and the fragmentation and erosion of the contracting officer's authorities. A new method is needed to help solve these problems.

NEW METHOD

The new contracting method proposed herein—Simplified Competitive Acquisition Technique (SCAT)—is premised on changing the basic thrust of present procurement management philosophy; i.e., away from managing the acquisition process to focusing on end results. The acquisition process is now micromanaged in many agencies and departments without concomitant beneficial results. SCAT will not replace good planning but it will help provide for an efficient, economical, and effective process with adequate management controls and safeguards resulting from the following key features: competition, responsiveness, wide applicability, and accountability. It is emphasized that the attached legislative proposal encompasses only a part of the SCAT system. To the extent that the SCAT system is not dealt with in the legislative proposal, it will be dealt with in the context of the regulatory process.

Competition. SCAT contracts will be 100 percent competitive; i.e., the SCAT method of contracting is proposed for use only where it is anticipated that two or more acceptable offers will be received.[1] If only one offer is received in response to a SCAT notice in the Commerce Business Daily (CBD), the contracting officer will be required to either synopsize again and follow

[1] Small business set-asides are competitive, and SCAT will not adversely affect agencies' decisions to set-aside procurements.

the present system or document the justification for continuing under SCAT by providing a copy of the justification to the activity's competition advocate or to the agency head, in accordance with Sec. 2711, P.L. 98-369.

Responsiveness. The SCAT process is designed to shorten the acquisition cycle to 10-to-12 weeks. If longer lead-times are needed to achieve specific objectives, the normal 27-to-37-week cycle should be followed. SCAT will save time primarily by simplifying and shortening the evaluation-source selection process. The process now consumes approximately 150 days of the normal 260-day lead-time. This process is administratively controllable and, under SCAT, will be shortened to approximately 30 days.

Applicability. SCAT is not designed for all acquisitions. It is intended primarily for selected acquisitions of supplies and services costing between $25,000 and $5 million where competitive negotiations are used. These acquisitions account for some 300,000 contracting actions per year and result in annual outlays in excess of $54.5 billion.

Accountability. One of the main ways to assure that the Government's acquisition function is efficient, effective, and relatively free of fraud, waste, and abuse is to give the Government's contracting officers sufficient authority to do their job and then hold them accountable for results. This requires the highest level of professionalism and the removal of unnecessary clearance and organizational constraints that have been imposed on the contracting officers. SCAT acquisitions will be administratively simplified and competent contracting officers given the latitude to conduct the Government's contracting in a businesslike manner.

OTHER SPECIFIC FEATURES OF SCAT

Acquisition Planning. SCAT acquisitions will be conducted in accordance with a plan and schedule. The schedule for issuing the RFP and awarding the contract shall be included in the CBD notice announcing the proposed SCAT acquisition.

Clear Statements of Work and Product Descriptions. Statements of work for services and specifications for products will be clear and concise. Commercial item descriptions will be used rather than Federal specifications if the solicitation is for a commercial or commercial-type product. Statements of work and/or product descriptions will be prepared by the program office and will be carefully checked and "scrubbed." SCAT will not be used unless the work to be performed or the product to be acquired can be described in a clear and concise manner.

Increased Small Business Participation. It is anticipated that more small businesses will compete as a result of straight-forward work statements, simplified proposal formats, and substantially faster awards. Many acquisitions conducted under present procedures require the offeror to expend many staff hours in preparing complex, extensive, and costly proposals. As a result, many small business contractors do not compete because they lack the resources for preparation of such proposals and are unable to retain technical personnel during lengthy acquisition cycles. The simplified proposal format and product description and/or work statement under SCAT will help solve this problem.

CBD Announcements. The CICA presently requires 15 days advance notice in the CBD prior to issuing a solicitation and a minimum of 30 days between issuance of the solicitation and the deadline for the receipt of offers. If authorized by Congress, these intervals will be shortened for SCAT acquisitions to 5 and 15 days, respectively. All notices of proposed SCAT acquisitions and synopses of SCAT requirements will be highlighted in a new proposed section of the CBD. Oral requests for SCAT Solicitations will be honored. International trade agreement procurements will continue to grant 30 days for proposal preparation.

Limitation on Length of RFPs. RFPs will not normally exceed 20 pages. Except in very unusual circumstances, they will contain no more than 25 pages. The RFPs will be clearly written and "boilerplate clauses" will be incorporated by reference and furnished to offerors only if requested. Each RFP will contain an "Executive Summary" explaining the salient characteristics of the acquisition, including the evaluation factors. Evaluation criteria will be limited to five or fewer factors and listed in relative order of importance. Extensive subcriteria will not be used.

Limitation on Length of Offerors' Technical Proposals. Offerors' technical proposals will be limited to 15 pages, exclusive of required resumes. Each technical proposal will contain an Executive Summary (2 pages); a statement of the offeror's understanding of the problem and proposed approach for resolving it (5 pages); a management plan (4 pages); a description of past relevant experiences (3 pages); and a listing of key personnel (1 page). These page allocations may vary depending on the nature of the acquisition, but the 15-page limit will be standard.

Limitation of Length of Cost/Price Proposals. Cost/price proposals will normally be limited to the data required by the appropriate standard forms.

Evaluation of Offers. Offers will be evaluated and ranked in strict adherence to the evaluation criteria stated in the RFP. Award may be made on the basis of offers, as submitted. If there are issues that preclude award on this basis, the submitters of the top proposals (no more than three) may be scheduled for oral discussions. If a pre-award survey is required, it shall be conducted concurrently during the source selection process. Only one discussion will be conducted with each offeror. At the end of the oral discussions, which shall be started and completed within 1 week, a best and final offer (BAFO) will be solicited. The technical section of the BAFO should not exceed 4 pages. Generally, there will be no further discussion after receipt of BAFOs, except for negotiations with the offeror selected for award.

Selecting Authority. The contracting officer will be the final selecting official. The SCAT may only be used by highly qualified contracting officers. Each contracting officer using SCAT must be authorized, in writing, by his or her agency. Contracting officers will be held strictly accountable for proper performance under SCAT. This includes actions relating to the acquisition process, as well as business judgments relating to the award of the contract. When SCAT is used, authority, responsibility, and accountability will be centralized in one person—the contracting officer.

Awards. Offers will be selected for award on the basis of the evaluation criteria and in accordance with the best value to the Government concept. In all cases, the contracting officer will be required to certify that the selected offer represents the best value to the Government. Any difference between the selected offer and acceptable but lower-priced offers must be justified in writing by the contracting officer, accompanied by a certification by the program official establishing the Government's need for the technical superiority of the selected firm's proposal. Award will not be delayed pending audits. Pre-award audit will not be performed for SCAT procurements. If the contracting officer determines that an audit is required, it will be performed on a post-award basis. Current statutory requirements for obtaining certified cost and pricing data will continue.

Protest and Debriefings. Offerors will be required to file any protests under SCAT acquisitions with the contracting officer. The contracting officer will attempt to resolve all pre-award protests prior to the contract award, and all post-award protest within 10 days of receipt. If the contracting officer does not resolve protests to the offeror's satisfaction, the offeror will follow the normal bid protest procedures. All offerors requesting debriefings will be given thorough and detailed explanations as to why their offer(s) were not accepted for a SCAT award.●

By Mr. ROTH (by request):

S. 2009. A bill to authorize the Secretary of the Treasury to issue regulations to require that wages and salaries of Federal employees be paid by electronic funds transfer or any other method determined by the Secretary to be in the interest of economy or effectiveness, with sufficient safeguards over the control of, and accounting for, public funds; to the Committee on Governmental Affairs.

ELECTRONIC FUNDS TRANSFER FEDERAL SALARY ACT

● Mr. ROTH. Mr. President, I am introducing, by request, a bill to authorize the Secretary of the Treasury to issue regulations to require that wages and salaries of Federal employees be paid by electronic funds transfer. This is one of the management legislation initiatives addressed in the President's July 31, 1985, message to the Congress on management improvement.

The purpose of this bill is to improve operating efficiency, increase productivity, reduce the costs associated with the current methods, and to ensure that Federal salaries and wage payments are delivered to the recipient on time. Currently, it costs Treasury 24 cents for each issued salary and wage check, while the same payment made by electronic funds transfer methods costs 3 cents. It is expected that approximately $10.8 million annually will be saved through enactment of this bill.

According to the Treasury Department, conversion of Federal salary and wage payments to electronic funds transfer methods will eliminate lost, forged, or stolen checks and the attendant costs associated with issuance of new payments. Use of the electronic funds transfer payment method will afford employees an earlier access to their banked payments.

Treasury is aware that some Federal employees have assignments which preclude use of the electronic funds

transfer payment method. The Department is also sensitive to the fact that some employees may not have bank accounts. Regulations will be prepared to address these concerns and, through regulations, the Secretary will have sufficient discretion to permit checks to continue to be used for some categories of wage and salary payment and when individual circumstances indicate the best method of payment is a check. In this regard, Treasury will work closely with affected employees and their representatives to ensure that no one is unfairly disadvantaged.

Treasury believes that this legislation will receive the support of the private sector financial community.

Mr. President, I request unanimous consent that the bill and accompanying section-by-section analysis be printed in the RECORD.

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

S. 2009

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Electronic Funds Transfer Federal Salary Act".

SAFE, ECONOMICAL, EFFECTIVE PAYROLL ADMINISTRATION

SEC. 2. Section 3332 of title 31, United States Code, is amended by striking subsections (a), (b), (c), (d), and (e) and substituting the following subsections (a), (b), (c), and (d) in lieu thereof:

"(a) In this section, "financial organization" means a bank, savings and loan association, a credit union chartered by the United States Government or a State, or a similar institution.

"(b)(1) Notwithstanding any other provision of law, the Secretary of the Treasury may issue regulations requiring that, where he determines it to be practicable, wages and salaries of any or all employees of an agency be paid by electronic funds transfer or any other method determined by the Secretary to be in the interest of economy or effectiveness, with sufficient safeguards over the control of, and accounting for, public funds.

"(2) Such regulations shall require covered employees to designate the financial organization to receive payments of their wages and salaries.

"(3) The head of each employing agency shall include in certifications of payments of wages and salaries information required by the Secretary about the financial organization chosen by the agency's employees.

"(4) The Secretary shall not charge financial organizations any fees in connection with payments made in accordance with this section.

"(5) Financial organizations shall not charge agency employees for handling payments made in accordance with this section.

"(6) The Secretary may, upon request by an employee who was employed by the United States Government on the effective date of this section and whose annual rate of basic pay is less than twenty thousand dollars, exempt such employee from the requirements of this section.

"(c) Payment of an amount by the United States by methods authorized pursuant to subsection (b) or (d) of this section, and accepted by a financial organization, shall constitute full acquittance of the United States for that amount.

"(d) On the written request of a person to whom payment of other than wages and salaries is to be made, the payment may be made using any method authorized by the Secretary pursuant to this section.".

SEC. 3. Section 3332 of title 31, United States Code, is further amended by redesignating subsection (f) as subsection (e) and by striking "The" in the first sentence of subsection (e) (as so redesignated) and inserting in lieu thereof "Notwithstanding subsection (b)(1) of this section, the".

EFFECTIVE DATE

SEC. 4. This Act shall become effective on October 1, 1986.

SECTION-BY-SECTION ANALYSIS

Section 1. This section gives the legislation the popular name the "Electronic Funds Transfer Federal Salary Act."

Section 2. Subsection (a) of § 3332, which defines "financial organization," is revised to clarify that "similar institution" is an inclusive term and not restricted to "savings and loan association."

New subsections (b), (c), and (d) of § 3332 are substituted for current provisions (b) through (e). The former subsection (b) authorized the head of an employing agency, upon an officer's or employee's request, to make allotments of pay, on the officer's or employee's behalf, to not more than three financial organizations.

New subsection (b) authorizes the Secretary of the Treasury to issue regulations requiring that, where he determines it to be practicable, wages and salaries of any or all agency employees be paid by electronic funds transfer or any other method determined by the Secretary to be economical, effective, and safe. Such employees will be asked to designate financial organizations to receive payments of their wages and salary. Ample authority for allotments of pay is now and would continue to be provided by 5 U.S.C § 5525. See also, 38 U.S.C. 701 et seq. Heads of employing agencies will be obliged to include in their certifications of employees' pay the information necessary to make payments by the method determined by the Secretary of the Treasury. New subsection (b) also retains the affirmative statement added to 31 U.S.C § 3332 by its most recent amendment, section 2814 of Public Law 98-369, that the Government shall not charge financial organizations for their handling of direct deposit payments. Subsection (b)(6) provides that the Secretary may, if a person who is employed by the United States Government on the effective date of this Act and whose annual rate of basic pay is less than twenty thousand dollars so requests, permit that person to be paid by check.

Old subsection (c) which authorized the issuance of composite checks is eliminated. (To the extent that the Secretary of the Treasury determines that composite check payments are economical, effective, and safe, this authority is retained in new subsection (b).) New subsection (c) is analogous to old subsection (d). Both provide a rule of law that the Government is acquitted of its debt to the officer or employee to whom payment is due when the statutorily authorized transfer to the financial institution is made.

New subsection (d) merely restates old subsection (e). The restatement preserves the authority of the Secretary of the Treasury to determine the method of any payment when the payee's consent is obtained.

Section 3. Subsection (c) of § 3332 reserves for the Senate and the House their existing authority to issue their own regulations to implement the direct deposit program. The Secretary of the Treasury will issue the regulations for all other agencies to carry out this program.

Section 4. The Act will be effective on October 1, 1986. Additional time, if needed, will be provided for in the regulations that are authorized by the Act.●

By Mr. ROTH (by request):

S. 2010. A bill to eliminate or change statutory requirements preventing the reduction of paperwork burdens and regulatory simplification; to the Committee on Governmental Affairs.

PAPERWORK AND REGULATORY SIMPLIFICATION ACT

● Mr. ROTH. Mr. President, I am introducing, by request, the Paperwork and Regulatory Simplification Act of 1985, a bill designed to modify or streamline existing laws regarding information collection and regulation. This bill was submitted to Congress by the administration last year as part of the President's management legislative initatives. (See PM-71, July 31, 1985.)

This bill is intended to eliminate or change a number of statutory provisions requiring executive branch agencies to impose information collections on the public and to issue regulations. The Office of Management and Budget advises that these provisions are now either obsolete or no longer serve useful purposes. This bill is Governmentwide in scope in that statutory provisions administrated by a number of departments and agencies are being processed for change or elimination. The bill represents the administration's first attempt to seek such changes on a Governmentwide basis. According to OMB, the provisions contained in the bill will, if enacted, result in improvement in overall Government efficiency and will eliminate unnecessary burdens on the public. As the administration continues its activities under the Paperwork Reduction Act, it expects to identify statutory requirements that impose unnecesary burdens on the public, and will bring these to the attention of the Congress.

Examples of existing statutory provisions affected by this legislation include a decennial census of drainage, the establishment of a standard barrel of apples, restrictions on for-profit organization receiving Federal grants or contracts, and a requirement that wholesale liquor dealers post a sign outside their business premises.

I request unanimous consent that the bill and accompanying section-by-section analysis be printed in the RECORD.

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

S. 2010

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be cited as the "Paperwork and Regulatory Simplification Act of 1985."

DEPARTMENT OF COMMERCE

SEC. 101. (a)(1) Section 142 of title 13, United States Code, is amended—

(A) By striking our "Agriculture, irrigation, and drainage" in the heading of such section and inserting in lieu thereof "Agriculture and irrigation"; and

(B) By striking our "and drainage" from subsection (b) of such section.

(2) The table of contents for title 13, United States Code, is amended—

(A) By striking "DRAINAGE" from the item pertaining to subchapter II of Chapter 5 of such title; and

(B) By striking our ", irrigation, and drainage" from the item pertaining to Section 142 of such title and inserting in lieu thereof "and irrigation".

(3) The heading of subchapter II of Chapter 5 of title 13, United States Code, is amended by striking out "DRAINAGE,".

(b)(1) Section 1 of the Act of August 3, 1912, (15 U.S.C. 231) is repealed.

(2) Section 4 of the Act of August 3, 1912, (15 U.S.C. 232) is repealed.

(3) Section 6 of the Act of August 3, 1912, (15 U.S.C. 233) is repealed.

(c)(1) Section 1 of the Act of March 4, 1915, (15 U.S.C. 234) is repealed.

(2) Section 2 of the Act of March 4, 1915, (15 U.S.C. 235) is repealed.

(3) Section 3 of the Act of March 4, 1915, (15 U.S.C. 236) is repealed.

(d)(1) Section 1 of the Act of August 23, 1916, as amended (15 U.S.C. 237) is repealed.

(2) Section 2 of the Act of August 23, 1916, as amended (15 U.S.C. 238) is repealed.

(3) Section 3 of the Act of August 23, 1916, as amended (15 U.S.C. 239) is repealed.

(4) Section 4 of the Act of August 23, 1916, as amended (15 U.S.C. 240) is repealed.

(5) Section 5 of the Act of August 23 1916, as amended (15 U.S.C. 241) is repealed.

(6) Section 6 of the Act of August 23, 1916, as amended (15 U.S.C. 242) is repealed.

(e)(1) Section 402 of the Federal Property and Administrative Services Act of 1949, (40 U.S.C. 512 (a)(1)), is amended by striking "; but in no event shall any property be sold without a condition forbidding its importation into the United States, unless the Secretary of Agriculture (in the case of any agricultural commodity, food, or cotton or woolen goods) or the Secretary of Commerce (in the case of any other property) determines that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of this country", and inserting instead a comma.

(2) The amendment made by this subsection shall take effect 90 days following the date of enactment of this Act.

(3) Applications pending before the Secretary of Commerce of the Secretary of Agriculture on, or received after, the date of enactment for authorization to import such property under Section 402 shall be returned without action and applicants shall be informed in writing that authorization is no longer required after the date of enactment.

(4) The amendments made by the subsection shall not affect any civil or criminal proceeding instituted by the Government prior to the date of enactment.

DEPARTMENT OF EDUCATION

SEC. 102. (a) Section 406(h) of the General Education Provisions Act (20 U.S.C. 1221e-1(h)) is repealed.

(b) Section 400A of the General Education Provisions Act (20 U.S.C. 1221-3) is repealed.

DEPARTMENT OF ENERGY

SEC. 103. (a)(1) Section 30 of the Federal Power Act (16 U.S.C. 823a) is amended to read as follows:

"SEC. 30. (a) Except as provided in subsection (b) or (c) of this section, by rule or order the Commission may grant an exemption in whole or in part from the requirements of this part, including licensing requirements, to any facility constructed, operated, or maintained for the generation of electric power, if the exemption is consistent with the public interest and safety and granted in order to simplify, promote, and expedite the development of a hydroelectric power project.

"(b) The Commission may not grant an exemption under subsection (a) to any facility where installed capacity exceeds 15 megawatts.

"(c) In making the determination under subsection (a) of this section the Commission shall consult the United States Fish and Wildlife Service and the State agency with administrative jurisdiction over the fish and wildlife resources of the State in which the project is or will be located on a project specific basis and in the manner provided by the Fish and Wildlife Coordination Act, and shall include in any exemption authorized subsection (a) of this section—

"(1) the terms and conditions as the United States Fish and Wildlife Service and the State agency each determine are appropriate at each proposed project to prevent loss of or damage to fish and wildlife resources from site specific and cumulative impacts and to otherwise carry out the purposes of the Fish and Wildlife Coordination Act, and

"(2) such additional terms and conditions the Commission determines appropriate to insure that the project continues to comply with the provisions of this section and terms and conditions included in an exemption issued under subsection (a) of this section.

"(d) A violation of a term or condition of an exemption granted under subsection (a) of this section shall be treated as a violation of a rule or order of the Commission under this Act."

(2) Section 405(d) of the Public Utilities Regulatory Policy Act (16 U.S.C. 2705(d)) is repealed.

(3) The regulations established under Section 30 of the Federal Power Act (16 U.S.C. 823a) and section 405(d) of the Public Utilities Regulatory Policy Act (16 U.S.C. 2705(d)) as they existed before the passage of this Act shall remain in effect until modified or revoked by the Commission.

(4) Exemptions previously granted by the Commission under section 30 of the Federal Power Act (16 U.S.C. 823a) and Section 405(d) of the Public Utilities Regulatory Policy Act (16 U.S.C. 2705(d)) remain in effect under the conditions previously established by the Commission.

(b) Section 11 of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796) is amended by striking the last sentence of subsection (a).

(c) Section 25 of the Federal Energy Administration Act of 1974 (15 U.S.C. 784) is repealed.

(d) Section 133 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2643) is repealed and the table of contents is amended by striking the item relating to section 133.

(e) Section 208 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824d(f) is repealed and the table of contents is amended by striking the item relating to section 208.

(f) Section 211 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 825d(c) and 825d(c) note) is repealed and the table of contents is amended by striking the item relating to section 211.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

SEC. 104. (a)(1) Section 2(b)(4) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101(b)(4)) is amended by striking out the word "nonprofit".

(2) Section 4(a) of such Act (42 U.S.C. 5103(a)) is amended in the matter preceding paragraph (1) by striking out the word "nonprofit".

(3) Section 203 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5113) is amended by striking out the word "nonprofit" wherever it appears therein.

(b)(1) Section 426(a)(1)(A) of the Social Security Act (42 U.S.C. 626(a)(1)(A)) and Section 426(a)(1)(C) of such Act (42 U.S.C. 626(a)(1)(C)) are amended by striking out the word "nonprofit" wherever it appears therein.

(2) Section 426(a)(2) of such Act (42 U.S.C. 626(a)(2)) is amended by striking out "public and".

(c)(1) Section 102(3) of the Development Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(3)) is repealed.

(2) Section 102(10) of such Act (42 U.S.C. 6001(10)) is amended by striking out the word "nonprofit" and inserting instead "private".

(3) Section 103(c) of such Act (42 U.S.C. 6002(c)) is amended by striking out the word "nonprofit".

(4) Section 133(b)(3)(B) of such Act (42 U.S.C. 6063(b)(3)(B)) is amended by striking out the word "nonprofit".

(5) Section 145(a) of such Act (42 U.S.C. 6081(a)) is amended by striking out the word "nonprofit".

(d) Section 507(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357) is amended by striking out the third sentence.

(e)(1) The Filled Milk Act (21 U.S.C. 61-64) is repealed.

(2) Section 902(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 392(b)) is amended by striking out "the Filled Milk Act of March 4, 1923 (21 U.S.C. 61 et seq.);".

(f) Subsection (c) of section 708 of the Public Health Service Act (42 U.S.C. 292h) is repealed and subsections (d), (e) and (g) of such section are redesigned as subsections (c), (d) and (e), respectively.

(g) Section 304(b)(1) of the Public Health Service Act (42 U.S.C. 242b(b)(1)) is amended by striking out the word "nonprofit".

(h) Section 1906(b)(2) of the Public Health Service Act (42 U.S.C. 300w-5(b)(2)) is amended by striking out the word "annually" and inserting instead "biennially".

(i) Section 1906(a)(1) of the Public Health Service Act (42 U.S.C. 300w-5(a)(1)) is amended by striking out "the Secretary determines (after consultation with the States and the Comptroller General)" and inserting instead "the State determines".

(j) Section 1917(a) of the Public Health Service Act (42 U.S.C. 300x-5(a)) is amended

by striking out "the Secretary determines (after consultation with the States and the Comptroller General)" and inserting instead "the State determines".

(k) Section 1904(b) of the Public Health Service Act (42 U.S.C. 300w-3(b)) is amended—

(A) by adding the word "or" at the end of paragraph (3),

(B) by substituting a period for ", or" at the end of paragraph (4), and

(C) by striking out paragraph (5).

(l)(1) Section 318(a) and 318(b) of the Public Health Service Act (42 U.S.C. 247c(a) and 247c(b) are amended by striking out the word "nonprofit".

(2) Section 2002(a)(3) of the Public Health Service Act (42 U.S.C. 300z-1(a)(3)) is amended by striking the word "nonprofit".

(m) Section 1861(z) of the Social Securty Act (42 U.S.C. 1395x(z)) is amended by striking out paragraph (2).

(n) Section 1876(h)(4)(A) of the Social Security Act (42 U.S.C. 1395mm(h)(4)(A)) is amended by striking out "in an independently certified financial statement".

(o) Section 1881(b)(1) of the Social Security Act (42 U.S.C. 1395rr(b)(1)) is amended by striking out the last sentence.

(p)(1) Section 1882(b)(1)(A) of the Social Security Act (42 U.S.C. 1395ss(b)(1)(A)) is amended by inserting ", except that a policy may provide benefits solely to supplement the benefits provided under part B" before the semicolon.

(2) Section 1882(c)(1) of such Act (42 U.S.C. 1395ss(C)(1)) is amended by inserting ", except that the policy (or policies issued in conjunction with one another) may provide benefits solely to supplement the benefits provided under part A or solely to supplement the benefits provided under part B" before the semicolon.

(q) Section 402(a)(1) of the Social Security Amendments of 1967 (42 U.S.C. 1395b-1(a)(1)) is amended in the first sentence by striking out the word "nonprofit".

(r) Section 1910(c)(2) of the Social Security Act (42 U.S.C. 1396i(c)(2)) is amended in the first sentence by striking out "a hearing by the Secretary to the same extent as is provided in section 205(b)" and inserting instead "a hearing on the record before an official designated by the Secretary at which the entity is entitled to be represented by counsel".

(s) Section 803 of the Native American Programs Act of 1974 (42 U.S.C. 2991b) is amended by striking out "nonprofit private agencies" and inserting instead "private entities".

(t)(1) Section 313 of the Runaway and Homeless Youth Act (42 U.S.C. 5713) is amended in the first sentence by striking out "nonprofit private agency" and inserting instead "private entity".

(2) Section 314 of that Act (42 U.S.C. 5714) is amended in the first sentence and in the caption by striking out "nonprofit private agencies" and inserting instead "private entities".

(u) Section 2001 of the Social Security Act (42 U.S.C. 1397) is amended—

(1) by striking out "and" at the end of clause (4),

(2) by striking out the comma at the end of clause (5) and inserting instead "; and", and

(3) by adding after and below clause (5) the following new clause: "(6) alleviating poverty,".

(v)(1) Notwithstanding any other provision of law, upon application under this title by an Indian tribe the Secretary of Health and Human Services (hereafter in this title "the Secretary") shall consolidate the grants made by that Department directly to an Indian tribe under title XX of the Social Security Act, and under the Low-Income Home Energy Assistance Act of 1981.

(2) Any consolidated grant for any Indian tribe shall not be less than the sum of the separate grants which that tribe would otherwise be entitled to receive for such fiscal year.

(3) The funds received under a consolidated grant shall be expended for the programs and purposes authorized under any or all of the grants which are being consolidated, in accordance with all conditions and requirements which would be applicable to grants for those programs and purposes in the absence of the consolidation, but each Indian tribe shall determine the proportion of the funds granted to be allocated to each such program and purpose.

(4)(A) Notwithstanding any other provision of law, an Indian tribe shall be entitled (i) to submit a single application for a consolidated grant in accordance with this title for any fiscal year, and (ii) to submit a single pre-expenditure report and a single post-expenditure report with respect to each such consolidated grant received for any fiscal year, in accordance with regulations promulgated by the Secretary.

(B) Notwithstanding any other provision of law, an Indian tribe which elects to expend none of its consolidated grant funds for any individual program authorized under any one of the grants being consolidated shall not be required, as a condition of receiving a consolidated grant under this title, to comply with the conditions or to make the reports or assurances applicable to that program.

(C) Nothing in this title shall preclude the Secretary from providing adequate procedures for accounting, auditing, evaluating, and reviewing any programs or activities receiving funding under any consolidated grants.

(5) The provisions of this subsection shall be effective with respect to fiscal year 1986 and succeeding fiscal years.

DEPARTMENT OF THE INTERIOR

SEC. 105. (a) Section 5(g)(2) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334(g)(2)) is repealed.

(b) Section 403(b) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1843(b)) is repealed.

DEPARTMENT OF TRANSPORTATION

SEC. 106. (a) Section 114(a) of title 23, United States Code, is amended to read as follows:

"(a) The construction of any highways or portions of highways located on a Federal-aid system shall be undertaken by the respective State highway departments or under their direct supervision. The construction work and labor in each State shall be performed in accordance with the laws of the State and applicable Federal laws. Except as provided in Section 117 of this title, the Secretary shall establish procedures for the inspection and approval of such construction. The State highway department shall not erect any information signs other than official traffic control devices conforming with standards approved by the Secretary on any project where actual construction is in progress and visible to highway users.".

(b) Section 121(c) of title 23, United States Code, is amended by striking the words "following inspections".

DEPARTMENT OF THE TREASURY

SEC. 107. (a) Sections 6034(a) and (b) of the Internal Revenue Code of 1954 (26 U.S.C. 6034(a) and (b)) are amended to read as follows:

"(a) General rule. Every trust described in section 4947(a)(2) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

"(b) Exception. This section shall not apply to any section 4947(a)(2) trust to which all transfers in trust were made before May 27, 1969, if all of the net income for the taxable year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries.".

(b) Section 6043(a) of the Internal Revenue Code of 1954 is amended to read as follows:

"(a) Corporations

"When required by the Secretary, every corporation shall make a return regarding its distributions in liquidation, stating the name and address of, the number and class of shares owned by, and the amount paid to, each shareholder, or, if the distribution is in property other than money, the fair market value (as of the date the distribution is made) of the property distributed to each shareholder.".

(c) Section 5008(c)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 5008(c)(1)) is amended by striking the words "withdrawn from bonded premises on payment or determination of tax" and inserting the words "on which tax has been determined or paid".

(d) Section 5175(c) of the Internal Revenue Code of 1954 (26 U.S.C. 5175(c)) is amended to read as follows:

"(c) Cancellation or credit of export bonds—

"Upon the exportation of distilled spirits withdrawn without payment of tax, the bonds given under subsection (a) shall be cancelled or credited and the bonds liable under subsection (b) credited. The Secretary is authorized to prescribe regulations governing the requirements of such evidence, records, or certification, indicating exportation as shall be deemed necessary.".

(e) Section 5181(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 5181(c)(3)) is amended by revising the second sentence to read:

"For purposes of sections 5212 and 5232 and subsection (e)(2) of this section, the premises of an eligible distilled spirits plant shall be treated as bonded premises.".

(f) Section 5207(c) of the Internal Revenue Code of 1954 (26 U.S.C. 5207(c)) is amended by striking the words "shall be kept on the premises where the operations covered by the record are carried on and".

(g)(1) Section 5222(b) of the Internal Revenue Code of 1954 (26 U.S.C. 5222(b)) is amended to read as follows:

"(b) Receipt

"Under such regulations as the Secretary may prescribe, fermented materials to be used in the production of distilled spirits may be received on the bonded premises of a distilled spirits plant authorized to produce distilled spirits as follows:

"(1) from the premises of a bonded wine cellar authorized to remove such material by section 5362(c)(6);

"(2) conveyed without payment of tax from brewery premises;

"(3) cider exempt from tax under the provisions of section 5042(a)(1).".

(2) Section 5053 of the Internal Revenue Code of 1954 (26 U.S.C. 5053 is amended by adding at the end thereof the following new paragraph:

(g) Removal for use as distilling material

"Under such conditions and regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax to any distilled spirits plant for use as distilling material.".

(h) Section 5232(b)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 5232(b)(1)) is amended by striking the words "only if of 185 degrees or more of proof".

(i)(1) Section 5115 of the Internal Revenue Code of 1954 (26 U.S.C. 5115) is repealed.

(2) Subsections (a) and (c) of section 5681 of the Internal Revenue Code of 1954 (26 U.S.C. 5681(a) and (c)) are amended by striking the words "section 5115(a) or".

(j)(1) Section 5044 of the Internal Revenue Code of 1954 (26 U.S.C. 5044) is amended by—

(a) striking the word "unmerchantable" in the catchline of such section; and

(b) striking the words "as unmerchantable" and the words "produced in the United States and" in subsection (a).

(2) Section 5361 of the Internal Revenue Code of 1954 (26 U.S.C. 5361) is amended by striking the word "unmerchantable".

(k) The Internal Revenue Code of 1954 is amended by adding where appropriate the following new section:

"Sec. 5364. Imported bulk wine

"Wines imported or brought into the United States in bulk containers may, under such regulations as the Secretary may prescribe, be withdrawn from customs custody and transferred in such bulk containers to the premises of a bonded wine cellar without payment of the internal revenue taxes imposed on such wine. The proprietor of the bonded wine cellar to which such wines are transferred shall become liable for the taxes on the wines withdrawn from customs custody under this section upon release of the wines from customs custody, and the importer, or the person bringing such wines into the United States shall thereupon be relieved of the liability for such tax.".

(l) Section 5362(c) of the Internal Revenue Code of 1954 (26 U.S.C. 5362(c)) is amended by—

(1) striking the word "and" at the end of paragraph (8);

(2) striking the period at the end of paragraph (9) and inserting in lieu thereof "; and"; and

(3) adding at the end thereof the following new paragraph:

"(10) without payment of tax for destruction.".

"(m) Section 5053 of the Internal Revenue Code of 1954 (26 U.S.C. 5053) is amended by adding the following:

"(g) Removal of beer to customs bonded warehouses

"Subject to regulations prescribed by the Secretary, beer may be removed without payment of tax for transfer to any customs bonded warehouse for removal as provided in paragraph (h).

"(h) Removal of beer from customs bonded warehouses for use of foreign embassies, legations, etc.

"(1) In general

Notwithstanding any other provision of law, beer entered into customs bonded warehouses under paragraph (g) may, under such regulations as the Secretary may prescribe, be withdrawn from such warehouses for consumption in the United States by and for the official or family use of such foreign governments, organizations, and individuals who are entitled to withdraw imported beer from such warehouses free of tax. Beer transferred to customs bonded warehouses under paragraph (g) shall be entered, stored, and accounted for in such warehouses under such regulations and bonds as the Secretary may prescribe, and may be withdrawn therefrom by individuals free of tax under the same conditions and procedures as imported beer.

"(2) Withdrawal for domestic use

Beer entered into customs bonded warehouses under paragraph (g) for purposes of removal under paragraph (1) may be withdrawn therefrom for domestic use. Beer so withdrawn shall be treated as American goods exported and returned.

"(3) Sale or unauthorized use prohibited

Beer withdrawn from customs bonded warehouses or otherwise brought into the United States free of tax for the official or family use of foreign governments, organizations, or individuals authorized to obtain beer free of tax shall not be sold and shall not be disposed of or possessed for any use other than an authorized use. The provisions of paragraph (a)(3) of section 5054 are hereby extended and made applicable to any persons selling, disposing of, or possessing any beer in violation of the preceding sentence, and to the beer involved in any such violation.

"(i) Removals for destruction

Beer may be removed from the brewery without payment of tax for destruction, subject to such regulations as the Secretary may prescribe.".

(n) Section 5055 of the Internal Revenue Code of 1954 (26 U.S.C. 5055) is amended by striking the first sentence and inserting in lieu thereof the following:

"On the exportation of beer, brewed or produced in the United States, the brewer thereof shall be allowed a drawback equal in amount to the tax paid on such beer. The Secretary is authorized to prescribe regulations governing the payment or crediting of drawback on beer eligible for drawback under this section, including the requirements of such notices, bonds, bills of lading, and such other evidence indicating payment of tax and exportation as shall be deemed necessary.".

(o) Section 5056(a) of the Internal Revenue Code of 1954 (26 U.S.C. 5056) is amended by adding at the end thereof the following new sentence:

"In determining the amount of tax due on beer removed in any one day, the quantity of beer returned to any brewery of the brewer shall be allowed, under such regulations as the Secretary may prescribe, as an offset against or deduction from the total quantity of beer removed from that brewery on the day of such return.".

(p) The Internal Revenue Code of 1954 is amended by adding where appropriate the following new section:

"Section 5418. Imported Bulk Beer

"Beer imported or brought into the United States in bulk containers may, under such regulations as the Secretary may prescribe, be withdrawn from customs custody and transferred in such bulk containers to the premises of a brewery without payment of the internal revenue taxes imposed on such beer. The proprietor of a brewery to which such beer is transferred shall become liable for the taxes on the beer withdrawn from customs custody under this section upon release of the beer from customs custody, and the importer, or the person bringing such beer into the United States shall thereupon be relieved of the liability for such tax.".

(q) Section 5401(b) of the Internal Revenue Code of 1954 (26 U.S.C. 5401(b)) is amended deleting the third and fourth sentences and inserting in lieu thereof the following:

"Whenever required to do so by the Secretary, the brewer shall execute a new bond or continuation certificate, in the penal sum prescribed in pursuance of this section, and conditioned as above provided, which bond or continuation certificate shall be in lieu of any former bond or bonds, or former continuation certificate or certificates, of such brewer in respect to all liabilities accruing after its approval.".

(r) Section 5146 of the Revised Statutes (12 U.S.C. 72) is amended by deleting the first sentence and inserting instead the following:

"Every director must, during his whole term of service, be a citizen of the United States, and a majority of the directors must, throughout their terms, reside in the State, Territory, or District in which the association is located, or within one hundred miles of the location of the main office of the association, except that in the case of an association which is a subsidiary or affiliate of a foreign bank, the Comptroller of the Currency may, in his discretion, waive the requirement of citizenship in the case of not more than a minority of the total number of directors.".

(s) The Act of May 1, 1886 (12 U.S.C. 30, 31 and 32) is amended as follows:

(1) Section 2(a) of such Act (12 U.S.C. 30(a)) is amended by adding at the end thereof the following sentence: "All debts, liabilities, rights, provisions, and powers of the association under its old name shall devolve upon and inure to the association under its new name.".

(2) Section 2 of such Act (12 U.S.C. 30) is amended by adding at the end thereof the following new subsection:

"(c) Nothing in this section shall release any association under its old name or at its old location from any liability or affect any action or proceeding in law in which such association is or may become a party or interested.".

(3) Sections 3 and 4 of Act (12 U.S.C. 31 and 32) are repealed.

GENERAL SERVICES ADMINISTRATION

SEC. 108. Section 207(c)(1) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 488 (c)(1)), is amended to read as follows: "(1) real property if the estimated appraised fair market value is less than $1,000,000; or"

INTERNATIONAL TRADE COMMISSION

SEC. 109. Headnote 3 to Subpart A of part 8 of schedule 7 of the Tariff Schedules of the United States (19 U.S.C. 1202) is repealed.

NATIONAL SCIENCE FOUNDATION

SEC. 110. Section 15(c) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1874(c)), is amended to read as follows:

"(c) No part of any funds appropriated or otherwise made available for expenditure by

the Foundation under authority of this Act shall be used to make payments under any scholarship or fellowship awarded to any individual under section 10, unless such individual has provided the Foundation (in the case of applications made on or after October 1, 1962) with a full statement regarding any crimes of which he has ever been convicted (other than crimes committed before attaining sixteen years of age and minor traffic violations for which a fine of $100 or less was imposed) and regarding any criminal charges punishable by confinement of thirty days or more which may be pending against him at the time of his application for such scholarship of fellowship."

SECTION-BY-SECTION ANALYSIS OF PROPOSED BILL TO ELIMINATE OR CHANGE STATUTORY REQUIREMENTS PREVENTING THE REDUCTION OF PAPERWORK BURDENS AND REGULATORY SIMPLIFICATION

DEPARTMENT OF COMMERCE

Sec. 101. (a) Repeals the requirement for decennial census of drainage. The data were originally collected in the 1920's. Many drainage districts no longer exist. The Department of Agriculture's Soil Conservation Service has administrative data that are as good, or better, than the data that can be gathered through a survey program.

(b) Repeals sections 1, 4 and 6 of the Act of August 3, 1912, relating to the standard barrel for apples. These sections are obsolete and no longer used. The packaging terms of the item covered by these sections are today covered by the weights and measures laws that have been enacted by the legislature of each State.

(c) Repeals sections 1, 2 and 3 of the Act of March 4, 1915, relating to the standard barrel for fruits, vegetables and other dry commodities. These sections are obsolete and no longer used. The packaging in modern day terms of the items covered by this statute is today covered by the weights and measures laws that have been enacted by the legislature of each State.

(d) Repeals sections 1 through 6 of the Act of August 23, 1916 relating to the standard large and small barrels for lime. These sections are obsolete and no longer used. The packaging in modern day terms of the items covered by this statute is today covered by the weights and measure laws that have been enacted by the legislature of each State.

(e) Repeals a condition required when disposing Federal property overseas. Such sales must contain conditions prohibiting importation of the property into the United States unless the Secretary of Agriculture or Commerce determines that the importation would relieve U.S. shortages or be beneficial to the U.S. economy. The number of applications to Agriculture and Commerce under this provision have been small and since 1980 less than $100 million worth of property has been denied import authorization. This repeal would eliminate unnecessary regulatory and paperwork burdens on businesses dealing in surplus merchandise.

DEPARTMENT OF EDUCATION

Sec. 102. (a) Repeals the requirement for data collection on the financing of elementary and secondary education and the periodic publishing of profiles showing the degree to which States have achieved equalization of resources for elementary and secondary education among their school districts and among themselves. There is no consensus within the education finance community as to what definitions and measures should be used to determine disparities in expenditures and disparities from wealth neutrality, as the law requires. Until these issues are resolved, meaningful data collection and reporting are not possible.

(b) Repeals the Secretary of Education's review authority, and related responsibilities including functions of the Federal Data Acquisition Council, covering data collection activities which are education-related. Enactment of the Paperwork Reduction Act of 1980 established a central review and approval mechanism, within the Office of Management and Budget, for all federally-imposed paperwork, including education-related data collections. The reviews conducted by Education under this authority duplicate the OMB review process and often lead to unnecessary delay. This would only affect Department of Education involvement in education-related activities of other departments and agencies since Education would still have responsibilities under the Paperwork Reduction Act to review and coordinate its own data collection activities.

DEPARTMENT OF ENERGY

Sec. 103. (a) Authorizes the Federal Energy Regulatory Commission (FERC) to reduce unnecessary or burdensome regulatory requirements with respect to hydroelectric power projects having an installed capacity of 15 megawatts or less. This expands upon current FERC authority to waive licensing requirements of the Federal Power Act for (1) hydroelectric projects of 5 megawatts installed capacity or less at existing dams or impoundments; and (2) hydroelectric projects of 15 megawatts or less of installed capacity in water conduits on non-Federal lands that are used for irrigation and industrial purposes.

(b) Eliminates the requirement to gather information quarterly on domestic reserves and production; imports; and inventories of crude oil, residual fuel oil, refined petroleum products, natural gas, and coal; and report on energy company finances. The Department is able to collect this information when necessary pursuant to other authority. Reporting of information on a quarterly basis is needlessly detailed and excessively burdensome.

(c) Eliminates a required system for tracking and reporting every transaction, sale, exchange or shipment involving exports of coal or oil. Continuation of the requirement is unjustifiable because sufficiently detailed data on the export of oil and coal currently are collected by the Department of Commerce and made available to the Energy Information Administration.

(d) Eliminates the requirement to collect detailed information on cost of service provided by electric utilities to various consuming classes.

(e) Eliminates the requirements to perform biennial and quadrennial reviews of practices of electric utilities under automatic adjustment clauses.

(f) Eliminates the requirement for annual reports by officers of electric utilities regarding their holding of directorships in related corporations. Interlocking directorships are separately regulated by the Federal Energy Regulatory Commission so this additional reporting serves no useful purpose.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sec. 104. (a) Repeals provisions barring for-profit organizations from receiving technical assistance and demonstration and service grants under the Child Abuse and Prevention and Treatment Act and the Child Abuse Prevention and Treatment and Adoption Reform Act. The amendments would allow the Department to select the best qualified service providers irrespective of the for-profit or nonprofit status of applicants.

(b) Allows for-profit organizations to be eligible for Child Welfare Services grants. This change will promote wider competition, especially for operational programs for which effective methods are fairly well known.

(c) Repeals provisions of the Developmental Disabilities Assistance and Bill of Rights Act barring for-profit organizations from submitting grant applications on a competitive basis with other, nonprofit organizations.

(d) Eliminates mandatory certification by the Food and Drug Administration of each batch of antibiotics upon demand by a manufacturer. Modern manufacturing practices make this requirement unnecessary.

(e) Repeals the prohibition on shipment in interstate commerce of any milk, cream, or skimmed milk which has any added fat or oil, other than milk fat. This statute was declared unconstitutional in 1972 and is no longer enforceable.

(f) Eliminates a reporting requirement to collect analytic data from medical schools with regard to health professions.

(g) Allows for-profit organizations to be eligible for health statistics and health services research grants. This change will promote wider competition, especially for operational programs for which effective methods are fairly well known.

(h) Replaces the requirement that States conduct an annual independent audit of their Preventive Health and Health Services Block Grant expenditures with a requirement for an audit not less than once every two State fiscal years.

(i) Eliminates the present requirement that the Secretary determines the form and content of State prepared annual reports for the Preventive Health and Health Services Block Grant Program.

(j) Eliminates the present requirement that the Secretary determines the form and content of State prepared annual reports for the Alcohol, Drug Abuse, and Mental Health Service Block Grant Program.

(k) Allows for-profit organizations to receive financial assistance from States to provide, plan, or coordinate services under the Alcohol, Drug Abuse, and Mental Health Services and Preventive Health and Health Services Block Grants on a competitive basis with other nonprofit organizations.

(l) Allows for-profit organizations to submit grant applications for veneral disease research, training and health prevention programs and adolescent family life grants on a competitive basis with nonprofit organizations.

(m) Eliminates the capital planning requirement under Medicare for hospitals, nursing homes, and home health agencies. The change would decrease the administrative burden and the costs of facility operations.

(n) Eliminates a Medicare requirement that health maintenance organization (HMO) cost reports be independently certified. HMOs are the only providers now burdened with this requirement, the cost of which is reimbursed by the Federal government.

(o) Eliminates the minimum utilization rate requirement for facilities furnishing end stage renal disease services under Medicare. Repeal of this section would eliminate some excessive travel for treatment.

(p) Allows States to retain Medigap certification if they allow marketing of Medicare Part A only and Medicare Part B only policies. The change would provide the senior citizen with the choice of the most suitable type of Medicare supplemental insurance, while affording increased regulatory protection.

(q) Repeals exclusion of for-profit organizations in the area of health programs established under the Social Security Act.

(r) Modifies the type of hearing required before the Secretary and cancel a provider's participation in Medicaid. In place of a formal hearing before an administrative law judge the provider would be entitled to an opportunity for an informal hearing on the record.

(s) Allows for-profit organizations to be eligible for grants and contracts under the Native Americans Programs. Increasingly, for-profit organizations combine good business practices with capable services to various groups.

(t) Allows for-profit organizations to be eligible for grants and contracts under the Runaway and Homeless Youth Act. This change will promote wider competition, especially for operational programs for which effective methods are fairly well known.

(u) Amends the Social Services Block Grant Program to include the alleviation of poverty. The proposal would permit greater coordination of social and community services at State and local levels.

(v) Amends the Social Services Block Grant Program to permit Indian tribes to consolidate non-health block grant funds of the Department of Health and Human Services. This amendment is patterned after a similar authority now available to the U.S. territories which has reduced administrative costs and allowed improved targeting of services.

DEPARTMENT OF THE INTERIOR

Sec. 105. (a) Eliminates the requirement that the Department enforce maximum rates of oil and gas production on the outer continental shelf. Companies, rather than the Federal Government, would determine the most economic rates of production except insofar as production is required to ensure conservation of the resource.

(b) Eliminates the requirement that all offshore oil and gas equipment be marked with identification. Frequently, these markings have not been used to verify ownership when damage has occurred because of the difficulty in reaching the equipment often located in deep waters well below the surface.

DEPARTMENT OF TRANSPORTATION

Sec. 106 (a) and (b). Requires the Secretary to establish procedures for inspecting and approving construction but would not require a Federal inspection of each project. Title 23 U.S.C. now requires that the Secretary inspect each highway construction project. These amendments would thereby eliminate an unnecessary requirement. Current law also provides that informational signs erected on any project where actual construction is in progress and visible to highway users must conform with standards developed by the Secretary. These amendments would permit the Secretary to approve standards developed by other parties as well as those developed by the Department of Transportation.

DEPARTMENT OF THE TREASURY

Sec. 107. (a) Allows section 4947(a) trusts to file single information returns.

(b) Eliminates the requirement that corporations must file an information return within 30 days after adopting a plan of dissolution or liquidation. The plan of dissolution or liquidation still would be required to be maintained. Taxpayers would be relieved of filing a form with no useful tax administration purpose.

(c) Permits processing of Puerto Rican spirits at a U.S. distilled spirits plant. Refund, credit or abatement of tax for spirits returned to a distilled spirits plant is currently restricted to those spirits which have been withdrawn from a domestic distilled spirits plant. Because of this, spirits brought into the U.S. from Puerto Rico must be returned to customs custody or to Puerto Rico for destruction, denaturation, redistillation, reconditioning or rebottling.

(d) Gives the Secretary authority to prescribe regulations concerning proof of exportation as may be deemed necessary. Under such authority, regulations allowing the retention at the exporter's place of business, of evidence of exportation, could be prescribed.

(e) Permits small alcohol fuel plants to receive spirits withdrawn from customs custody. Medium and large alcohol fuel plants are currently authorized to receive spirits withdrawn from customs custody, but small plants cannot do so since they have no bonded premises.

(f) Eliminates the requirement that accounting records be maintained on the premises of distilled spirits plants. Such plants equipped with automatic data processing equipment frequently locate their accounting offices in places other than the plant premises. This change would end the necessity of maintaining two sets of records.

(g) Permits transfer of distilling material for the production of distilled spirits to noncontiguous breweries.

(h) Removes the limit on redistillation and denaturation of imports to spirits of 185 degrees proof or more.

(i) Removes the requirements for a sign outside business premises of a lawful wholesale liquor dealer. The requirement is obsolete and unnecessary.

(j) Removes the restriction that wine be both unmerchantable and produced in the United States for return to bond. Bonded winery proprietors would be allowed to return wine to bond for any reason.

(k) Allows bulk imported wine to be brought from customs custody without payment of tax to a bonded wine cellar. Technological advances in the shipping of wine in pressurized containers now make it possible to ship wines in bulk rather than bottled and cased. This section would facilitate the movement of such bulk imported wine through Customs port facilities directly to bonded wine cellars for storage and subsequent bottling, labeling and removal.

(l) Provides sufficient statutory latitude to allow by regulation the voluntary destruction of unsalable wines at sanitary landfills and other locations which are not a part of the bonded wine cellar premises.

(m) Allows domestically produced beer to be removed from a brewery, without payment of tax, for storage pending removal by personnel of foreign government or international organizations. This extends the same treatment to domestically produced beer as currently exists for domestically produced spirits and wine and imported distilled spirits, wine and beer. Also provides statutory authority to allow by regulation the removal of beer from a brewery without payment of tax for the purpose of destruction. This change would allow destruction at sanitary landfills or other convenient locations. Currently, many brewers are experiencing environmental problems with the disposal of large quantities of waste beer at breweries.

(n) Gives the Secretary the authority to credit drawback of tax on beer and the discretion to require or not to require the submission of notices, bonds, bills of lading and other evidence indicating payment of tax and exportation. Under such authority, regulations allowing the retention at the brewery premises of evidence of tax payment and exportation may be prescribed.

(o) Eliminates the requirement that beer must be returned to the same brewery from which it was removed to permit a tax offset without the filing and payment of a claim. This would eliminate the filing and payment of claims by a brewer for beer returned to another brewery.

(p) Permits bulk importation of beer for bottling in the United States. Technological advances in the shipping of beer in pressurized containers now makes it possible to ship the beer in bulk rather than in bottles, cans or barrels. This section would facilitate the movement of bulk imported beer through customs port facilities directly to breweries for storage and subsequent bottling, labeling and removal.

(q) Eliminates the requirement for four year bond renewal by brewers and gives the Secretary discretion as to when a new bond shall be required.

(r) Eliminates entirely the current prior residency rule for national bank directors and reduces from two-thirds to a majority the number of directors that must comply with the residency requirement during tenure in office. The primary purpose of the residency requirement is to assure management familiarity with local capacities and credit needs. By reducing to a majority the number of resident directors, the amendment would maintain a balance between local knowledge and participation and the widest possible range for selection of qualified directors.

(s) Combines three related statutory requirements applying to national banks for clarity. These deal with change of name or location, related rights and liabilities and suits.

GENERAL SERVICES ADMINISTRATION

Sec. 108. Changes the threshold for required antitrust advice form the Attorney General on government disposal of real property from $1 million acquisition cost to $1 million fair market value of the property. Acquisition cost has little bearing on current value of property.

INTERNATIONAL TRADE COMMISSION

Sec. 109. Repeals the requirement that the President annually determine if substantial changes in the consumption of wiskbrooms and other brooms made from broom corn has substantially changed from the previous year and if so he must change the permissible quantity of such imports. This requirement serves as the basis for Executive Order No. 11377 which requires the International Trade Commission to collect annual data on broom consumption. This requirement is now obsolete because this industry is now very minor and the surveys are primarily used for marketing purposes by the broom industry.

NATIONAL SCIENCE FOUNDATION

Sec. 110. Eliminates (1) the requirement that each applicant for a National Science Foundation fellowship or scholarship

submit a signed loyalty oath or affirmation, and (2) an obsolete provision relating to organizations registered under the Subversive Activities Control Act of 1950. This provision also raises to $100 the exemption threshold below which minor traffic violations are not required to be included in a statement of crimes for which an applicant has been convicted.●

By Mr. ROTH (by request):

S. 2011. A bill entitled the "Drug Enforcement Administration Excepted Service Act of 1986"; to the Committee on Governmental Affairs.

DRUG ENFORCEMENT ADMINISTRATION EXCEPTED SERVICE ACT OF 1986

● Mr. ROTH. Mr. President, I am introducing, by request of the administration, a bill which would place all Drug Enforcement Administration personnel into excepted service status. This bill involves a serious and growing problem: drug trafficking. Therefore, although I am not prepared at this time to announce my support for this legislation, I believe it deserves serious consideration by the Senate, and it should be referred to the appropriate committee.

The impetus for this bill is the decision by the Attorney General to give the DEA and the Federal Bureau of Investigation concurrent jurisdiction in the area of narcotics trafficking. Having chaired a number of hearings on drug trafficking and abuse for the Permanent Subcommittee on Investigations, I believe that no stone should go unturned in the fight against illicit drugs. If subsequent hearings indicate that passage and implementation of this bill would assist law enforcement authorities in this fight, I am certain that many Senators would support it.

The bill, entitled the "Drug Enforcement Administration Excepted Service Act of 1986," would, by placing all DEA personnel into the excepted service, allow the reassignment of employees between the DEA and the FBI, which would facilitate cooperation between these two agencies. Current civil service rules prohibit the reassignment of an employee in the excepted service to a position in the competitive service, except for a short-term detail. Since the FBI already has all of its personnel in the excepted service, this bill would make the DEA and FBI personnel systems compatible and would allow these reassignments.

This legislation may also enable DEA to improve and expedite its recruitment of new personnel. In addition, it would extend the "whistle blower" provisions of the Civil Service Reform Act to DEA employees and protect them from any prohibited personnel practices as a result of any covered complaint which they might file.

Mr. President, I request unanimous consent that a copy of the bill be printed in the RECORD.

There being on objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2011

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 "Drug Enforcement Administration Excepted Service Act of 1986."

SEC. 2. Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, (Public Law 91-513) is amended by adding the following new section:

"EXCEPTED SERVICE

SEC. 710. All positions in the Drug Enforcement Administration are excepted from the competitive service, and the incumbents of such positions occupy positions in the excepted service."

SEC. 3. Section 2303 of title 5, United States Code, is amended to read as follows:

"PROHIBITED PERSONNEL PRACTICES IN THE FEDERAL BUREAU OF INVESTIGATION AND THE DRUG ENFORCEMENT ADMINISTRATION

"(a) Any employee of the Federal Bureau of Investigation or the Drug Enforcement Administration who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau or the Administration as a reprisal for the disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose) which the employee or applicant reasonably believes evidences—

"(1) a violation of any law, rule, or regulation, or

"(2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"For the purpose of this subsection 'personnel action' means any action described in clauses (i) through (x) of section 2302(a)(2)(A) of this title with respect to an employee in, or applicant for, a position in the Bureau or the Administration (other than a position of a confidential, policy-determining, policy-making, or policy-advocating character).

"(b) The Attorney General shall prescribe regulations to ensure that such a personnel action shall not be taken against an employee of the Bureau or the Administration as a reprisal for any disclosure of information described in subsection (a) of this section.

"(c) The President shall provide for the enforcement of this section in a manner consistent with the provisions of section 1206 of this title."

CONFORMING AMENDMENTS

SEC. 4. Section 2302(a)(2)(C)(ii) of Title 5, United States Code is amended by inserting "the Drug Enforcement Administration," immediately after "the Federal Bureau of Investigation,"

SEC. 5. Section 4701(a)(1)(B) of title 5, United States Code, is amended by inserting "the Drug Enforcement Administration," immediately after "the Federal Bureau of Investigation,"

SEC. 6. Section 7103 of title 5, United States Code is amended

(a) by deleting "or" at the end of (F) in paragraph (3) of subsection (a);

(b) by inserting "or" immediately after the semi-colon in (G) of paragraph (3) of subsection (a); and

(c) by adding after (G) in paragraph (3) of subsection (a) the following:

"(H) the Drug Enforcement Administration."

SEC. 7. Section 3132(a)(2)(E)(iii) of Title 5, United States Code, is amended to read "any position in the Drug Enforcement Administration;"

SEC. 8. Section 4701(b) of title 5, United States Code, is hereby repealed.

SEC. 9. Section 201 of Public Law 94-503 is hereby repealed.●

By Mr. LEVIN (for himself, Mr. GRASSLEY, Mr. GORE, Mr. PRYOR, Mr. SARBANES, and Mr. BURDICK):

S. 2014. A bill to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes; to the Committee on Governmental Affairs.

WHISTLEBLOWER PROTECTION ACT

● Mr. LEVIN. Mr. President, I am introducing today, along with Senators GRASSLEY, PRYOR, GORE, SARBANES, and BURDICK, the Whistleblower Protection Act of 1986. Identical legislation is being introduced in the House of Representatives by Congresswoman SCHROEDER and Congressman HORTON.

This act is urgently needed to restore the faith of conscientious Federal employees in the fairness and integrity of our Federal service. It will do so by strengthening the statutory protections for Federal whistleblowers—those in the Government who "blow-the-whistle" on mismanagement, fraud, and abuse, and are sometimes subjected to reprisal for doing so. It is outrageous that Federal employees should have to risk their financial security and professional careers in order to do that which is right and which we in Congress encourage them to do—blowing the whistle on fraud and mismanagement. Our system should not only protect this kind of activity but reward it. All too frequently, our system does neither. All too frequently, whistleblowers have to struggle through skepticism, hostility, and even harassment to get their message heard, and in the process may even be driven out of the very Government they are trying to improve.

It is alarming but true that the number of people in the Federal Government who feel they can safely come forward with allegations of waste or mismanagement is declining. According to a study by the Merit Systems Protection Board, in 1980, 20 percent of employees who perceived agency problems did not report them because of fear of reprisal. In 1983, that figure was 37 percent. The number of Federal employees who think that blowing the whistle will result in any positive action is also declining. In 1980, 53 percent of the potential whistleblowers didn't act because they didn't think anything

would be done. In 1983, it was 61 percent.

These statistics should be a matter of grave concern not only because reprisals against whistleblowers are illegal, unfair, and unethical, but also because such reprisals directly counter our ongoing efforts to reduce unnecessary Government spending. It doesn't make sense to struggle with deficit reduction with one hand, while on the other hand ignoring or discouraging—or sometimes even punishing—those individuals who are trying to help us cut wasteful spending. The bill we are introducing today will go a long way toward rectifying this situation.

Congress recognized its responsibility to whistleblowers in 1978 by passing the Civil Service Reform Act [CSRA], the most comprehensive reform of the Federal work force since the establishment of the Civil Service Commission in 1883. Among other things, CSRA created the Merit Systems Protection Board [MSPB] to handle hearings and appeals involving Federal employees. The Special Counsel of the MSPB was established to investigate prohibited personnel practices and other activities prohibited by civil service law, and to protect Federal employees from reprisals for disclosures of problems within an agency or for the exercise of appeal rights. The Office of Special Counsel [OSC] was also established to serve as a conduit for reviewing and referring to agencies allegations of waste, fraud, and abuse.

The OSC got off to a shaky start in 1978 for a number of reasons, including funding and administrative problems, the unaggressive attitude of some of the Special Counsels, and frequent staff turnover, including the position of Special Counsel itself. For several years, there were extremely lengthy delays in responding to and processing Federal employees' complaints.

Since 1982, the position of Special Counsel has been held by William O'Connor, who has resolved some of the most serious administrative problems, in particular the inordinate delays in the processing of Federal employees' cases. But the serious substantive problems remain. The OSC is still far from fulfilling its role of protecting Federal employees from prohibited personnel practices. Many Federal employees, and whistleblowers in particular, feel they were better off before Congress' well-intentioned reform of 1978. Prior to CSRA, Federal employees could go to Federal court and sue the perpetrator of any alleged reprisal for damages based on constitutional tort action. After CSRA, the courts ruled that Congress' intent was for the OSC to be the sole avenue of relief for employees alleging prohibited personnel practices. As a result, many civil servants feel their right to individually bring a constitutional tort action in Federal court, which private citizens enjoy, was exchanged for their assignment to an unresponsive or ineffectual advocate in the OSC, which can bring cases only before an administrative body, the MSPB.

Under the current law, the procedures governing the OSC are as follows:

Current Federal employees or applicants for Federal employment who allege they are the victims of a prohibited personnel practices can come to the OSC for assistance. For a number of personnel actions, there is no judicial remedy, and the OSC is the only administrative remedy available. The OSC investigates the employee's claim to the extent necessary to determine whether there are reasonable grounds to believe a prohibited personnel practice has indeed occurred.

If the OSC terminates or does not pursue an employee's claim, the OSC must let the employee know in writing.

If the OSC accepts an employee's case, the OSC can seek a stay of any personnel action taken against the employee. The OSC can initially seek a stay from a member of the MSPB for 15 days, and must then seek subsequent stays if necessary.

If the OSC determines corrective action is necessary to restore a complainant to his previous position, the OSC may request the MSPB to consider the matter. After hearing the case, the MSPB may order whatever corrective action it considers appropriate. The OSC cannot appeal a MSPB decision.

In addition, if the OSC determines disciplinary action should be taken against an employee who has engaged in a prohibited personnel practice, the OSC shall bring an action before the MSPB against that employee. An employee who is the subject of such an action can appeal a MSPB decision.

The OSC can also investigate Hatch Act violations, and bring any necessary corrective or disciplinary actions before the MSPB to correct those violations. In addition, the OSC can investigate prohibited personnel practices on its own initiative, without an allegation by an individual Federal employee.

Federal employees or applicants for employment can also come to the OSC in order to make a "disclosure" of information which the employee believes shows a violation of law, gross waste of funds, abuse of authority, or a danger to public health or safety. The OSC does not have the power to investigate such allegations of agency problems, but must review them and refer them to the agency for investigation.

For those disclosures which the OSC determines to have a substantial likelihood that there is a significant agency problem, the OSC can require a report on the disclosure, signed by the agency head, within 60 days.

For other disclosures, which the OSC determines do not have a substantial likelihood of showing a significant problem, the OSC still refers the disclosure to the agency but requires a less formal report without any set time limit.

In fiscal year 1984, the OSC received 1,383 complaints alleging prohibited personnel practices. According to the General Accounting Office, only about 8 percent of these allegations survived an initial screening process and were given an in-depth investigation. For alleged whistleblower reprisal cases, the statistics are even more startling—99 pecent of these cases were closed by the office without initiating disciplinary or corrective action.

A recent GAO report on the OSC cites three reasons for the low level of response to the some 11,000 complaints to the OSC since 1979:

First, the limited role assumed by the OSC. The current Special Counsel stresses protection of the merit system itself rather than protection of individual Federal employees.

Second, difficulties of proof of retaliation against whistleblowers.

Third, few complaints have sufficient merit.

The first point is an important one. Mr. O'Connor sees his role as protecting the merit system rather than individual employees, and believes that goal can best be achieved through pursuing disciplinary action against employers guilty of prohibited practices, rather than corrective action for employees who might be victims of those practices. Mr. O'Connor has said several times that he is not in office to protect federal employees. His client is the system, he says, and it should be protected by prosecuting those who break its rules.

This distinction between protecting the system versus protecting individuals would be just an argument over semantics, except that it has had the very concrete result of really limiting the kind of help whistleblowers can get. Mr. O'Connor's emphasis on protecting the system through disciplinary measures does not necessarily benefit the human beings who comprise that system. The GAO pointed out: "Few of these complainants (whistleblowers) will ever receive the relief they seek through the Office of Special Counsel, particularly as the Special Counsel does not emphasize the pursuit of corrective action on behalf of aggrieved whistleblowers. During the 2 years prior to August 1984, the Special Counsel obtained redress for a total of but three whistleblowers—redress in the form of cancelled transfers."

GAO points out that the OSC won several disciplinary action cases before

the MSPB, and was able to work out four other disciplinary action settlements with agencies. While whistleblowers might feel disciplinary action is warranted against an employer who took reprisals, such action is hardly helpful if the whistleblower himself is still out in the cold and no one is willing to help him receive corrective action.

There shouldn't be a conflict between protecting the merit system and protecting individuals in it. Surely helping victims obtain corrective action against reprisals serves merit system principles.

Mr. O'Connor's predisposition against assisting individual Federal employees is regrettably evident in other areas of his record. In a 1985 hearing, he said that in his experience most whistleblowers are "malcontents." This is hardly the attitude I would like to see in the director of the office that is supposed to be defending these people's rights.

In addition, the OSC maintains unnecessarily stringent requirements for accepting a case. GAO reports that Mr. O'Connor has said he will only accept cases in which he feels there is an 75-80 percent chance of winning. This 75-80 percent standard can be a rather difficult requirement to meet for an individual battling an agency. But apparently the OSC's standard are now even higher. The OSC's most recent annual report noted that the office will not file complaints "unless there is virtual certainty that the evidence provides sufficient facts to ensure success * * *."

It is no wonder that so few cases are pursued by the OSC if the whistleblower has to prove to the OSC that there is a "virtual certainty" of winning. That's an unreasonable requirement. It means the hardest part for a whistleblower is likely to be not winning the case before the MSPB, but proving to the OSC that the case is just worth looking into in the first place.

The second point cited by GAO—the difficulty of proving retaliation—is also a valid concern. A careful employer can make it very difficult to prove that an action taken against an employee was because of their whistleblowing.

It may also be true, as the GAO says, that many allegations of prohibited personnel practices are without merit or without adequate evidence. But is it true for 92 percent—92 percent of all allegations do not have enough merit to warrant even a detailed investigation?

GAO acknowledges that the vast majority of complainants are disappointed with OSC's actions or lack thereof. Another matter about which I am concerned is that OSC frequently provides minimally acceptable explanations to complainants of why their cases were not accepted. OSC is required by law to provide some explanation, but that explanation can be one sentence long, for example stating that the OSC believes that action taken against the complainant was carried out for "legitimate management reasons." Such an explanation is not very helpful to a complainant who needs to know why his or her case is not being pursued.

Beyond these facts, the most pressing need to improve the OSC is reflected in the statistics I cited earlier showing that fewer and fewer Federal employees believe it is worthwhile coming forward with reports of waste or abuse. Even more damning is that fact that the Special Counsel himself, Mr. O'Connor, does not believe the system works. In a July 17, 1984, Washington Post article, Mr. O'Connor was reported to say that if he were an attorney advising whistleblowers: "I'd say that unelss you're in a position to retire or are independently wealthy, don't do it. Don't put your head up, because it will get blown off."

This is not what we want. We do not want whistleblowers to fear coming forward. We want to encourage them, and must do so by assuring them we'll do our best to protect them against reprisals.

The bill we are introducing today makes three significant improvements to current law. It clarifies that the purpose of the OSC is to protect employees, especially whistleblowers. It should be made clear in statutory language that Congress believes whistleblowers deserve to have an advocate. It is to be hoped this change will settle the continuing argument over this office's mission.

The bill also gives individuals an alternative to going to the OSC. Under this bill, individuals could take their case directly to the MSPB, and if they lost there, they could go to court. Federal employees alleging prohibited personnel practices should have another option besides the OSC, in light of the OSC's negative attitude toward such employees.

In addition, this bill changes the standard of proof for whistleblower reprisal cases before the MSPB from "preponderance" of evidence to "substantial" evidence. This is needed to make it more feasible to bring cases with merit. Agencies would still have the inherent advantage with the weight of the system on their side, the resources, and the witnesses who are often reluctant to testify against the agency. Even with this change in law, it would remain relatively easy to cover up retaliation against employees, and it would remain difficult to show a causal connection between an adverse personnel action, and whistleblowing. But, by changing the standard of proof, we would at least give whistleblowers a better shot at proving their case.

The bill does the following:

Establishes that for proving a case of reprisal taken against a whistleblower, there shall be a more realistic standard of "substantial evidence," rather than the current standard of preponderance of evidence.

Clarifies the purpose of the OSC. The bill establishes that: "(A) the primary role of the Office of Special Counsel is to protect employees, especially whistleblowers; and (B) while disciplining those who commit prohibited personnel practices may be used as a tool to help accomplish this goal, the protection of individuals is the priority." The bill also requires the OSC to establish a lawyer-client relationship with employees who claim to have been subject to prohibited personnel practices.

Provides that Federal employees could take their own cases to the MSPB instead of or in addition to taking it to OSC. If they win, the MSPB must order the agency to pay reasonable attorney's fees and other costs.

Strengthens the current stay procedures. Under the bill, if the OSC believed a prohibited personnel practice had been taken against an employee, the OSC could request the MSPB to order a stay of that personnel action for 60 days. If OSC filed a petition for corrective action from the MSPB, the stay would automatically continue until the MSPB resolved the case. Under current law, the OSC can request an initial stay of only 15 days, and then must seek subsequent extensions if necessary.

Provides that Federal employees could also request the MSPB for a stay of a personnel action taken against them. The MSPB would order the stay if it determined that there was a substantial likelihood the employee would win his or her case.

Gives the OSC the power to take its cases to court if it loses before the MSPB.

Allows Federal employees to go to court if they lose before the MSPB. The court may award reasonable attorney's fees and other costs.

Requires that a letter of termination to a complaining employee about his or her case include the findings of facts ascertained during the investigation.

Expands the definition of prohibited personnel practice to include taking reprisal against an employee who assists someone else who claims to be the victim of a prohibited personnel practice, who cooperates with an agency's inspector general or the OSC, or who fails to follow orders to disobey a law.

Broadens the power of the MSPB to sanction presidential appointees, military officers, and contractor officials.

Officially separates the OSC from the Merit Systems Protection Board. In early years, there were a number of concerns about the close relationship between these two offices. The administrative functions of the two were separated in 1984. This bill would just complete that process.

Requires affirmative congressional action to continue the OSC beyond September 30, 1989, and the MSPB beyond 1991.

Authorizes $5 million for the OSC, and $20 million for the MSPB (which are roughly the current figures).

The current system of relief for victims of prohibited personnel practices is not working fairly. If we want to be fair to Federal workers, encourage them to blow the whistle on waste and fraud, and save taxpayers money, we must make the OSC more responsive and more effective. To achieve this, I urge my colleagues to support this bill.

I ask unanimous consent that the full text of the bill appear immediately following the remarks.

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

S. 2014

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 "Whistleblower Protection Act of 1986".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) Federal employees who make disclosures described in section 2302(b)(8) of title 5, United States Code, serve the public interest by bringing about reductions in Government expenditures, fraud, waste, and abuse;

(2) protecting employees who disclose Government illegality, waste and corruption is a major step toward a more effective civil service; and

(3) in passing the Civil Service Reform Act of 1978, Congress established the Office of Special Counsel to provide whistleblowers (those individuals who make disclosures described in such section 2302(b)(8)) protection from reprisal.

(b) PURPOSES.—The purpose of this Act is to strengthen and improve protection for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government by—

(1) mandating that victims of prohibited personnel practices, expecially whistleblowers, should be restored to their previous positions;

(2) establishing that—

(A) the primary role of the Office of Special Counsel is to protect employees, especially whistleblowers; and

(B) while disciplining those who commit prohibited personnel practices may be used as a tool to help accomplish this goal, the protection of individuals is the priority; and

(3) providing that the Office of Special Counsel establish a lawyer-client relationship with employees who claim to have been subject to prohibited personnel practices.

SEC. 3. MERIT SYSTEMS PROTECTION BOARD; SPECIAL COUNSEL; EMPLOYEE RIGHT OF ACTION.

(a) Chapter 12 of title 5, United States Code, is amended to read as follows:

"CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD, SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION

"Subchapter I—Merit Systems Protection Board

"Sec.
"1201. Appointment of members of the Merit Systems Protection Board.
"1202. Term of office; filling vacancies; removal.
"1203. Chairman; Vice Chairman.
"1204. Powers and functions of the Merit Systems Protection Board.
"1205. Stays of certain personnel actions.
"1206. Transmittal of information to Congress.
"1207. Annual report.

"Subchapter II—Office of Special Counsel
"1211. Establishment of Office of Special Counsel.
"1212. Powers and functions of Office of Special Counsel.
"1213. Receipt and processing of disclosures.
"1214. Investigation of prohibited personnel practices; corrective action.
"1215. Disciplinary actions.
"1216. Discrimination complaints.
"1217. Other matters within the jurisdiction of Office of Special Counsel.
"1218. Transmittal of information to Congress.
"1219. Annual report.

"Subchapter III—Employee Right of Action
"1221. Individual right of action.
"1222. Individual action on agency failure to comply with order of Board.
"1223. Relationship between individual action and Special Counsel action.

"Subchapter I—Merit Systems Protection Board

"§ 1201. Appointment of members of the Merit Systems Protection Board

"The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same political party. The Chairman and members of the Board shall be individuals who, by demonstrated ability, background, training, or experience are especially qualified to carry out the functions of the Board. No member of the Board may hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President. The Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations.

"§ 1202. Term of office; filling vacancies; removal

"(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

"(b) A member appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201 of this title.

"(c) Any member appointed for a 7-year term may not be reappointed to any following term but may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that such member may not continue to serve for more than 1 year after the date on which the term of the member would otherwise expire under this section.

"(d) Any member may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

"§ 1203. Chairman; Vice Chairman

"(a) The President shall from time to time, appoint, by and with the advice and consent of the Senate, one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

"(b) The President shall from time to time designate one of the members of the Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

"(c) During the absence or disability of both the Chairman and Vice Chairman, or when the offices of Chairman and Vice Chairman are vacant, the remaining Board member shall perform the functions vested in the Chairman.

"§ 1204. Powers and functions of the Merit Systems Protection Board

"(a) The Merit Systems Protection Board shall—

"(1) hear or adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title, section 2023 of title 38, or any other law, rule, or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter;

(2) order any Federal agency or employee to comply with any order or decision issued by the Board under the authority granted under paragraph (1) of this subsection and enforce compliance with any such order;

"(3) conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected; and

"(4) review, as provided in subsection (e) of this section, rules and regulations of the Office of Personnel Management.

"(b)(1) Any member of the Merit Systems Protection Board, any administrative law judge appointed by the Board under section 3105 of this title, and any employee of the Board designated by the Board may—

"(A) administer oaths, examine witnesses, take depositions, and receive evidence;

"(B) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, the District of Columbia, or from any installation or facility of the Government of the United States throughout the world; and

"(C) order the taking of depositions and order responses to written interrogatories.

"(2) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

"(c) In the case of contumacy or failure to obey a subpoena issued under subsection (b)(2) of this section, the United States district court for the judicial district in which

the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(d)(1) In any proceeding under subsection (a)(1) of this section, any member of the Board may request from the Director of the Office of Personnel Management an advisory opinion concerning the interpretation of any rule, regulation, or other policy directive promulgated by the Office of Personnel Management.

"(2) In enforcing compliance with any order under subsection (a)(2) of this section, the Board may order that any employee charged with complying with such order shall not be entitled to receive payment for service as an employee during any period that the order has not been complied with. The Board shall certify to the Comptroller General of the United States that such an order has been issued, and no payment shall be made out of the Treasury of the United States for any service specified in such order.

"(3) In carrying out any study under subsection (a)(3) of this section, the Board shall make such inquiries as may be necessary and, unless otherwise prohibited by law, shall have access to personnel records or information collected by the Office and may require additional reports from other agencies as needed.

"(e)(1) At any time after the effective date of any rule or regulation issued by the Director in carrying out functions under section 1103 of this title, the Board shall review any provision of such rule or regulation—

"(A) on its own motion;

"(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

"(C) on the filing of a written complaint by the Special Counsel requesting such review.

"(2) In reviewing any provision of any rule or regulation pursuant to this subsection, the Board shall declare such provision—

"(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face, require or encourage any employee to violate section 2302(b) of this title; or

"(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision, has required or encouraged any employee to violate section 2302(b) of this title.

"§ 1205. Stays of certain personnel actions

"(a)(1) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 60 calendar days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

"(2) Any member of the Board requested by the Special Counsel to order a stay under paragraph (1) of this subsection shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

"(3) Unless denied under paragraph (2) of this subsection, any stay under this subsection shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

"(4)(A) If, during the pendency of any stay granted pursuant to paragraph (2) of this subsection, the Special Counsel files a petition for corrective action pursuant to section 1214(b)(2) of this title seeking cancellation of the personnel actions which are the subject of the stay, the stay shall continue until the Board issues its final decision on the petition of the Special Counsel for corrective action.

"(B) If, during the pendency of any stay granted pursuant to paragraph (2) of this subsection, the employee submits an appeal to the Board under section 7701 of this title, the Board may extend the stay until the Board issues its final decision on the appeal if the Board finds that there is a substantial likelihood that the individual will prevail in the appeal, unless the extension of the stay would impose an extreme and extraordinary hardship on the agency against which the stay has been imposed.

"(b)(1) Any individual who claims to be a victim of a prohibited personnel practice may request the Merit Systems Protection Board to order a stay of any personnel action for 60 calendar days if the individual alleges that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

"(2) The Board shall order a stay requested under paragraph (1) of this subsection if there is a substantial likelihood that the individual will prevail in an action for relief under section 1221 of this title, or in an appeal under section 7701 of this title unless the ordering of a stay would impose an extreme and extraordinary hardship on the agency against which the stay is sought.

"(3) Unless denial under paragraph (2) of this subsection, any stay uinder this subsection shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the individual.

"(4) If, during the pendancy of any stay granted under this subsection—

"(A) the individual files a petition for relief under section 1221 of this title seeking cancellation of the personnel actions which are the subject of the stay,

"(B) the Special Counsel files a petition for corrective action under section 1214 of this title seeking cancellation of the personnel actions which are the subject of the stay, or

"(C) the employee submits an appeal to the Board under section 7701 of this title,

the stay shall continue until the Board issues its final decision on the petition of the individual for relief, on the petition of the Special Counsel for corrective action, or on the appeal of the employee, as the case may be.

"§ 1206. Transmittal of information to Congress

"Notwithstanding any other provision of law or any rule, regulation, or policy directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.

"§ 1207. Annual report

"The Board shall submit an annual report to the President and the Congress on its activities, which shall include a description of significant actions taken by the Board to carry out its functions under this title. The report shall also review the significant actions of the Office of Personnel Management, including an analysis of whether the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

"Subchapter II—Office of Special Counsel

"§ 1211. Establishment of Office of Special Counsel

"(a) There is established an Office of Special Counsel, which shall be headed by a Special Counsel. The Office shall have an official seal which shall be judicially noticed. The Office shall have its principal office in the District of Columbia and shall have field offices in other appropriate locations.

"(b) The Special Counsel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The Special Counsel shall be an individual who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of the term. The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President.

"§ 1212. Powers and functions of Office of Special Counsel

"(a) The Office of Special Counsel shall—

"(1) represent and act as legal counsel on behalf of employees alleging prohibited personnel practices before the Merit Systems Protection Board and Federal courts;

"(2) receive and investigate allegations of prohibited personnel practices, and, where appropriate, bring petitions for stays, under section 1205 of this title, and petitions for corrective action, under section 1214 of this title, to protect individuals from being subject to prohibited personnel practices;

"(3) receive, review, and, where appropriate, forward to the Attorney General or an agency head under section 1213 of this title, disclosures of violations of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

"(4) investigate prohibited personnel practices and, where appropriate, bring disciplinary actions against individuals who have committed prohibited personnel practices, pursuant to section 1215 of this title;

"(5) review each rule or regulation issued by the Director in carrying out functions under section 1103 of this title and, where the Special Counsel finds that any such rule or regulation would, on its face or as implemented, encourage or require the commission of a prohibited personnel practice, file a written complaint with the Board; and

"(6) investigate and bring appropriate actions concerning allegations of violations of other laws within the jurisdiction of the Office of Special Counsel under section 1217 of this title.

"(b)(1) The Special Counsel and any employee of the Office of Special Counsel designated by the Special Counsel may administer oaths, examine witnesses, take depositions, and receive evidence.

"(2) The Special Counsel may issue subpoenas requiring the attendance of any employee, member of the uniformed services or contract employee of the Government for the purpose of interviewing such individual and may issue subpoenas requiring the production of any documents or other information from any such person from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, the District of Columbia, or from any installation or facility of the Government of the United States throughout the world.

"(3) The Special Counsel may order the taking of depositions and order responses to written interrogatories.

"(4) In the case of contumacy or failure to obey a subpoena issued under paragraph (2) of this subsection, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to be interviewed or to produce documents or other information. Any failure to obey the order of the court may be punished by the court as contempt thereof.

"(c) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Special Counsel may appear for the Office of Special Counsel, and represent the Office, in any civil action brought in connection with any function carried out by the Office pursuant to this title or as otherwise authorized by law.

"(d)(1) Except as provided in paragraph (2) of this subsection, the Special Counsel may, as a matter of right, intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board.

"(2) The Special Counsel may intervene or otherwise participate in an action brought by an individual pursuant to section 1221 of this title or in an appeal brought by an employee pursuant to section 7701 of this title only with the consent of such individual or employee.

"(3) The Special Counsel may obtain judicial review of any final order or decision of the Merit Systems Protection Board in which the Special Counsel was a party to the United States district court for the judicial district in which the employee resides.

"(e)(1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

"(2) Any appointment made under this subsection shall be made in accordance with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33 of this title).

"(f) The Special Counsel may prescribe regulations relating to the receipt and investigation of matters under the jurisdiction of the Special Counsel. Such regulations shall be published in the Federal Register.

"(g) The Special Counsel shall not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15, or subchapter III of chapter 73, of this title).

"§ 1213. Receipt and processing of disclosures

"(a) In any case involving—

"(1) any disclosure of information by an employee or applicant for employment which the employee or applicant reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if the disclosure is not specifically prohibited by law and if the information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

"(2) a disclosure by an employee or applicant for employment to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee or applicant reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

the identity of the employee or applicant may not be disclosed without the consent of the employee or applicant during any investigation under this chapter unless the Special Counsel determines that the disclosure of the identity of the employee or applicant is necessary in order to carry out the functions of the Special Counsel.

"(b) Whenever the Special Counsel receives information of the type described in subsection (a) of this section, the Special Counsel shall review such information and shall, within 15 days after the date on which the Special Counsel received the information, make a determination with respect to the matters described in subsection (c)(1) of this section.

"(c)(1) If the Special Counsel determines under subsection (b) of this section that—

"(A) there is a substantial likelihood that the information referred to in such subsection discloses a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety; and

"(B) the information was transmitted to the Special Counsel by an employee or former employee or applicant for employment in the agency which the information concerns or by any employee who obtained the information in connection with the performance of the employee's duties and responsibilities,

the Special Counsel shall require the head of such agency conduct an investigation and submit a report as provided in paragraph (2) of this subsection.

"(2) The head of an agency referred to in paragraph (1) of this subsection shall—

"(A) conduct an investigation of the information referred to in such paragraph and any related matters transmitted by the Special Counsel to such head of an agency under such paragraph; and

"(B) within 60 days after the date on which the Special Counsel transmits such information to such head of an agency or within such longer period as such head of an agency and the Special Counsel agree to in writing, submit to the Special Counsel a written report setting out the findings of such head of an agency with respect to the investigation.

"(d) Any report required under subsection (c) of this section shall be reviewed and signed by the head of the agency and shall include—

"(1) a summary of the information with respect to which the investigation was initiated;

"(2) a description of the conduct of the investigation;

"(3) a summary of any evidence obtained from the investigation;

"(4) a listing of any violation or apparent violation of any law, rule, or regulation; and

"(5) a description of any action taken or planned as a result of the investigation, such as—

"(A) changes in agency rules, regulations, or practices;

"(B) the restoration of any aggrieved employee;

"(C) disciplinary action against any employee; and

"(D) referral to the Attorney General of any evidence of a criminal violation.

"(e)(1) Any such report shall be submitted to the Congress, to the President, and to the Special Counsel for transmittal to the complainant. Whenever the Special Counsel does not receive the report of the agency head within the time prescribed in subsection (c)(2) of this section, the Special Counsel shall transmit a copy of the information which was transmitted to the agency head to the President, and to the Congress together with a statement noting the failure of the head of the agency to file the required report.

"(2) In any case in which evidence of a criminal violation obtained by an agency in an investigation under subsection (c) of this section is referred to the Attorney General—

"(A) the report shall not be transmitted to the complainant; and

"(B) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

"(f) Upon receipt of any report of the head of an agency required under subsection (c) of this section, the Special Counsel shall review the report and determine whether—

"(1) the findings of the head of the agency appear reasonable; and

"(2) the agency's report under subsection (c)(2) of this section contains the information required under subsection (d) of this section.

"(g)(1) If the Special Counsel cannot make a determination described in subsection (c)(1)(A) or (c)(1)(B) of this section with respect to information disclosed to the Special Counsel by an individual, the Special Counsel shall return the information to such individual together with an explanation of the reasons that such determination cannot be made and a referral to any Federal Government agency which might be authorized to take some action on the basis of such information.

"(2) The Special Counsel shall not release outside the Office of the Special Counsel any information returned to an individual under paragraph (1) of this subsection or any related information obtained in connection with the disclosure of such information to the Special Counsel by such individual.

"(h) Except as specifically authorized under this section, the provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is—

"(1) specifically prohibited from disclosure by any other provision of law; or

"(2) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

"(i) In any case under subsection (a) of this section involving foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

"(j) The Special Counsel shall maintain and make available to the public a list of noncriminal matters referred to heads of agencies under subsection (c) of this section, together with reports by the heads of agencies under subsection (c)(2) of this section, in the case of matters referred to under this section. The Special Counsel shall take steps to ensure that any such public list does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs.

"§ 1214. Investigation of prohibited personnel practices; corrective action

"(a)(1) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

"(2) If the Special Counsel terminates any investigation under paragraph (1) of this subsection, the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of the termination of the investigation, the findings of fact ascertained during the course of the investigation and the reason the Special Counsel decided to terminate the investigation.

"(3) In addition to the authority granted under paragraph (1) of this subsection, the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice (or a pattern of prohibited personnel practices) has occurred, exists, or is to be taken.

"(b)(1) If, in connection with any investigation under this section or under section 1213 of this title, the Special Counsel determines that there are reasonable grounds to believe a prohibited personnel practice (or a pattern of prohibited personnel practices) has occurred, exists, or is to be taken by an agency, the Special Counsel shall promptly seek a stay of such prohibited personnel practice pursuant to section 1205 of this title.

"(2)(A) If a prohibited personnel practice is taken or has not been reversed or canceled in violation of a stay ordered under section 1205(a)(2) of this title, the Special Counsel shall petition the Merit Systems Protection Board for corrective action.

"(B) If the Special Counsel, in consultation with the individual who is alleged to be subject to the prohibited personnel practice, finds that the agency has reversed or canceled the prohibited personnel practice, the Special Counsel shall file with the Board such finding together with an indication of whether such individual agrees to the finding. Such individual may file supplementary comments with the Board.

"(3) In the case of any petition for corrective action filed against an agency under paragraph (2) of this subsection, the Board shall provide an opportunity for presentations to be made by the Special Counsel, the agency, the Office of Personnel Management, and any individual who is alleged to be subject to the prohibited personnel practice involved in such petition.

"(4) The Board shall order such corrective action as the Board considers appropriate if the Board determines that the Special Counsel has demonstrated—

"(A) by substantial evidence, in the case of a prohibited personnel practice described in section 2302(b)(8) of this title; or

"(B) by a preponderance of the evidence, in the case of any other prohibited personnel practice,

that a prohibited personnel practice has been taken and continues in effect in the case of any individual or is to be taken against any individual.

"(c)(1) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

"(2) In any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel shall proceed with any investigation or proceeding instituted under this section notwithstanding that the alleged violation has been reported to the attorney General.

"(d) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred which is not referred to in subsection (b) or (c) of this section, the violation shall be reported to the head of the agency involved. The Special Counsel shall require, within 30 days of the receipt of the report by the agency, a certification by the head of the agency which states—

"(1) that the head of the agency has personally reviewed the report; and

"(2) what action has been or is to be taken, and whan the action will be completed.

"(e) During any investigation initiated under this section, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

"§ 1215. Disciplinary actions

"(a) The Special Counsel may file a petition for disciplinary action, pursuant to this section, against an official for—

"(1) commission of a prohibited personnel practice;

"(2) violating a law within the jurisdiction of the Special Counsel under section 1217 of this title; and

"(3) any knowing and willful refusal or failure to comply with an order of the Merit Systems Protection Board.

"(b) For purposes of this section, the term 'official' means an individual in the civil service or in the uniformed services or an individual employed, directly or indirectly, by the Government to perform work for the Government.

"(c) The Special Counsel shall prepare a written complaint against the official containing the charges and supporting facts, and present the complaint to the official and to the Merit Systems Protection Board.

"(d) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under subsection (c) of this section is entitled to—

"(1) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(2) be represented by an attorney or other representative;

"(3) a hearing before the Board or an administrative law judge appointed under section 3105 of this title and designated by the Board;

"(4) have a transcript kept of any hearing under paragraph (3) of this subsection; and

"(5) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

"(e) Except as provided in subsection (h) of this section, a final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

"(f) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this section may obtain judicial review of the order in the United States court of appeals for the judicial circuit in which the employee resides or is employed at the time of the action.

"(g) In the case of any State or local officer or employee under chapter 15 of this title, the Board shall consider the case in accordance with the provisions of such chapter.

"(h) In the case of an official—

"(1) in the civil service who is in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), or

"(2) not in the civil service, the final order of the Board shall recommend to the appointing authority of such official what type of disciplinary action should be imposed.

"(i) Any decision of the Board pursuant to this section shall be made publicly available at issuance.

"§ 1216. Discrimination complaints

"Where a complaint is presented to the Special Counsel which alleges a prohibited personnel practice of the type described in section 2302(a)(1) of this title and such complaint has also been made to the Equal Employment Opportunity Commission, the Special Counsel shall refer such complaint to the Equal Employment Opportunity Commission for consideration.

"§ 1217. Other matters within the jurisdiction of Office of Special Counsel

"(a) In addition to the authority otherwise provided in this chapter, the Special Counsel shall conduct an investigation of any allegation concerning—

"(1) political activity prohibited under subchapter III of chapter 73 of this title, re-

lating to political activities by Federal employees;

"(2) political activity prohibited under chapter 15 of this title, relating to political activities by certain State and local officers and employees;

"(3) arbitrary or capricious withholding of information prohibited under section 552 of this title, except that the Special Counsel shall make no investigation under this subsection of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

"(4) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

"(5) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

"(b)(1) If the investigation by the Special Counsel substantiates the allegation referred to in subsection (a)(1) of this section, the Special Counsel shall petition the Merit Systems Protection Board for penalties, pursuant to section 7325 of this title, for the individual engaging in political activity prohibited under subchapter III of chapter 73 of this title.

"(2) If the Special Counsel receives allegations of political activities prohibited under chapter 15 of this title, the Special Counsel shall investigate and present findings pursuant to section 1504 of this title.

"(3) If the Special Counsel receives allegations of an arbitrary or capricious withholding of information prohibited under section 552 of this title, the Special Counsel shall investigate and submit findings pursuant to section 552(a)(4)(F) of this title.

"(4) If the Special Counsel receives allegations of activities described in subsection (a)(4) of this section or involvement described in subsection (a)(5) of this section, the Special Counsel shall investigate and seek corrective action under section 1214 of this title and if appropriate, disciplinary action under section 1215 of this title as if the activities or involvement were a prohibited personnel practice.

"§ 1218. Transmittal of information to Congress

"Notwithstanding any other provision of law or any rule, regulation, or policy directive, the Special Counsel or any employee of the Special Counsel designated by the Special Counsel, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Office, without review, clearance, or approval by any other administrative authority.

"§ 1219. Annual report

"The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types, and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, and actions initiated by it before the Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this section, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this subsection shall include whatever recommendations for legislation or other action by Congress the Special Counsel may consider appropriate.

"Subchapter III—Employee Right of Action

"§ 1221. Individual right of action

"(a)(1) Any individual who has been adversely affected by a prohibited personnel practice may bring an action before the Merit Systems Protection Board for corrective action.

"(2) The individual shall commence an action by filing a written complaint with the Merit Systems Protection Board, and shall serve a copy of such complaint on the agency in which the prohibited personnel practice is alleged to have occurred. The complaint shall contain the specific prohibited personnel practice which is alleged to have occurred and facts to support such allegation.

"(b) At the request of the individual, the Board shall compel the agency to provide all relevant and material documents and witnesses to assist the individual in the preparation of the case.

"(c) The Board may not defer action on a complaint brought under subsection (a) of this section to await final agency action.

"(d) The Board shall order such corrective action as is necessary to eliminate the adverse effect of the prohibited personnel practice on the individual if the individual demonstrates—

"(1) by substantial evidence that a prohibited personnel practice described in section 2302(b)(8) of this title has occurred, exists or is to be taken; or

"(2) by a preponderance of the evidence that a prohibited personnel practice other than one described in section 2302(b)(8) of this title has occurred, exists, or is to be taken.

"(e) If the Merit Systems Protection Board finds that a prohibited personnel practice has occurred, the Board shall order the agency which committed the prohibited personnel practice to pay to the individual who brought the action under this section all that individual's actual costs in bringing the action, including reasonable attorney's fees.

"(f)(1) The individual may obtain judicial review of any final order or decision of the Merit Systems Protection Board in any action brought by the individual under this section or in a petition for corrective action brought by the Special Counsel pursuant to section 1214 of this title where the individual was alleged to be a victim of the prohibited personnel practice.

"(2) An individual seeking judicial review under this subsection may seek such review in the United States district court for the judicial district in which the individual resides.

"(3) The court referred to in paragraph (2) of this subsection may order the agency which committed the prohibited personnel practice to pay to the individual who brought the appeal under this subsection all of the actual costs incurred by that individual in bringing the action, including reasonable attorney's fees.

§ 1222. Individual action on agency failure to comply with order of Board

"Where the Merit Systems Protection Board orders any Federal agency to comply with an order or decision, pursuant to section 1204(a)(2) of this title, and the agency does not promptly comply, any individual who suffers harm as a result of such delay may file an action before the Merit Systems Protection Board for actual and punitive damages against such agency.

"§ 1223. Relationship between individual action and Special Counsel action

"(a) The right of an individual to bring and pursue an action before the Merit Systems Protection Board or a court of the United States under section 1205, 1221, 1222, or 7701 of this title shall not be affected by any decision of the Special Counsel not to pursue any action requested by the individual.

"(b) An individual may not bring an action under section 1221 of this title if an action involving the same facts and circumstances has previously been brought before the Merit Systems Protection Board by the Special Counsel in the case of such individual pursuant to section 1214 of this title or by such individual pursuant to section 1221 of this title and the Merit Systems Protection Board has previously decided such action on the merits.".

(b) The table of chapters at the beginning of part II of such title is amended by striking out the item relating to chapter 12, and inserting in lieu thereof the following:

"12. Merit Systems Protection Board Special Counsel, and Employee Right of Action ..... 1201.".

SEC. 4. REPRISALS.

Section 2302(b)(9) of title 5, United States Code, is amended to read as follows:

"(9) take or fail to take any personnel action against any employee or applicant for employment as a reprisal—

"(A) for the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

"(B) for testifying for or assisting any individual who alleges to be the victim of a prohibited personnel practice;

"(C) for cooperating with or disclosing information to the Inspector General of an agency or to the Special Counsel; or

"(D) for failing to follow orders to disobey or not enforce a law;".

SEC. 5. AUTHORIZATION OF APPROPRIATIONS; RESTRICTION RELATING TO APPROPRIATIONS UNDER CIVIL SERVICE REFORM ACT OF 1978.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated—

(1) for each of fiscal years 1987, 1988, 1989, 1990, and 1991, the sum of $20,000,000 to carry out the provisions of subchapter I of chapter 12 of title 5, United States Code; and

(2) for each of fiscal years 1987, 1988, and 1989, the sum of $5,000,000 to carry out the provisions of subchapter II of chapter 12 of title 5, United States Code.

(b) RESTRICTION RELATING TO APPROPRIATIONS UNDER CIVIL SERVICE REFORM ACT OF 1978.—No funds are authorized to be appropriated to the Merit Systems Protection Board or the Office of Special Counsel pursuant to the authorization contained in section 903 of the Civil Service Reform Act of 1978 (15 U.S.C. 5509 note).

SEC. 6. TERMINATION AND TRANSFER PROVISIONS.

(a)(1) The positions of Special Counsel of the Merit Systems Protection Board is terminated.

(2) Any reference in any law, regulation, document, record, or other paper of the United States to the Special Counsel of the Merit Systems Protection Board shall be deemed to refer to the Special Counsel referred to in section 1211 of title 5, United States Code, as added by section 3(a) of this Act.

(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available to the Special Counsel of the Merit Systems Protection Board are, subject to section 1531 of title 31, United States Code, transferred to the Special Counsel referred to in section 1211 of title 5, United States Code (as added by section 3(a) of this Act), for appropriate allocation.

SEC. 7. EFFECTIVE DATE AND APPLICATION.

(a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on October 1, 1986.

(b) This Act and the amendments made by this Act shall apply to any allegation of a prohibited personnel practice received by the Office of the Special Counsel after September 30, 1986.●

● Mr. GRASSLEY. Mr. President, earlier this Congress the Senate approved an amendment I sponsored providing enhanced legal protections for Government whistleblowers. The same language passed this body as a separate piece of legislation in the 98th Congress. Unfortunately, the protections in those bills were not acted on by the House of Representatives.

Today, however, I am joining with my colleagues Senator LEVIN and Representatives SCHROEDER and HORTON to sponsor a more comprehensive bill which offers not only increased legal options, but reforms the administrative system Federal civil servants turn to for fair and just treatment.

I have learned from my own contact with so-called whistleblowers over the past several years that their services are absolutely essential to the Government, the public, and the media, as well as those of us in Congress. Most of us wouldn't know where to begin to find $7,600 coffee pots, not to mention complex schemes of fraud and overpricing, without the aid of whistleblowers from within the system.

Unfortunately, our Government bureaucracies usually have a strange method of rewarding those who point out waste and inefficiency. Harassment, demotions, and undesired relocations are the "prizes" most often handed out.

No wonder this administration's own survey has found nearly 70 percent of observed waste or fraud is going unreported for two basic reasons; one, the belief that nothing will be done to correct the activity, and; two, the fear of reprisal.

Perhaps most disturbing though is the finding that since 1980, fear of reprisal among would-be whistleblowers has nearly doubled.

What does that mean? It means that despite assurances about protections and despite the supposed safeguarding mechanisms within the system, reality tells us there is virtually no protection for whistleblowers—and it's getting worse.

The current system of rewards and punishments in practice is evidence of a bureaucracy whose incentives produce the direct opposite of its stated goals. This legislation is an effort to help reverse what appears to be an upside down system.

Among other provisions, our bill would allow whistleblowers a legal remedy if they suffer retaliation from superiors for disclosing waste, abuse, mismanagement, or fraud. Presently, civil servants who suffer reprisal are tried entirely within the administrative system. If the system prevails, the whistleblower is at the end of his rope. However, if the whistleblower happens to succeed through the administrative route, those found guilty of retaliation do have another chance to have their case heard in the outside judicial arena. This bill would equalize the appeal rights, so that whistleblowers by themselves, or through the Office of Special Counsel, could seek protections in Federal court.

Additionally, this legislation clarifies that the special counsel is a representative for whistleblowers and reestablishes the Office of the Special Counsel as an independent agency.

Mr. President, this bill is a bipartisan vote of confidence for the many whistleblowers and would-be whistleblowers in Government service. The need for sending this message of support is irrefutable. Government efficiency would be promoted, taxpayer funds saved, and honest Federal workers rewarded. I strongly urge my colleagues to join us in supporting this important measure.●

By Mr. TRIBLE (for himself and Mr. DENTON):

S.J. Res. 256. Joint resolution designating August 12, 1986, as "National Neighborhood Crime Watch Day"; to the Committee on the Judiciary.

NATIONAL NEIGHBORHOOD CRIME WATCH DAY

Mr. TRIBLE. Mr. President, I am introducing a joint resolution today which commends the efforts of the Nation's neighborhood crime watch groups and declares August 12, 1986, as "National Neighborhood Crime Watch Day."

During the last several years, the ranks of neighborhood crime watch organizations have grown tremendously. Citizens throughout America, who have been justifiably concerned about the Nation's crime rate, have joined together in voluntary efforts to prevent and deter criminal activity.

One grassroots organization alone, the National Association of Town Watch, has 1,500 chapters from 32 different States. The National Sheriffs Association is actively involved in neighborhood watch efforts. And in my own State of Virginia, roughly 300,000 households participate in some form of neighborhood crime watch program, all of which are operated in close cooperation with local police and sheriffs.

On August 12 of this year, many of these organizations will participate in a "national night out" being sponsored, in part, by the National Association of Town Watch. In large cities and small towns across America, participating neighborhood watch members will spend the hour between 8 p.m. and 9 p.m. local time patrolling their neighborhoods or watching from the lawns of their homes. At least a dozen jurisdictions in Virginia are expected to take part.

This annual event is designed to increase cooperation between community-based watch programs and their local law enforcement authorities. It is also aimed at generating local support for the crime watch groups and increasing their membership.

Last year, more than 10 million people in 46 different States took part in the national night out. A number of law enforcement organizations in Virginia have endorsed this activity, and have told me how highly they value the contribution of neighborhood watch groups. I fully agree, and I am hopeful that an even larger turnout will occur in Virginia and across the Nation on August 12 of this year.

The joint resolution I am introducing today commends the efforts of America's neighborhood crime watch organizations. It also declares August 12, 1986, as National Neighborhood Crime Watch Day, to coincide with the national night out being held on that same day.

Mr. President, I am greatly encouraged by the widespread participation in neighborhood crime groups. I believe it reflects a growing unwillingness on the part of law-abiding Americans to simply buckle under to the threat of crime. It is also a valuable example of the voluntary, community-based efforts that contribute so much to society in general.

I urge my colleagues to join me in supporting this joint resolution, and I ask unanimous consent that a copy 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. 256

Whereas neighborhood crime is of continuing concern to the American people;

Whereas the fight against neighborhood crime requires people to work together in cooperation with law enforcement officials;

Whereas neighborhood crime watch organizations are effective at promoting awareness about, and the participation of volunteers in, crime prevention activities at the local level; and

Whereas citizens across America will soon take part in a "National Night Out," a unique crime prevention event which will demonstrate the importance and effectiveness of community participation in crime prevention efforts by having people spend the period from 8 to 9 o'clock postmeridian on August 12, 1986, with their neighbor-

hoods in front of their homes: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That August 12, 1986, is designated as "National Neighborhood Crime Watch Day," and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate programs, ceremonies, and activities.

By Mr. CHILES (for himself, Mr. PELL, Mr. BYRD, Mr. TRIBLE, Mr. KENNEDY, Mrs. HAWKINS, Mr. PROXMIRE, Mr. LAUTENBERG, Mr. DOMENICI, Mr. CHAFEE, Mr. SIMON, Mr. BOREN, Mr. HOLLINGS, Mr. BRADLEY, Mr. DODD, Mr. DOLE, Mr. BURDICK, Mr. MOYNIHAN, Mr. HATCH, Mr. RIEGLE, and Mr. THURMOND):

S.J. Res. 257. Joint resolution to designate the first Friday of May each year as "National Teacher Appreciation Day"; to the Committee on the Judiciary.

NATIONAL TEACHER APPRECIATION DAY

● Mr. CHILES. Mr. President, today I am introducing legislation which would designate the first Friday of May each year as "National Teacher Appreciation Day." I am joined in this effort by Senators PELL, BYRD, TRIBLE, KENNEDY, HAWKINS, PROXMIRE, LAUTENBERG, DOMENICI, CHAFEE, SIMON, BOREN, HOLLINGS, BRADLEY, DODD, DOLE, BURDICK, MOYNIHAN, HATCH, RIEGLE, and THURMOND.

I am proud to be introducing this legislation in the same week that we have a teacher, Christa McAuliffe, going into space on the shuttle *Challenger.* Educators from all over the Nation are gathering in Florida for this launch and for briefings by NASA. This kind of joint effort to bring together the Government and classroom teachers around science, one of the most important curriculum areas, is inspiring to everyone. Her class must be excited about having lessons presented from space. My enthusiasm is heightened by the fact that experiments of students from across the Nation will be conducted in space. This is applied science at its best!

This space flight represents the kind of advances we have seen in teaching in recent years. I am happy to see surveys indicating a rise in teachers' salaries. I am also pleased to see an increase in the number of high school seniors who plan to go into teaching. This means that publicly recognizing the importance of teaching in society does affect the views of young people toward the profession and their dedication to it.

Even so, the future of the teaching profession is one of the most challenging areas we are facing as a nation. Approximately one-half of the teachers surveyed indicated that they don't plan to be teaching in 5 years. Data further show that we will need over 1 million new teachers by 1990. The demands facing these new teachers will be greater than ever before as an increasing percentage of students are from disadvantaged backgrounds or are of limited English proficiency. At every level, teachers are called upon to excel in all areas to raise motivation and standards.

To meet the demands of today's schools requires great commitment. Our teachers are rising to the challenge. They are using creative teaching techniques to bring subjects alive in the classroom; they are becoming increasingly involved in parent teacher organizations; and they are enrolling in courses to keep themselves on the cutting edge of the areas they teach. Such dedication must be acknowledged and applauded.

In order to ensure that we continue to have quality teachers in our schools, we must recognize and respect the teachers who do so much. By designating the first Friday of May each year as "National Teacher Appreciation Day," we encourage students, parents, school administrators and the entire community to recognize the invaluable contributions teachers make.●

● Mr. DOMENICI. Mr. President, today I am delighted to join my colleague from Florida, Senator LAWTON CHILES, in introducing a Senate joint resolution designating the first Friday of May each year as "National Teacher Appreciation Day."

As a former junior high school mathematics teacher myself, I am keenly aware of the vital work that goes on each day in our Nation's classrooms. Critical attitude, concepts, and social skills are developed. These form the basis of a lifetime of accomplishment. While we are often reminded that so-called failures are the fault of the school, I am one who believes that failing, like succeeding, depends on individual initiative or the lack thereof. I view our Nation's schools as providing opportunities and buttresses for success, supporting a productive life much as a bridge is supported by its piers and abutments. Those who accept the challenge and choose to cross the bridge will be rewarded with new challenges and a possible life of achievement.

Teachers choose to commit their lives to maintaining and improving this vital bridge. Many distinguish themselves in giving their life energy to others through the art of teaching. Teachers are indispensable in our modern lives, and it is important to our own growth that we stop and give our gratitude to those who have helped us conquer the manifold problems of ignorance.

Teachers are one of society's main supports. Our superstructures would collapse without them. We have grown accustomed to high quality graduates from our Nation's schools, colleges, and universities. We have also become too complacent about the consistent and improving quality of graduates. We have not, as a society, taken the time to thank those who work to help others become the backbone of industry, government, finance, commerce, education, and culture.

By introducing this resolution, we are thanking the millions of teachers who have done their work without asking for national acclaim. Passage of this resolution will help to begin an annual cycle of national attention and appreciation in the month of May for those who are busy preparing yet millions more students for their graduation ceremonies and a productive life to follow.

In an age where teacher evaluation has become commonplace, we hope, by means of this resolution, to turn the critical eyes of society upon ourselves to see whether we have been properly grateful to those teachers who have served us so well. We want to recognize these hidden and reliable pillars of strength for their fine work.

By creating this special day, we hope to give students and parents a new opportunity to express their gratitude to their teachers and their children's teachers who have been there to guide and lend a timely helping hand. This expression of gratitude from students and parents will be a fine finish and a deserved tribute to their friend the teacher. I believe education is incomplete without the opportunity to thank those who give us so much on a daily basis. By so doing we enhance the status of the teacher in our society, the importance of education to our society, the quality of education that we receive, and ultimately, we enhance our society itself.●

● Mr. BOREN. Mr. President, Today I rise to join my colleague, Mr. CHILES, in introducing a resolution to designate the first Friday of May as "National Teacher Appreciation Day."

Nothing is more essential to the quality of education than the quality of the teacher. Few persons outside of our own immediate families exert such an influence on our lives. Few make such a mark on our total cutlure and society as do our teachers.

To remain a first-class Nation, it is imperative that we support an educational system that encourages first-class teachers. This kind of investment in human resources is the only way that our Nation can continue to effectively compete with the rest of the world. We need to solve the problem of the trade imbalance, we need to develop a competitive business technology, we need to insure the strength of our defense. All of these are depend-

ent on a sound and progressive educational system.

Today's commitment to recognizing these teachers can be a step toward reversing the decline of quality students interested in pursuing careers in education. The prognosis has been bleak: only 2 percent of the top quarter of college students plan to enter the teaching profession. Although education constitutes less than 2 percent of the Federal budget, it is being asked to absorb a 6.5 percent reduction for fiscal year 1986. College level professors are being lured away from the campus to higher paying careers in business. On the whole, teachers are very dedicated and committed to the values of education, but simply cannot afford to remain in a program that is not fully supported by the entire Nation.

At a time when there could not be a greater national need for qualified and specially trained minds to bring us into the 21st century, education should be a Federal priority. For this reason, I am pleased to join in this effort to bring much deserved recognition and appreciation to those who have chosen to dedicate their time and energies to the profession of teaching.●

Mr. BYRD. Mr. President, I am pleased to join the other distinguished Senators in offering this joint resolution designating the first Friday of May each year as "National Teacher Appreciation Day."

All parents and grandparents of students have long known what many recent scholarly studies on excellence in education are reporting: That one of the most crucial ingredients in a quality education is a quality teacher. A good teacher can inspire in a student a love of learning, regardless of the amount of resources at hand such as books, computers, and fancy study guides.

Fortunately, the schools in my home State of West Virginia and throughout our Nation are blessed with many very inspiring and excellent teachers. It is my hope that a "National Teacher Appreciation Day" will serve not only to honor the many fine teachers of our students, but also will encourage dedicated young people to join the teaching profession.

ADDITIONAL COSPONSORS

S. 1107

At the request of Mr. NUNN, the name of the Senator from North Carolina [Mr. EAST] was added as a cosponsor of S. 1107, a bill to authorize the Society of the Third Infantry Division to erect a memorial in the District of Columbia or its environs.

S. 1134

At the request of Mr. COHEN, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 1134, a bill to amend title 5, United States Code, to provide administrative civil penalties for false claims and statements made to the United States by certain recipients of property, services, or money from the United States, by parties to contracts with the United States, or by Federal employees, and for other purposes.

S. 1203

At the request of Mr. THURMOND, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 1203, a bill to amend section 534 of title 28, United States Code, to allow railroad police and private university or college police access to Federal Government criminal identification records.

S. 1288

At the request of Mr. DANFORTH, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 1288, a bill to amend the Tariff Schedules of the United States regarding the classification of television apparatus and parts thereof.

S. 1429

At the request of Mr. SPECTER, the names of the Senator from Maine [Mr. COHEN], the Senator from Delaware [Mr. ROTH], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Nevada [Mr. HECHT], and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of S. 1429, a bill to amend title 18, United States Code, to authorize prosecution of terrorists who attack U.S. nationals abroad, and for other purposes.

S. 1456

At the request of Mr. LAUTENBERG, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 1456, a bill to recognize the Army and Navy Union of the United States of America.

S. 1710

At the request of Mr. HOLLINGS, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of S. 1710, a bill to establish a motor carrier administration in the Department of Transportation, and for other purposes.

S. 1766

At the request of Mr. MATHIAS, the names of the Senator from Nevada [Mr. LAXALT], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Missouri [Mr. DANFORTH], the Senator from Georgia [Mr. NUNN], the Senator from Indiana [Mr. LUGAR], and the Senator from Texas [Mr. BENTSEN] were added as cosponsors of S. 1766, a bill to designate the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park in honor of J. Glenn Beall, Sr.

S. 1774

At the request of Mr. GRASSLEY, the name of the Senator from Florida [Mrs. HAWKINS] was added as a cosponsor of S. 1774, a bill to amend section 1951 of title 18 of the United States Code, and for other purposes.

S. 1778

At the request of Mr. BENTSEN, the name of the Senator from Kansas [Mr. DOLE] was added as a cosponsor of S. 1778, a bill to deny most-favored nation trade treatment to any country that provides support for acts of terrorism.

S. 1824

At the request of Mr. ZORINSKY, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 1824, a bill to amend section 13(e)(3) of the Federal Deposit Insurance Act.

S. 1919

At the request of Mr. ANDREWS, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 1919, a bill to establish a task force to examine the issues associated with abuse of the elderly.

S. 1966

At the request of Mrs. KASSEBAUM, the names of the Senator from Maryland [Mr. MATHIAS], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 1966, a bill to provide for efficient and equitable use of operating rights at congested airports, and for other purposes.

SENATE JOINT RESOLUTION 220

At the request of Mr. MATTINGLY, the names of the Senator from Florida [Mrs. HAWKINS], the Senator from Maryland [Mr. MATHIAS], and the Senator from New Jersey [Mr. BRADLEY] were added as cosponsors of Senate Joint Resolution 220, a joint resolution to provide for the designation of September 19, 1986, as "National P.O.W./M.I.A. Recognition Day."

SENATE JOINT RESOLUTION 249

At the request of Mr. DENTON, the names of the Senator from Arizona [Mr. DECONCINI], the Senator from Georgia [Mr. NUNN], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 249, a joint resolution to proclaim October 23, 1986, as "A Time of Remembrance" for all victims of terrorism throughout the world.

SENATE CONCURRENT RESOLUTION 90

At the request of Mr. LAUTENBERG, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of Senate Concurrent Resolution 90, a concurrent resolution urging the President to convene a conference to develop an International Seaport Security Agreement relating to seaport and passenger vessel security among the United States, its allies, other interested nations, and the private sector.

NOTICES OF HEARINGS

COMMITTEE ON SMALL BUSINESS

Mr. WEICKER. Mr. President, I would like to announce that the Senate Small Business Committee will hold a full committee field hearing on the impact of tax reform and simplification proposals on small business on February 10, 1986, in Oklahoma City, OK. The hearing will commence at 3 p.m. in Court Room One on the third floor of the Federal court house. Senator DON NICKLES will chair the hearing. For further information, please call Bill Langdon, of the committee staff at 224-5175, or Bret Bernhardt of Senator NICKLES' office at 224-6005.

SUBCOMMITTEE ON ENTREPRENEURSHIP AND SPECIAL PROBLEMS FACING SMALL BUSINESS

Mr. WEICKER. Mr. President, I would like to announce that the Senate Small Business Committee's Subcommittee on Entrepreneurship and Special Problems Facing Small Business will hold 2 days of hearings in Wisconsin on the entrepreneurial spirit in America. The first hearing will be held on February 11, 1986, at 2 p.m. in the Great Hall of the New Student Center at the University of Wisconsin-Stout, in Menomonie, WI. On February 13, 1986, the subcommittee will hold a morning and afternoon hearing. The morning hearing will commence at 8:30 a.m. in room E1-14, of the Fox Valley Technical Institute, Appleton, WI. The afternoon hearing will take place at 3:30 p.m. in the multipurpose room at Mount Mary College in Milwaukee, WI. Senator BOB KASTEN, chairman of the subcommittee will chair all three hearings. For further information, please call Skip Waddell of the committee staff at 224-2809, or Steve Loucks of Senator KASTEN's office at 224-4632.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MATHIAS. Mr. President, I wish to announce that the Committee on Rules and Administration will meet at 9:30 a.m., in SR-301, Russell Senate Office Building, on Wednesday, January 22, 1986, to receive testimony from Senators on pending legislation to amend the campaign finance laws (S. 59, S. 1072, S. 1787, S. 1806, and S. 1891).

Senators wishing to testify or to submit a statement for the hearing record are requested to contact the elections staff of the Rules Committee at 224-3448.

Mr. President, I wish to further announce that the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, on Tuesday, February 4, and Wednesday, February 5, 1986, beginning at 9:30 a.m. on each day, to receive testimony from committee chairmen and ranking minority members on their fiscal year 1986 funding resolutions.

For further information concerning these hearings, please contact Carole Blessington of the Rules Committee staff on extension 40278.

ADDITIONAL STATEMENTS

THE INNOCENT VICTIMS OF ABORTION

● Mr. GARN. Mr. President, on this day 13 years ago, the Supreme Court made a landmark decision that, in essence, sealed the fate of millions of unborn children. In that decision, Roe versus Wade, the Court declared that the Constitution guarantees the right to abortion.

In my readings of the Constitution, I have never found an all-encompassing right to abortion. I have always understood that it was the function of that document to protect what Jefferson called those "unalienable rights," first and foremost of which is life. I do not see how it can at the same time be construed to sanction the wholesale destruction of human life that is taking place in our society today at the rate of about 1.5 million lives per year.

Thousands of people, all across our Nation, share my concern. They are gathering today in their hometowns and cities to protest and mourn the 1973 Supreme Court decision. Many are joining at the State Capitol in Utah for a special "Memorial for Life" to express their distress at the loss of these many young lives and to share their hopes for the future.

I, too, am hopeful that we will be able to stop this destruction of life. Last January, I introduced, for the fifth consecutive Congress, a human life amendment to the Constitution. Senate Joint Resolution 19 states that:

> With respect to the right to life, the word "person" as used . . . in the 5th and 4th amendments to the Constitution . . . applies to all human beings, irrespective of age, health, function, or condition of dependency, including their unborn offspring at every stage of their biological development.

It goes on to specify that measures necessary to prevent the death of the mother should not be prohibited.

Congress has been enmeshed in the debate on abortion this year. At least nine votes took place in the Senate and the House of Representatives on abortion-related issues in 1985. Some significant progress was made, particularly with regard to U.S. moneys going to proabortion organizations overseas. The Supreme Court also heard two more abortion-related cases. We are waiting now for their decisions.

Beyond the familiar arguments between the right to life and the right to choose, some new twists in the abortion debate have evolved. Advances in medicine over the past few years have opened up entirely new questions. Some of these include the constitutional rights of unborn children who are viable before the beginning of the Supreme Court's all-important third trimester; the rights and proper treatment of a child who lives through the abortion procedure; and the very real possibility of fetal pain during abortion. In addition, technical advances are showing, ever more graphically, that abortionists are dealing with two human lives, that of the mother and that of the child.

The cruelest irony, however, is that while we discuss all of the ethical components of these questions, babies are dying—over 4,000 of them every day.

I commend those who are joining today in honor of the innocent victims of abortion. That the abortion topic remains at the forefront, even after 13 years, is just one more indicator for all of us that the controversy has not been resolved. Those who are horrified by this rampant taking of life will not quietly accept its reality, but will continue to raise their voices as advocates for the unborn.

I pledge that I, too, will continue working to see that the laws of our country protect our tiniest and most helpless citizens.●

UKRAINIAN INDEPENDENCE DAY

● Mr. BRADLEY. Mr. President, today is the 68th anniversary of the proclamation of independence in the Ukraine, and I am honored to pay tribute to the Ukrainian people, whose national spirit continues to thrive today despite the hardships they have endured under the Soviet regime.

Although the Ukrainian National Republic lasted only 3 years, from 1918 to 1921, the Ukrainian spirit of freedom has remained strong. Since the Soviet takeover in 1921, the Ukrainian people have suffered insurmountable deprivation and degradation, yet they have not lost their identity, culture and religious traditions.

One of the most severe hardships endured by the Ukrainians was the 1932 famine, engineered by the Soviet Union to destroy the political and cultural life in the Ukraine. The Soviets seized and exported the bulk of the Ukrainian grain crop and went so far as to establish border patrols to prevent food from coming into the Ukraine. Seven million people died during this period. The Soviets took great measures to conceal the famine, and to this day, the Soviet Government continues to deny that the tragedy ever took place. As a result many Americans and other citizens around the world are not even aware of the famine. I am pleased that Congress approved a bill that I introduced in 1984 to create a commission to study this famine and to expand the world's knowledge of the event. Although we cannot change history, we can preserve the memory of those who died

by giving this forgotten Holocaust a secure place in history.

Even today, Ukrainians are subject to persecution for espousing their belief in the principles of democracy and freedom. So, on this 68th anniversay of Ukrainian independence, let us all continue to speak out against human rights violations in the Ukraine and throughout the world and let us praise the Ukrainian people for their tireless struggle for freedom.●

NEW YORK STATE SENATOR RICHARD SCHERMERHORN—MAN OF THE YEAR

● Mr. D'AMATO. Mr. President, I rise today to call the attention of my colleagues to the annual Lincoln Day Dinner held by the Republican Committee of Newburgh, NY. Every year at this dinner, the town of Newburgh's Republican Committee honors an outstanding Republican as their "Man of the Year," an honor which recognizes an individual for years of dedicated service both in government and in civic activities. Receiving this honor for 1986, New York State Senator Richard E. Schermerhorn has devoted his life to serve his country and his community.

Upon graduation from Albany Military Academy at the age of 18, Dick Schermerhorn enlisted in the U.S. Army and served with the infantry in the occupation forces in Japan after World War II. Soon after returning home, he received his bachelor degrees from Bryant College, and then went into the insurance business. Currently, he is president of Richard Schermerhorn Insurance, one of the largest insurance companies in the lower Hudson Valley.

As a Republican-conservative, Dick Schermerhorn was first elected to the New York State Senate in 1970. Currently, he is serving his eighth term in office. During his tenure, he has received many honors and awards from a number of uniformed service organizations for his efforts on their behalf. He also is active in many civic and fraternal organizations such as the VFW, the American Legion, the Elks Club, and the Boy Scouts of America. In 1973, Senator Schermerhorn became the first recipient of the New York State Youth Bureau Award for Distinguished Services for his efforts to "promote the welfare of youth."

As an active member of the New York State Senate, Senator Schermerhorn is Chairman of the Senate Corporations, Authorities and Commissions Committee and the Special Subcommittee on Aviation Facilities. He is a member of the Committees on Civil Service and Pensions, Conservation and Recreation, Energy, Transportation, Social Services, Government Operations, Insurance, and the Select Committee on Casino Gambling.

Mr. President, I salute the town of Newburgh Republican Committee's selection of Senator Richard E. Schermerhorn as their "Man of the Year." But more than this, I salute the Senator for the life he has chosen, a life reflecting his concern for the welfare of others. I, as well as this Congress, wish him many future years of success as a public servant.●

TRIBUTE TO WALT GRIFFIN

● Mr. GORE. Mr. President, I should like to pay tribute today to a great Tennessean and a good friend, Walt Griffin, who died over the recent holidays in Clarksville.

Since 1973, Walt had served as director of the Clarksville Chamber of Commerce and executive director of the Montgomery County Industrial Board. Over the years, no one did more for Clarksville and Montgomery County than Walt Griffin. His work with the American Legion, the public service commission, the industrial board and the chamber will long be remembered.

Walt was a leading Legionnaire and one of the most civic-minded men in the State of Tennessee. The people of Clarksville will miss him as a leader, and all of us will miss him as a friend.

I ask that an editorial tribute to Walt Griffin from the December 14, 1985, Clarksville Leaf-Chronicle be printed in the RECORD.

The editorial follows:

COMMUNITY'S FRIEND

Whenever a person of note dies in this community, the newspaper tries to contact someone who was a friend, and for the past several years, that friend has always been Walt Griffin. He seemed to know everyone.

No matter what the person's occupation or age, it was Mr. Griffin who had been a pal and could describe his friend's life with both accuracy and affection.

When Mr. Griffin died Thursday, his obituary made it clear why he was so knowledgeable about this community and its people. The list of organizations he served over the years went on for several paragraphs—from the Boy Scouts to the American Legion to the Tennessee Industrial Development Council—and his honorary pallbearers alone would fill an auditorium.

"He never forgot you once he met you," said Evans Harvill, who had known "Griff" since their high school days. "In a crowd of 75, he would be able to call everyone by name, and tell a little about each one."

But this was more than just good memory. He genuinely liked people and loved to do things to please them. A few years back, Mr. Griffin wanted to pull his neighborhood together, and so he suggested a barbecue. "Well, he dug the pit himself and got some hogs, and sat up all night long keeping watch," said Mr. Harvill. "Just for the neighborhood."

While Mr. Griffin held several positions in business over the years, most people now remember him best as director of the Chamber of Commerce and executive director of the Montgomery County Industrial Board, two jobs he held simultaneously for 12 years until his death.

The responsibility was monumental, but under Mr. Griffin's leadership, the county succeeded in attracting several major new industries, including Jersey Miniere Zinc, Union Carbide, Jostens American Yearbook and Thun.

"He was fiercely loyal to Clarksville, and he was great at selling it to others," said Mr. Harvill. His knowledge and enthusiasm were important in this, but also his personality.

He was always friendly, but frank as well. "You didn't ever ask him his opinion if you didn't want an answer," said Mr. Harvill. He always followed up on his promises and seemed to have boundless energy. "I've seen him work at conventions and wear out people half his age," said Mr. Harvill.

These qualities helped him in all his civic activities, too, where he was never just a joiner, but always an active participant. "If he couldn't contribute, he wouldn't join," said Mr. Harvill. "He was the most civic-minded man I ever knew in my life."

Indeed, his civic duties took far beyond Clarksville, and in his various leadership roles in the American Legion, he was well respected nationwide

What probably endeared him most to his friends, though, was his wit and good humor. "He was one of the world's greatest bullshooters; he always had a tale about something," said Mr. Harvill. He loved to tease, and was a master of repartee.

"He was just a fun person to be around," said Mr. Harvill. "He made a heck of a good friend."

Yes, not just to the individuals who loved him best, but to the entire community.●

AFGHANISTAN

● Mr. WALLOP. Mr. President, the political situation in Afghanistan and the terrible record of the Soviet military occupation of that country is one which should concern us all during this session of Congress. The Soviet Union has been making vague noises about disentangling itself from its war in Afghanistan and hinting that Moscow might be willing to "negotiate" a "settlement" of its military and political takeover of Afghanistan.

Mr. President, these Soviet hints regarding negotiations over their Afghanistan war are pure propaganda and we must recognize them as deliberate attempts to deceive the West, both now and in anticipation of the forthcoming summit meetings. They also hope to deflect the West from calling into question the Brezhnev doctrine. If it were in fact true that the Soviets wanted real negotiations over Afghanistan, it is clear to me that their purpose would be to try to obtain a political endorsement from the world community that the Soviet takeover in Afghanistan is legitimate and that the puppet government they have set up in Kabul is the legitimate representative of the Afghan people.

Mr. President, we in the U.S. Senate must be wary of these deceptions and guard against them. For that reason, I ask that the following statement entitled "A Negotiated Settlement to the

Soviet Afghan War?", by Dr. Elie Krakowski of the Department of Defense delivered at the Heritage Foundation on January 16, 1986, which gives a penetrating analysis of Soviet aims and objectives in Afghanistan, and the reasons for Soviet noises over negotiations on that war, be printed in the CONGRESSIONAL RECORD.

The statement follows:

A NEGOTIATED SETTLEMENT TO THE SOVIET AFGHAN WAR?

(Presentation by Dr. Elie D. Krakowski)

Has the Soviet position on a troop withdrawal from Afghanistan been shifting? Is Moscow about to accept what it has in the past always refused even to discuss?

Various Soviet public statements, both before and since the Geneva Summit, have been cited as implying a greater Soviet willingness to withdraw troops from Afghanistan.

The question is, Do they? If one is to rely on vague noises emitted publicly by Soviet officials there is in fact not much to go on. In the first place these public statements have not been accompanied by similar statements in private discussions with U.S. officials. Secondly, such rumours about alleged Soviet good intentions—somehow these never materialize into anything more than that—have had a habit of cropping up on various occasions.

Several examples of this tendency should serve as a useful reminder of the propensity for delusion. The New York Times, on February 1, 1980 quoted Armand Hammer as having been told by the Soviet Ambassador to Washington that "the Soviet Union planned to withdraw its troops from Afghanistan, but did not specify when." Added Armand Hammer: the Soviet Ambassador "has never lied to me." According to George Kennan (Washington Post, February 28, 1980), "The United States should not seek to increase the Soviet difficulty there, but rather to explore the hints that the Soviets may seek a way out." Or again, such flat statements as "the Soviet Union wants very much to negotiate its way out of Afghanistan" (Christian Science Monitor, 12/22/82). Dan Rather's pronouncement on CBS Evening News (January 25, 1983) that "there are indications tonight that the Soviet Union may be looking for a way to disentangle itself from Afghanistan."

Some might cite recent Soviet "frank admissions" about the cost of the war, and argue that the situation, six years after the Soviet invasion, is different. The Washington Post, for instance, made such a point recently: "Soviet officials, apparently concerned about the toll their six-year-old military involvement in Afghanistan has taken, have begun to voice complaints about rising casualties and admitted to reporters that they are 'not very happy' with the situation." (November 18, 1985) Here too, however, what is being said at the end of 1985 was already being written at the end of 1983: "As the diplomatic, military, and economic costs of its involvement have grown, Moscow has searched for a face-saving way out." (Selig Harrison, USA Today, 12/27/83).

The predilection for seeing far-reaching implications of a profound Soviet longing for a withdrawal of its troops have so far only been evident among some Western observers. Moscow has periodically encouraged such speculations in the Western press precisely because they serve Soviet purposes.

Moscow's negotiating posture has been clear from the start and has not, in fact, budged since then. It has insisted that the question of Soviet troop withdrawal is a purely bilateral issue between the Babrak Karmal regime and the Soviet Union and, therefore, of no concern to other parties. Moscow continues to assert that it was "invited" into Afghanistan and that, as a result it is up to those who so "invited" it in to request a withdrawal.

Even more central to its negotiating stance, Moscow has always demanded that cessation of outside support to the Afghan resistance precede any consideration of a Soviet troop withdrawal. The so far non-negotiable nature of that demand, its "unconditional surrender" character by now should have been obvious to all. Moscow is in fact saying that the only way it will ever withdraw is when the Afghan resistance has been eliminated. In other words, Moscow will remove its troops when there is no longer any reason for their being in Afghanistan. (There is strong reason to doubt that even then the Soviets would not withdraw willingly—the historical record speaks loudly on this score). It is significant that all the "hints" of a modification in the Soviet position do not even claim that this crucial condition is about to be modified. That is, what is being bounced around is the so-called existence of a "withdrawal plan"—not the removal of that most important Soviet pre-condition.

Furthermore, this so-called withdrawal plan—meaningless without the removal of the Soviet precondition on outside support to the resistance—has itself been tied in press accounts to another of the Communist objectives, direct talks between the puppet Babrak Karmal regime and the Government of Pakistan. According to the Washington Post (28 December 1985) the Afghan foreign minister "reportedly declared that he had details of a withdrawal plan in a folder in front of him on the conference table (reference is to the UN-sponsored "proximity" talks in Geneva) but that he would discuss them only face-to-face with Pakistani representatives—and not through the United Nations intermediary." The Soviet objective is obvious: force the outside world, in this case through obtaining Pakistani acceptance of direct talks with the puppet Babrak regime, to grant the legitimacy that that regime has been unable otherwise to achieve.

In addition, the Soviets are keenly aware that the very mention of the possibility of a deal over the heads of the Afghan resistance sends tremors through the ranks of the Mujahidin. It is that, as well as to sow confusion and doubt about each other's motives in the Pakistani Government and the Afghan resistance, that Moscow seeks to achieve through talk of timetables for withdrawal. More importantly, the Soviet Government, through such a diplomatic move, is attempting to create anxiety and distrust within the Afghan resistance and the Pakistani Government about the United States' motives and reliability.

In order to lay to rest, hopefully permanently, the recurring tendency of some in the West to attach significance to Soviet "withdrawal" "hints," it is necessary to go beyond the more narrow and immediate Soviet objectives described above.

When it is discussed, the war is usually described as a quagmire or a stalemate for the Soviets. The reality is, I believe somewhat more complex.

The general acknowledgement that fully one-third—and perhaps more—of the Afghan population has either been killed or driven into exile, apparently has not been sufficient to make clear the contradiction between a thus far successful Soviet policy of "migratory genocide" and assumptions of "stalemate."

The fundamental flaw with the view of the war as a stalemate, and hence with the derivative assumption about war weariness and an alleged Soviet desire for withdrawal, is that it misunderstands the character of the war, focusing on the short term, and excluding the Soviet perception of things. In part the reason for this can be attributed to American tendencies to project or mirror image. Americans cannot easily visualize anything but a quick war, a "knockout punch." This is particularly true in the Soviet-Afghan War, in which such manifestly unequal power is clearly in evidence. Anything short of clearcut and rapid victory, it seems, is automatically portrayed as a stalemate.

No doubt Moscow first thought that the massive rebellion it itself provoked could be squashed by its Afghan puppets with little direct Soviet involvement. No doubt in the period immediately following the Soviet invasion, Moscow may have believed that its show of force would be sufficient to destroy any opposition. The realization that it was dealing with an unusual enemy, however, came quickly. Within the first year following its invasion, Moscow settled into a long-term strategy whose basic objective has been to outlast the resistance, destroying in the process its support base. The Soviets have themselves on occasions made reference to their colonization/anti-insurgency campaigns of the nineteen twenties and thirties in what is now Soviet Central Asia as a model for their current strategy. And while, in essence, the Soviets have attempted to "empty the water out of the fishbowl," thereby ultimately killing the fish, they have also systematically—and most of the time unsuccessfully—attempted to coopt Afghans.

Ideal conditions for the pursuit of a long-term strategy of this sort would be the cessation of external support for the resistance, as well as ignorance of the conflict by the outside world.

Cessation of external support would rapidly lead to almost complete ignorance by the outside world. The various humanitarian and media organizations from various European countries and the United States would also disappear, and together with them, no doubt, whatever interest there has been in the war. Moscow would then be able, quietly and without any restrictions whatsoever, systematically to destroy any meaningful opposition to its rule. And, while the Soviets no doubt do not believe their own propaganda describing the war as an "undeclared war launched by the imperialists," they are confident that without external help the Afghan resistance will—especially at the current level of fighting—become quickly demoralized and subjugated. The soviets are also clearly conscious of the impact that cessation of aid to the Mujahidin would have on the millions of refugees now in Pakistan and Iran. In their rage and despair at being thus abandoned, the Mujahidin might well turn against the Pakistanis, thereby unwittingly furthering Soviet designs.

Current Soviet "hints" about "withdrawal" and "timetables," talks about a possible enlargement of the Kabul regime to include other political elements, the attempt to coopt Western European governments in this Soviet peace offensive, are all designed

to further the above Soviet objectives. Put somewhat differently, the Soviets have used the UN-sponsored talks to lull the rest of the world into believing that the problem is solvable through negotiations alone, that if only "moderation" were exercised by outside powers, that if only we could give the Soviets "some help," the problem would be solved.

One might have expected a systematic Soviet campaign to encourage wishful thinking in the West to be accompanied, at least in the short term, by some attenuation in the level of fighting, as well as in the level of pressure placed on both the resistance and on the Pakistani Government. The opposite has been true. Soviet military actions have continued through the Afghan winter and, as the Wall Street Journal noted on January 9, 1986, there has been a marked increase in Soviet arms shipments to Afghanistan in recent weeks. Perhaps this tells us something about the amount of respect, or lack of it, Moscow has for Western public opinion.

The question which remains then, is not whether the Soviets are now in fact seriously contemplating withdrawal, but why they have chosen to make such a concerted effort at deception at this time.

One possible answer was given at the beginning of this presentation. It is simply that Moscow has made such noises periodically, especially around special events such as the recent summit, or around the time of sessions of the UN-sponsored talks. The magnitude of the current effort suggests additional explanations. One such additional elucidation is that the "peace" campaign on Afghanistan is part of a worldwide Soviet peace offensive that covers a broad range of subjects. In all of them, however, Moscow's objective is to take advantage of the willingness in the West to give the benefit of the doubt to a new Soviet leader, to portray the Soviet Union as "peace-loving," and to make the point that with some concessions by the West, better, more tranquil relations can soon be re-established.

There is a third, and in the context of Afghanistan, more important possible explanation, and that is that Moscow is responding at the diplomatic level, as well as at the military and other levels, to the changing situation on the ground. Let me explain.

The Soviets no doubt expected that with the passage of time interest in the Soviet-Afghan War would wane. They no doubt expected to continue facing a less and less effective, primitive, and primitively armed resistance that could be worn our with measured Soviet power.

The opposite has happened. Interest in, and opposition to, the war has grown in the six years since the Soviet invasion. Votes in favor of the annual United Nations resolution demanding Soviet withdrawal have encompassed larger and larger majorities, and include almost every member with the exception of Communist countries. Active participation in humanitarian efforts to relieve some of the barbaric conditions in which the Afghan people have been placed by Soviet actions, has grown significantly, and now represents many nations. The Afghan resistance, though suffering heavily, has become more effective and is now better equipped than in the past. In short, the Soviets probably feel that their dual strategy of outlasting the resistance while ensuring no more than minimal outside interest is being threatened by current trends. It is important to point out that what may thus be threatened is not necessarily the ultimate Soviet objective or subjugation, but Moscow's ability to move toward that objective with a relatively limited military commitment, and with no more than minimal external attention to both the conflict and Soviet methods in waging it. Furthermore, such Soviet ability to move toward the objective of subjugation in the fashion outlined will become significantly threatened only with the continuation of current trends toward a better equipped, more effective, resistance, and with greater worldwide interest. Then, the choice before them would become one between withdrawal and escalation. The situation would become one in which the Soviets would, as I have stated it elsewhere, have to escalate in order to win, but fail to achieve their ultimate objective if they did escalate.

The present Soviet approach—hard and intense on the battlefield, soft-sounding in the diplomatic arena—is responding to the developing situation by conveying in essence a single message.

That message is that they are as determined as ever to destroy and subjugate the resistance; that neither the resistance nor the Pakistani Government should put too much faith in the outside world because it will abandon them at the first opportunity. Hence the continuation of military operations at an intense level through the winter; hence the continued campaign of intimidation toward the Afghans and Pakistanis. Hence also the "hints" of withdrawal timetables, designed to undercut outside interest and support by encouraging the belief that increasing restraint by the outside world is the only way to a negotiated settlement. The "tough" component of the Soviet Technique is, if anything, meant to enhance further the appeal of the "peace" component by intimating that embracing the latter is the only way out of an increasingly painful course.

In conclusion, Moscow has probably decided that it has little to lose from the current exercise in deception. At the very least it will have injected an additional dose of distrust and suspicion on the part of the Mujahidin and of the Pakistanis toward the outside world, and helped demoralize somewhat the resistance. Should Soviet pressures for direct Pakistani negotiations with the puppet Karmal regime succeed—for such is the price demanded for the Pakistanis to see, and discuss, the withdrawal timetable—Moscow would have achieved the legitimacy that regime cannot otherwise attain. Beyond this, Moscow understands fully well that democracies, once having taken a step back from commitment, find it more difficult to recommit. Hence the attempt to erode that commitment through appeals to powerful impulses in the Western psyche.

The current series of Soviet "hints," then, does not convey a greater willingness to actually withdraw. The fact that the Soviets have found it necessary to put forth hints of withdrawal timetables, however, does suggest that they feel they now must go to greater lengths to obtain the same results as before. Diplomatically speaking, this may be progress of sorts. We will know that we are facing a changed situation when Moscow no longer insists that cessation or external support must precede talk of Soviet withdrawal. When will the Soviets decide to withdraw? One possibility is that they will do so only when the costs become great enough. The other is that Moscow will recognize before it actually faces the question of escalation, that the costs of such a course will be so great as to negate any potential benefits. Our hope should therefore be that the Soviets will understand sooner, rather than later, that it is in their interest to withdraw from Afghanistan and allow that brave people to resume control of their own destiny, free from the horrors and suffering that the current attempt at colonization carries with it.●

ANNUAL SURVEY OF NATIONAL CONFERENCE ON SOVIET JEWRY AND THE COALITION TO FREE SOVIET JEWS—1985

● Mr. LAUTENBERG. Mr. President, I would like to draw my colleagues' attention to the 1985 annual survey on Soviet Jewry done by the National Conference on Soviet Jewry and the Coalition to Free Soviet Jews. The survey reviews the plight of Soviet Jews over the past year and describes the outlook for the future. Unfortunately, despite hopes raised by the Geneva summit, the picture for Soviet Jews remains bleak, and the need for continued efforts on behalf of this beleaguered community remains urgent.

In 1985, emigration levels remained relatively constant at a low level, with a little over 1,000 Jews permitted to leave during the year. But the survey points out that harassment of Jewish activists through arrests, trials, and other methods increased dramatically in 1985. And the vicious press campaign attacking Israel, Zionism, Judaism, and individual Soviet Jews continued unabated in 1985.

This report must reinvigorate our efforts on behalf of Soviet Jews. Congress has done a great deal to help, but its efforts must continue until every Jew who seeks to emigrate has been allowed to leave. And until those who want to stay are permitted the freedom to practice their religion in peace.

The continuing plight of the Soviet Jews serves as a reminder to the free world of the great strides necessary in the Soviet system to ensure both personal and political rights of Soviet citizens. Soviet Jews must receive our unwavering support as they struggle for ideals which we, as Americans, proudly cherish. We must continue to speak out and work for the freedom of Soviet Jewry until there is no need for an annual survey such as the one I have included in the RECORD today.

The annual survey follows:

ANNUAL SURVEY—1985

Nearly two months have passed since the November summit in Geneva between United States President Ronald Reagan and Soviet General Secretary Mikhail Gorbachev. With the Soviet Party Congress approaching in February and the second round of summit meetings between Reagan and Gorbachev planned for June in Washington, D.C., there is still no concrete evidence—despite many rumors—of a significant improvement in the plight of Soviet Jews. In fact, on Monday, December 30, the Soviet Union issued a press statement label-

ing all rumors of an imminent large-scale Jewish emigration as "a vicious lie". The 1985 year therefore bodes ill for the future of this beleaguered community.

With respect to emigration, a relatively constant level was maintained, with an average of about 100 Jews per month permitted to leave. A comparison of the twelve months of 1985 during which a total of 1,139 Jews left, with those of last year when 896 received exit permits, demonstrates a continuing restrictive Soviet policy. Even those few allowed to leave did not, for the most part, include veteran refuseniks waiting over ten years, despite the welcome news that a handful of refuseniks, notably Eliyahu Essas and Yaakov Mesh, who were refused in the 70's, unexpectedly received permission to go to Israel. Former Prisoners of Conscience who served their terms also continued to be denied permits, with the exceptions of Isaak Shkolnik and Mark Nashpitz.

At the same time that emigration was kept low, the number of arrests, trials and other forms of harassment of Jewish activists rose alarmingly. Of the 26 Prisoners of Conscience sent to prison or labor camps, 12 were arrested or tried since the beginning of 1985—an average of one a month! The police methods employed in some cases were crude even by Soviet standards and involved, among other things, the planting of incriminating evidence. Since the major thrust of these police activities was directed at the informal network of Hebrew teachers, and Soviet authorities wished to maintain the myth that the study of Hebrew by Jews is permissible, the Soviets had a need to fabricate evidence of these teachers' alleged crimes. Wide-ranging searches were conducted in scores of homes in connection with these cases and involved the seizure of Hebrew instructional material as well as religious articles and books.

The tough Soviet policy was aptly demonstrated in the brutal beatings by KGB-provoked assailants of Jewish cultural activities, including film director Leonid Kelbert, who was hospitalized for his wounds, and twelve-year-old Avi Goldstein, son of Tblisi refusenik Isai Goldstein, who was beaten, stripped and photographed naked by his attackers. The general treatment of Jews in the prisons and camps also worsened, with Zachar Zunshain, Iosif Begun, Yuli Edelshtein, Simon Shnirman and Anatoly Shcharansky being particularly singled out for maltreatment. The maltreatment ranged from violations of these prisoners' rights to correspondence and visits, to long periods in isolation and punishment cells, as well as physical abuses by guards and fellow prisoners.

The past year did not see any diminution in the spate of vicious articles and television broadcasts attacking Israel, Zionism, Judaism and individual Soviet Jews. If there was a temporary abatement when Gorbachev assumed control of the party apparatus, they have now resumed their former level of frequency and intensity. "Zionists" of today continue to be equated with the "Nazis" of the past.

The response of Soviet Jews has been a renewal of public activities, manifested in petitions and protests to Soviet authorities, as well as to individuals and organizations abroad. These have focused on official abuses and on the renewed demand for "repatriation to Israel." A parallel development has been a steep rise in requests for Israeli citizenship.

SOVIET LEADERSHIP

These happenings took place against the background of leadership changes in the Soviet Union and within the framework of negotiations between the superpowers. Gorbachev has been rapidly and steadily consolidating his position, and changes to his advantage in the Party Politbureau and Central Committee Secretariat reflect this consolidation. Virtually all of Gorbachev's supporters, like himself, are proteges of former Party chief, and head of government, Yuri Andropov, who was also the former head of the KGB. Reflecting the ambivalence of the situation, his memory is now the subject of cult, promoted by the new leadership, even as Leonid Brezhnev and Konstantin Chernenko seem to slide into oblivion. It is also striking that 25% of the 13 members of the Politbureau have backgrounds in the police or the KGB. Also significant is the fact that the dread KGB, as an institution, appears to have obtained preeminence over the military. In the context of Gorbachev's new domestic policies, emphasizing strict discipline and the suppression of nonconformist behavior, the negative implications of these developments for Jewish activists is heightened.

This trend must be balanced against the opportunity offered by talks between the United States and the Soviet Union on a variety of subjects, including culture, science, arms limitation, and trade, as well as ongoing meetings between Soviet and West European leaders. The Soviet attitude towards Jews should serve as a test of the credibility of Soviet commitments and general good will. Jewish activists perceive the opportunity and are anxious that their fate be accorded a high place on the negotiating agenda of the superpowers. They recognize, however, that a strong public campaign on their behalf must continue to be waged.

The new Soviet leadership has already distinguished itself by a talent for public relations. This was demonstrated in an apparent campaign of disinformation on the Jewish question, designed to create the impression that the situation is improving and to defuse concern. Soviet policy makers would love to remove the matter entirely from the international agenda while the US and the USSR deal with other bilateral issues at the series of Presidential summits. Rumors which circulated in the months before the Geneva summit, of the impending issuance of large numbers of exit visas, proved false, the reality obscuring the moderate tone and the occasional hints with which the Soviet leaders chose to face the world. Similar rumors were spread by Soviet officials after the summit and were then vehemently denied in Moscow in an apparent attempt to throw critics in the West off balance.

It is unlikely that there will be any significant modification of the campaign for Soviet Jews, in the West, without any parallel substantial changes affecting the Jewish minority in the Soviet Union. There have been past occasions when Soviet representatives have given assurances that, if specific activities were to cease, some movement on particular cases could be expected. Such promises have not been fulfilled. Since the public advocacy campaign on behalf of Soviet Jews is a function of Soviet behavior, experience dictates that it remain constant in the face of the present situation.

SOVIET JEWRY RESEARCH BUREAU

JEWISH EMIGRATION FROM THE U.S.S.R.

Oct. 1968 through 1970	4,235
1971	13,022
1972	31,681
1973	34,733
1974	20,628
1975	13,221
1976	14,261
1977	16,736
1978	28,864
1979	51,320
1980	21,471
1981	9,447

	1982	1983	1984	1985
January	290	81	88	61
February	283	125	90	88
March	289	101	51	97
April	288	114	74	166
May	205	116	109	51
June	182	102	72	36
July	186	167	85	174
August	238	130	83	29
September	246	135	69	93
October	168	90	29	124
November	137	56	55	128
December	176	97	91	92
Total	2,688	1,314	896	1,139

From October 1968 through December 1985, 265,656 persons left the Soviet Union with Israeli visas. Approximately 163,556 of them went to Israel.

THE ABORTION ISSUE

● Mr. KERRY. Mr. President, since 1973, when the Supreme Court ruling recognized a woman's right to choose abortion, opponents have attempted to overturn this decision through nearly 500 legislative initiatives. These initiatives seek to restrict abortion from several perspectives ranging from constitutional amendments to prohibiting abortion by statute. As the pro-choice advocates recognize this anniversary and the opponents work to reverse the 1973 ruling one single issue gains significance: that persons of sensitive and informed conscience find themselves on differing sides of the choice issue.

I strongly support the woman's right to terminate a pregnancy, but recognize that such a decision is not made lightly. One may struggle with the circumstances of their own ability to love and care for a coming child and the options a woman must choose from may all seem equally difficult. It is my belief that the pro-choice position is weighed with many responsibilities as we all work for greater respect for human life.

There is the responsibility of maintaining broad, accessible family planning to provide maternal and infant health care as well as preventive services. The provision of family planning services to low- and marginal-income persons can be instrumental in reducing or alleviating poverty and dependency. An especially important part of maternal and infant health is the timing and spacing of births—a key to adequate family planning services. And of course from the beginning, family planning has focused on preventive services to avert the unintended pregnancy. The consequences of pregnancy and childbearing for adolescents is particularly heartrending and family planning services have served to educate teenagers about the obligations of parenting and alternatives for prevention.

There is the responsibility of working for a better quality of life after birth. Our child nutrition programs, Head Start, assistance for the low income, education for the handicapped, and other special programs of benefit to children are all pro-life programs. They seek to improve the quality of life for all children regardless of a family's situation, a child's physical handicap, or other special concerns. Recognizing the value of life entails recognizing the hungry from the fed, the poor from the rich, and the sick from the well.

Coming full circle, though, we return to the value judgment placed on the issue of abortion. The belief in the right to choose abortion is based in philosophical and theological judgments, although no less weighty they cannot be imposed on a multireligious society.

The Supreme Court view in Roe against Wade stated that there is not a necessary relationship between the definition of legal personhood and a given theory of human life. One is the question of law, and the other a question of biology. On the question of law responsible individuals do and will probably continue to disagree.

The right to a safe and legal abortion is under attack from a specific group of opponents who seem to believe that in their effort to protect life, the sanctity of other lives may be threatened. Women have had their examining rooms invaded, children have come home from elementary schools with threatening notes in their school books, and our own domestic version of terrorism, clinic bombings—these incidences represent a trend that all free citizens should fear.

To conclude, I reaffirm my belief that reproductive freedom is a basic human right and while the right to choose abortion is a legal option I shall work to uphold this legal option.●

JOINT SESSION OF THE TWO HOUSES TO RECEIVE A MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

Mr. DOLE. Mr. President, I ask unanimous consent the Senate turn to House Concurrent Resolution 268 providing for the State of the Union Address just received from the House of Representatives.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A resolution (H. Con. Res. 268) providing for a joint session of Congress to receive a message from the President on the State of the Union.

The Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 268) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

INDEFINITE POSTPONEMENT OF HOUSE JOINT RESOLUTION 496

Mr. DOLE. Mr. President, I ask unanimous consent that House Joint Resolution 496 providing for the convening of the 2d session of the 99th Congress be indefinitely postponed.

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

STAR PRINT OF SENATE RESOLUTION 280

Mr. DOLE. Mr. President, I ask unanimous consent that Senate Resolution 280, which was introduced in the Senate on December 19, 1985, by myself, be star printed to reflect the following changes which I send to the desk.

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

ORDERS FOR TOMORROW

RECESS UNTIL 12 NOON

Mr. DOLE. Mr. President, I ask unanimous consent that once the Senate completes its business today, it stand in recess until 12 noon on Thursday, January 23, 1986.

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

RECOGNITION OF CERTAIN SENATORS

Mr. DOLE. I further ask unanimous consent, Mr. President, that following the recognition of the two leaders under the standing order, there be special orders in favor of Senators PROXMIRE and HART for not to exceed 15 minutes each.

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

ROUTINE MORNING BUSINESS

Mr. DOLE. I further ask unanimous consent that following the special orders just identified, there be a period for the transaction of routine morning business not to extend beyond 1 p.m., with statements limited therein to 5 minutes each.

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

PROGRAM

Mr. DOLE. Under the provisions of rule XXII of the Standing Rules of the Senate, at 1 p.m., a live quorum will begin. Immediately following the establishment of a quorum, a cloture vote will occur on the motion to proceed to the consideration of S. 638, the Conrail bill.

So I would guess that vote should come prior to 1:30 tomorrow afternoon.

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

Mr. DOLE. If cloture is invoked, the Senate will remain on the motion to proceed throughout the day on Thursday; and if it is involved, we will be on the bill or a substitute, as I understand it. So there could be other votes throughout the day tomorrow.

Mr. METZENBAUM. Does the majority leader expect the Senate to be in session on Friday?

Mr. DOLE. It depends. I would rather not be in on Friday, but I can announce that by 2 o'clock tomorrow.

Mr. BYRD. Could we debate TV in the Senate on Friday?

Mr. DOLE. I am not in a position to indicate that at this time.

RECESS

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I move that the Senate stand in recess until 12 noon on January 23.

The motion was agreed to, and at 5:52 p.m. the Senate recessed until tomorrow, Thursday, January 23, 1986, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate January 22, 1986:

INTERSTATE COMMERCE COMMISSION

J.J. Simmons III, of Oklahoma, to be a member of the Interstate Commerce Commission for a term expiring December 31, 1990, reappointment.

DEPARTMENT OF JUSTICE

Robert Q. Whitwell, of Mississippi, to be U.S. attorney for the northern district of Mississippi for the term of 4 years, vice Glen H. Davidson, elevated.

Ralph L. Boling, of Kentucky, to be U.S. Marshal for the western district of Kentucky for the term of 4 years, reappointment.

Emery R. Jordan, of Maine, to be U.S. Marshal for the district of Maine for the term of 4 years, reappointment.

Wayne D. Beaman, of Virginia, to be U.S. Marshal for the western district of Virginia for the term of 4 years, reappointment.

Paul R. Nolan, of Washington, to be U.S. Marshal for the eastern district of Washington for the term of 4 years, reappointment.

Frederick N. Falk, of Wisconsin, to be U.S. Marshal for the western district of Wisconsin for the term of 4 years, reappointment.

Robert T. Keating, of Wisconsin, to be U.S. Marshal for the eastern district of Wisconsin for the term of 4 years, reappointment.

DEPARTMENT OF STATE

James L. Malone, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Belize.

SOLAR ENERGY AND ENERGY CONSERVATION BANK

Richard H. Francis, of Virginia, to be president of the Solar Energy and Energy Conservation Bank, vice Joseph S. Bracewell.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Jeffrey I. Zuckerman, of Maryland, to be general counsel of the Equal Employment Opportunity Commission for a term of 4 years, vice David L. Slate, resigned.

FEDERAL RESERVE SYSTEM

Wayne D. Angell, of Kansas, to be a member of the Board of Governors of the Federal Reserve System for the unexpired term of 14 years from February 1, 1980, vice Lyle Elden Gramley, resigned.

Manuel H. Johnson, of Virginia, to be a member of the Board of Governors of the Federal Reserve System for a term of 14 years from February 1, 1986, vice J. Charles Partee, term expiring.

NATIONAL TRANSPORTATION SAFETY BOARD

Kenneth John Hill, of Virginia, to be a member of the National Transportation Safety Board for the remainder of the term expiring December 31, 1986, vice Donald D. Engen, resigned.

U.S. POSTAL SERVICE

Barry D. Schreiber, of Florida, to be a Governor of the U.S. Postal Service for the remainder of the term expiring December 8, 1992, vice Frieda Waldman.

EXTENSIONS OF REMARKS

BLACK AMERICANS AND THE NFL

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. STOKES. Mr. Speaker, as football fans across the Nation prepare for the Super Bowl this Sunday, this is an ideal time to take a close look at the level of involvement of black Americans in professional football.

On Sunday, there will be a number of black Americans playing in the Super Bowl matchup between the Chicago Bears and the New England Patriots. Likewise during the regular professional football season, black America is well represented on the football field each Sunday. This is virtually the total and shameful extent of black Americans in professional football in this country today.

The meager number of black Americans in coaching and management positions is nothing short of disgraceful. While there are 32 black assistant coaches in the National Football League, the harsh reality is that there is not even one black head football coach. Even more appalling is the fact that with the wealth of talent of black Americans in all aspects of the game, not one black American—not even men with the talent or expertise of Bobby Mitchell—have received serious consideration for top management positions with any NFL team.

The Sunday Washington Post included an article by Ken Delinger which detailed this dreadful situation. At this time, Mr. Speaker, I would like to include it in the RECORD.

BLACKS ARE READY TO TACKLE MANAGEMENT JOBS, BUT THE NFL STILL BLOCKS THE WAY

Another season of shame has passed in the National Football League, one more year in which black men were judged qualified to star for their teams but not to manage them. For the 20th time in the Super Bowl's 20-year existence, blacks will be among the leaders on the field but not in the front office.

Our most popular sporting business is the least progressive. Probably, this massive appeal is a major reason for the NFL's management decisions.

Win or lose, most owners turn a tidy profit each year—and the value of their franchises escalates. Most stadiums either are sold out each week, or close to capacity.

So why even hop on the boat, let alone rock it?

Walter Payton can do everything in football just now except dream. Same with the exceptional defender who will lead his Patriots against Payton's Bears Sunday in New Orleans, Andre Tippett. Same with Henry Lawrence of the Raiders and so many more.

History shows that the NFL will make wonderful use of their bodies, but not their minds. If tactics were as slow to evolve in the NFL as social progress, teams still would be in leather helmets and running the single wing.

There is one general manager vacancy in the league and four head-coaching jobs open after the season. I would bet that not one black was even *interviewed* for any of them.

A generation ago, when somebody would inquire of NFL poohbahs why the ranks of head coach and general manager were lily-white, the answer was; name one qualified black.

That no longer works.

Want a black man qualified to be a general manager in the NFL? I can name one: Bobby Mitchell. Also, I can rattle off at least a half-dozen others who should have been groomed for managerial positions but were not.

Mitchell was.

He's been very good for a very long time, and still shut out. I cannot fathom how owners allegedly obsessed with winning could look past a Hall of Fame player who knows scouting and finances and who has organized training camps and Super Bowl functions. They have.

If Bobby Mitchell hasn't earned the chance to run a pro football team, Lee Iacocca isn't qualified to manage a Chrysler dealership on the Rockville Pike.

Vince Lombardi persuaded Mitchell to join Redskins management after his retirement in 1968; George Allen educated him in the ways of the league.

"I learned more football," Mitchell said in the spring of 1983, "more about the league and how to get things done under George Allen in those seven years [from 1971 through '77] than anybody [else] could have taught me.

"Like to have ran me crazy. I didn't have a gray hair when I met him. Three years later, it's gray all over. Dammit, though, he taught me. Have to give him credit for that . . .

"The only reason I stayed all these years was the hope that somebody eventually would say: 'Hey, Bobby Mitchell's good enough to do that.' I think about all the guys I used to have to show how to find a school who now are personnel directors or general managers.

"Certainly, in the back of my mind it's there. But it's not eatin' at me like it once was. This is a business where somebody has to take a chance. And most owners don't have that kind of guts."

As the Post's Gary Pomerantz reported recently, there has been a dramatic increase in the number of black assistant coaches in the NFL; there are 32 in all. Three (Tony Dungy of the Steelers, Billie Matthews with the Colts and Jimmy Raye of the Buccaneers) are in charge of an offense or defense.

Since 1981, the NFL also has sponsored a program during training camp that about 1,000 coaches from the nation's 48 predominantly black colleges have attended. That surely has speeded upward mobility.

Still, reacting to the 26-year-old son of Miami's Don Shula being prominently mentioned for the Eagles' head coaching job, Raye told Pomerantz: "We're always being told that being in the right place at the right time is important. I guess this is a case of being born in the right place at the right time.

Cynics suggest that Don Shula's grandson, David's boy, Danny, might be an NFL head coach before Raye and others from the black talent pool. Danny turned 2 in October.

Maybe many blacks are too smart to get into coaching. It's a business with more heartaches than glory. Even good head coaches are three knee injuries and two lousy drafts away from unemployment.

But Payton, Tippet, Lawrence or any other player—black and white—has devoted so much time to football that the logical career move is into coaching or management.

How appealing can that be when advancement seems no higher than being able to tell the fullback whether to run left, right or straight ahead. Or to make sure the frisky middle linebacker has gone beddy-bye at a decent hour before game day.

Pro football is life with a two-minute warning. Unfair a great deal of the time. Hundreds of talented white assistants and mid-level managers also have gotten bypassed.

There are hundreds of thousands of youngsters who aspire to football fame and fortune; there are 28 NFL head coaches and 28 NFL general managers. And one asinine attitude toward blacks: not yet.

LYNN WOOD RETIRING AS SHERIFF OF STANISLAUS COUNTY, CA

HON. TONY COELHO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. COELHO. Mr. Speaker, this spring Lynn Wood will retire from his post as Sheriff of Stanislaus County after 32 years of loyal public service.

Lynn was born in Alvarado, TX. He has spent the majority of his life performing duties for the betterment of our community. Over the years, Lynn has served on all three levels of law enforcement and security. He served as a member of the U.S. Marines during the Korean war before undertaking his initial position with the Stanislaus County sheriff's department in 1954. Sheriff Wood began his extensive career in civil service as jailer before many promotions such as those to lieutenant in 1962 and chief deputy in 1968. He was elected sheriff by the citizens of Stanislaus County in 1974. He is also past chairman of the Emergency Planning Committee of the California Peace Officers Association.

In addition, his educational focus has been on public service at the local, State, and national level. After receiving his bachelor of arts degree from the University of San Francisco,

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

Matter set in this typeface indicates words inserted or appended, rather than spoken, by the Member on the floor.

he obtained his peace officer standards and training certificate at the executive development level. Furthermore, he was also graduated from the FBI National Academy in 1968.

Lynn's dedication to progress and community improvement merits much admiration and respect. He has worked very hard to make his community, and thus our society, a better place to live. He is a life member of the Modesto Elks Lodge 1282, actively serving as the chairman of the board of the California-Hawaii Elks Association from 1982 to 1985. He is also a member of the Youth Advocacy Council and serves on the Muir Trail Girl Scout steering committee.

Lynn has been an influential and dedicated component of Stanislaus County in his many years of public service. On behalf of the citizens of Stanislaus County, I would like to thank him for all that he has done to maintain and improve the safety of our community.

NEW JERSEY FINDS SUCCESS IN ENTERPRISE ZONES

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. GARCIA. Mr. Speaker, the debate on enterprise zones used to be a matter of theory. However in recent years we have seen much tangible evidence as the States have taken the lead in creating such zones. Now New Jersey has joined the ranks of States that have State designated enterprise zones. They have not been disappointed. Since August 1983, when enabling legislation was passed in the State of New Jersey, five zones have been created in Newark, Camden, Plainfield, Trenton, and Bridgeton. Since then, private sector investment of $125 million has been made by 380 companies, creating over 8,500 jobs. Because of this success five more zones have been approved.

The continual message we get from these States that have tried enterprise zones is that they work. Studies have shown that not only are jobs created, but these jobs tend to go to the long-term unemployed and disadvantaged. Another healthy sign is the number of existing businesses in the enterprise zones that are expanding in response to the incentives rather than closing their doors. Indeed, the retention and expansion of existing businesses is one of the most important elements of any revitalization strategy, especially in the older industrial areas of the Northeast and Midwest.

Enterprise zones are a departure from past urban policies in three ways: (1) they require virtually no new Federal bureaucracy, (2) they provide incentives for private sector job creation and investment automatically rather than through lengthy grant application procedures, and (3) they are designated to secure real commitments from the neighborhoods and up through the city, State and Federal levels of government. If an enterprise zone should fail to induce business activity, then it will not cost the taxpayer a cent. If tax credits are claimed, it is because people have been hired and a business has been formed or expanded.

So far, business, States and local governments have embraced enterprise zones enthusiastically. If Congress fails to followup on the experience the States are now providing us, we will have missed a golden opportunity to help get jobs and to help our cities.

GLOBAL ENVIRONMENTAL RESEARCH ORGANIZATION [GERO]

HON. FRANK J. GUARINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. GUARINI. Mr. Speaker, Dr. Irwin W. Silverman of Weehawken, NJ, a constituent and a close personal friend of mine for more than 20 years, was recently appointed special consultant to Chancellor Huttenback at the University of California at Santa Barbara.

At the suggestion of Dr. Silverman, it was my good fortune to meet Chancellor Huttenback as well as the codirectors of the Global Environmental Research Organization [GERO], Dr. Daniel Botkin of the University of California and Dr. Angelo Orio of the University of Venice. I was invited by them to attend and address the conference sponsored by the Universities of California, Venice, and Padua held in Venice, Italy last October. As the mark up of the Tax Reform Act of 1985 was scheduled during the month of October, I was unable to attend.

Because of my deep interest in environmental matters and in the success of the project, I would like to share with my colleagues a report of the conference which was submitted to me:

A landmark in the history of environmental research was reached this year with the establishment of the Global Environmental Research Organization (GERO). Led by Codirectors Dr. Daniel B. Botkin of the University of California, Santa Barbara and Dr. Angelo Orio of the University of Venice, Italy, GERO was inaugurated at a conference dealing with Man's Role in Changing the Global Environment in Venice in October 1985. The conference introduced what Dr. Botkin called a "new science of the biosphere," which will encompass all aspects of environmental science. GERO's mission will be to lead a change in emphasis from negative to positive aspects of our abilities to technologically influence and manage our environment, and from a local and regional to a global perspective. The conference, attended by economists, geographers, geologists, chemists, biologists, academics from other disciplines, and government officials from various agencies, including the National Aeronautics and Space Administration and the United Nations Environment Programme, underscored the inter-disciplinary dimension of the undertaking.

GERO is a broadly based program, whose initial conference drew 300 participants from 30 countries, including every major western European nation, the United States, Canada, Yugoslavia, Hungary, Poland, Israel, the People's Republic of China, Hong Kong, India, Bangladesh, Nigeria, and the Philippines (five papers from Soviet scientists were submitted to the conference; regrettably, none of the scientists were in attendance). Knowing that many environmental issues do not recognize geo-political boundaries, GERO is prepared to tackle issues which confront both industrialized and developing nations.

With headquarters in Italy and at the University of California, Santa Barbara, GERO will take an entirely new, constructive approach toward global environmental issues. As Lee M. Talbot of the World Resources Institute stated in the conference's concluding remarks, "sustainable use of resources can be achieved, and improvements in environmental quality can be obtained, if human wisdom and ability are well served by modern science and technology."

The Venice Conference was also addressed by the senior academic officers of the institutions which sponsor GERO: UCSB Chancellor Robert A. Huttenback, as well as Rector Giovanni Castellani of the University of Venice and Rector Marcello Cresti of the University of Padua. Each of them, as well as UCSB conference coordinators Dr. Margriet Caswell and Dr. John Estes, made a great contribution to the success of the conference. GERO is also attracting the interest of industry, banking, and government in expanding its foundations beyond the realm of academia; the World Bank and European Economic Community have already demonstrated interest by sending representatives to the first plenary conference.

The distinguished individuals who have come together to found GERO deserve both our praise and congratulations for breaking ground in the new and exciting science of the biosphere and for assembling an international body to assess and attack the international environmental problems which confront every resident of this planet. As UCSB Chancellor Robert A. Huttenback stated, "the Conference on Man's Role in Changing the Global Environment is significant and important in itself, but is not the end, or even the end of the beginning, of what we had in mind; it is rather the beginning of the beginning."

Mr. Speaker, I ask my colleagues to join with me in extending warm congratulations to Dr. Silverman, Chancellor Huttenback, Dr. Botkin and Dr. Orio on the first plenary conference of the Global Environmental Research Organization. GERO's international and inter-disciplinary approach will open new avenues to solutions to the environmental challenges which we face.

A TRIBUTE TO BARBARA CAHN

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. LENT. Mr. Speaker, on January 30, the Valley Stream Central High School District staff will honor a truly outstanding individual, Miss Barbara Cahn, for her efforts to strengthen school and community relations. Barbara is a constituent of mine from Wantagh, NY, and after 10 years of dedicated service, she will be leaving her position as the school district's community relations director for a well-earned retirement.

At this time, I'd like to say a few words in recognition of Barbara's successful efforts to promote support throughout the community for the local high schools. Barbara dedicated her energies to encouraging interaction and a beneficial working relationship between teachers, administrators, parents and students. This interest and mutual support is essential to

meeting the educational needs of the community as well as the individual student.

Prior to her position as community relations director, Barbara worked for many years with the Massapequa Post, a popular weekly newspaper, meeting deadlines, writing, editing, informing people about the local events that are important in their daily lives. Working for the school district, Barbara successfully combined her skills in communicating with people and her interest in the local community. She revamped the concept of school and community relations and brought professional standards to a field that had never received the status it deserved. In addition, the New York State School Public Relations Association honored her with five awards in recognition of her noteworthy accomplishments.

I'd like to express my deepest gratitude to Barbara Cahn for her outstanding contributions to education and service to the community, and I wish her much health and happiness in the years ahead.

THE 1986 ELECTION

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington report for Wednesday, January 22, 1986, into the CONGRESSIONAL RECORD:

THE 1986 ELECTION

With the 1986 elections less than a year away, political talk is beginning to heat up the congressional cloakrooms.

The stakes in the election are high both locally and nationally. With both political parties positioning themselves for the post-Reagan era, the consequences of this election could be greater than usual: Republicans could move within striking distance of becoming the majority party. The biggest national battle will be for control of the U.S. Senate, where Republicans now have a 53-47 advantage. A quieter year is expected in the U.S. House of Representatives, with most of the battles occurring over open seats. It is unlikely that Republicans will gain enough seats to overcome the Democrats' present 253 to 182 advantage. History suggests that the Democrats could solidify their control of the House: in mid-term elections in a President's second term, the party out of power in the White House usually gains seats. There will also be important races in 1986 in the states, where 34 of 50 governors are Democrats and two-thirds of the legislative houses have Democratic majorities. Just as Republicans must defend a disproportionate number of U.S. Senate seats, Democrats have to defend a disproportionate number of governorships. Because 27 of the 36 governors before the voters in 1986 are Democrats, opportunity is rich for Republican gains. The activity of the presidential contenders in both parties as they position themselves for the 1988 election will also be worth watching. The demands of building a national organization, and the intense competition for supporters and resources, drive contenders to increasingly early and elaborate efforts.

Given the high stakes, politicians at all levels are trying to come up with ways to appeal to apparently more open-minded voters. Voter affiliation with either party is at best loose. Recent polls show that the public's preference for political parties is nearly even, but that almost a third of the public identifies with neither party. Politicians are now looking past President Reagan and searching for themes that can win the voters' allegiance in future elections.

These politicians spend a lot of time arguing among themselves about the best way to appeal to American voters. Some favor an emphasis on issues; others stress broad themes. Issue-oriented politicians think voters decide on the basis of issues, like social security, the nuclear freeze, or the high deficit and interest rates. They believe that the way to win elections is to identify the issues most important to voters, then charge the opponent with being wrong on those issues and out of touch with the views of the majority. This issue approach is used in every election, and is especially popular in congressional campaigns. On the basis of some statement or vote, a political opponent is labeled a "big spender" or "soft on communism" or "lacking compassion" or "favoring the rich". One problem with this approach today is that, just eleven months before the next election, they do not detect an issue of overriding importance to the voters. They tend to think that now, with no crisis or great division, local issues will dominate the election, and that the personal, financial and organizational strengths of individual candidates will be more important than national trends and issues.

Another approach, popularized by President Reagan, deemphasizes specific issues, and stresses warmth, emotion, and personal values. In 1984, the President was successful in making people feel good about themselves and their country, and upbeat about their prospects. He was often more interested in creating a mood than in arguing about issues. His idea was that people vote more by how they feel about the candidate and general conditions, and less by their feelings on specific issues. Other politicians favoring this approach stress that people between 30 and 45 years of age cast a disproportionate number of votes, and tend to be the least ideological of all age groups, largely because they are preoccupied with family and personal concerns. Perhaps more than other voters, they are attracted to candidates who emphasize broad themes. Candidates who have a five-point plan for every problem do not make as good an impression on these voters as do those who appeal to values and life-styles. This approach worked well for an incumbent president in 1984 in a campaign dominated by television. A similar approach might not work as well for a challenger in a lesser race.

My view is that politicians must be cautious in choosing between these approaches. They must be ready to appeal to some voters on issues, and to others on broad themes. Recently I have come to believe that voters are concerned more with broad themes and general conditions, and somewhat less with specific issues. Above all, voters want government to keep the economy in reasonable order so that they can continue to provide for their families and tend to their concerns. They also want the government to keep the country out of needless military conflicts. In times when the economy is working reasonably well, and no military crisis looms, most voters will give politicians decent, if not high, grades.

I think that efforts to assess blame do not have as much effect on elections as politicians think. I do not find voters especially interested in efforts by politicians to place blame for failures or to claim credit for successes. Many voters do not have time to monitor closely the intricate political maneuvers in Washington, or to try to distinguish which party has a better approach to specific issues. They have more important and immediate things to do and to think about—principally, the conditions they face in their daily lives: Do they have jobs? Are prices going up? Is a war imminent? Announcing or denouncing specific policies undoubtedly has some effect on the outcome of elections, but I think that for most voters the issues are less important than their general feelings about the economy, security and the candidate.

Politicians may argue over the tactics and issues for 1986. They agree the stakes have rarely been higher.

ILL TREATMENT OF UNDOCUMENTED WORKERS

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. COLEMAN of Texas. Mr. Speaker, as the House continues the debate on the reformation of immigration policy and the evaluation of the many issues involved, it is disappointing to read about the certain actions and beliefs of key administration officials charged with carrying out these policies.

The most recent Time magazine contains an article on Harold Ezell, the western regional commissioner for the Immigration and Naturalization Service, who apparently believes that acting out his Rambo fantasies by tearing up and down the Southwest border arresting illegal aliens is "fun," to quote him.

Aside from the fact that Mr. Ezell cannot even pretend to be qualified for the position he holds—his sole reason for having the job is the fact that he worked for the President in both his gubernatorial and Presidential campaigns—Mr. Ezell's philosophy on what should happen to those undocumented workers found in this country is summarized by saying: "If you catch 'em, yu ought to clean 'em and fry 'em yourself."

Now, Mr. Speaker, I am sure that most thinking people would recognize the depth of ignorance portrayed by such a statement on such a complex issue. What troubles me is that such a thing could be stated publicly by a Government official charged with at least having the semblance of being capable of performing his job without lapsing into tasteless "tough guy" posturing.

Racism has a thousand faces, Mr. Speaker, and I believe that Mr. Ezell, through his statements, has added his portrait to this collection.

HOUSE OF REPRESENTATIVES,
Washington, DC, January 14, 1986.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: I would like to call to your attention an international incident which has developed in El Paso, Texas, over the last three days which the Federal Gov-

ernment has been either unable or unwilling to resolve.

The Immigration and Naturalization Service (INS) has refused entry to a band of about fifteen Mexican Indians who are in the process of making a walking pilgrimage from Mexico City to Los Angeles. The pilgrimage is designed to honor an ancient Aztec ruler. Because this band of Indians lacked the requisite papers for entry into the United States, the INS remains reluctant to act.

Based on conversations between members of my staff and representatives of both the INS and the Department of State (DOS), it appears that there is some degree of confusion as to which agency has primary jurisdiction in this area. It is also apparent that in order for a waiver to be granted to the Indians for normal visa requirements, certain conditions must be met.

I would appreciate your immediate intervention into this matter so as to guarantee a timely response on the part of our government to this problem in order to prevent the escalation of this issue into an international debacle. I would also take this opportunity to formally request a waiver of all traditional requirements for entry into this country in the case of these Mexican Indians. Based upon my personal review of the situation, I am convinced that these Indians seek entry for legitimate reasons and that our government should do all within its power to facilitate their stated intentions of continuing the pilgrimage to Los Angeles.

With kindest personal regards, I remain

Very truly yours,

RONALD D. COLEMAN,
Member of Congress.

IN HONOR OF DR. MARTIN LUTHER KING, JR.

HON. BARBARA BOXER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1986

Mrs. BOXER. Mr. Speaker, I think Dr. Martin Luther King, Jr. would be surprised that we are gathered here today, joining with millions of other Americans in cities and hamlets, in churches and courthouses, around banquet tables and kitchen tables, to continue a celebration—long overdue—to honor him now and for every year there is a United States of America.

I think he would be surprised that he was awarded the highest of honors that we have given to just two other Americans—George Washington and Abraham Lincoln—a national celebration of their birthdays. We don't do that often.

Dr. King said of himself, "If any of you are around when I have to meet my day, I don't want a long funeral, and if you get somebody to deliver the eulogy, tell him not to talk too long."

Well, here we are, remembering him in a way he didn't ask for, in a way he couldn't ever foresee. I think he would have been surprised.

I'd like to be true to his memory. I won't talk too long, and I'll speak about the ideals he lived for, instead of about him. Dr. King didn't care about himself—"It really doesn't matter with me now, because I have been to the mountaintop," he said—but he cared unto death about justice, peace, and righteousness.

Dr. King gave his life to a mortal struggle that can never be permanently won, but can be permanently lost if we aren't ever-vigilant in our support for human dignity.

He knew that each of us must be a constant caretaker for freedom. He said, "I can never be what I ought to be until you are what you ought to be. And you can never be what you ought to be until I am what I ought to be."

He knew if he blinked on his watch, the light of individual freedom could flicker and fade. And you and I must know that if we are not as vigilant as Dr. King, then racism, sexism, and ageism—all of the terrible "isms" that add to the slavery of the human race—can rise to the forefront, making us the weaker and the poorer for it.

Today, if you turn your head and pretend not to see, there are those in the U.S. Justice Department who will reinterpret the U.S. Constitution to forbid equal access and equal opportunity for all. They call this interpretation a "color-blind" Constitution, and say it is superior to the Constitution that led to the outlawing of segregation, to the Voting Rights Act and to the beginning of fairness in our society.

Today, if you turn your head, there will be no one to hear the voice of Winnie Mandela in South Africa. If you turn your head, there will be no one to prevent the President from an executive order dismissing affirmative action.

Dr. King showed us how never to turn our head, even if we would be called "maladjusted."

He said: "If you will allow the preacher in me to come out now, let me say to you that I never did intend to adjust to the evils of segregation and discrimination. I never did intend to adjust myself to religious bigotry. I never did intend to adjust myself to economic conditions that will take necessities from the many to give luxuries to the few. I never did intend to adjust myself to the madness of militarism, and the self-defeating effects of physical violence. And I call upon all of good will to be maladjusted because it may well be that the salvation of our world lies in the hands of the maladjusted."

As we gather today in celebration, let's remember that we dishonor Dr. King if we honor the man without the message. Let us all resolve to live this and every day in the true spirit of Martin Luther King, for when one of us in the human race loses dignity because of another who may not like our skin color, our sex, our religion, or the way we live, then all of the human race loses. Let us each and every one of us remember that well and remember the meaning of this day all year long.

DISTINGUISHED PUBLIC SERVANT: EARL TOULOUSE

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. GEPHARDT. Mr. Speaker, it is through the dedication, professionalism, and zeal of public servants that our Nation's local, State, and the Federal governments are truly effective. Today I would like to pay tribute to a man who is the epitome of such a servant, Mr. Earl Toulouse. For 23 years as collector of revenue in Jefferson County, MO, Earl has made the collector's office into a professional organization that serves the county's taxpayers efficiently and effectively.

Throughout his tenure, Earl has worked with taxpayers and for taxpayers. When he assumed his position in 1962, the office had no filing system, no filing cabinets, and few employees. Earl has built the office into an efficient operation with professional staff whose first priority has always been serving the people fairly and honestly. It is quite a marvel that in all of his 23 years, the collector's office has been only 40 cents out of balance—a feat that both the public and private sector should strive toward. He has truly set a standard for effective government service.

Earl Toulouse has recently announced that this is his last term as collector of revenue. The third district wishes him a happy and healthy retirement. I ask my colleagues to join me today as I rise to extend my warm thanks to Earl for his contribution to public service.

Thank you Earl, and best wishes.

A TRIBUTE TO MRS. SHEILA MEYERS

HON. ROBERT E. BADHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. BADHAM. Mr. Speaker, I rise today to honor a truly outstanding citizen of my district, Mrs. Sheila Meyers of Fountain Valley, CA, upon her retirement from the Orange County Board of Education after a career of public service that has spanned more than 18 years.

In her years devoted to serving the needs of students, faculty, staff and parents of our community's fine public schools, Mrs. Meyers has demonstrated a broad scope of knowledge, expertise, understanding and care plus an immense capacity for hard work.

A recipient of the prestigious "Marian Bergeson Award" for outstanding school board service, Mrs. Meyers was first elected to the Fountain Valley School District Board of Trustees in 1968 after 2 years of service as chairman of the district's personnel commission. While a member of the board, she served two terms as president, two as president pro tem, four terms as clerk, and one as clerk pro tem. She was the district's representative at National and State school board conferences, served two terms as president of the Orange County School Boards Association, spent 7 years on the National School Boards Association Federal relations network and 8 years on the county committee on school district organization, including terms as chair and vice chair.

From 1980 to the present, she has been a member of the Orange County Board of Education, which has broad responsibilities for the education of hundreds of thousands of young people in a county of more than 2 million people.

Mrs. Meyers' commitment to the growth and betterment of her community does not stop

with its schools, however. She has played active roles through the years with the March of Dimes, the Fountain Valley Library, the PTA, the women's auxiliary of Fountain Valley Community Hospital, the Little League, the Cub Scouts, the YMCA, and the Golden West College Citizens Advisory Committee.

The honors bestowed on Mrs. Meyers during this active and extensive period of public service are many, including plaudits from the State legislature, the National School Boards Association, the California School Boards Association and the Orange County School Boards Association.

It is a distinct honor for me to present the outstanding accomplishments of Mrs. Sheila Meyers for your consideration and recognition. Here is the kind of personal, individual commitment and dedication that makes our Nation truly great.

RIGHT TO LIFE OF UNBORN CHILDREN

HON. RICHARD STALLINGS

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. STALLINGS. Mr. Speaker, today, on the 13th anniversary of the Supreme Court's Roe versus Wade decision, the attention of Congress and many throughout the Nation is focused on the issue of abortion. Although I realize this is a sensitive issue—one which many consider to be very personal—I cannot morally ignore it.

My feelings on this issue are deeply rooted in my life—a combination of my religious beliefs and lifetime commitments. Abortion is wrong, except in very rare instances such as when the life of the mother may be in danger because of the pregnancy. Fortunately, this belief is shared by a majority of residents of the Second District of Idaho.

During the recently completed session of Congress, I voted my conscience and consistently opposed legislation that would further encourage the morally wrong choice of abortion and as this new legislative year begins, I will continue to oppose legislation which promotes abortion or allows Federal dollars to be used to fund abortions.

I find statistics, which graphically show the number of abortions being performed in this country, staggering. Although it's very difficult to say for certain how many abortions are performed each year, the National Right to Life Committee estimates that 1,573,900 abortions were performed in 1985.

The legalization of abortion has had a dramatic effect on millions of couples who find adoption increasingly difficult. From 1957 to 1970, according to information from the National Committee for a Human Life Amendment, the number of children adopted rose annually from 91,000 to 175,000. However, since 1970, when abortion-on-demand first occurred in some States, the trend has reversed. During the first 5 years of legalized abortions, annual adoptions decreased 20 percent to 140,000.

There are many issues facing us in the House of Representatives this year. Protecting the lives of unborn children must be among our priorities. Toward this end, I am pleased to be a cosponsor of legislation introduced by Representative HAROLD VOLKMER which would amend the Constitution to define "person" to include unborn children for the purpose of the right to life guarantee.

As we begin a new legislative year, I remain committed to supporting legislation which supports the right to life of unborn children. I will continue to oppose legislation which supports abortion or promotes the use of Federal money to fund abortions. I hope my colleagues will join me in this effort.

DISARMAMENT BY STAGES

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. MARKEY. Mr. Speaker, Mikhail Gorbachev's recent arms control proposal should be carefully considered by President Reagan. Although Gorbachev's goal of complete disarmament by the year 2000 may not be reached, elements of the first two stages of his three-stage program are encouraging.

Gorbachev has placed the ball in President Reagan's court, and it is his turn to respond. It has become increasingly evident that unless star wars is restricted to laboratory research, no reductions in offensive nuclear weapons are possible. President Reagan should recognize the opportunities for progress inherent in the new Soviet proposal, and drop his stubborn insistence that star wars be completely insulated from arms control. If President Reagan does not do this, he will lose his best opportunity to realize his rhetorical goal of eliminating all nuclear weapons from this planet.

I would like to call my colleagues' attention to a recent Boston Globe editorial on this important issue.

The article follows:

DISARMAMENT BY STAGES

The Kremlin's proposal for staged reductions in nuclear weaponry and its three-month extension of the unilateral moratorium on test explosions are keeping political pressure on the Reagan administration.

The commitment to the elimination of nuclear weapons by the year 2000 with a "universal accord that such weapons should never again come into being" is the least important element of the proposal. As nuclear-deterrent forces are thinned toward the vanishing point, the weapons remaining would assume great importance. Thus, complete disarmament is a theoretical goal unlikely to be reached for decades, if ever.

The intermediate stages proposed by Mikhail Gorbachev are more realistic. They will have an impact on Western public opinion, which no doubt was the reason for the announcement.

In the first stage, lasting five to eight years, Gorbachev proposes a 50-percent cut in long-distance nuclear weapons, together with the elimination of medium-range missiles that the United States and the Soviet Union have based in, or targeted on, Europe. The superpowers would also freeze their tactical, or "battlefield," weapons.

In the second stage, beginning in 1990 and extending five to seven years, other nuclear powers such as Britain and France would eliminate their nuclear forces. The superpowers would cut their tactical weapons.

This two-step sequence represents a substantial Soviet concession. Previously, the Kremlin had insisted on being compensated for British and French forces targeted on the Soviet Union, to maintain equal warhead counts on both sides. This was one issue on which the 1983 round of negotiations to reduce "Euromissiles" foundered.

Now, the Russians have moved to the sensible position that the superpowers, with their far larger arsenals, should move first. Whether this initiative will lead anywhere hinges on the Reagan administration.

To negotiate any cuts in offensive forces, the administration will have to change its stance on space weaponry.

"Star wars" technology is an acceptable subject for laboratory research. But unless it is held short of testing outside the laboratory, it will block any chance of cuts in offensive weapons. This is the Soviet position, one that many Western security specialists agree with.

In recent months, Soviet arms-control positions have had increasing appeal to the Western public. President Reagan should modify his goals on "star wars" and muster the flexibility, initiative and realism needed to match Gorbachev's pace—and possibly steal his thunder.

MERCHANT MARINE ACT AMENDMENTS OF 1986

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. BIAGGI. Mr. Speaker, I am introducing legislation today that will help to reverse the critical decline of a vital national resource—the U.S.-flag merchant marine. Foresighted leaders have long recognized the strategic and defense importance of merchant ships. In peace, they are the links that assure uninterrupted commerce. In war, they are the only reliable supply lines for our overseas forces.

Since merchant vessels are such an important resource many nations have developed elaborate methods to support their fleets. Unfortunately, over the last few years we have abandoned many of the programs that helped our fleet compete on the world market. I have never believed our merchant fleet should depend on the Government for its survival. The level of Government subsidy should not be the factor that determines which companies survive and which fall. However, I do believe it is fair and reasonable for the Federal Government to step into the international marketplace and assure the scales are balanced.

This legislation is aimed at decreasing the Government's regulatory role by eliminating requirements that make our fleet uncompetitive while offering the bare minimal assistance necessary to preserve the balance between U.S.-flag ships and their subsidized competitors.

If you examine the U.S. role in the maritime marketplace, it is evident we have largely played not a promotional role but rather an equalizing role. Just as we impose countervailing tariff duties on foreign goods to offset for-

eign government subsidies so, too, we need to offset foreign government subsidies given to foreign-flag shipping lines.

The centerpiece of this legislation is to build foreign authority. Currently, U.S. operators who receive operating-differential subsidies are prohibited from purchasing vessels built in a foreign yard. Since the elimination of the ship construction subsidy in 1981, it has not been financially feasible for U.S. operators to purchase vessels in the United States because U.S.-built ships cost two or three times more than foreign-built ships. Vessels obtained under this provision would be eligible for a 5-year subsidy for crew costs and insurance. Currently, subsidized operators receive subsidy for 20 years. The shorter subsidy period for foreign-built vessels will reduce Federal Government outlays while still offsetting foreign subsidies for the first 5 years a vessel is under U.S. registry.

Other important provisions of the bill relate to the Cargo Preference Program and will meet some of the past criticisms of the program.

First, the legislation will eliminate the prohibition barring reflagged vessels from the preference trade for their first 3 years under the U.S. flag. By increasing the pool of available vessels this provision will reduce the cost of the Cargo Preference Program.

Second, the legislation addresses the complaint that cargo preference rates are sometimes incorrectly based on the assumption that vessels carrying preference cargo will return to the United States empty. The legislation still allows operators to charge rates based on the assumption that they will not be carrying cargo on their return trip. However, the bill provides that if a ship carries cargo on any portion of the back haul, or if the vessel is scrapped while overseas, the operator wil be required to refund a portion of the money he received for that voyage to the Government.

Finally, the bill provides for the exclusive use of U.S.-flag vessels for the shipment of U.S. mail. This provision constitutes Government recognition that companies operating U.S.-flag ships should be given preference over foreign shipping companies. If U.S. vessels are not available at fair and reasonable rates or if U.S. vessels cannot provide sufficient service, the Postal Service would be permitted to use foreign-flag vessels.

Other provisions in this legislation though mainly technical, will streamline the administrative process and further deregulate the ocean shipping industry.

Let me assure my colleagues, I do not see this bill as a panacea for the shipping industry. Certainly, during consideration of this legislation other useful proposals may be presented. I only hope this bill will be a useful first step leading to the enactment of meaningful legislation that will help U.S. carriers compete more effectively while reducing Government outlays.

THE DRUG THREAT TO NATIONAL SECURITY

HON. LAWRENCE J. SMITH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. SMITH of Florida. Mr. Speaker, when the administration talks about threats to our "national security," it usually refers to the adventurism of the Soviet Union. But, another threat exists—drugs.

I, therefore, am flabbergasted by reports that the fiscal year 1987 budget may decimate the Customs Service—one of the agencies that is battling the drug threat to our security.

According to these reports, Customs will lose $69 million. About half will come from a decimation of the Customs Air Service. This cut would ground the P-3A aircraft that just now are being used to track drug traffickers entering south Florida.

I am reminded of what nearly occurred several years ago. The administration wanted the Defense Department to handle Customs' Air Interdiction Program, but the Pentagon refused. Congress finally insisted on maintaining the Customs program to prevent a reduction in our antidrug efforts.

Mr. Speaker, it is time for this administration to realize that drugs are as important a threat to American society as communism. Rhetoric will not stop drug traffickers. And neither will the Customs Service if we accept these draconian reductions.

MIAMI HERALD EDITORIAL COMMEMORATES REAGAN'S DECISION TO HONOR SALT II TREATY

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. FASCELL. Mr. Speaker, an important editorial came to my attention recently regarding U.S. policy toward the SALT II Treaty—the strategic arms limitation treaty signed in 1979, but never ratified. Published in the December 26, 1985, Miami Herald, the editorial emphasizes the key role the SALT II Treaty has played in limiting the number of long-range missiles that either superpower may deploy.

In a letter sent to the President in mid-December I described the President's decision last June to follow a policy of not undercutting the SALT II Treaty as a testament to his commitment to achieving mutual and verifiable arms control agreements. I also urged him to continue U.S. adherence to the treaty.

The President reaffirmed his commitment to the treaty when he recently decided to continue U.S. adherence to the SALT II Treaty after its expiration on December 31, 1985.

As the editorial points out, "the United States and the Soviet Union both have dismantled weapons whose continued existence would have placed them in violation of SALT II limitations." Moreover, while it "has been a bleak year for arms control, the President's decision to continue honoring SALT II averts a costly step backward." I might also add that the President's decision averts a potentially destabilizing impact on the United States-Soviet arms control negotiations in Geneva.

I encourage my colleagues to carefully read this editorial commending the President's decision to honor the SALT II Treaty. The text of the Miami Herald editorial follows:

[From the Miami Herald, Dec. 26, 1985]

NUMBERS DO MATTER

After a year of ominous fulminations, President Reagan quietly has decided against trashing the SALT II Treaty when it expires on Dec. 31. Mr. Reagan's restraint offers welcome reassurance that neither he nor his key advisers have resigned themselves to resuming unbridled arms competition.

Mr. Reagan, mind, has never been a champion of SALT II. The Senate never did ratify the 1979 accords, which limit the number of long-range missiles (ICBMs) that either side may deploy. The President has criticized the treaty for countenancing what he perceives as a Soviet advantage in strategic weapons, and arms-control opponents within his Administration allege that repeated Soviet violations have rendered the agreement meaningless.

But even SALT II's critics concede that both sides have observed the weapons ceiling fixed in the treaty. In fact, the United States and the Soviet Union both have dismantled weapons whose continued existence would have placed them in violation of SALT II limitations.

Whether the number of strategic weapons that either side is permitted to deploy matters as much as the character of those weapons—their mode of basing their targetability, their usefulness in a pre-emptive strike—is a legitimate question. But it's a long way from there to the conclusion that numbers are irrelevant. Numbers do matter, if only because neither side can afford—economically, politically, or morally—to devote ever-increasing proportions of its resources to the production of strategic weapons.

It has been a bleak year for arms control, but the President's decision to continue honoring SALT II averts a costly step backward. If he is to build on his predecessor's modest arms-control legacy, Mr. Reagan must continue to reject any return to unrestrained arms competitions as vigorously as he rejects recourse to nuclear arms themselves.

PITTSBURGH AND ITS SUCCESSFUL TEACHING CENTER

HON. WILLIAM J. COYNE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. COYNE. Mr. Speaker, back in the late 1970's, the Pittsburgh public school system was experiencing some difficulties with a court-ordered desegregation directive and a general perception by disillusioned parents that public education was on the decline. Starting in 1980 the city school system, under the direction of Superintendent Richard C. Wallace, Jr., set about to cure the ailing educational system with a unique set of remedies. First, a workable desegregation plan was enacted calling on voluntary and mandatory

shifts in student assignment and then a "teacher center" was instituted.

I would like to take this opportunity to share with you the success Pittsburgh has had in rebuilding its inner city school system. In two articles recently run in the Christian Science Monitor the model teacher center program was discussed at some lenght. I would like to submit these articles for the RECORD.

THE ARTICLES

As Jake Milliones, school board president so aptly points out, "so much in education has to do with what you expect from students and teachers". The Pittsburgh system, through its instructional experiment, has made great strides toward the goal of teacher and student improvement.

[From the Christian Science Monitor, Jan. 10, 1986]

PITTSBURGH REBUILDS ITS INNER-CITY SCHOOL SYSTEM

(By Keith Henderson)

In the late 1970s, Pittsburgh public schools were stuck in a political quagmire.

The school board was locked in wrangling over court-ordered desegregation. Parents, disillusioned by both that struggle and what they saw as a general decline in public education locally, were whisking their children away to private and parochial schools.

A half dozen years later, those storm clouds have largely dispersed.

The city's schools now draw more praise than scorn. Theodore Sizer of Brown University, a prominent critic of public education, hails the city's efforts to "improve schools by helping teachers improve themselves." Eileen Dewalt, a parent volunteer at Pittsburgh's Schenley High School who had taken her son, Jason, out of the city school system, is now "impressed by what the public schools are offering."

What happened? First, in 1980 a workable desegregation plan was finally put in effect, mixing voluntary and mandatory shifts in student assignment. Then administrators and board members zeroed in on the "root cause of the desegregation movement—the quality of education," according to Richard C. Wallace Jr., the superintendent.

Among other things, the district set up a program called MAP (Monitoring Achievement in Pittsburgh) to establish districtwide goals for each subject—e.g., math, reading, writing—and for each grade level. It developed an "instructional model" (dubbed PRISM) that is now used throughout the system to train and evaluate teachers. And it converted an aging hulk of a high school—Schenley, formerly considered one of the worst schools in the city—into a teacher center, where instructors are given eight-week refresher courses.

The payoffs from all this are starting to roll in. Over the last four years all the city's public elementary and middle schools have risen above the national norm in academic achievement tests. In 1981, by contrast, almost half these schools were below that norm. The high school dropout rate is down to 21 percent, from 35 percent five years earlier.

And perhaps most gratifying, the flow of students away from the public schools has reversed. Some 3,400 children have enrolled over the past three years.

Dr. Wallace is widely acknowledged as chief architect of Pittsburgh's educational rebuilding effort. Seated in a spacious office in the block-long Greek Revival administration building, the superintendent recalled his initial task on taking the school district's reins in late 1980: to hammer together a firm list of priorities from a sprawl of "concerns and anxieties."

Working with experts at the University of Pittsburgh, he and his staff surveyed the community—children, parents, teachers, administrators—to see what was on people's minds.

The superintendent took his findings to the school board with the message that, as he put it, "This is what the district says are problems to be addressed." Leading the list: better student achievement, better evaluation of teachers and other personnel, and dealing with declining enrollments.

The board's unanimous approval of these and other priorities was "the most significant thing that's happened in the district," Wallace says. A few months later the board united behind the programs designed to meet those priorities, including the MAP, PRISM, and teacher center projects.

The big difference between now and six years ago, observes school board president Jake Milliones, a clinical psychologist by profession, is a firm emphasis on instruction. "And Dick Wallace is an instructional leader," he adds.

Among other things, the board wanted Wallace to get rid of incompetent teachers.

Instead of going at this as a "weeding out" process, the superintendent decided to view the task as "a strong effort to improve the performance of all the people in the district." That's where PRISM (Pittsburgh's Research-based Instructional Supervisory Model) came in.

"From my perspective," says Wallace, "it's the most important thing we've done—a massive staff development effort."

The tenets of good teaching included in the PRISM model—teaching to an objective, monitoring learners, consistent observation of teachers, among others—are hardly new. But Pittsburgh's thoroughness in promulgating them throughout a large urban school district is. This effort is part of what Dr. Sizer terms the city's "marvelous unwillingness to think that educational reform is simply a matter of testing and grades."

While some teachers have been fired—20 or so in the last three years—the emphasis, says Sizer, is on "not hassling them, but trying to get the best in them to emerge."

Superintendent Wallace explains that the job of teaching the PRISM model began with a four-member "staff development team" assigned to work with principals and supervisory people.

Individual teachers were brought into the program through the teacher center at Schenley High School. A similar center for elementary teachers is just getting under way at the Brookline Elementary School.

In some ways, the city's schools are building on inherent strengths.

For one thing, the district has independent taxing authority and a citizenry willing to support education observes Dr. Milliones. For another, the local teachers' union, an affiliate of the American Federation of Teachers, has been willing to work closely with the district to "professionalize" classroom work. And teachers' pay in Pittsburgh is unusually high—a district average of $35,000 a year.

There is little doubt, however, that innovations of the past few years have been crucial to turning the district around. But Milliones is quick to point out "there's still a ways to go." The board president, himself black, wants to see an even greater effort to close the gap between the achievement of white and black students.

"It's narrowing," he concedes, "but at a pace I'm certainly not satisfied with." In particular, he sees a need to further trim the dropout rate. "We cannot write off any of our kids."

So much in education "has to do with what you expect" from students and teachers, Milliones concludes. In that regard, certainly, Pittsburgh has made genuine strides.

[From the Christian Science Monitor, Jan. 13, 1986]

NEW LIFE FOR PITTSBURGH'S SCHENLEY HIGH

(By Keith Henderson)

Not long ago, Pittsburgh's Schenley High School had all the earmarks of a depressed inner-city school: deteriorating physical plant, an all-black student body, soaring dropout rate, and dismal academic performance.

But the school's image has shifted radically in the last three years. Beginning in 1983, Schenley became Pittsburgh's High School Teacher Center, a place where educators from all parts of the city can sharpen their classroom skills. The school attracted top teachers—180 applicants for 75 openings—district superintendent Richard Wallace recalls. "Magnet" programs such as international studies—designed to draw high-achieving students—were placed there. Physical improvements, including construction of a new gym, are under way.

Schenley is also piloting Pittsburgh's critical thinking" curriculum, aimed at getting high school students to wrestle with Kant, Bacon, and other classical philosophers. What goes on now at Schenley is a kind of multilayered education—for both children and teachers.

A visitor to Harry Bratsky's ninth-grade social studies class sees something akin to a college-level discussion seminar, with Mr. Bratsky firing questions. The students come back with some fairly spirited answers about social security funding and other issues.

A short walk down one of Schenley's cavernous halls, Roger Babusci—a former Pennsylvania "teacher of the year"—helps a class of 10 or 15 pupils negotiate the mysteries of punctuation. These students, from a mix of ethnic backgrounds, need help with fundamental language skills.

In the music room, Ralph Hill admonishes the girls' chorus, "You may not realize it, but you have to sing this Thursday in front of strangers. . . . Sing it now like you're going to sing it Thursday!" Dr. Hill is one of 25 clinical resident teachers (CRTs) at Schenley. They serve as mentors to other teachers in the district, along with handling regular classroom responsibilities of their own.

Four times a year, a new set of 46 to 48 teachers comes to Schenley to begin an eight-week training program. Their regular duties are taken up by replacement teachers assigned from the teacher center.

The first two weeks of the program are spent in seminars devoted to educational theory. The last six focus on applying that theory in Schenley's classrooms, under the tutelage of CRTs. Each visiting teacher conducts 12 classes during his or her stay. Conferences follows each class—a time for comment and useful criticism.

"We're trying to develop a collegial atmosphere," says Judy Johnston, director of the teacher center. Throughout the program, she explains, every effort is made to be "sure that observing of other teachers is seen as positive," not threatening. As many as 200 teachers were involved in drawing up

plans for the center, so it's less something imposed on them than something they helped shape.

Evaluations of those who've been through the program have shown clear gains in such areas as responsiveness to students and ability to concentrate on "the learning task," Dr. Johnston notes.

The training program at Schenley is scheduled to end after 1987. By that time all the high school teachers in the district—900 of them—will have taken part.

The "big-buck question," as Johnston puts it, is how well gains made at the center will be maintained. One key, she says, could be the role of department chairmen in the city's various high schools. They could be instrumental in reinforcing the teaching theory and practice learned at Schenley.

Meanwhile, students at Schenley have shown their own "dramatic improvement in achievement," according to superintendent Wallace. In language skills, for instance, test show 68 percent of the student body is at or above national norms. Three years ago the figure was 27 percent.

Even in "filtering out" the white students—the school is now 30 percent white—there has been remarkable improvement, adds Jake Milliones, president of the city's board of education. Not long ago Schenley was "thumbs down," he says. The main thing, in his view, is that a "climate of learning" has been built within the school and should persist well beyond the four-year run of the teacher center.

Wallace points out that the Schenley Teacher Center costs over $1 million a year and a Ford Foundation grant was crucial in getting the project rolling. He and others in the district, however, have few doubts that it's a sound investment in the future of education in their city.

CONGRESSIONAL SALUTE TO THE HIROSHIMA NIKKEI JIN KAI

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. MATSUI. Mr. Speaker, I am pleased to call to the attention of the U.S. Congress a monumental event in the history of the Hiroshima Nikkei Jin Kai. This exceptional organization will be marking its 80th year with an anniversary celebration and new year's party to be held in Sacramento on the afternoon of January 11.

The motivation behind the formation of this remarkable group was deep concern for immigrants coming to the United States from the Hiroshima Prefecture. One of the problems exacerbated by the language barrier was the difficulty of borrowing money from American banks. Based on trust and selfless desire to help, this group came together to assist those facing this serious problem. Over the years the responsibilities of this outstanding club have grown to incorporate those of the community while still generously attending to the special needs of its members.

Mr. Speaker, on behalf of the people of Sacramento, I want to commend this worthy group and offer my best wishes for continued success in all of its endeavors in the coming years.

IN RECOGNITION OF NEW YORK STATE SENATOR RICHARD SCHERMERHORN

HON. HAMILTON FISH, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. FISH. Mr. Speaker, today I call the Members' attention to an outstanding legislator from the great State of New York, State Senator Richard E. Schermerhorn. I do so on the occasion of Senator Schermerhorn's recognition by the Republican Committee of the town of Newburgh, NY, as "Man of the Year."

Dick Schermerhorn was first elected to the State senate in 1970, and is presently serving his eighth term in office. During the last 16 years, he has received a long list of awards from the State's uniformed service organizations, including police organizations and professional firefighters. The American Legion has honored the senator for his service in public office and for his Americanism. Senator Schermerhorn was the first recipient of the New York State Youth Bureau Award for Distinguished Services for "promoting the welfare of youth."

The senator enjoys membership in a variety of civic and fraternal organizations, and has served his community faithfully on many different levels. He is also the president of Richard Schermerhorn Insurance, one of the largest insurance agencies in the lower Hudson Valley.

It is only fitting that this dedicated elected official be named "Man of the Year" by those who know him well. He has served as a model of leadership and involvement for the people of the Hudson River Valley. His many years of hard work and service deserve gratitude and praise, and I join the Newburgh Republicans in thanking and commending State Senator Richard E. Schermerhorn.

HOLDING CYPRUS HOSTAGE

HON. MARK D. SILJANDER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. SILJANDER. Mr. Speaker, the Cyprus problem, which now spans more than 30 years, has been a matter of concern to the House for a number of years. It has now reached a critical point.

When the leaders of the Greek and Turkish Cypriot communities agreed to meet in New York a year ago, there was genuine hope that 4 months of proximity talks conducted by U.N. Secretary General Peres de Cuellar had succeeded in bringing the two sides close to a settlement.

Regrettably, the Greek Cypriot leader, Mr. Kyprianou, refused to accept the draft agreement put forward by the U.N. Secretary General.

Dissatisfaction with Mr. Kyprianou's action which led to failure of the summit prompted even the Greek Cypriot National Assembly to formally censure him twice.

Many observers have long suspected that Greek Prime Minister Papandreou has been encouraging Mr. Kyprianou's intransigence on a Cyprus settlement. Mr. Papandreou's intervention in the December Greek Cypriot elections, with a warning to the electorate against accepting a settlement formula unacceptable to Greece, was clearly designed to undermine support for the opposition parties, which had made Mr. Kyprianou's handling of the Cyprus negotiations the central campaign issue.

It is paradoxical indeed that Mr. Papandreou decided upon such an open intervention in the Greek Cypriot political process, considering his often proclaimed commitment to the principle of nonintervention in Cyprus.

Mr. Papandreou's action at this critical juncture will certainly have a negative effect on the Secretary General's ongoing efforts to find a solution to the Cyprus problem.

The Wall Street Journal, in a recent editorial titled "Holding Cyprus Hostage," focused on Mr. Papandreou's role in failure to make progress on the Cyprus issue. It clearly describes the current state of affairs, and I commend it to my colleagues.

[From the Wall Street Journal, Dec. 26, 1985]

HOLDING CYPRUS HOSTAGE

For years Greece's premier, Andreas Papandreou, has tried to compensate for his domestic shortcomings by thumbing his nose at both the North Atlantic Treaty Organization, which protects his nation, and the Common Market, which subsidizes it. This has often seemed more silly than sinister. But he has looked a bit nastier as he's tried to embarrass Turkey by flogging the Cyprus issue.

It's time for the Western democracies to sit on Mr. Papandreou. The Greek premier recently attacked a Greek Cypriot parliamentary opposition that had been promoting a more conciliatory line toward Turkish Cypriots. U.N. Secretary General Javier Perez de Cuellar has been trying to prevent total collapse of once-promising talks between Cyprus' resident Greek and Turkish leaders. The U.S. State Department is trying to lend its good offices as well. Finally, EC commissioner Claude Cheysson has been conducting negotiations for a customs union between Cyprus and the EC.

The latest haggling over trade benefits from the EC illuminates the real reason the much-lamented "Cyprus problem" has not been solved. The Greek Cypriots and their Greek guardians have had little incentive to do so. An exclusively Greek Cypriot government is recognized by all but Turkey as the only legitimate voice of Cyprus. Consequently it is Greek Cypriots who get the millions in aid from such institutions as the EC, UNESCO and the World Bank. A Greek Cypriot embargo against the north has helped ensure that Turkish Cypriots remain in relative squalor, dependent upon Turkey for sustenance as well as security.

This dismal state of affairs continues primarily because it serves Mr. Papandreou. So long as Turkish troops remain in North Cyprus to protect the lives and property of Turkish Cypriots, Mr. Papandreou can present Turkey as an imperialist aggressor. Yet while criticizing Turkey, he calls for Cyprus to be unified with Greece.

Now it's true that Turkish troops are in Cyprus and that they invaded the island in July 1974. But the Turks can legitimately claim that the invasion would not have oc-

curred had not Greek Cypriots abused their role as the majority population and had there not been a military coup against then President Makarios, who described it as an invasion by Greeks led by Greek officers. Greece was then run by the colonels who'd taken power through their own coup in 1967 and certainly were no heroes in the eyes of Mr. Papandreou and his fellow leftists. Yet Mr. Papandreou has not improved much on their Cyprus policy.

Turkey, for its part, has been moving closer to the West under Prime Minister Turgut Ozal. Joint European and U.S. recognition of a federated Cyprus would go a long way to guarantee the democratic rights of Turkish Cypriots and put pressure on the Greeks and Greek Cypriots to reach an accord with them. Such recognition could apply to Turkish Cypriot passports; it would entail allowing trade and communications to go directly to Turkish Cyprus and consulting the Turkish Cypriot leadership in any decisions affecting the island. Indeed, Western institutions like the EC and the World Bank should divide up the money earmarked for Cyprus between the two Cypriot states.

That the Turkish Cypriots still want an accord can be seen even in their 1983 statement of independence, where they hold out their hand to the south to join with them in a federal union. The main problem is to influence Mr. Papandreou, but we fail to see why that should be as hard as it has been made to seem.

PITTSBURGH ELKS GROUP CELEBRATES

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. WALGREN. Mr. Speaker, on February 16, 1986, the Pittsburgh South Hills Benevolent and Protective Order of Elks will celebrate the 118th anniversary of the founding of this order. This lodge is the first to institute Elks American Patriotism Day, a displaying of the colors. For this, the South Hills group was awarded the All-American Lodge Award in 1984 by the Pennsylvania Elks Association.

The Elks are to be commended for their unwavering patriotism and their contributions to our communities across the land. I would like to share with my colleagues the following background information on the Elks.

THE ELKS

The Benevolent and Protective Order of Elks is one of the oldest and largest fraternal organizations in the United States.

The first formal meeting was held on February 16, 1968, in New York City. Fifteen persons turned out, most of them young, undiscovered but budding artists who had gathered for companionship and to help their other out-of-work peers.

The idea caught on and spread to other groups and other cities. As it grew, the new organization broadened its membership base to include businessmen, professionals, farmers and representatives from other occupations.

Today there are more than 1.6 million members of the Elks in 2,280 local "Lodges" found throughout all fifty states and the District of Columbia. Over the years, these Lodges have evolved into the primary building blocks of the highly decentralized Elks organization. They provide recreational facilities for the entire family, but the Lodges are also the focal point for the many community service and charitable programs that have become an Elk tradition.

Early in its history, the Elks supported groups such as the Salvation Army and the Red Cross. In 1871, they staged a benefit for the victims of the great Chicago fire. Money was raised for victims of the Seattle fire and the Johnstown flood in 1889. And the Elks were the first on the scene to supply money and rescue assistance during the San Francisco earthquake of 1906. Today, disaster relief continues to play an important part in Elk activities.

Patriotism has also been a hallmark of the Elks. In 1907, the Elks became the first fraternal organization in the nation to mandate observance of June 14 as Flag Day. More than 40 years later, fellow Elk, President Harry S. Truman signed into order a declaration naming Flag Day as an official national holiday.

The Elks National Foundation, the philanthropic arm of the organization, was created in July, 1928, as an income-producing fund to help support national Elk projects and to supplement programs at the state and local Lodge levels. Each year, scholarships are awarded to 500 outstanding high school students across the nation. Emergency educational grants are also provided to children of members who have died or been disabled.

Foundation support of state association projects is based on a "revenue sharing" concept. Funds are provided to each state in proportion to the level of contributions made by individuals in the state. The Elks contributed $26 million in 1983 to support cerebral palsy research, veteran's hospital, retarded child care and to provide wheelchairs, recreational facilities and other aids to the handicapped.

The Elks devote a great deal of attention to youth programs. Lodges and individual members today sponsor more than 1,000 Boy Scout troops and 3,000 Little League teams, as well as Boy's Clubs and Camp Fire Girls Clubs.

But one of the most important youth programs in recent years has been the annual "Elks' Hoop Shoot," a national free throw shooting contest, for boys and girls from ages 8 to 13. Over three million youngsters from all fifty states participate yearly in the "Hoop Shoot" from local contest to the national finals where six champions were named.

The program, begun in 1972 on a national basis, provides spirited competition and the chance for youngsters to develop new friendships. Winners and their families also travel to state, regional and national competition, courtesy of the Elks.

RETIREMENT OF THOMAS R. CLARKE FROM TAYLOR CENTER HIGH SCHOOL

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. FORD of Michigan. Mr. Speaker, I rise today to honor Thomas R. Clarke, who is retiring from Taylor Center High School in my hometown of Taylor, MI.

Tom's retirement follows 33 years of service at Taylor Center High. In fact, Tom has been on the faculty since the school originally opened in 1953. Prior to this, he taught at Tennessee Tech and at Richman High School.

Tom's involvement with and concern for the youth of Taylor extend beyond the classroom. He has coached basketball, baseball, and track at Taylor Center.

Tom has also been active in a number of capacities with the Taylor Federation of Teachers. Tom has served as the treasurer, executive secretary and an organizer for the TFT.

The citizens of Taylor have benefited substantially from Tom's experience in the classroom and in the community. He will truly be missed by students, his fellow teachers, and other members of the community.

I want to take this opportunity to wish Tom, his wife Ruth and the rest of his family all the best as he begins his retirement.

SAKHAROV SIXTH ANNIVERSARY OF EXILE

HON. JOE MOAKLEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1986

Mr. MOAKLEY. Mr. Speaker, I rise today to offer my strong support for the resolution being introduced today to express the sense of Congress that Dr. Sakharov and his wife Yelena Bonner should be allowed to exercise the rights of expression and movement guaranteed to them by the Helsinki accords.

On January 22, 1980, Nobel laureate and human rights activist, Dr. Andrei Sakharov, was arrested and exiled for 5 years to the closed city of Gorky for criticizing Soviet actions. Now, 6 years later, despite his declining health condition, Dr. Sakharov is still in exile. The Soviets have denied proper medical attention to Dr. Sakharov and Yelena Bonner. Fortunately, Yelena Bonner was granted a 3-month visa to receive medical treatment in the United States. She was released from Massachusetts General on Monday 7 days after the triple bypass surgery with the hope of quickly recovering in a home environment of her children. While the surgery was deemed a success, Mrs. Bonner is reported to be in great pain during her recovery process. She has been allowed almost no phone contact with her husband during her visit and what little contact has been allowed has been jammed. Certainly this lack of direct communication has not been easy on Andrei Sakharov whose own health has been reported to be even more serious since his wife's trip to the United States.

Dr. Sakharov and his wife have been dedicated in their fight to preserve human rights and have suffered greatly. It is clearly time for this arbitrary, illegal, and inhumane term of imprisonment to end so that Sakharov and Bonner will finally be able to exercise their rights granted to them in the Helsinki accord. I would like to praise my colleague, BARNEY

FRANK, for his perseverance and leadership in this matter and join with him in sponsoring this timely and important resolution. I urge my colleagues to join with me in this effort and hope that they will continue to press the Soviet Union for the freedom of Dr. Sakharov and his wife.

Thank you very much.

INJUSTICES IN BUDGET BILL

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. COLEMAN of Texas. Mr. Speaker, today I am introducing a bill to remedy what I consider to be an injustice for the millions of Americans who have faithfully served the people of this Nation as Government employees and members of the military.

Mr. Speaker, my bill would reverse the injustice contained in the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177). My bill would remove all Federal civil service, military, and tier II railroad retirement and disability programs from the sequestration process and provide for full reimbursement of the January 1986 cost-of-living adjustment.

The conferees, whom I commend for their diligence and concern for fairness in deficit reduction, unfortunately overlooked this injustice. By including the cost-of-living adjustments for Federal, military, judicial, and railroad retirees, the Congress broke a good-faith contract with the employees of the Government and the Nation's rail systems. We broke a contract which stems over many years and has contributed to the well-being of millions of Americans in their sunset years of life. That good-faith contract, to provide a fair and equitable employer-employee sponsored retirement and disability plan, has allowed the Government to attract qualified men and women to carry out the duty of Government at a lower rate of compensation than they would have been granted in the private sector. In effect, these men and women in the public work force were promised a respectable retirement in return for a lower rate of pay during their years of labor. This system has worked and it has allowed the Federal Government to attain and retain qualified personnel. But last December, the Congress changed all of that. In the mad rush to defuse the deficit time bomb which truly threatens the economy of this great Nation, the Congress passed the Balanced Budget and Emergency Deficit Control Act of 1985. I supported that legislation because I believed then and now that further Government borrowing to finance our excessive spending would, in the long run, mortgage the future of this Nation. The conferees sought to draft a plan which would achieve a balanced budget by fiscal 1991, while at the same time ensure that the cuts were spread evenly over defense and nondefense spending, and that the poorest of the poor were protected from the automatic cutting measure contained in the bill. They did a worthy job and I commend them. However, somewhere in their deliberations, they overlooked the retirees who have given a lifetime toward the defense, operations, and movement of people and goods. The conferees were looking for every dollar they could find. But in taking away that dollar from the retiree, are we really contributing to deficit reduction while reducing the real purchasing power of millions of Americans?

Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177, provides that automatic spending increases shall be reduced as part of the sequestration order issued by the President to conform with the specific deficit level provided for fiscal years 1986 through 1991. These automatic spending increases, as defined in section 257 of the act, consist of 19 retirement and disability programs and 3 other Federal programs which are indexed to adjust with increases in inflation. Of these 19 programs, 13 are either Federal employee or military retirement and disability programs. My legislation would exempt all but one of these retirement programs and include the retirement program for tier II railroad retirement under the exemption contained in the bill. These programs, including tier II railroad retirement, would no longer be considered as automatic spending increases for purposes under the act. Therefore, cost-of-living adjustments for these programs would be protected in the same way as those for veterans' pensions and compensation. The bill would set as the effective date the date of the passage of Public Law 99-177, and therefore provide for the full reimbursement of the January 1986 cost-of-living adjustment for Federal, military, and tier II retirees. The cost of this exemption for fiscal year 1986 would be $993.6 million, according to the General Accounting Office report to the President, submitted January 21, 1986.

The programs exempted from being considered as automatic spending increases for purposes of the act and the U.S. General Accounting Office estimated fiscal year 1986 outlays are listed below:

[In millions of dollars]

Program	GAO estimate
Retirement and disability programs (section 257(1), part A):	
CIA retirement and disability system fund	(1)
Civil Service retirement and disability fund	534.5
Comptrollers general retirement system	(2)
Foreign service retirement and disability fund	5.9
Judicial survivors' annuities fund [3]	0
Military retirement fund	409.1
NOAA retirement	0.2
Railroad retirement tier II	18.0
Retired pay, Coast Guard	8.6
Retirement pay for commisioned Public Health Service Officers	2.3
Special benefits, FECA [4]	15.0
Tax Court judges survivors annuity fund [3]	0
Total, part A	993.5

[1] Amounts are classified and have not been included in totals.
[2] Less than $50,000.
[3] Benefits are indexed to general schedule, judicial, or executive level pay, which did not increase for fiscal ear 1986.
[4] Scheduled benefit increase was 3.4 percent.
Source: U.S. General Accounting Office.

In its report to the President, as required by the new budget law, the General Accounting Office calculates the amount of savings the Government will achieve through the suspension of the January 1986 COLA's for civil service, military, and railroad retirees will total less than $1 billion. That amount is 8.49 percent of the total $11.7 billion of cuts which need to be made in fiscal 1986. However, as the total of cuts necessary to meet the specified deficit levels contained in the law rises, to approximately $64 billion in fiscal 1987, the percentage share of savings made up through suspension of the COLA's will fall dramatically. Assuming that inflation stays constant, even with the new entrants into the retirement programs, the percentage value of the savings achieved through suspending the COLA's would fall to a level of approximately 2 percent in fiscal 1987. In the meantime, the real purchasing power of the retirees would have declined by at least 6 percent over this 2-year period.

Mr. Speaker, the law as enacted greatly punishes the Federal, military, and railroad retirees who have given of themselves so that we may live a more safe and secure life as a nation. It is a punishment for a crime they did not commit. In a mad rush to balance the Federal budget, which I agree must be done, we have substituted the welfare of those persons who have provided the goods and services to ensure our own well-being. For the last 5 years Federal and military personnel have willfully contributed to deficit reduction through pay freezes and COLA reductions. They have been more than glad to do their part. But as the law is now written, these retirees are a minority have been singled out unfairly. This law subjects only this minority to the annual threat of reduction in real purchasing power.

Mr. Speaker, I hope the House will join me in assuring the Federal, military, and railroad retiree community that this legislation will be given fair and swift consideration by the appropriate committees and the full House.

ANDREI SAKHAROV

HON. BARBARA BOXER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1986

Mrs. BOXER. Mr. Speaker, I would first like to commend my colleague, Representative FRANK, for calling this timely special order.

Tomorrow, January 22, 1986, marks the sixth anniversary of Dr. Andrei Sakharov's internal exile to the city of Gorky. To those of us around the world who are concerned with human rights, not one day passes where we do not think of the tragic imprisonment of the man who was called by the Nobel Peace Committee in 1975, "the conscience of mankind."

In demanding Dr. Sakharov's release, we must remember his contributions to the fundamental causes of world peace and human rights. Dr. Sakharov was one of the first scientists to call for a universal political commitment to stop the proliferation of nuclear weapons and to call for world disarmament.

Dr. Sakharov was also one of the first to state the idea that world peace and human rights are inseparable issues. He recognized that human rights without peace, or peace without human rights, is worthless. Dr. Sak-

harov constantly warned against sacrificing one for the other.

On January 22, 1980, Andrei Sakharov was arrested, stripped of his state honors, and sent into internal exile. Although 5 years is the maximum penalty for exile in the Soviet judicial system, Dr. Sakharov was never given a trial or charged with any official crime. Thus he remains in the closed city of Gorky, cut off from the world.

Mr. Speaker, time and again I have stood on this floor condemning the Soviets for their outrageous human rights abuses. But I am not discouraged. I simply keep in mind the words of Dr. Sakharov himself:

Our only protection is the spotlight of public attention on our fate by friends around the world.

I am sure that Dr. Sakharov would be the first to ask us not to forget that January 20 was the 38th birthday of Anatoly Shcharansky, who remains in prison for the crime of asking to join his wife Avital in Israel, and for pointing out Soviet violations of the 1975 Helsinki accord on human rights.

Today we again call on the Soviet Union to release Andrei Sakharov and Anatoly Shcharansky in the name of humanity and respect for human rights. Our voices will not be silent on this issue. As long as these men remain in prison, those of us who believe in the fundamental importance of human rights and justice will not be able to rest.

HILLSDALE COLLEGE, NATIONAL NAIA CHAMPION

HON. CARL D. PURSELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. PURSELL. Mr. Speaker, I rise today to bring tribute to a college which, although lacking the reputation of a football powerhouse, successfully stayed the course to win a national football championship last month.

Hillsdale College, long recognized as an outstanding academic institution located in the city of Hillsdale, MI, demonstrated athletic strength and prowess in becoming the 1985 NAIA national champions.

Just days before Christmas, the 1985 Hillsdale Chargers delivered their "championship gift" by playing to a 10–10 tie with the Central Arkansas Bears. As Head Coach Dick Lowry said after the game, "Winning a national title is not just for Dick Lowry or just the football team. It's for all of Michigan, it's for the Hillsdale people and for the college."

Undoubtedly, it was this spirited perspective which helped the Chargers bring home their first national title since starting a football program 91 years ago.

Mr. Speaker, I am proud today to represent Hillsdale College—and not just because they have won a national title. It is true that a national championship for a school such a Hillsdale College is a proud accomplishment, not having the athletic stature or recruiting clout of larger universities.

I am proud instead, because the determination and dedication of the Hillsdale players parallels that of the entire institution. To me, as well as many others, Hillsdale College serves as a hallmark for smaller educational institutions. And, Mr. Speaker, winning the 1985 championship reinforces that idea.

I ask my colleagues to join with me in congratulating the 1985 Chargers, and Hillsdale College on this fine accomplishment and in wishing them continued athletic and academic success.

DR. MARTIN LUTHER KING, JR.

HON. MARTIN FROST

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1986

Mr. FROST. Mr. Speaker, January 20, 1986, marked the first observance of our national holiday honoring Martin Luther King, Jr. Dr. King, from his cell in the Birmingham City jail, predicted that, "one day the South will recognize its real heroes." He was referring to all those who joined him in his courageous struggle for peace, justice, and freedom. On Monday, his prophecy came true in a way he could never have foreseen. Americans in all parts of our country, not just the South, joined together to pay tribute to a great national hero, Dr. Martin Luther King, Jr.

Dr. King's work with the civil rights movement began in Montgomery, AL, in 1955 and ended, tragically, in Memphis in 1968. In a span of just 13 short years, he provided leadership and focus for the civil rights movement, touched the world with his philosophy of nonviolence, and was awarded a Nobel Peace Prize for his efforts. In that 13 years, he changed the life of a nation and his influence continues to be felt nearly 18 years after his death. It's impossible to fully comprehend the real meaning his life had for every one of us, and for the generations that will follow us.

Martin Luther King, Jr., awakened in us the best qualities of the American spirit. He called upon us to put aside our fears, our prejudices, and to commit ourselves to the American ideal of liberty and justice for all. We saw him threatened, harrassed, jailed, and finally murdered because he would not abandon his dream. His courage gave us strength, and his words of love and hope gave us inspiration. He provided the voice for a generation's dream and, because of him, that dream lives on today.

Martin Luther King, Jr., devoted his life to fighting bigotry and injustice. Clear vision, courage, and determination were the hallmarks of his character. His memory provides, not just an example, but a challenge. It challenges us to believe, as he did, that "injustice anywhere is a threat to justice everywhere." It presents a special challenge to those of us in public life. It demands that we use the power of politics and of public office to pursue equal justice and true liberation for all Americans. Significant gains have been made but there is much work left to do. We must do all we can to see that our Government is just and responsive—in employment, in education, in health, and in public services. It is up to us to fulfill the dream that Martin Luther King, Jr., articulated so beautifully.

It's important, then, that Martin Luther King Day be more than a celebration of a great man's life. It must be an opportunity for all of us to reaffirm our own commitment to brotherhood and justice. When we quote his speeches, we must remember to live the lessons they teach us. When we praise him, we must remember that words alone are not adequate to honor his memory. We can only truly honor Dr. Martin Luther King, Jr., by working to complete the struggle for which he gave his life. We must remember his hope that "in some not too distant tomorrow, the radiant starts of love and brotherhood will shine over our great Nation in all their scintillating beauty." We must commit ourselves to putting aside those things which separate us and to working together toward that day. The memory of Martin Luther King, Jr., will truly be honored when every American is living his dream of peace, freedom, and equality.

A TRIBUTE TO MR. KENT M. PIERCE

HON. ROBERT E. BADHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. BADHAM. Mr. Speaker, I would like to take this opportunity to recognize an outstanding citizen of my district, Mr. Kent M. Pierce, for his years of service to the community and to his profession as a realtor. He recently completed his second term as president of the Huntington-Beach/Fountain Valley Board of Realtors in Orange County, CA, and is only the fourth person to serve twice in that capacity in the 25-year history of the organization.

As president of Coats and Wallace Real Estate, he has spent countless hours in volunteer service to the programs, events and activities of the board of realtors over the past 13 years. In recognition of his unselfish commitment to the growth and excellence of his profession, he is a past recipient of the "Realtor Associate of the Year" award.

During his tenure as a board officer, which also includes 5 years as a director, Mr. Pierce has established himself as a staunch defender of private property rights, a strong advocate of the realtors code of ethics and an active promoter of professional standards.

In addition to his work at the local level, Mr. Pierce has established himself as a statewide leader in service to the State Trade Association, the California Association of Realtors. He went first to serve as a delegate in 1975 and then served for 8 years as a member of the board. This year, he is regional vice president of the State organization, representing not only his home board but also the boards which serve the profession in more than two-thirds of Orange County.

Mr. Chairman, it is a distinct pleasure for me to bring this recognition to Mr. Kent Pierce. I am sure the pride in his accomplishments that is felt by his wife, Gianna, and their five daughters is shared by the hundreds of his colleagues with whom he has worked through the years.

HISPANICS IN THE LABOR MARKET

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. TOWNS. Mr. Speaker, Hispanic Americans constitute the fastest growing minority group in our Nation today. Unfortunately, we are often without the data necessary to develop public and social policies to address the needs of this population.

Hispanic educational and civil rights organizations have begun to fill this gap developing their own statistical information on Hispanic Americans. This information is particularly useful when it compares the various subgroups within the Hispanic community, that is, Cuban Americans, Puerto Ricans and Mexican Americans. One of the most recent efforts, in this regard, is a study by the National Council of La Raza entitled, "Hispanics in the Labor Market: 1980–85." This study provides some very important comparative analyses on Hispanics performance in the labor market. I have included this study for my colleagues' review. I am certain that the statistics found in the study will be useful to those who are concerned about the employment problems of Hispanic Americans.

HISPANICS IN THE LABOR MARKET: 1980–85

I. INTRODUCTION

Hispanic Americans are the nation's youngest and fastest-growing major population group. Their youth and relatively low levels of eduation pose especially intractable problems, suggesting that hard-core Hispanic unemployment and poverty will endure into the future.

The 1980 Census estimated the Hispanic population in the United States at 14.6 million, or 6.4% of the total U.S. population. The Hispanic community had a birth rate in 1980 of 106.5 births per 1,000 women aged 18–44, compared to the White rate of 68.5 and the Black rate of 84.0. This high fertility rate, which is well above "replacement" level, guarantees larger cohorts of children for years to come. These high birth rates, which stem partly from a higher proportion of Hispanic women of child-bearing age, reflect the low median age of Hispanics, which is 23.2 years as compared to 31.7 years for Whites, and 24.9 years for Blacks.

Hispanics are projected to account for at least 8% of the labor force by 1995. The Hispanic community is an increasing pool of potentially productive workers. However, the progress of Hispanics in the labor market is hindered by their low levels of education, employment, and earnings. Hispanics are the least-educated and the lowest-paid of all groups in the labor market. Hispanic workers are "distressed" workers—a phrase coined by Professor Daniel Saks of Vanderbilt University to identify large segments in the labor force who do poorly in the labor market despite good economic times.[1] As "distressed" workers, Hispanics are extremely vulnerable to shifts in the economy and to restrictive federal policies in education and employment and training.

II. LABOR MARKET STATUS

A. Education

Data from the Bureau of Labor Statistics reveal that Hispanics are the least-educated major population group in the country, and that the general Hispanic population has lower educational attainment than Hispanics in the civilian labor force:

MEDIAN SCHOOL YEARS COMPLETED BY THE CIVILIAN LABOR FORCE

[Persons 16 years old and over, 1980–84]

	1980	1981	1982	1983	1984
Hispanics:					
Men	11.7	11.6	12.0	12.1	12.0
Women	12.2	12.2	12.2	12.3	12.3
Blacks:					
Men	12.3	12.3	12.4	12.4	12.4
Women	12.4	12.5	12.5	12.6	12.6
Whites:					
Men	12.7	12.7	12.7	12.8	12.8
Women	12.7	12.7	12.7	12.7	12.8

A cursory analysis of the civilian labor force data may lead to the conclusion that there are only small differences in the educational levels of various segments of the labor market. However, these numbers only reflect the civilian labor force—the employed and the unemployed who are actively looking for work. It does not include the 1.2 million discouraged workers—those workers who have given up looking for jobs because of the prevailing economic situation or because of various personal factors such as age, or lack of education or training. This measure also does not include the chronically unemployed—those that founder in the job market because they are bereft of marketable skills. This measure also does not include women who are housewives, or persons who are retired from the labor force. Finally, this measure does not include that segment of the population between the ages of 14 and 16. This specific age group is very important to the Hispanic community since Hispanics appear to drop out of school earlier than do other groups of students. According to the Bureau of the Census, 9.0% of Hispanics 14–17 years old have left school without graduating, as compared to 5.3% of White youth, and 5.2% of Black youth.

If these excluded segments of the population were included, Hispanics appear more undereducated when compared to Blacks and Whites, as shown in the following data from the March 1981 Current Population Survey:

Median school years completed, 1981

[Persons 25 years old and over]	*Years*
White males	12.6
White females	12.5
Black males	12.1
Black females	12.1
Hispanic males	11.0
Hispanic females	10.5

The Current Population Survey measures a cross-section of the general population, whether in the labor force or not. Thus, it includes those segments of the general population who are excluded by data based on the civilian labor force.

A disproportionately high percentage of Hispanic youth leave high school without a diploma. Data from a 1979 Census Bureau study showed that 35% of Hispanics 18–21 years old had dropped out of high school as compared with 25% of Blacks and 15% of Whites. In 1983, only 50.3% of Hispanic 18–19 year olds had graduated from high school as compared to 75.6% of Whites and 59.1% of Blacks.

For certain groups of Hispanics, such as women, dropout rates are even higher. Hispanic females are more likely to drop out of school than are Hispanic males, and are more likely than other groups of women to be high school dropouts. Census data from 1980 showed that by age 17, 20.9% of Hispanic females have left high school without a diploma. In 1979, of Hispanic women aged 16–24, 34.2% were high school dropouts as compared to 31.5% of Hispanic males, 12.8% of White females, and 20.0% of Black females.

Education is the single most important human capital characteristic in terms of its direct correlation on future earnings. A study using data from the 1976 Survey of Income and Education and the 1970 census found that Hispanics have lower returns to education than Whites. For example, White men earned 6.1% more for each additional grade of school completed, whereas Mexican men earned 5.4% higher wages per school grade completed, Puerto Rican men earned 3.6%, Cuban men earned 3.5%, and Black men earned 4.9% [2]

These findings are consistent with the results of a 1982 research project of the National Council of La Raza which analyzed data from the March 1981 Current Population Survey and found that Hispanics, both males and females, received less income for each additional year of schooling than did Whites. Hispanic women were worse off in this regard, as they earned only an additional $271.93 per year for each year of education received, while Hispanic males earned $524.84, White females $544.51, and White males $870.91.[3]

B. Labor force participation

The labor force participation rate measures the percent of those persons age 16 and over who are either employed or actively seeking employment. Table 1, attached, reveals that in 1984 Hispanics recorded the highest labor force participation rate of any major population group.

Hispanic men have higher labor force participation rates than White or Black men. Some economists believe that the higher overall labor force participation rate reflects the fact that the current Hispanic male population in the United States is, on average, younger than the non-Hispanic male population (in 1983, 49.7% of the adult Hispanic men were between the ages of 20 and 34 as compared to 39.1% for all adult men) and young adult men traditionally have higher labor force participation rates than older men.[4]

Hispanic women, like all women, have lower labor force participation rates than men. This is primarily due to the traditional cultural belief that women should remain at home and raise the family. However, in

[1] Saks, Daniel H., "Distressed Workers in the Eighties," Committee on American Realities, Report No. 1, 1983.

[2] Reimers, Cordella W., "A Comparative Analysis of the Wages of Hispanics, Blacks, and Non-Hispanic Whites," Hispanics in the U.S. Economy, edited by Borjas and Tienda, Institute for Research on Poverty, University of Wisconsin-Madison, 1985.

[3] Verdugo, Naomi, "The Effects of Discrimination on the Earnings of Hispanic Workers: Findings and Policy Implications," Hispanic Youth Employment Research Center, National Council of La Raza, July 1982.

[4] Roth, Dennis, "Hispanics in the U.S. Labor Force: A Brief Examination," Congressional Research Service, Economics Division, Library of Congress, August 1, 1984.

recent years, the growth of the labor force is due to the increasing numbers of women entering the workplace. In the last quarter of calendar year 1981, 47 million working women accounted for about 43% of the work force. Such growth equaled two-thirds of the total labor force increase during 1981. Hispanic women still have somewhat lower labor force participation rates than other women (49.9% in 1984, compared with 53.3% for White women, and 55.3% for Black women), but Hispanic women's labor force participation increased slightly more between 1981 and 1984 than did participation rates for other women (a 4.4% increase, compared to 4.1% for White women and 4.0% for Black women).

C. Occupational distribution

In 1984 Hispanic workers were especially concentrated in the following occupations:

1. Technical, sales, and administrative support, where 25.8% of Hispanics in the civilian labor force are employed, compared to 30.9% of the total labor force. Over half of Hispanics (60%) employed in this category are concentrated in administrative support, including clerical work.

2. Operators, fabricators, and laborers, where 25.0% of Hispanics in the labor force are employed, compared to 16.0% of the total labor force. Over half of Hispanics (55%) employed in this category are machine operators, assemblers, and inspectors; one-fourth (27%) are handlers, equipment cleaners, and helpers.

3. Service occupations, where 17.6% of Hispanics in the labor force are employed, compared to 13.5% of the total labor force. Excluding private household and protective service occupations, over four-fifths of Hispanics (83%) employed in this category are concentrated in jobs such as cooks, dishwashers, cleaning service workers, and food counter workers.

Hispanics are underrepresented in the managerial and professional occupations, where only 11.8% of Hispanic workers are employed, compared to 14.0% of Black workers, and 24.0% of White workers. On the other hand, Hispanics are overrepresented in the agriculture industry, where 5.7% of Hispanics are employed, compared to 2.7% of Black workers, and 0.35% of White workers.

D. Earnings

The occupational concentration of Hispanics is within those jobs which require a low level of skills and are low paid. The following table identifies the three occupational categories with highest concentrations of Hispanics, and lists their corresponding median weekly earnings:

Occupation and median weekly earnings, 1984

	Dollars
1. Technical, sales, and administrative support	300
Administrative support, including clerical	273
2. Operators, fabricators, and laborers	287
Machine operators, assemblers, inspectors	279
Handlers, equipment cleaners, helpers	250
3. Service occupations	208
Service, except private household/protective	200

Hispanic men and women earn the lowest wages in the labor market. In this regard, Hispanic women are worst off, earning only 52% as much as white men, while Hispanic men earn 71% as much as white men. For the first quarter of 1985, the median weekly earnings by sex and ethnic origin, for individuals 25 years and over, were as follows:

Median weekly earnings, first quarter 1985

	Dollars
White men	452
Black men	325
Hispanic men	319
White women	293
Black women	255
Hispanic women	237

For the total Hispanic workforce, this pattern of lowest median weekly earnings is a recurrent one, as the following table indicates:

MEDIAN WEEKLY EARNINGS

	1980	1981	1982	1983	1984
Total White	$265	$292	$307	$321	$339
Male	321	353	374	397	403
Female	203	220	243	253	264
Total Black	208	236	247	257	265
Male	246	264	279	299	304
Female	184	204	214	231	242
Total Hispanic	207	223	242	250	256
Male	236	251	263	274	286
Female	170	188	203	209	224

The low wage levels of Hispanics in the U.S. are a result of varying factors. For some Hispanics, such as Mexican origin workers, the low level of education is the major source for the wage discrepancy. However, discrimination still plays a significant role in determining the wages earned in Hispanic workers. In this regard, the wage levels of Puerto Rican and Central and South American men appear to be determined by discriminatory practices to a greater degree than the wage levels of other Hispanic subgroups.

Professor Cordelia Reimers in her study, "A Comparative Analysis of the Hispanics, Blacks, and non-Hispanic Whites," found that the average wages offered to minority men are at least 15% below those offered to White men.[5] The Reimers study, based on data from the 1976 Survey of Income and Education and the 1970 Census, yielded the following findings:

1. The lower level of education of Hispanics was the single most important reason for the lower wages they received compared to non-Hispanic Whites.

2. Controlling for sex, age, race, education, and other observable characteristics, lower wages among Hispanic groups were attributed, in part, to employment discrimination. Puerto Rican and Central and South American men were found to experience the most employment discrimination.

3. Even if Puerto Rican wage earners received the same wages as other groups, their families would still have a lower income as a result of relatively low female labor force participation rates and the large proportion of female-headed families.

The following table indicates the wage differences between White men and minority men found by the Reimers study:

WAGE DIFFERENCES

[In percent]

Group	Wage gap	Potential discrimination
Mexican	34	6
Puerto Rican	33	18
Cuban	16	−6
Central/South American	42	36
Black	23	14

Education was found to be the major source of differences in wage offerings. For Mexican origin men, education differences account for half (17%) of the 34% wage-offer differential; for Puerto Rican men, education differences account for 13% of the 33% wage-offer differential; for Cuban men, education differences account for 5% of the 16% wage-offer differential; for Central and South American men, education differences account for 3% of the 42% wage-offer differential; and for Black men, education differences account for 10% of the 23% wage-offer differential.[6]

The Reimers study also found that differences in language fluency, time in the United States, work experience, race, age, armed forces experience, health and government employment are also sources of wage differentials. But, after all these factors are taken into consideration, a wage gap still remains, which can be attributed to discrimination. For Mexican origin men, this "discrimination" wage gap is 6%; for Puerto Rican men, it is 18%; for Central and South American men, it is 36%; and for Black men, it is 14%.[7] With regard to Cuban men, if their background characteristics were the same as those of White non-Hispanic men, the wage differential would be 6% in the Cuban's favor. This result may be explained by the fact that Cubans who immigrated to the U.S. before 1970 formed and maintained their own economic and institutional structure within a small geographic area.[8]

The Reimers study, though based on 1970 and 1976 Census data, corroborates the findings of a 1982 research project of the National Council of La Raza. This research project analyzed data from the March 1981 Current Population Survey and found that unequal opportunities faced by Hispanics account for much of the earnings gap. These inequalities, however, do not account for the total difference between earnings of Whites and Hispanics. La Raza's regression-based analysis evaluated the effects of the following variables on wage and salary income: age, sex, ethnicity, marital status, hours worked, occupation, employment sector (private versus public sector), and industry (which was divided into nine different categories). The results of the analysis indicate that even when all other variables are controlled—thus assuming that Hispanics are equally educated, trained, work the same number of hours, etc.—ethnicity alone appears to account for 14% of the wage differences between White and Hispanic males and 29% of the total difference in earning power between White males and Hispanic females.[9]

[5] Reimers, op.cit.

[6] Ibid, p. 52.

[7] Ibid, p. 53.

[8] Sullivan, T., "Differential Success Among Cuban-American and Mexican-American Immigrants," Report to the United States Department of Labor, Employment and Training Administration, 1979.

[9] Verdugo, op. cit.

E. Unemployment

Hispanics face severe, continuing unemployment and underemployment. During both good and bad economic times, unemployment among Hispanics is usually 60% higher than that of White Americans. Table 2, reveals that double-digit unemployment has been a pattern for both the Hispanic and Black communities during the last five years. In October 1985, the official unemployment rate was 7.1% for the total population, 6.1% for Whites, 15.0% for Blacks, and 11.3% for Hispanics.

The official rate of unemployment does not include long-term discouraged workers, or persons working part-time for economic reasons. When the 1.2 million discouraged workers and 5.5 million part-time workers are added to the officially unemployed, the number of persons affected by unemployment climbs dramatically. In 1984, the official unemployment rate of 7.5% translated to a real rate of 13.6%. In June 1985, the overall official unemployment rate of 7.3% translated to a real rate of 13.0%; the official White unemployment rate of 6.5% translated to a real rate of 11.7%; the official Black unemployment rate of 14.0% translated to a real rate of 23.7%; and the official Hispanic unemployment rate of 10.6% translated to a real rate of 18.0%.

Table 3, ranks metropolitan areas according to incidence of unemployment. Three of the six metropolitan areas with the highest unemployment rates have a Hispanic population of three-fourths or more; among other areas in the top twenty, the concentration of Hispanics is significant. The McAllen, Brownsville, Laredo, and El Paso, TX metropolitan areas are border regions particularly vulnerable to the Mexican peso devaluations and the resultant loss of jobs. These regions were also hit by a severe freeze during Christmas 1983, which destroyed millions of crops and citrus trees and caused the unemployment rates among agricultural and food processing workers to climb dramatically.

III. CONCLUSIONS AND POLICY RECOMMENDATIONS

An analysis of the labor market data clearly shows that Hispanic workers occupy the bottom rungs of the labor market. Although they have a higher labor force participation and lower unemployment rate than Blacks, Hispanics are the least-educated and earn the lowest wages of any major population group in the country. However, Hispanics are a youthful subpopulation group with a vast productivity potential. Hispanics are projected to account for at least 8% of the labor force by 1995. Though national demographics will favor lower unemployment over the next 12 years as prime-age workers make up a larger share of the work force, the particular demographic trends of the Hispanic community indicate the opposite, since its high birth rates and lower median age mean that Hispanics will be entering the workforce at a high rate.

One long-range effect of this demographic trend is that the taxable salaries of Hispanic workers will be increasingly vital to the fiscal viability of many domestic programs, especially Social Security, which relies on withholding allowances of current workers for the support of current retirees. It is not unrealistic to envision an aged White population being supported by an increasingly non-White workforce. Therefore, changes in public policy, which recognize these demographic realities, are necessary in order to bring about greater parity in the labor market for minority subpopulation groups such as the Hispanic community.

The National Council of La Raza strongly supports the continuation and improvement of federal programs and policies which seek to eliminate the barriers to equal employment opportunities. A strong federal commitment to accomplishing equal access for minorities to education and employment and training programs is essential if Hispanics are to improve their labor market status.

Responsive policies from the federal government, policies which recognize the educational crisis faced by Hispanics, are crucial if Hispanics are to become productive workers. Education is inextricably bound to earning levels. Higher education not only raises wage rates, it also lowers the probability and duration of unemployment spells, which ultimately translate to lower earnings. However, research from the National Council of La Raza indicates that when certain variables are controlled—thus assuming that Hispanics are equally educated, trained, work the same number of hours, etc.—ethnicity alone appears to account for 14% of the wage differences between White and Hispanic males and 29% of the total difference in earning power between White males and Hispanic females. Thus, policies which eliminate discrimination in the workplace are also necessary.

Federal employment and training policies must address the issue of hard-core structural unemployment, that unemployment level which never disappears despite the economic progress made during a recovery. Hard-core structural unemployment primarily affects disadvantaged minorities and individuals who lack the education necessary to meet the needs of a changing economy. Current federal employment and training programs, such as the Job Training Partnership Act, must be adequately funded and structured in order to address the differing needs of the various segments of the labor market such as minorities, youth, dropouts, disadvantaged adults, dislocated workers, limited-English proficient persons, and women.

Hispanic workers are disproportionately vulnerable to shifts in the economy and to restrictive federal policies in education and employment and training. The growing Hispanic population will make up an increasing segment of the future labor force. Therefore, to enable Hispanics and other minority groups to make their full contribution in the future—and to assure a trained work force which can meet the future needs of the U.S. economy—human investment partnerships must develop between the public, private, and nonprofit sectors. The Hispanic community is a human resource, whose reservoirs must be tapped in order to maximize its work force participation and productivity potential. The investment should be made now in order to reap societal benefits and protect the nation's economic security tomorrow.

TABLE 1.—LABOR FORCE PARTICIPATION RATES BY RACE, HISPANIC SUBGROUP, AND SEX

[16 years and over—1980–84 annual averages; in percent]

	1980	1981	1982	1983	1984
Total White	64.1	64.3	64.3	64.3	64.6
Men	78.2	77.9	77.4	77.1	77.1
Women	51.2	51.9	52.4	52.7	53.3
Total Black	61.0	60.8	61.0	61.5	62.2
Men	70.3	70.0	70.1	70.6	70.8
Women	53.1	53.5	53.7	54.2	55.2
Total Hispanic	64.0	64.1	63.6	63.8	64.9
Men	81.6	80.8	80.0	80.8	80.5
Women	47.8	48.5	48.6	48.5	49.9
Mexican origin:					
Total	66.4	66.6	65.9	65.7	66.0
Men	84.2	84.0	82.5	82.5	81.8
Women	48.4	49.0	49.7	49.6	50.8
Puerto Rican origin:					
Total	51.6	50.0	51.2	42.2	52.3
Men	74.8	69.5	70.9	71.8	72.3
Women	34.3	34.7	35.7	33.0	37.7
Cuban origin:					
Total	66.0	64.4	63.3	68.4	67.0
Men	80.0	76.4	75.6	80.8	80.4
Women	53.1	52.8	52.1	57.7	55.6

TABLE 2.—UNEMPLOYMENT RATES BY RACE, SEX, AND HISPANIC SUBGROUP

[16 years and over—1980–84 annual averages; in percent]

	1980	1981	1982	1983	1984
Total population	7.1	7.6	9.7	9.6	7.5
Total white	6.3	6.7	8.6	8.4	6.4
Men	6.1	6.5	8.8	8.8	6.4
Women	6.5	6.9	8.3	7.9	6.5
Total black	14.3	15.6	18.9	19.5	15.9
Men	14.5	15.7	20.1	20.3	16.4
Women	14.0	15.6	17.6	18.6	15.4
Total Hispanic	10.1	10.4	13.8	13.7	10.7
Men	9.7	10.2	13.6	13.5	10.4
Women	10.7	10.8	14.1	13.8	11.0
Mexican origin:					
Total	10.3	10.5	13.9	14.7	10.8
Men	9.6	10.0	13.9	14.6	10.7
Women	11.5	11.3	14.1	14.9	10.9
Puerto Rican origin:					
Total	13.6	13.6	17.6	15.9	13.3
Men	13.1	14.2	17.3	17.0	12.3
Women	14.7	12.6	18.0	14.4	14.7
Cuban origin:					
Total	8.4	9.0	11.2	11.9	7.9
Men	9.0	9.1	10.8	11.6	9.0
Women	6.4	9.0	11.7	12.1	6.7

TABLE 3.—20 HIGHEST METROPOLITAN AREAS' UNEMPLOYMENT

[September 1985 Unemployment Rates (most recent), in percent]

Location	Hispanic population	Official rate	Real rate
McAllen-Edinburg-Mission, TX	81.3	21.3	38.3
Lakeland-Winter Haven, FL	3.0	14.8	26.6
Waterloo-Cedar Falls, IA	3.6	14.3	25.7
Brownsville-Harlingen, TX	77.1	13.9	25.0
Beaumont-Port Arthur, TX	3.4	13.6	24.5
Laredo, TX	91.5	13.4	24.1
Modesto, CA	15.0	12.3	22.1
Bakersfield, CA	21.6	11.3	20.3
Galveston-Texas City, TX	12.0	11.1	20.0
Stockton, CA	19.2	10.6	19.1
El Paso, TX	61.9	10.6	19.1
Gary-Hammond, IN	7.3	10.4	18.7

BROOKLYN'S POLYTECH, A STORYBOOK SUCCESS

HON. JOSEPH P. ADDABBO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. ADDABBO. Mr. Speaker, I would like to call to the attention of my colleagues an institution of learning which has rightfully earned the distinction as one of the finest and most successful technological schools in the Nation.

Since its inception in 1854 as a finishing school for young men, Polytechnic University has transformed into the largest technological university in the New York metropolitan area.

Comprised of a distinguished faculty and an outstanding student body, Polytech is both an innovator and a major contributor in the field of technology. Over the past 131 years, the Brooklyn university has played a key role in the research and development of microwave physics, radar, the space program and, most recently, electrophysics and polymer blends. Last year a $3.2 million research grant was awarded to the school to develop technology for the Star Wars Program. Polytechnic University's past achievements has been beneficial to all Americans and I am confident that the school's graduates and faculty will continue in their great contributions in high technology.

I would like to share with you an insightful article which appeared in the January 5, 1986, New York Times.

The article follows:

[From the New York Times, Jan. 5, 1986]

BROOKLYN'S POLYTECH, A STORYBOOK SUCCESS

(By Cynthia Sanz)

In a converted razor factory in downtown Brooklyn, across the street from a pizza parlor and a hardware store, resides a school whose contributions to science stand in wild contrast to its surroundings. Over the years it has been a key center of research in the development of microwave physics, radar, polymers and the space program. More recently it has played a key role in the promotion of Metrotech, a 16-acre academic-industrial research park in Brooklyn. And just this year the school—Polytechnic University, the newest of several names it has taken over its 131-year history—was awarded a research grant to develop technology for the "Star Wars" project, the Strategic Defense Initiative.

"We are the institution of the American dream," said Dr. George Bugliarello, president to Polytechnic. "We're scrappy and we're determined to be the best."

With a relatively small and unpretentious campus and buildings designed more for function than esthetics, Polytechnic University, the name it adopted last year, seems light-years away from the ivy-covered walls that usually accompany the image of academia. Founded in 1854 as the Brooklyn Collegiate and Polytechnic Insitute, the school was first an upper-class college-preparatory and finishing school for young men, as recalled by Prof. A. George Schillinger, chairman of Polytechnic's division of management, who came to the institute in 1957. In the late 19th century downtown Brooklyn grew as a commercial and residential area. In response the school altered its focus to training in engineering and the sciences; and in 1890 it became a college, changing its name to the Polytechnic Institute of Brooklyn. It retained the preparatory division until 1917, when it split off. By 1985 the college had outgrown its facilities and moved a few blocks away to its present, larger quarters.

The school's shift to a scientific curriculum reflected a change in the student pool from the wealthier group to an upwardly mobile middle class. These demographics remained stable until the 1930's, according to Professor Schillinger, when the school began to attract the immigrant groups that until that time had mostly attended City College.

Polytechnic has long had a distinguished faculty. Over the last half-century its members have included Herman Mark, a chemist in polymers, who came in 1930; Paul Ewald, an early leader in crystal physics and a founder of X-ray crystallography; Ernst Weber, an electrical engineer and an early leader of the university's Microwave Research Institute; and Donald Othmer and Raymond Kirk, who together edited the Kirk-Othmer Encyclopedia of Chemical Technology.

During World War II the Microwave Institute worked on problems whose solution led to the development of radar, and later broke ground in electromagnetic theory and electronics in general. In later years the university's aerospace department has participated in the space program, solving re-entry problems of the manned space capsules.

Enrollment at Polytechnic is 5,100, making it the largest technological university in the New York metropolitan area and the second-largest in graduate enrollment in the nation after the Massachusetts Institute of Technology.

But while its position now is comfortable, there were days not long ago when faculty members outnumbered students, and a $3.5 million deficit, despite state subsidies of more than $18 million, threatened to close the school for good.

The university began to experience severe budgetary difficulties in the late 1960's as a result of cutbacks in Federal science and engineering support and a general decline in engineering enrollment nationally. By 1970, having invested more than $4 million in teaching and research faculty and new laboratories, Polytechnic found itself left with very few students.

From 1969 to 1975, Polytechnic was forced to rely on state subsidies, which it obtained on the basis of its value as an engineering school and the economic hardship it would create locally if it folded. Despite the state aid, with no cushion of endowments to tide it over, Polytechnic was forced to merge in 1973 with New York University's School of Engineering and Science in the Bronx, another financially troubled private school, but one with enough students to help pay Polytechnic's bills. With the merger went another name change, to Polytechnic Institute of New York.

Over the next several years, Dr. Bugliarello and his staff managed to turn Polytechnic around. An intensive student recruitment plan increased enrollment, while the encouragement of early retirement pruned the faculty. The makeover did not end there. In the mid-1970's Polytechnic began an undergraduate engineering program at its Long Island campus in Farmingdale, which had previously been used only for research, and started offering courses through other universities in the metropolitan area. University administrators meanwhile were furiously pursuing research dollars and endowments.

After three and a half years of tightening its belt, Polytechnic managed to balance its budget, and in 1979 was able to achieve enough of a budget surplus to begin a program of capital reinvestment. "The moment we balanced the budget, we accelerated the tempo," Dr. Bugliarello said. "We started strengthening our computer program while most universities were ignoring theirs, and at the same time we reached out into previously unexplored areas. We began a technical management program and created the nation's only philosophy and technology studies center."

Of the 300 engineering schools in the United States, Polytechnic has the second-largest graduate enrollment and is among the most successful institutions in the country as a producer of science and engineering graduates who go on to doctoral studies. An average of 7.2 percent of Polytechnic graduates go on to achieve a PH.D., compared with two other schools with large engineering programs: Carnegie-Mellon, with an average of 6 percent, and Princeton, with 4.5 percent.

Today, Polytechnic is a full-fledged university generally rated academically in the top 5 percent of all U.S. colleges and universities, and is well known for its research centers in electrophysics and polymer blends. Last year the school was awarded a $3.2 million Federal Government grant to study the concept pulsepower physics—how to produce bursts of power—in space, for the "Star Wars" program.

Polytechnic is also designated the New York State Center for Advanced Technology in Telecommunications, and last year it played a lead role in organizing support for bringing to downtown Brooklyn the Metrotech complex, a 16-acre academic-industrial research park.

"Poly has a reputation of being the best," said Maria C Elevado, a computer-science junior at the school. She remembers applying for a part-time job with the New York City Department of General Services as a freshman and being called immediately to interview for the position. "They saw 'Polytechnic' at the top of my résumé and didn't even read any further," she said. "Simply by virtue of that name, I was chosen for the interview, and I'm sure it was at least partly responsible for my getting the job."

Remi Begonia Mendoza, a graduate student in technological management, agrees. Miss Mendoza says she would have left New York if she felt she could get a better technological education elsewhere, but after studying the alternatives, decided on Polytechnic. "Polytechnic is exploring new areas in this type of education," she said. "Most colleges don't offer such a wide range of courses in the field of technology." She is currently a senior flavor chemist at Pepsico.

"Poly is a breeder of entrepreneurs," said Dr. Bugliarello. "We see our mission as that of a catalyst in the economic development of the region."

The school hopes to give the New York area a strong center of academic support that will insure that it holds its place as the technological nerve center of the nation. "New York is one of those cities at risk," Dr. Bugliarello said. "People can easily move their operations somewhere else, someplace less expensive. But if we can provide an environment that cannot be found in other cities, then New York will continue to be extremely vital."

STOCKTON'S MAN OF THE YEAR—LEO D'OR

HON. NORMAN D. SHUMWAY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. SHUMWAY. Mr. Speaker, today I am pleased to ask that my colleagues join with me in hornoring the outstanding civic contributions of an equally exceptional individual, Mr. Leo d'Or, of Stockton, CA. Leo has just been named "Stocktonian of the Year" for 1985 by the Stockton Board of Realtors. This highly coveted award is given annually to the individ-

ual who has contributed beyond the call to the community, and Leo d'Or certainly qualifies as a fine recipient.

I would like to take the liberty of sharing with my colleagues a succinct and touching article concerning the full and wonderful life of Leo d'Or as it appeared in the Stockton Record, for which Leo labored by more than 35 years. He is well remembered and well loved by those who worked with him, those who know of his devotion to the community, and those who are just fortunate enough to know him as a fine human being.

STOCKTON'S MAN OF YEAR—LEO D'OR

(By Luanne Hyde)

Leo d'Or received a bill and a surprise Tuesday when he walked into a meeting of the Weber Point Coffee Club at the Holiday Inn.

The club's founder and president, d'Or has been known to rap his gavel during meetings and jovially tag a member with paying for the day's coffee.

On Tuesday, 35 members watched while Matt Marinkovich, 1985 president of the Stockton Board of Realtors, presented him with a large facsimile of a restaurant bill.

D'Or was asked to read the bill aloud: "Leo C. d'Or, You have been charged with being the 1985 Stocktonian of the Year."

The man who celebrated his 85th birthday two months ago almost missed the surprise announcement of his recognition. He was attending another meeting.

Once at the Holiday Inn. he said, "I can't believe it yet. I was in another meeting but they (club members) knew I'd come back here for coffee."

Chosen Stocktonian of the Year because of his involvement in community activities, d'Or will be honored by the Stockton Board of Realtors at a Jan. 23 banquet at the Stockton Golf and Country Club. Reservations, at $25, may be made by calling the board office at 951-9300.

Friends and former co-workers said Tuesday that active volunteering keeps the retired d'Or laboring as hard or harder than many who receive paychecks.

D'Or was employed by The Stockton Record for more than 35 years and retired in 1969. He began his career as a salesman, then became advertising manager, director of advertising and headed the department when he retired. Since that time, he has devoted much time to volunteering.

The indefatigable d'Or said Tuesday, "It's fun. The big thing is there are no deadlines."

When The Record's retail advertising manager, Fred Risso learned of d'Or's honor, he said, "I'm real excited about this. He's 85 years old and sharp as a tack. There's no one more deserving than Leo d'Or."

"D'Or worked here (The Record) when I started in 1944," Risso said. "He was always the most involved, caring person in Stockton and, through the years, his activities have increased."

Deputy Police Chief Ralph Tribble said, "Leo's the kind of guy that all of us try to emulate. At 85, he's still very active. His mind is brilliant. He is the master of one-liners."

"This club is one of the most upbeat organizations I belong to. Leo runs it with a fast gavel," Tribble said.

The nucleus of the club was formed in the 1940s when d'Or began dropping into Tiny's restaurant at 27 N. Sutter St. for morning coffee. Others joined him and later migrated to DeBono's on Weber Avenue, the Ambassador Hotel on Channel Street and finally the Holiday Inn. By acclamation, d'Or was chosen to lead the group.

The active Stocktonian has been selected for numerous other honors.

For maintaining high standards in the area of public relations, advertising and communications, d'Or in 1984 received the first Ken Fong Memorial Award, established in memory of the late local advertising firm owner. He also received the American Advertising Federation's Silver Medal Award for accomplishments in the field of advertising and civic betterment.

D'Or's concern for education led him to become a Waverly School District trustee and board clerk. He was an original member of the first elected San Joaquin County Board of Education, which he served as chairman for five years. He has also been treasurer of the San Joaquin County School Boards Association.

D'Or started many of the institutions he later served.

He was a founder of the Waterloo/Morada Fire Protection District and served as trustee and secretary for 12 years. He helped organize a lay board of trustees for St. Joseph's Hospital and served the board for 10 years, eight at chairman.

The San Joaquin County Board of Supervisors appointed him to the San Joaquin County Retirement Board and, in 1973, the Private Industry Council board, which he served as chairman for three terms.

In 1985, he received a commendation from President Reagan and the United States Department of Labor for assisting in making the Job Training and Partnership Act a success in San Joaquin County.

WHY UNITED STATES REJECTED NUCLEAR TEST BAN

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. MARKEY. Mr. Speaker, last week, Soviet General Secretary Gorbachev indicated that the Soviets will continue Moscow's moratorium on underground nuclear tests until April, and perhaps longer if the United States also stops testing.

The Reagan administration quickly indicated that it has little interest in joining this moratorium. It wants to keep on testing, contending that continued nuclear warhead testing is required for the United States to assure strategic "deterrence."

I find it somewhat incredible that a President who repeatedly says his ultimate goal is the elimination of all nuclear weapons from the face of the earth keeps ducking out of comprehensive test ban talks. If he really wants to eliminate all nuclear weapons, the President should be willing to talk about halting the tests needed to develop new warheads.

When the Soviets first announced their unilateral testing halt, the administration said that we wouldn't join because it was just a propaganda stunt.

But the Soviets have stopped testing. That's not just a stunt; they aren't testing their nuclear warheads and we're continuing to test ours.

As the attached chart indicates, the United States conducted 16 underground tests last year, 7 of them following announcement of the Soviet test moratorium. The Soviets conducted seven tests in 1985 prior to the announcement of their moratorium last July. They have not tested since that time.

I am convinced that the primary reason the administration refuses to enter into a testing moratorium is not its concern with the preservation of strategic deterrence nor its concern about verification. The United States has kept on testing chiefly because of the administration's desire to accelerate a key part of star wars program—the x-ray laser.

The most recent U.S. nuclear test, codenamed Goldstone, was reportedly a test of the nuclear-driven x-ray laser. Maintaining a rigid and accelerated test schedule for this program is so important to this administration that it denied a request from Representative BILL GREEN, myself, and 28 other Members of Congress to temporarily delay this test until technical problems with the design of these experiments had been rectified.

Star wars is not only an obstacle to progress in strategic arms reduction; it is holding up talks on a comprehensive test ban. The administration would better serve our national security interests if it stopped reaching for harebrained technological panaceas like the x-ray laser and committed itself to negotiations to end nuclear testing.

I would like to call to the attention of my colleagues a recent article by Fred Kaplan of the Boston Globe, which analyzes the administration's decision to reject a test ban.

The article follows:

[From the Boston Globe, Jan. 19, 1986]

WHY U.S. REJECTED NUCLEAR TEST BAN

(By Fred Kaplan)

WASHINGTON.—In the package of arms control proposals offered last week by Soviet leader Mikhail S. Gorbachev, there is one element that could instantly be put into effect—a ban on nuclear weapons tests.

Yet the Reagan administration has rejected this idea. The reason is simple. It has nothing to do with whether such a ban can be verified or whether it would make the existing U.S. nuclear arsenal less reliable. It is because the administration wants to develop new types of nuclear weapons, and this requires nuclear testing.

Last July, Gorbachev announced that, as of Aug. 6, the Soviet Union would suspend nuclear testing. The moratorium would last until the end of the year, and could be extended if the United States reciprocated.

Reagan spokesmen declined the invitation. They said a test ban could not be verified, and called the offer a propaganda hoax. They said the Soviets had just completed tests of a new series of nuclear weapons, and had indeed accelerated the test schedule so it could be finished before the suspension began.

One of those rationales for refusal was false, and the Soviets would soon make the other a moot point.

The falsehood was that the Soviets had just accelerated a series of new weapons tests. The data—gathered by the Swedish National Defense Research Institute, whose Hagfors Observatory has seismometers capable of detecting underground nuclear explosions in the Soviet Union down to the level of one kiloton—indicates otherwise.

COUNTING TESTS

In 1983, the Soviets conducted 14 nuclear tests. In 1984, they conducted 18 tests. In the first half of 1985, before the moratorium took effect, they conducted 7 tests, hardly an acceleration.

If one looks at the nuclear explosions the Soviets set off underground for nonmilitary purposes (to open up gas lines, for example), it appears that the number of those tests also declined just before the moratorium. In 1983, they conducted 27 such tests, including the "peaceful nuclear explosions." In 1984, they conducted 28 tests. Yet from January through July 1985, they conducted only 8 tests in all.

The United States conducted 17 nuclear tests in 1983, 17 tests in 1984, and 16 in 1985, 7 of them after Gorbachev's moratorium began.

There is also no way US officials could truthfully say the Soviets had just completed a series of tests on new nuclear weapons. While seismometers can detect a nuclear explosion and measure its magnitude, they cannot tell what weapon is being tested. Only a fraction of the total explosive yield of a weapon is exploded in a nuclear test.

This is because a hydrogen bomb is two bombs in one—a fission explosion, which triggers a fusion implosion. To see if it works, weapons designers need only test the fission element and its trigger.

Thus there is no way anyone could measure a US or Soviet underground nuclear explosion and infer from that which weapon was being set off, or whether the weapons were new or old.

VERIFICATION MEASURES

There is another reason for doubting the Reagan administration's view that Gorbachev's offer was merely propaganda. Since 1957, the Soviets have consistently conducted most—on average, 64 percent—of their nuclear tests in the latter half of the year. Had Gorbachev wanted to score political points, he would have stopped the tests in January.

As for the other US rationale for rejecting the Soviet test-ban offer-that it cannot be vertified—this was made moot last month when Gorbachev offered to allow the United States to place seismic detectors on Soviet soil and to permit US scientists to inspect Soviet test sites if any suspicions arose.

It has been reported that 26 U.S.-designed seismometers, already in place in Norway, can detect Soviet nuclear tests of roughly one-half kiloton. In testimony last April before the House Foreign Affairs Committee, Jack Evernden of the U.S. Geological Survey said an additional network of 25 seismic stations inside the U.S.S.R. "could successfully monitor compliance with a one-kiloton threshold test-ban treaty, even if such explosions were placed in large decoupling cavities." Opponents of a test ban have argued that a bomb exploded in a deep cavity could not be detected by seismometers.

As a result of this proposal, Reagan officials were forced to alter their rationale for opposing a test ban. They now say periodic testing of weapons in the existing arsenal is necessary to gauge their continued reliability, and is thus—in the words of Assistant Secretary of Defense Richard Perle—"indispensable to maintaining the credibility of our nuclear deterrent."

However, in 1978, Norris Bradbury, director of the Los Alamos weapons lab from 1945-70, J. Carson Mark, head of the lab's theoretical division from 1947-73, and Richard Garwin, a Los Alamos consultant since 1950, wrote a letter to then-President Jimmy Carter, saying: "Can the continued operability of our stockpile of nuclear weapons be assured without future nuclear testing? . . . Our answer is 'yes.' "

They said reliability could be, and had been, assured "almost exclusively" by other means—inspection and disassembly of components, firing fuses, and remanufacturing.

The real reason for the refusal to consider test-ban offers is that the Reagan administration wants to develop a new generation of nuclear weapons. For example, a leading program in the Strategic Defense initiative is a weapon that enhances the X-ray energy of an H-bomb and funnels it into a laser beam. The labs are also developing weapons that boost other aspects of a nuclear explosion, for example electromagnetic pulse, which wipes out communications networks.

These effects have never before been tried in nuclear-weapons design. Building such weapons means testing them first.

U.S. AND SOVIET NUCLEAR WEAPONS TESTS—1985

[January 1, 1985–December 19, 1985]

Date (1985)	United States (16 tests)	Soviet Union (7 tests)						
		Name	Location	Type	Yield (kilotons)	Date (1985)	Location	Yield (kilotons)
Mar. 15	Vaughn	Nevada	UG	20–150	Feb. 9	Semipalatinsk	UG	150
Mar. 23	Cottage	do	UG/X-Ray	20–150	Apr. 24	do	UG	75
Apr. 2	Hermosa	do	UG	20–150	June 14	do	UG	150
Apr. 6	Misty Rain	do	UG	–20	June 29	do	UG	120
May 2	Towanda	do	UG	20–150	July 18	N.E. USSR	UG/PNE	3
June 12	Salut	do	UG	20–150	July 19	Semipalitinsk	UG	60
June 12	Ville	do	UG	–20	July 25	do	UG	6
June 26	Mirabo	do	UG	–20				
July 22	Serena	do	UG	20–150				
Aug. 17	Chamita	do	UG	–20				
Sept. 27	Ponil	do	UG	–20				
Oct. 9	Mill Yard	do	UG	–20				
Oct. 9	Diamond Beech	do	UG	–20				
Oct. 16	Roquefort	do	UG	20–150				
Dec. 5	Kinibito	do	UG	20–150				
Dec. 19	Goldstone	do	UG/X-Ray	20–150				

Sources: U.S. Department of Energy, Swedish National Defence Research Institute (Hagtors Observatory), yield estimates for Soviet tests are based on calculations performed by Dr. Hugh DeWitt, LLNL.
Notes: UG = underground tests. PNE = Peaceful Nuclear Explosion. X-Ray = Reported X-Ray Laser Test.

ROBERT A. FUHRMAN

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. MINETA. Mr. Speaker, I would like to ask you and my distinguished colleagues to join me in saluting Robert A. Fuhrman, group president of Lockheed Missiles, Space, and Electronics Systems. Bob will be honored at a dinner on February 1, 1986, marking his departure from Sunnyvale to new duties in Burbank as president of Lockheed Corp.

In the 27 years that Bob has been associated with Lockheed Missiles and Space, he has been deeply involved in the U.S. Navy's Fleet Ballistic Missile Program from its inception, serving as a member of the Navy's steering task group, occupying successively higher technical management positions in the program, and receiving the Secretary of the Navy's Certificate of Commendation for his contribution. The fleet ballistic missile series—from Polaris through Trident—has been widely regarded as the Nation's most effective deterrent against nuclear war.

Under his leadership, Lockheed in Santa Clara County has become the bay area's largest employer and has continued its longstanding tradition of helpful involvement in the community's charitable and civic efforts. Bob has played a personal role in many of these efforts, including trustee of the United Way, chairman of its Loaned Executive Program for 3 years and general campaign chairman in 1978. He was a founding director of the Santa Clara County Manufacturing Group, served as its second chairman and has continued on the board for the group's entire history. Bob was a member of the San Jose Management Study's executive committee, the bay area council's board of directors, the advisory councils of Junior Achievement and the National Alliance of Businessmen, and Scout-O-Rama chairman for the Palo Alto-Stanford area Boy Scouts. He organized and recruited the leadership council for the Salvation Army's current $5 million capital fund campaign. Bob has served on the advisory boards at Santa Clara University and Stanford University, as well as the Universities of Michigan and Texas.

In his business activities, Bob is a member of the National Defense Science Board, the Aeronautics and Space Engineering Board of the National Research Council, and the Science Advisory Committee of the Alabama Space and Rocket Center. He has served on the boards of Bank of the West and the Federated Employers of the Bay Area and has been awarded Tau Beta Pi's Eminent Engineer Award, the Society of Manufacturing Engineers' Manufacturing Management and Industrial Technology Management Awards, the National Society of Aerospace Professionals John Montgomery Award for his role in the Polaris Program, the National Management Association's Silver Knight of Management and honorary memberships in Tau Beta Pi and Beta Gamma Sigma. Bob is a fellow of the American Institute of Aeronautics and Astronautics and was elected in 1976 to the National Academy of Engineering.

Bob's generous devotion of time to our area is a reflection of his own personality. I've known Bob for many years, and I've always been impressed with his sincerity, his spirit, and his high regard for the people around him. I've also come to know Bob as a friend, a friend willing at any time to devote himself to the betterment of our community and our Nation.

Mr. Speaker, on the occasion of this awards banquet, Robert A. Fuhrman can be confident that our country is most grateful for his contributions and accomplishments. Therefore, I ask you Mr. Speaker, and my colleagues to join in expressing my thanks and congratulations to Bob Fuhrman and to wish him the best for his health and future endeavors.

Thank you very much.

NOT TOO LONG AGO: "I HAVE A DREAM"

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. GARCIA. Mr. Speaker, in honoring the late Martin Luther King, Jr., it should be remembered that he died barely a generation ago. The movement he led is still alive; the "dream" not completely fulfilled.

Martin Luther King created the atmosphere that required action. To his great credit, this was all done by nonviolent means. He raised the conscience of this country and compelled us all to look at the inequalities that existed. Indeed great steps were taken in breaking down the barriers to equality; from voting rights to desegregation he accomplished much for all people. The law came to recognize equality, not just on paper, but in practice.

If we are to make the fruit of his efforts last, we can not stop now. It is our task to bring to fulfillment his dream. Legal justice is now served and people's conscience has been raised. However, we must continue to break down the economic barriers to all minorities and all disadvantaged that still exist today. A constant commitment to helping the poor, improving our cities, relieving our farmers, and aiding the disadvantaged is needed.

It is fitting that Dr. King's birthday should fall at the beginning of the congressional session. His dream speech, of a dream we all should now hold, was made not too far from here and not too long ago. His remembrance should be honored by renewed efforts in making that dream come to be reality. As chairman of the Census and Population Subcommittee, I am proud to have played a part in the development and passage of the King holiday legislation. It is my fervent hope that this holiday will further raise our conscience and reinvigorate our efforts.

Attached is an article which appeared in the Washington Post, Wednesday, January 15, 1986, which expresses the debt that all people owe to Martin Luther King, Jr.

[From the Washington Post, Jan. 22, 1986]

SOUTHERN WHITES OWE THANKS TO KING

ATLANTA.—The billboards went up a few weeks ago. Dramatic and elegant, they portray a pensive Martin Luther King, Jr. in shades of black and white. There is nothing more on them except a date: Jan. 20. A local advertising company raised 10 of the sidings around town to remind Atlantans that a new holiday approaches.

Not everyone needs reminders. The Atlanta Chamber of Commerce, City Hall and the Martin Luther King Center for Nonviolent Social Change have been scrambling for corporate contributions to a local holiday parade. King's home town, which expects to receive national attention during the holiday, hopes to mount a worthy extravaganza.

Yet among whites elsewhere in the South, a different attitude sometimes surfaces. Not long ago, the mayor of Claxton, Ga., was asked what his town would do for the holiday. Not much, he reckoned: "It just not something we can do without irritating the taxpayers. If they want to have something in the black community, that's fine, but the city itself will not participate."

Why? Apparently the mayor believes that while blacks may owe King a debt of gratitude, southern whites owe his memory nothing.

Is he ever wrong. Two decades after the South got on with the business of enfranchisement and desegregation, this much is clear: The social justice that King and civil rights movement forced upon the region was perhaps the best thing that ever happened to it.

If Martin Luther King was a latter-day Moses who led southern blacks toward full equality under the law, he did even more for southern whites. He led us toward the milk and honey of America's economic mainstream. The business boom that Atlanta and other parts of the South have long enjoyed would have been meager stuff indeed without King and the movement.

The reason is simple enough. Ultimately, social justice means efficiency and stability. If the movement did not create today's business boom, it did build an environment that could sustain high-quality investment and growth.

No longer was scarce money squandered on dual sets of schools, colleges, stores, restaurants and the rest. No longer was a major part of the southern work force denied real jobs and decent wages. No longer was the southern caste system allowed to undermine the work ethic among blacks and whites alike.

Suddenly the South was an attractive place in which to invest. In the five counties of metropolitan Atlanta between 1960 and 1972, service jobs increased from 50,350 to 105,900; manufacturing jobs from 85,050 to 112,800; retail jobs from 60,150 to 115,500, and wholesale jobs from 38,850 to 69,500.

Legal segregation had shackled everyone. When it was finally gone, areas that were ripe with economic potential took off. Even areas that saw little actual development reaped some benefits. The wealthier metropolitan Atlanta grew, for example, the more money state coffers held for health, education and welfare throughout Georgia.

Of course, there is a nagging irony here. While the economic benefits have touched rich and poor, the biggest beneficiary has been the middle class. In this category, far and away, whites have gained the most.

For blacks, while the civil rights movement delivered full citizenship, it didn't solve inequities that stem from poor education and historical discrimination. But for whites, it allowed mainstream southerners to become mainstream Americans. It opened the region to a business climate that was to pay handsomely for skills they already possessed.

Two decades after the end of the Civil War, Henry Grady, editor of The Atlanta Constitution, wrote that white southerners "are thankful that the issues at stake in the great Civil War were adjudged by a higher wisdom than their own." Grady and his fellow "New South" boosters knew that economic development could come about only if the South became one with the nation.

Tragically, their aspirations foundered on the twin mistakes of disenfranchisement and segregation.

No, Martin Luther King did not end these two evils by himself. The federal courts and a cast of thousands inside and outside the movement played major roles. But as a symbol of the struggle to reinstate the South as a full-fledged part of the country, the martyred pastor of Atlanta's Ebenezer Baptist Church will do nicely.

On Monday, communities throughout the South may rejoice that the issues at stake two decades ago were "adjudged by a higher wisdom than their own." The King holiday is for everyone, but especially for southern whites. Even those who are blind to the human goodness of his work have tasted its fruits—and liked them.

NATIONAL SANCTITY OF HUMAN LIFE DAY, 1986

HON. MARK D. SILJANDER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1986

Mr. SILJANDER. Mr. Speaker, today marks the 13th anniversary of the greatest tragedy to take place in the United States in our lifetimes. The Supreme Court's decision in Roe versus Wade has resulted in the deaths of nearly 20 million unborn children and has blazed the trail for infanticide and euthanasia.

The Democratic leadership in the House has always blocked any attempt to overturn this evil decision. As a result, they too must be considered responsible for the consequences of Roe versus Wade. Every session legislation is offered to overturn this decision. Every poll that examines the depth of public feelings shows that the vast majority of Americans reject abortion on demand and favor it only in extreme cases. Yet no pro-life legisla-

tion that wasn't an amendment has ever been considered on the floor.

Mr. Speaker, the pro-life movement will never go away. Although politicians may wish it, judges may hope for it, and the feminist movement may desire it, the love of life is too strong to ever fade away. As long as I am in this Congress, I will never allow this issue to fade away.

Albert Camus once said:

Perhaps we cannot make this a world in which children do not suffer, but we can lessen the number of suffering children. And if you don't help us do this, who will?

Mr. Speaker, every time the opportunity presents itself, a pro-life Member of this Congress will introduce an amendment, a substitute or legislation that will lessen the number of suffering unborn children. I hope you will leave your mark on history in this final year of your service to the people of the United States by helping us save some lives.

I ask permission that the text of President Reagan's proclamation making today National Sanctity of Human Life Day be printed in the RECORD.

[Proclamation by the President of the United States of America]

NATIONAL SANCTITY OF HUMAN LIFE DAY, 1986

America was founded with a ringing affirmation of the transcendence of human rights. Our Declaration of Independence proclaims that the rights to "Life, Liberty, and the pursuit of Happiness" are not a grant from the government, but a gift from the Creator; and we declared that the same Divine Providence in which the new Nation placed its "firm reliance" imposes on government a solemn duty to respect and secure these fundamental rights.

Yet, on January 22, 1973, the Supreme Court of the United States struck down our laws protecting the lives of unborn children. At that time there were those who predicted confidently that in time Americans would come to accept the Court's decision and the "new ethic" that it reflects. History has proved them wrong. Each year the terrible toll of more than a million innocent human lives has weighed more heavily on the conscience of America.

Each year remarkable advances in prenatal medicine bring ever more dramatic confirmation of what common sense told us all along—that the child in the womb is simply what each of us once was: a very young, very small, dependent, vulnerable member of the human family. When Americans demand legal protections for human life, we are simply being true to our most basic principles and convictions. We are reaffirming the self-evident truths set forth in our Declaration of Independence. Indeed, we are reaffirming the consensus of civilized humanity by recognizing that children need special safeguards and care, including appropriate legal protection, before as well as after birth.

Those who champion the right to life know the harsh pressures and the profound anguish that drive some women to consider abortion. The most moving testimony to our reverence for human life has been the generous, even heroic efforts made by so many religious and charitable organizations to help women with problem pregnancies and to facilitate the adoption of infants into families eager to give them love and care.

Those who work to restore legal protection to the unborn do so with the knowledge that they have gone to the defense of the weak, the silent, the endangered. But that is not something new. Whenever disasters have endangered human life, we Americans have always responded swiftly and selflessly.

Respect for the sanctity of human life has not died in America. Far from it. With every passing year it shines ever more brightly in the hearts of more and more of our citizens as they come to see the issue with greater clarity in all of its dimensions. As we carry this message to our courts, our legislatures, and our fellow citizens, let us never be discouraged. Let us put our trust in God, the Lord and Giver of Life, the Creator Who endowed us with our inalienable rights. May we soon rejoice in the day when reverence for human life is enshrined as surely in our laws as in our hearts.

Now, therefore, I Ronald Reagan, President of the United States of America, do hereby proclaim Sunday, January 19, 1986, as National Sanctity of Human Life Day. I call upon citizens of this blessed land to gather on that day in homes and places of worship to give thanks for the gift of life and to reaffirm our commitment to the dignity of every human being and the sanctity, of each human life.

In witness whereof, I have hereunto set my hand this fifteenth day of January, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

RONALD REAGAN.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, January 23, 1986, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

JANUARY 24

9:30 a.m.
Appropriations
Agriculture, Rural Development and Related Agencies Subcommittee
To hold oversight hearings on the foreclosure policies of the Farmers Home Administration's and on new regulations for handling delinquent farm borrowers.
SD-138

JANUARY 28

9:00 a.m.
Veterans' Affairs
To hold hearings on the reported sightings of live military personnel missing in action.
SD-138

9:30 a.m.
Banking, Housing, and Urban Affairs
Financial Institutions and Consumer Affairs Subcommittee
To hold hearings on S. 1603 and S. 1922, bills to impose a ceiling on credit card interest rates.
SD-538

Finance
Savings, Pensions and Investment Policy Subcommittee
To hold hearings on S. 1784, to enhance retirement security by broadening retirement benefit delivery, strengthening the present system of voluntary employer-sponsored pensions and encouraging growth and development of the private pension system by simplifying the administration of pension plans.
SD-215

Governmental Affairs
Intergovernmental Relations Subcommittee
To hold oversight hearings on the Office of Management and Budget's regulatory review and planning process, and on the implementation of the Paper Reduction Act (96-511).
SD-342

Governmental Affairs
Governmental Efficiency and the District of Columbia Subcommittee
To hold oversight hearings on the District of Columbia courts.
SD-562

10:00 a.m.
Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To hold hearings to review the role of the Federal Government in measuring the quality of higher education programs.
SD-430

JANUARY 29

9:30 a.m.
Finance
To hold hearings on H.R. 3838, proposed Tax Reform Act of 1986.
SD-215

Select on Intelligence
To hold closed hearings on Intelligence matters.
SH-219

2:00 p.m.
Judiciary
To hold hearings on pending nominations.
SD-226

JANUARY 30

8:30 a.m.
Special on Aging
Business meeting, to consider committee budget request for 1987, and to discuss the committee's agenda for the second session of the 99th Congress.
SR-385

9:00 a.m.
Veterans' Affairs
To resume hearings on the reported sightings of live military personnel missing in action.
SD-192

9:30 a.m.
Finance
To continue hearings on H.R. 3838, proposed Tax Reform Act of 1986.
SD-215

10:00 a.m.
Foreign Relations
To hold closed hearings to review U.S. policy toward Angola.
SD-419

4:00 p.m.
Select on Intelligence
To hold a closed briefing on intelligence matters.
SH-219

JANUARY 31

9:30 a.m.
Finance
Taxation and Debt Management Subcommittee
To hold hearings on S. 1959, to clarify the tax treatment of certain mortgage related securities, and to authorize the ownership of certain mortgage loans in multiple class arrangements, S. 1978, to clarify the taxation of certain asset backed securities in multiple class arrangements, and S. 1839, to provide that certain deductions and credits not be allowed for expenditures within an environmental zone.
SD-215

FEBRUARY 4

9:30 a.m.
Finance
To resume hearings on H.R. 3838, proposed Tax Reform Act of 1986.
SD-215

Rules and Administration
To hold hearings on Senate committee resolutions requesting funds for operating expenses for 1986.
SR-301

FEBRUARY 5

9:30 a.m.
Finance
To continue hearings on H.R. 3838, proposed Tax Reform Act of 1986.
SD-215

Rules and Administration
To continue hearings on Senate committee resolutions requesting funds for operating expenses for 1986.
SR-301

Select on Intelligence
To hold closed hearings on intelligence matters.
SH-219

FEBRUARY 6

9:30 a.m.
Commerce, Science, and Transporation
Aviation Subcommittee
To hold hearings on S. 1966, to provide for efficient and equitable use of operating rights at certain congested airports.
SR-253

Finance
To continue hearings on H.R. 3838, proposed Tax Reform Act of 1986.
SD-215

10:00 a.m.
Labor and Human Resources
Children, Family, Drugs, and Alcoholism Subcommittee
To hold hearings on proposed legislation authorizing funds for ACTION.
SD-430

4:00 p.m.
Select on Intelligence
To hold a closed briefing on intelligence matters.
SH-219.

FEBRUARY 18

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1987 for the American Battle Monuments Commission, Army cemeterial expenses, Office of Consumer Affairs (Department of Commerce), Consumer Information Center, and the Consumer Product Safety Commission.
SD-124

Select on Indian Affairs
To hold hearings on those programs which fall within the jurisdiction of the committee as contained in the President's budget requests for fiscal year 1987.
SD-628

FEBRUARY 19

9:30 a.m.
Select on Intelligence
To hold closed hearings on proposed legislation authorizing funds for fiscal year 1987 for the intelligence community.
SH-219

10:00 a.m.
Labor and Human Resources
Employment and Productivity Subcommittee
To hold hearings on S. 1990, to establish an Education and Training Partnership to administer the Job Training Partnership Act, the Wagner-Peyser Act, and the Carl D. Perkins Vocational Education Act.
SD-430

FEBRUARY 20

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1987 for the Council on Environmental Quality, Selective Service System, Federal Home Loan Bank Board, Neighborhood Reinvestment Corporation, and the National Institute of Building Sciences.
SD-124

Labor and Human Resources
Children, Family, Drugs, and Alcoholism Subcommittee
To hold hearings on proposed legislation authorizing funds for the National Institute on Drug Abuse and the National Institute on Alcohol Abuse and Alcoholism.
SD-430

4:00 p.m.
Select on Intelligence
To continue closed hearings on proposed legislation authorizing funds for fiscal year 1987 for the intelligence community.
SH-219

FEBRUARY 21

9:30 a.m.
Finance
Health Subcommittee
To hold hearings to review hospital income under the Medicare prospective payment system.
SD-215

FEBRUARY 25

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1987 for the National Credit Union Administration, Office of Revenue Sharing (Department of the Treasury), and the Office of Science and Technology Policy.
SD-124

FEBRUARY 26

9:30 a.m.
Select on Intelligence
To resume closed hearings on proposed legislation authorizing funds for fiscal year 1987 for the intelligence community.
SH-219

FEBRUARY 27

10:00 a.m.
Labor and Human Resources
Children, Family, Drugs, and Alcoholism Subcommittee
To hold hearings on proposed legislation authorizing funds for Head Start.
SD-430

4:00 p.m.
Select on Intelligence
To continue closed hearings on proposed legislation authorizing funds for fiscal year 1987 for the intelligence community.
SH-219

MARCH 5

9:30 a.m.
Select on Intelligence
To resume closed hearings on proposed legislation authorizing funds for fiscal year 1987 for the intelligence community.
SH-219

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1987 for the National Science Foundation, and the Federal Emergency Management Agency.
SD-124

MARCH 6

4:00 p.m.
Select on Intelligence
To continue closed hearings on proposed legislation authorizing funds for fiscal year 1987 for the intelligence community.
SH-219

MARCH 12

9:30 a.m.
Select on Intelligence

To resume closed hearings on proposed legislation authorizing funds for fiscal year 1987 for the intelligence community.

SH-219

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1987 for the Environmental Protection Agency.

SD-124

MARCH 13

4:00 p.m.
Select on Intelligence
To continue closed hearings on proposed legislation authorizing funds for fiscal year 1987 for the intelligence community.

SH-219

MARCH 19

9:30 a.m.
Select on Intelligence
To resume closed hearings on proposed legislation authorizing funds for fiscal year 1987 for the intelligence community.

SH-219

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1987 for the Veterans Administration.

SD-124

MARCH 20

4:00 p.m.
Select on Intelligence
To continue closed hearings on proposed legislation authorizing funds for fiscal year 1987 for the intelligence community.

SH-219

APRIL 9

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1986 for the Department of Housing and Urban Development.

SD-124

APRIL 16

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1987 for the National Aeronautics and Space Administration.

SD-124

APRIL 29

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1987 for the Department of Housing and Urban Development and certain independent agencies.

SD-124

APRIL 30

10:00 a.m.
Appropriations
HUD-Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1987 for the Department of Housing and Urban Development and certain independent agencies.

SD-124

CANCELLATIONS

JANUARY 23

10:00 a.m.
Judiciary
Business meeting, on pending committee business.

SD-124