SENATE—*Tuesday, September 16, 1986*

(Legislative day of Monday, September 15, 1986)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by Hon. MALCOLM WALLOP, a Senator from the State of Wyoming.

PRAYER

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

Let us pray.

Patient God, it has been said that the only thing we learn from history is that we learn nothing from history * * * and we are condemned to making the same mistakes over and over again. If history teaches anything, it is the powerlessness of man to produce an ideal social order. Not even the Ten Commandments could do it. And age upon age, tens of thousands of laws are passed—yet human nature does not change. Your word teaches that law is for the lawless * * * that government is the servant of God for good and to restrain evil. Even our incredible technological progress threatens our environment with nuclear waste and human survival with nuclear war.

God of glory, be merciful to us. Send Your spirit upon Your church—upon out Nation in a mighty visitation of moral renewal. Cleanse us of pride and avarice and lust and greed and hypocrisy and violence by word and deed. Revive us spiritually that we will live what we profess about a holy God. Send a fresh, healing, purifying touch of grace upon all Your people and upon Your servants who labor in this place. Do for us, what we are unable to do for ourselves—for the sake of Your glory in the name of Your righteous Son. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. THURMOND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE
Washington, DC, September 16, 1986.

To the Senate:

Under the provisions of Rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MALCOLM WALLOP, a Senator from the State of Wyoming, to perform the duties of the Chair.

STROM THURMOND
President pro tempore.

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

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE

The ACTING PRESIDENT pro tempore. Pursuant to Senate Resolution 480, 99th Congress, the Chair submits to the Senate for printing in the Senate Journal and in the CONGRESSIONAL RECORD, the replication of the House of Representatives to the answer of Harry E. Claiborne to the Articles of Impeachment, as received by the Secretary of the Senate on September 15, 1986.

IN THE SENATE OF THE UNITED STATES SITTING AS A COURT OF IMPEACHMENT

Impeachment of Judge Harry E. Caliborne.

NOTICE OF FILING

To Ms. Jo-Anne Coe, Secretary of the Senate, U.S. Senate (S-221 Capitol).

Please take notice that on this 15th day of September, 1986, the United States House of Representatives has filed with the Secretary of the Senate, an original and thirty copies of the following:

Replication of the House of Representatives to the Answer of Harry E. Claiborne to the Articles of Impeachment.

Simultaneous with the filing of the above described documents, the same were served on opposing counsel, Oscar B. Goodman, Esquire, and on The Honorable Howard W. Cannon by messenger.

THE U.S. HOUSE OF REPRESENTATIVES,
BY NICHOLAS D. CHABRAJA,
Special Counsel.

Managers of the House of Representatives:

PETER W. RODINO, JR., ROBERT W. KASTENMEIER, ROMANO L. MAZZOLI, WILLIAM J. HUGHES, DAN GLICKMAN.

HAMILTON FISH, JR., HENRY J. HYDE, THOMAS N. KINDNESS, MICHAEL DEWINE.

Impeachment Trial Staff:

Nicholas D. Chabraja, Special Counsel.

David W. DeBruin, Associate Special Counsel.

House Judiciary Committee Staff Participating in Impeachment Trial Preparation:

M. Elaine Mielke, General Counsel.

Alan F. Coffey, Jr., Associate Counsel.

Judith Bailey, Counsel.

Daniel M. Freeman, Counsel.

Gary G. Goldberger, Counsel.

Warren S. Grimes, Counsel.

Joseph V. Wolfe, Counsel.

Jonathan R. Yarowsky, Counsel.

IN THE SENATE OF THE UNITED STATES SITTING AS A COURT OF IMPEACHMENT

In re Impeachment of Judge Harry E. Claiborne.

REPLICATION OF THE HOUSE OF REPRESENTATIVES TO THE ANSWER OF HARRY E. CLAIBORNE TO THE ARTICLES OF IMPEACHMENT

The House of Representatives, through its Managers and Counsel, replies to the Answer to Articles of Impeachment, as follows:

ARTICLE I

The House of Representatives denies the allegations of the Answer to Article I and each of them.

First affirmative defense

The House of Representatives denies the allegations of this purported defense and each of them. Further replying, the House of Representatives avers that the asserted defense is not relevant to the allegations of Article I and is insufficient as a matter of law. Article I alleges specific acts of misconduct which are not addressed by this purported defense.

Second affirmative defense

The House of Representatives denies the allegations of this purported defense and each of them. Further replying, the House of Representatives avers that the asserted defense is not relevant to the allegations of Article I and is insufficient as a matter of law. Article I alleges specific acts of misconduct which are not addressed by this purported defense.

ARTICLE II

The House of Representatives denies the allegations of the Answer to Article II and each of them.

First affirmative defense

The House of Representatives denies the allegations to this purported defense and each of them. Further replying, the House of Representatives avers that the asserted defense is not relevant to the allegations of Article II and is insufficient as a matter of law. Article II alleges specific acts of misconduct which are not addressed by this purported defense.

Second affirmative defense

The House of Representatives denies the allegations of this purported defense and each of them. Further replying, the House of Representatives avers that the asserted defense is not relevant to the allegations of Article II and is insufficient as a matter of law. Article II alleges specific acts of misconduct which are not addressed by this purported defense.

ARTICLE III

The Answer does not deny the allegations of Article III. Accordingly, the only reply required is to the affirmative defenses asserted.

First affirmative defense

The House of Representatives denies the allegations to the first affirmative defense and each of them. Further replying, the House of Representatives avers that the al-

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

71-059 O-87-40 (Pt. 16)

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legation of this defense are irrelevant to the validity and finality of the conviction alleged. The conviction was obtained and can be vacated only in the judicial branch. The defense is insufficient as a matter of law.

Second affirmative defense

The House of Representatives admits that the convictions upon which Article III are based are presently the subject of a Motion To Vacate Judgment and Sentence. Except as expressly admitted herein, the allegations of the Second Affirmative Defense are denied. Further replying, the House of Representatives avers that this asserted defense is conjectural, speculative and insufficient as a matter of law.

ARTICLE IV

The House of Representatives denies the allegations of the Answer to Article IV and each of them.

First affirmative defense

The House of Representatives denies the allegations to this purported defense and each of them. Further replying, the House of Representatives avers that the asserted defense is not relevant to the allegations of Article IV and is insufficient as a matter of law.

Second affirmative defense

The House of Representatives denies the allegations of this purported defense and each of them. Further replying, the House of Representatives avers that the asserted defense is not relevant to the allegations of Article IV and is insufficient as a matter of law.

Respectfully submitted,

THE U.S. HOUSE OF REPRESENTATIVES,
NICHOLAS D. CHABRAJA,
Special Counsel.

Managers of the House of Representatives:

PETER W. RODINO, JR., ROBERT W. KASTENMEIER, ROMANO L. MAZZOLI, WILLIAM J. HUGHES, DAN GLICKMAN.

HAMILTON FISH, JR., HENRY J. HYDE, THOMAS N. KINDNESS, MICHAEL DEWINE.

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Gary G. Goldberger, Counsel.
Warren S. Grimes, Counsel.
Joseph V. Wolfe, Counsel.
Jonathan R. Yarowsky, Counsel.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mrs. HAWKINS. Mr. President, after the two leaders are recognized under the standing order for 10 minutes each, there are special orders in favor of the following Senators for not to exceed 5 minutes each: Senators HAWKINS, PROXMIRE, LEVIN, DURENBERGER, BUMPERS, KASSEBAUM, and GORE.

Following the execution of the special orders, routine morning business will occur, not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

At the conclusion of morning business, it will be the majority leader's intention to resume the unfinished business, H.R. 5234, the Interior Appropriation bill. Last night, it had been the leadership's intention to turn to the conference report to accompany the Defense Reorganization bill. However, that will now be considered at a later point in today's session.

Also, the Senate will consider any of the other remaining appropriation bills following the conclusion of the Interior bill. Therefore, votes will occur during today's session, and a late session is anticipated.

The Senate will also resume the Rehnquist nomination, if there are speakers available that need some floor time.

I reserve the remainder of the majority leader's time.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished minority leader is recognized.

Mr. BYRD. Mr. President, I thank the Chair.

VISIT OF PRESIDENT CORAZON AQUINO OF THE PHILIPPINES

Mr. BYRD. Mr. President, this week, the U.S. Senate has the opportunity to pay tribute to the people of the Republic of the Philippines for their courageous role in one of the most inspiring moments in modern history—the peaceful transition of that nation's government to democracy earlier this year.

We also have the opportunity to remember the historical bonds between the United States and the Philippines, and between Americans and Filipinos, and to reaffirm that those bonds are strong.

Yesterday, the new President of the Philippines, Corazon Aquino, arrived in the United States for her first official visit. On Thursday, President Aquino will address a joint session of the Congress and participate in at least one Senate activity.

Mrs. Aquino is to attend a working lunch for the Foreign Relations Committee and other Senators, hosted by the committee's distinguished chairman and ranking minority member, Senators LUGAR and PELL.

Senator DOLE and I are introducing a Senate Resolution to welcome President Aquino, to honor her and the Philippine people, and to reemphasize the solidarity of American and Filipino democracy. We hope that our resolution will be endorsed unanimously by the full Senate.

Our resolution recognizes the brave struggles of the Filipino people during the past years to restore democracy to their nation. It recognizes President Aquino's personal courage in these efforts, as she became the very symbol of the liberty her fellow citizens sought, and for which her husband, Senator Benigno Aquino, and others died.

The resolution states that since her inauguration, President Aquino quickly has begun the process of restoring full democracy to the Philippines, and of addressing that nation's severe economic, political, and security problems. It reaffirms the Senate's support for these efforts.

Our allies, and the private sector—especially the international banking community—can, and should, play a major role in providing aid to the Philippines. Our resolution urges these nations and interests to demonstrate their faith in the viability and future of Philippine democracy and to help promote restoration of that nation's prosperity and political institutions.

Our resolution commends President Aquino for honoring the agreement which permits U.S. Armed Forces to maintain major military bases in that nation. Those bases serve the security interests of both nations.

Finally, our resolution marks the past contributions Congress has made to promote Philippine democracy. I met recently with the new Philippines Ambassador to the United States, His Excellency Emmanuel Palaez, and he made a particular point about the importance of these contributions. He said that American faith in Philippines democracy, as demonstrated through various Senate resolutions, "had a tremendous effect in the Philippines." Those resolutions, Ambassador Palaez indicated, gave Filipinos the courage to oppose the Marcos government at the critical moments before and after the flawed election last February.

Senators from both sides of the aisle led these congressional efforts—Senators KENNEDY, KERRY, COCHRAN, LUGAR, PELL, DURENBERGER, DOLE, SASSER, DODD, BOREN, PRYOR, LEVIN, NUNN, MURKOWSKI, HART, DECONCINI, and others.

Yet when all is said and done, Mr. President, it was the Philippine people themselves who did the most, and will do the most, to restore fully their democracy and prosperity.

The credit for a peaceful government transition, and for persevering and suffering daily for Philippines freedom, must go to Filipinos from all walks of life. They are the ones who

were victorious against a government which clearly had lost its popular mandate and had brought the nation perilously close to political, economic, and military bankruptcy.

Mr. President, the Republic of the Philippines is at a critical moment in its history. The tasks required to deal successfully with its economic and military problems, and to reinvigorate fully its democratic political institutions, truly are daunting.

Yet, the United States has too many interests in common with the Philippines to turn away from that nation in its hour of greatest need. In so doing, the United States will be true to its own democratic heritage, as well as protect its own and Filipino best interests.

Our citizens have fought and died together to defend freedom, as the memorials in the American Military Cemetery in Manila eloquently attest. The graves of Filipino and American service personnel are a moving reminder of the shared sacrifices which comprise our mutual heritage.

Our two nations are bound by cultural, economic, and political ties which extend almost across the entire 20th century, and we are united in our shared respect for democratic values, political freedoms, and human liberties.

The strength of these philosophical and nonmilitary ties, and the continued demonstration to the citizens of the Philippines that the United States values most highly these aspects of our overall relationship, will be the most effective guarantee that the military component of our alliance will endure well into the future.

President Aquino's visit, and the resolution Senator DOLE and I are introducing today, give the Senate the opportunity to reinforce these ties, and to make such a demonstration.

We look forward to welcoming President Aquino, and honoring her and the people of the Philippines, and I am confident this sentiment is shared by all Senators and the American people.

Mr. President, I will submit this resolution—entitled "Welcoming Philippines President Corazon Aquino to the United States," on behalf of myself and Senator DOLE.

RECOGNITION OF SENATOR HAWKINS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Florida [Mrs. HAWKINS] is recognized for not to exceed 5 minutes.

LET'S GET TO WORK ON A DRUG BILL

Mrs. HAWKINS. Mr. President, if you have not been hiking around in the wilderness or holed up in a cabin somewhere in the Everglades, for the last 2 months you and I and just about everyone has been hit by a flood of attention on the drug threat. In my view, this attention is welcome and needed.

Some of those who are soft on the drug culture are put off by this attention. They call this a "frenzy" of attention, or a rush to action, as if there was no urgency in our situation. But this is no crisis dreamed up by politicians. The media, local and national, from one end of the country to the other have been doing their job.

They have been educating the public to the scope and nature of the threat. Two of the major networks, CBS and NBC, have aired documentaries on cocaine. The news magazines—Time, Newsweek, and U.S. News & World Report—have run cover stories on cocaine, and its chemical cousin, crack.

In story after story, they have been telling the American public the truth, and the truth is that illegal drugs and the drug culture is a threat to our freedom, our health, and our way of life. As far as I am concerned these people who traffick in these deadly substances are mass murderers. I have made that statement many times. Wherever they go, death, violence, and corruption follow in their wake.

□ 0940

The grip of these poisons on our society is staggering. Between 2 and 3 million Americans are seriously addicted to cocaine. Six million persons use it at least once a month. More than 25 million Americans have tried cocaine and 5,000 Americans sample it for the first time every day.

Let me tell you about the escalating effect of drugs on one community in my home State of Florida. In Hillsborough County, on the gulf coast, 40 people have died of cocaine-related deaths so far this year, 1986. This is almost a sixfold increase over the number of cocaine-related deaths in the county prior to 1984—and there are 3 months to go in this year. What the final figure will be by the end of December is anybody's guess.

Do not think of these as statistics, as numbers on a page or on a television screen. Think of these as people, as people who are ruining their own lives and the lives of the people they love, people who, by their actions and because of their numbers, are undermining the very fabric of our society.

Look at the drug problem this way and you will understand the sense of urgency. You cannot tell me this problem is not serious. You cannot tell me this problem is not urgent.

On Friday, the House of Representatives passed its version of the drug bill. It contains many positive provisions: the death penalty for certain drug-related crimes, a relaxation of the exclusionary rule, mandatory involvement of the military in the war on drugs, and increased funding for the law enforcement agencies fighting the war on drugs.

By the same token, I have some problems with the House bill. As I outlined in one of my floor speeches last week, the education provisions in the House bill are a disaster, and the provisions dealing with the foreign aspects of the problem are an illusion—just smoke and mirrors.

The Senate faces a challenge when it takes up this important legislation. We need to act now, but it is not enough that we simply pass a bill. I believe that we have an obligation to our children and to ourselves to pass a bill that discourages drug use in this country, and stops the drug traffickers dead in their tracks. I look forward to working with my colleagues toward that goal.

RECOGNITION OF SENATOR PROXMIRE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin [Mr. PROXMIRE] is recognized for not to exceed 5 minutes.

Mr. PROXMIRE. I thank the Chair.

WHY THE TEST BAN TREATY WOULD ADVANCE PEACE AND NUKE STABILITY

Mr. PROXMIRE. Mr. President, on September 5, Charles Krauthammer, a Washington Post columnist, introduced a new argument against a superpower nuclear weapon test ban treaty. He argued that such a treaty would threaten to destroy the offensive nuclear deterrent of both of the superpowers. How does Krauthammer contend the test ban would have this effect? He writes that the prime purpose of nuclear weapons tests is to modernize offensive nuclear weapons. Krauthammer defines "modernization" as a constant improvement in the penetrating capability of offensive nuclear weapons to assure their ability to penetrate the defenses of the other superpower.

As an example, he writes that improvement in Soviet capability to find and destroy American submarines requires that we develop warheads that are smaller, lighter, and can traverse a greater distance. This will permit our submarines to hide in more remote areas of the oceans. It will make them hard for the Soviets to search out and destroy. But to develop the lighter nuclear warheads, says Krauthammer, will require testing. A ban on testing would stop this progress.

This example—writes Krauthammer—applies generally to the offensive nuclear weapons of both sides. Result:

Freeze the offensive nuclear weapons that constitute the deterrence of both superpowers through a nuclear weapons test ban and you threaten the deterrent force that has kept the peace since the dawn of the nuclear age: mutual deterrence.

Why has not the administration used this Krauthammer argument? The administration is desperate for alibis for not pursuing a test ban treaty. Such a treaty has been the objective of other administrations, since the dawn of the nuclear age. But the Reagan administration has attacked the test ban first because they argued that it was not verifiable. Lately, they have dropped that argument because the evidence now indicates that if the treaty's terms include the stationing of seismic monitors throughout both superpower countries and if it provides for unannounced on-the-spot inspection of any suspicious explosions, the treaty will be verifiable.

Lately, the administration has argued the nuclear weapons tests are required to periodically check the reliability of our nuclear arsenal. The answer to that one is that such tests constitute a small proportion of nuclear weapons testing. A test ban agreement could permit such tests under careful scrutiny by both sides to assure that the tests, in fact, did simply check the continued reliability of weapons already proven and in stock.

Since these alibis against U.S. agreement to stop testing are so weak, why does not the administration pick up the Krauthammer idea and run with it? Why does the administration not contend that a test ban treaty would undermine the nuclear deterrence of both superpowers and introduce serious instability into the military posture of both superpowers? The answer is that the Krauthammer argument would apply with even greater force against the administration's top military priority: the strategic defense initiative [SDI] or star wars.

What is the single purpose of star wars? It is to render the Soviets' offensive missiles—their ICBM's—obsolete and ineffective. The President and Secretary Weinberger have consistently defended star wars on these precise grounds. This Senator is convinced that star wars will cost a trillion dollars or more and will not work. In that conclusion, this Senator has lots of scientific and expert military company.

Now we have Mr. Krauthammer coming along with the argument that a test ban treaty would be a great mistake for this country because it would accomplish for this country, at virtually no cost at all, what star wars would almost certainly not be able to accomplish and, in the process of failing, would burden this country with a trillion dollar plus flop.

The fact is, Mr. President, that Charles Krauthammer has made a notable contribution to the exact reason why the test ban treaty makes eminent good sense. It will strengthen the defenses of both superpowers against offensive attack. Krauthammer is right about that. He is wrong in contending that the test ban will threaten the deterrent of either superpower. Sure, over a period of 40 or 50 years, if the superpowers relied exclusively and entirely on the test ban as the only arms control agreement between them, there might or might not be a diminution in the credibility of each deterrent. But the test ban will not be, it must not be, the only arms control game in town. Both sides over the years have proposed negotiating a limit on the defenses against nuclear attack as well as the offensive weapons themselves. After all, what is the ABM Treaty if not a limit on a defense that would threaten the credibility each superpower deterrent?

The test ban treaty does not end the arms race. But it strikes at the heart of the offensive nuclear arms race. The Krauthammer column admits as much. The test ban treaty will significantly slow the development of ever more deadly, smaller, cheaper offensive nuclear weapons, and the development of such an enormous potential threat as the antimatter bomb. Krauthammer is right that a test ban treaty will not do everything. He is right in implying that it is not the end-all and be-all of arms control. But such a treaty is a great beginning. His column proves it.

Mr. President, I ask unanimous consent that a copy of the column by Charles Krauthammer from the September 5, 1986, Washington Post be printed at this point in the RECORD.

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

ANOTHER NAME FOR NUCLEAR FREEZE

(By Charles Krauthammer)

A man is accused of taking a kettle and returning it undamaged. His defense first of all, I never took it. Second, it was broke when I took it. And third, it was fine when I returned it.

Lawyers call that "arguing in the alternative." Listen to the arguments being made for the latest idea-in-vogue, the comprehensive nuclear test ban, now stampeding through Congress.

The 1963 Limited Test Ban Treaty stopped nuclear tests in the atmosphere. That was a good idea because it keeps strontium 90 out of our milk. Last month the House of Representatives passed a one-year-ban (matching a Soviet moratorium) on U.S. underground tests. The idea? No one claims that current underground tests pollute. Banning them must have another reason: to prevent the development of new nuclear weapons. In essence, a test ban is a nuclear freeze by another name.

What's wrong with that? What's wrong is that not all new weapons are bad. Some are needed to stabilize deterrence. When you freeze nuclear systems, you halt only half of the arms race. Improvements continue on (non-verifiable) nonnuclear defensive systems. Ban nuclear tests and the other side can proceed to, say, harden targets and improve its ability to shoot down bombers and hunt down subs. Since you cannot improve your offensive weapons ("modernize," in the jargon) to make sure that they can still get through, your deterrent erodes. And the melancholy fact is that your safety and mine (Gorbachev's too) rests on deterrence.

Consider one example. Deterrence is strenghtened, and thus the world made safer, if nuclear subs can hide in more parts of the ocean. But for that to happen, submarine missiles must have longer range. For that to happen, their warheads must be smaller in weight and size. For that, you need to test.

Now, test-ban proponents know how important modernization is for maintaining nuclear stability. So they argue—in the alternative—that a nuclear test ban will not really prevent modernization. The MX, crusie missile, Pershing II, neutron bomb, Midgetman and Trident II systems can all proceed, the pro-moratorium Arms Control Association reassures us.

Columnist Tom Wicker, ardent for a test ban, is reassuring too. "Strong scientific evidence exists" he writes, "that American supercomputers can simulate explosive tests to a degree that renders explosive testing obsolete and unnecessary." But if nuclear testing is redundant and replaceable, then stopping it will cure none of the nuclear ills that so upset Wicker.

You can't have it both ways. If a test ban prevents modernization, it endangers deterence and thus U.S. security. And if a test ban does not prevent modernization—if it does not "halt the arms race"—then it has no point.

Unless, that is, it is meant not to prevent new nuclear weapons, but to destroy the effectiveness of existing ones. If you can't test a weapon, you can't be sure it works, so you won't use it. In 1985 Rep. Pat Schroeder introduced a mutual test-ban bill thus: "After several years of being in effect, [it] would cause both sides to question whether the weapons they still had left were working efficiently, and, therefore, they would be less and less apt to use them."

Now, this is an idea with some attraction. A test ban as a back door, not to a freeze, but to a kind of functional disarmament. Have your weapons and disarm too, because neither side can be sure they will work.

Why is this not a good idea? Because the West is disproportionately dependent on nuclear weapons for its defense. It might have been a ghastly mistake, but it is now a fact: the West has chosen for 40 years to rest its defense on a nuclear deterrent. It did so because nuclear weapons are cheaper and thus less of a strain on democratic, consumer societies than are standing armies. ("More bang for the buck," explained John Foster Dulles.) Today the American security guarantee to Western Europe, where the Soviets have a vast preponderance of conventional force, consists principally of a threat of American nuclear retaliation.

In the face of this melancholy fact, test-ban advocates argue—in the alternative—that nuclear tests are *not* required to ensure the reliability of our nuclear stockpile. Test-ban advocates are in a box. Every time they extol the blessings of a test ban—ending the arms race, decreasing our reliance on nuclear weapons—they are forced to argue that

they don't really mean it, that a test-ban will really change nothing of importance.

And they rarely address two truly important functions of nuclear tests: (1) to develop safer, less sensitive explosives that cannot be detonated by accident and by terrorists; (2) to make other, often nonnuclear systems (such as satellites) more survivable by testing their ability to withstand the effects of a bomb.

Why then a test ban? One suspects that the point is to have an agreement with the Russians for its own sake. But if the real point is atmospherics and confidence-building and good detentish feeling, then we might start with other agreements, simpler and less injurious to national security. An agreement, say, banning the framing and imprisonment of journalists.

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

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

The bill clerk proceeded to call the roll.

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

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

Mrs. HAWKINS. Mr. President, I yield myself such time as I may need for the majority leader's time.

DRAMATIC RESULTS IN A CAMPAIGN AGAINST MARIJUANA

Mrs. HAWKINS. Mr. President, you sometimes wonder whether all the effort put forth against drugs is worthwhile. It seems the harder we fight, the more drugs there are on the street. It may seem that way, given the heightened awareness of the danger of drugs and recent media attention given to drug abuse. But it is an illusion, and only an illusion. The fact is the drug smugglers and dealers are taking a beating. Their loss of inventory and the apparatus required to move drugs from one place to another—planes, boats, trucks, and vans—are at an all-time high, as well as other property confiscations.

Let's talk about the track record of one effort against drugs and what has been accomplished. In California, the campaign against marijuana planting [CAMP] is responsible for an epidemic of what they call reefer sadness. CAMP—a combined undertaking of Federal, State, and local agencies—is perhaps the most successful antidrug effort ever mounted. Last summer CAMP eradicated 817,000 pounds of marijuana, an astounding 92 percent of the known crop in California. A sweep of national forests in California 2 months ago turned up 6 plants in an area where 12,000 plants were found in 1984.

"There is nothing anywhere," mourned a steady user of California marijuana to Newsweek reporter Pamela Abramson. Abramson, writing in the August 4 issue, said the pot user told her, "It was like they threw a switch and turned it all off." CAMP Comdr. Jack Beecham speaks with great optimism.

We're not ready to say that we won, but we're making fast gains. In a few years you'll see the marijuana problem as a thing of the past.

What great news that is compared with the doleful outlook of those who cry that drugs are out of control and ask, "What are you going to do?" An attitude of hopelessness is self-defeating. You can never do anything unless you try.

CAMP's aggressive stance against drugs is supported by tough new laws, which levy heavy fines and strip convicted growers of their land. Many growers have retired from the marijuana trade rather than risk loss of their land. One northern California woman who dropped out of the business 2 years ago relates that three of the six marijuana growers she knows have been arrested. Others have switched to growing pot indoors to escape the search and destroy squads of law enforcement officers. The yields of indoor crops are lower and costs are higher, up to quadruple the normal outside growing pattern. All of these factors have driven the price of marijuana higher than at any time in recent years. A pound of high-grade sinsemilla in California sold for $2,000 last year and this year the going price is $5,000. Sinsemilla is the Rolls Royce of the marijuana family and the most potent. Of the 40 million pounds of marijuana eradicated in the United States last year, about 10 percent was sinsemilla.

The CAMP project has proved very successful in California. Using that model, I would like to see the concept adopted for all 50 States, especially other States that have a nagging marijuana problem.

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

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

The bill clerk proceeded to call the roll.

□ 950

Mr. LEVIN. Mr. President, I ask unanimous consent that further proceedings under the quorum be dispensed with.

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

RECOGNITION OF SENATOR LEVIN

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Michigan [Mr. LEVIN] is recognized for not to exceed 5 minutes.

Mr. LEVIN. I thank the Chair.

WHY IS THIS TAX REFORM BILL INEVITABLE?

Mr. LEVIN. Mr. President, on each day since the Senate reconvened this month, I have come to the floor to raise some of the concerns about the conference report on the tax reform bill which will lead me to vote against it. I have discussed how it would increase taxes on more than 15 million middle- and low-income taxpayers; how it would make deficit reduction harder and less fair; how it would include hidden costs which could erode the small tax cuts which most taxpayers would receive; and how it would make some taxpayers victims of new unfair provisions. Given these flaws in the pending tax reform bill, the question which keeps coming back to me is, "Why are we doing this? Why are we treating the passage of tax reform as a given?"

Is it because the public enthusiastically supports the passage of this bill? I find that hard to believe in light of my own experience and in light of the comments which I have heard from other Members upon their return from their States and districts. Let us look at a sample:

"I'm still looking for the first constituent who wants tax reform in the way it's being done," said Congressman MIKE SYNAR.

"I frankly haven't seen so much negative feeling on an issue in a long time," according to Congressman ROBERT MATSUI.

Majority Leader ROBERT DOLE added that House and Senate Members looking for a reason to vote against the bill "could have found it at home."

No, there is no ground swell of support in the heartland for this pending tax reform bill.

Is the Congress said to be poised to overwhelmingly approve the tax reform conference report because it is the unquestionably good thing to do for the economy at this time? Some economists say yes but others dissent. For example:

Murray Weidenbaum, former Chairman of President Reagan's Council of Economic Advisers, has written:

Although we can debate the precise economic effects of these changes, the direction of their impact is clear: less investment, lower economic growth, fewer jobs.

Jerry Jasinowski, chief economist at the National Association of Manufacturers has stated:

It's a major gamble * * * over the long term it's got to be somewhat harmful to our international competitiveness because of the shift to consumption, which will decrease investment and suck in imports.

Harvard economist, Lawrence Summers adds:

The repeal of the investment tax credit is a big mistake. The effect is to lower taxes on old investment and increase them on new investment.

No, the economists are badly divided on the question of the economic benefits of this tax reform bill.

Is this tax reform bill inevitable because it is the only way the Tax Code can be reformed? Not at all. The essence of what the public sees as tax reform can be accomplished by a bill which would have as its cornerstone a toughened minimum tax on profitable corporations and wealthy individuals that are now paying nothing in taxes. The revenues from this minimum tax and from loophole closing could be used to reduce the deficit. Reforming the Tax Code to bring greater fairness through these changes would avoid the pitfalls of enacting uneven tax cuts, repealing deductions used by average Americans, and creating new inequities, for example, through substantial retroactivity.

If not for these reasons, then why is the passage of the tax reform bill treated as a foregone conclusion? I think the answer lies in the perceived momentum behind this bill. However, momentum should not be enough of a reason to pass legislation with implications far beyond the current moment. This is particularly true when the momentum is largely within the Congress itself and almost exclusively within the Washington Beltway. But in the heartland of this country, there is no cheering. There is only silence, skepticism, and the beginning of hostility.

I thank the Chair and I yield the floor.

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

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

The bill clerk proceeded to call the roll.

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

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

RECOGNITION OF SENATOR DURENBERGER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Minnesota [Mr. DURENBERGER] is recognized for not to exceed 5 minutes.

RECENT EVENTS IN POLAND

Mr. DURENBERGER. Mr. President, I rise today to recognize the action of the Government of the Polish People's Republic in releasing 225 political prisoners this past weekend.

As one who has closely followed the course of Polish governmental repression since the imposition of martial law on December 13, 1981, I am encouraged to observe that the Jaruzelski regime has finally allowed those brave Poles in the forefront of the struggle for greater freedom to leave the confines of their prison cells.

Although martial law was officially lifted on July 22, 1983, many of its more odious features were given the veneer of legality by incorporating them into what some observers have called a model version of a "legislation of terror." Since 1981, General Jaruzelski and his sponsors have consistently rejected opportunities to fashion a compromise between the aspirations of the Polish people and the designs of the Communist rulers.

The release of 225 political prisoners is a hopeful sign that the Polish Communist regime may be genuinely interested in restoring a semblance of political dialog.

However, it would be a mistake to read too much into the release of prisoners who were incarcerated only because they advocated a type of political liberty that we in the West have always associated with Poles.

The world must remember that Poland is still firmly in the grip of a Soviet repression that has unfortunately characterized the political system of that great nation since 1945.

The positive step by the Polish regime, releasing the 225 political prisoners, is unfortunately tempered by the news that Polish security police have explicitly warned over 3,000 Polish citizens known for their support of Solidarity.

These "exposing talks," as they were termed, did not lead to arrest and detention but they are an ominous sign that physical freedom for respected opposition leaders may not be followed by any meaningful change in the nature and scope of Polish internal repression.

It is clear that Jaruzelski's release of the political prisoners was not simply an effort to repair the social fabric of Polish society. Poland's worsening economic plight and the desire for increased Western aid, as well as the continuing need of the Communist regime for legitimation, led Jaruzelski to take the bold step of emptying the Polish prisons of political detainees.

We must remember that two previous amnesties since the 1981 declaration of martial law have been followed by more arrests. It is my firm hope that this amnesty endures and will not prove to be only a temporary measure.

Mr. President, it is unrealistic to expect an early restoration of genuine political liberty in Poland. But it is not too much to expect that Poland extend constitutional guarantees for basic political freedoms.

It is also not too much to expect that the Jaruzelski government open electoral representation to the Sejm—the unicameral parliament of Poland—to all the people of Poland rather than disqualifying those who disagree with the Government's prescription for legislative policy. Without such long-range steps, the crisis in Poland will endure.

I cannot state the issue more concisely than Nobel Peace Prize winner and leader of the outlawed Solidarity trade union, Lech Walesa:

> Only the road of social pluralism can lead to a situation in which prisons will not be refilled very soon again with political prisoners.

The United States has an obligation to let the Polish people know they will never be forgotten by the West.

Last year, I spent a week in Poland visiting thousands of Poles, their religious and social leaders, and the town of Poland which my maternal grandfather left in 1895. I went to Poland not as U.S. Senator but as a Polish-American returning home. Both as a Polish-American and as a Senator I will continue the effort to free the Polish spirit for the rewards of personhood which have marked the history of this country.

Continued humanitarian aid is especially important in this regard. Toward this end Mr. President, I am submitting for printing an amendment to H.R. 5161, the Commerce, Justice, State, and Judiciary Appropriations bill for fiscal year 1987. This amendment would authorize the expenditure of funds generated from the sale of surplus U.S. dairy products for construction and renovation projects within Poland designed to benefit handicapped and orphaned children.

I visited one such project in Krakow when I was there, but the need is desperate and cannot be filled by Polish resources at all.

I indicate to my colleagues that this amendment is identical to legislation I introduced with Senators LUGAR and PELL on December 13, 1985, S. 1945. Mr. President, I ask that the text of the amendment be printed in the RECORD.

(The text of the amendment appears in today's RECORD under "Amendments Submitted.")

□ 1000

RECOGNITION OF SENATOR KASSEBAUM

The PRESIDING OFFICER (Mr. BROYHILL). Under the previous order, the Senator from Kansas [Mrs. KASSEBAUM] is recognized for not to exceed 5 minutes.

GENERAL AVIATION LIABILITY STANDARDS ACT

Mrs. KASSEBAUM. Mr. President, product liability has been an important issue in Congress for many years since there are few businesses and consumers not touched by the problem. Numerous efforts have been undertaken over the past decade to achieve

comprehensive product liability tort reform.

Although I have supported these comprehensive measures in the past and will continue to do so, I have been discouraged by the lack of progress to date in dealing effectively with the problem. The failure to act has had particularly harsh consequences for the aviation industry, and I have come to the conclusion that the industry can no longer wait for consensus on broader reforms.

In the late 1970's, general aviation produced 17,000 aircraft annually—operating as the world's leader in the field. This year, production levels have dwindled to 1,200 aircraft. Needless to say, foreign competition threatens to preempt completely our leadership role. While liability problems are not solely responsible for this sorry state of affairs, product liability tort reform is one thing that can make a difference in determining whether the industry ever recovers.

The very survival of the general aviation industry is my primary concern, but it is not the only reason I believe the industry is a logical candidate to serve as a model for moderate tort reform. Not only has aviation always been of national concern, but it is also completely federally regulated. The unique regulatory situation of general aviation has never been completely addressed in comprehensive product liability measures.

To address these concerns, I introduced in May the General Aviation Liability Standards Act. Hearings were held in the Aviation Subcommittee, and the full Commerce Committee considered the legislation last month. The measure was modified to accommodate concerns raised by some of my colleagues and by consumer groups—after which it was reported out of committee unanimously as an original bill, S. 2794.

I think it is noteworthy that this bill has the support of the entire aviation industry, including every major aviation consumer group—National Business Aircraft Association, National Air Transportation Association, Aircraft Owners and Pilots Association, National Aeronautic Association, Experimental Aircraft Association, and Helicopter Association International. Such widespread support for product liability legislation is unprecedented, and it reflects the care and thought which went into the development of the final compromise bill.

The heart of the bill is the creation of Federal liability standards, including the retention of strict liability. The bill retains completely joint and several liability between the manufacturers of all subsystems and component parts, and enacts comparative responsibility among other parties. It also establishes a 20-year statute of repose for aircraft and replacement parts—which begins anew each time a part is replaced.

I also want to make it clear what this bill does not do. It does not cap damages in any way. It does not cap or limit attorneys' fees. It does not waive the responsibility to supply warnings against dangers regardless of the age of the product. Nor does it limit a person's right to sue.

I believe this is a good bill which is worthy of the broad support it has received from the aviation industry, aviation users, and my colleagues on the Commerce Committee. Because I feel so strongly about the need for this legislation and take pride in the care with which it was crafted, I find it disturbing to hear of recent reports that I have some type of hidden agenda. As I understand it, there are allegations that I have plans to slip caps—among other controversial items—into the measure while it is being considered by the Senate.

I want to make it clear that has never been my intention. It is not my intention now; and I would, in fact, oppose any such amendment to this bill.

The balance struck in this legislation is reasonable, and I will not abandon the compromise reached. I do intend to bring S. 2794 to the Senate floor, and I will bring it in its present form—the package that was worked out with so much thought and effort with my colleagues in the Commerce Committee. I would very much like your support of this very moderate, balanced bill at that time.

We cannot ignore this issue. Nor can we duck the consequences of our failure to act. Those opposing this legislation—the trial attorneys and nonaviation consumer groups—should not thwart those who are directly affected by the measure. Our duty to Federal aviation goals and constituents affected by the bill should prevail. Swift passage of S. 2794 is in the public interest.

Mr. President, I yield back any time I may have remaining, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1010

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

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

RECOGNITION OF SENATOR BUMPERS

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

THE SATELLITE TELEVISION SECURITY AND FAIR MARKETING ACT

Mr. BUMPERS. Mr. President, I rise this morning with my colleagues, Senators FORD and GORE, to introduce the Satellite Television Security and Fair Marketing Act of 1986. I hope that this legislation will provide an assurance to rural Americans that they will be able to receive scrambled satellite delivered television broadcasts in an open, competitive market.

This is not the first time I have spoken on the Senate floor on the issue of scrambled television signals. When I spoke on this issue in May of this year, I said that if a fully competitive market for scrambled programs did not develop, I would be back. It has not developed, and I am back. A competitive market has not developed, and it is time for Congress to step in an ensure fairness for rural America.

When I drive through rural Arkansas these days, I notice that the satellite dish is fast becoming as much of a feature on the farm as the old tree swing—everybody seems to have one. Yet it disturbs me greatly to know that rural folks, who may live only 1 or 2 miles beyond the city limits or city cable, will pay substantially more to receive the very same television services that their city cousins get. This is especially disturbing when you know that the dish owner purchases and maintains his own equipment; in other words, he covers his own overhead.

The market for purchasing scrambled programs for this Nation's 1.8 million dish owners has not developed in a way that is fair to rural America. They are willing to pay, but they are not willing to purchase programming at prices that do not reflect full market competition. To get scrambled programs today, one must go through a cable company—which is franchised—or buy directly from the programmer. The combined costs of buying from these programmers a la carte can be up to twice as much—$50 per month—as the same programs offered in cable packages.

One short analogy helps to illuminate the problems in the present market for satellite television. We are all now familiar with the video cassette recorder, or VCR. If I want to watch a movie on my VCR, I have to pay a fee. But I also know that I do not have to purchase that movie from a theater or direct from Hollywood, but that I can go to any number of distributors. I can go to Erol's Video, 7-11, Stop'n Go, and a host of others. These alternative distributors offer competitive variety and packaged services, and, according to the beauty of our market system, lower prices.

□ 1020

But if I wanted to watch that same movie with my television linked to a satellite dish, the market system and the terms are much different. There is no multiplicity of distributors. There is no competition. I would have to go to a franchised cable system, which would be analagous to the movie theater, or direct to Hollywood. In any event, the incentive for competition is absent.

The bill we are introducing today would require programmers to allow third parties to market competitive packages to dish owners. The bill is an amalgamation of a bill that Senator FORD and I introduced together in July, and a bill that Senator GORE introduced shortly thereafter. We are offering this legislation as a prelude to an amendment containing its provisions that we will offer to appropriate legislation in the near future. We have opted for this common front because we share a common concern about the availability of television to rural America.

My colleagues and I are asking that a competitive price be made available to rural, satellite dish owners through independent, third party distributors, and be they cable operators, that is fine with us. The bill says that its perfectly OK to scramble, but if you do, you must not discriminate against a potential distributor seeking to market the programming as long as the distributor meets certain minimum financial and character criteria.

We are also asking that the FCC set uniform standards for decoding devices to give satellite dish owners the assurance that only one such device will be necessary to view all the scrambled programs. It is also a balanced bill. It protects the programmers by sharply stiffening penalties for the interruption or hijacking of a signal. The incident in which a Florida man interrupted HBO's broadcast with a message of dissent about scrambling shows the level of frustration by dish owners, but such reckless activities should not be tolerated.

The noncompetitive aspects of satellite television signal scrambling were well documented at a hearing, at which I testified, before the Senate Commerce Committee on July 28 of this year. I urge each and every one of my colleagues to review the hearing record on this issue. It shows very clearly that there are anticompetitive forces at work in this market. It shows that satellite dish owners are not getting treated in the same manner as their city cousins, and that is not fair.

There are some 30,000 satellite television antennas in my home State of Arkansas, more than 80 percent of which are found in rural areas never to be served by a cable system. As I have said numerous times, these folks are not asking for something for nothing. They will pay for scrambled programming. All they want is a fair deal, and our legislation will give it to them.

Mr. President, I urge the Senate to carefully review their proposal. It does not require the FCC to set prices. It does not do injury to broadcast or cable industries. All it does is open the market for satellite delivered programming to competition. In doing so, it also meets the test of fairness that the people of rural America are demanding and are entitled to receive. I hope that after looking at the merits of this proposal closely, the Senate will adopt this measure.

Mr. GORE. Mr. President, over the past year the justified outcry about satellite television signal scrambling has produced several proposals to protect the legitimate interests of home dish owners. Today, Senators FORD, BUMPERS, COCHRAN, and I are introducing legislation which is the result of many weeks of discussions, negotiations, and hearings on this issue.

We want to invite our colleagues to join us in sponsoring the Satellite Television Security and Fair Marketing Act of 1986. This is the measure that is enthusiastically endorsed by dish owners, retailers, manufacturers, and the Satellite TV Viewing Rights Coalition, as well as key organizations representing rural interests. We may also offer this measure as an amendment to an appropriate bill on the Senate floor before the end of this session.

I am sure that practically all of our colleagues have received hundreds, even thousands of complaints by beleaguered owners of home dishes who believe they have been unfairly treated. I want to state at this time, in the strongest possible terms that this measure is the issue for dish owners in your States. Support for this measure will be considered support for fair viewing rights for dish owners. Opposition will send the signal to dish owners in your State that we are not prepared to act on even as simple, as modest a proposal as the one we introduce today.

It is time for the Senate to act, to send the strongest possible signal that we will no longer tolerate the blatant discrimination against home dish owners. The vast majority of home dish owners live in rural areas that are not served by cable. Yet, these rural families are being forced to accept scrambling and pricing terms that are clearly anticompetitive.

Mr. President, there may be some who will oppose this bill. Our colleagues will hear cries of "rate regulation" or "moratorium on scrambling." In the past, some legislative initiatives have proposed these measures as the way to obtain fair terms for dish owners.

So, it is important that our colleagues should understand what this bill does not do.

First, this bill does not restrict scrambling of programming services or network signals.

Next, this bill in no way involves the Federal Government in the rates programmers charge dish owners. There is absolutely no Federal regulation of program rates in this bill.

In fact, this bill, and the amendment we may seek to pass later this session, is really a very modest proposal. It has two simple elements.

First, the bill states that if a programmer sells satellite television program services for public viewing, that programmer should establish reasonable business standards for distribution of those services, and not discriminate against companies who would serve home dish owners simply because they are not a cable company or for some other arbitrary reason.

This fair marketing provision, then, simply does what programmers, cable interests, dish owners, and everyone else has claimed to want from the beginning—a marketplace that is open and competitive.

Second, the bill would allow the FCC to estalish a single technical standard for signal decoders. This is little more than a commonsense provision to avoid a situation where home dish owners would be required to purchase different, expensive decoding equipment for separate program services.

I want to also point out another provision in this bill which does not directly relate to program marketing, but which makes a strong statement about another issue of concern to everyone who utilizes geostationary communications satellites.

Many of our colleagues remember the infamous Captain Midnight incident a few months ago, when an individual broke into a satellite carrying HBO to broadcast a hostile message about program scrambling. Mr. President, as advocates of home viewing rights, we want to condemn this criminal act in the strongest terms. Captain Midnight, despite all his notoriety, did no favors for home dish owners by breaking into a satellite transmission system. What he did was illegal. Our bill toughens the penalties for such acts and sends a clear message to anyone who would tamper with satellite communications that incidents of this kind will not be dismissed lightly.

So, Mr. President, these three simple provisons make up this modest initiative—fair program marketing established in the marketplace itself, a single signal decoder standard, and tough new penalties for breaking into satellite transmissions.

There are no radical Federal interventions here. It is in no way hostile to cable companies. It is the absolute least we can do for the millions of dish owners, most of whom live in rural

America, the vast majority of whom are not served by cable television.

Mr. President, there is also a clear hearing record supporting the legislative proposal we introduce today. On July 31, the Commerce Committee held a hearing on the problems facing home dish owners as programmers rush to scramble their signals. The evidence at that hearing was clear and persuasive: There are strong market distortions created by powerful interests who would discourage fair distribution terms for home dish owners, and the potential for self-correction is slim. NTIA Administrator Alfred Sikes stated that there are "perverse incentives" for anticompetitive behavior by programmers and cable interests. HBO executive Michael Fuchs admitted: "Cable controls the supermarket" for programming. Moreover, Mr. Fuchs and Showtime's Neil Austrian both showed that these two powerful program forces have no intention of making their services available in a truly competitive marketplace.

Several weeks ago I introduced S. 2702, dealing with the need for a competitive marketplace for signal distribution. Senators FORD and BUMBERS introduced a bill which mandates a single standard for signal decoders. These initiatives address the primary problems now facing dish owners in our States.

We have combined the best features of my bill and the Ford-Bumpers bills into a single legislative measure, in order that momentum can be built for the very best, and most responsible Senate initiative. We must ensure that the nearly 2 million families who rely on this important new technology be dealt with fairly by those companies who would monopolize the industry. The Gore-Ford-Bumpers bill will do just that.

Mr. President, we believe this new legislation is the best way to correct the serious distortion that now exists in the satellite television marketplace. It is our responsibility to act as soon as possible to ensure that the discrimination against home dish owners will cease, and that this exciting new technology will again be allowed to thrive. I urge my colleagues to cosponsor this bill.

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

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

S. 2823

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 "Satellite Television Security and Fair Marketing Act".

INTERFERENCE WITH SATELLITE COMMUNICATIONS

SEC. 2. (a) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting after section 510 the following new section:

"WILLFUL AND MALICIOUS INTERFERENCE WITH SATELLITE COMMUNICATIONS AND OPERATIONS

"SEC. 511. Whoever without authorization willfully or maliciously interferes with, or causes interference to, the transmission of any lawful communication conveyed by means of satellite, or the operation of any satellite, shall, upon conviction, be fined not more than $250,000 or imprisoned not more than ten years, or both.".

(b) Within thirty days after the date of enactment of this Act, the Federal Communications Commission shall commence an inquiry into equipment, methods, and systems for the detection and prevention of violations of section 511 of the Communications Act of 1934 and other potentially damaging signal interference with satellite communications. In conducting such inquiry, the Commission shall consult with the National Telecommunications and Information Administration and other interested Federal agencies.

(c) Section 1362 of title 18, United States Code, is amended by adding at the end thereof:

"This section shall not apply to conduct prohibited by section 511 of the Communications Act of 1934, relating to interference with satellite communications.".

FAIR MARKETING OF CERTAIN SATELLITE COMMUNICATIONS

SEC. 3. Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c)(1) Any person who is encrypting any satellite cable programming for private viewing on or after thirty days after the date of enactment of the Satellite Television Security and Fair Marketing Act shall—

"(A) make such programming available for private viewing by home satellite antenna users;

"(B) in the case such person utilizes cable systems to distribute the encrypted satellite programming to home satellite antenna users—

"(i) not restrict such systems from selling service outside of the franchised areas of such a system, and not discriminate in price, terms, or conditions based on whether sale of such programming is for a cable subscriber or home satellite antenna users; or

"(ii) establish reasonable financial and character criteria under which noncable distributors may qualify to distribute such programming to home satellite antenna users and not discriminate in price, terms, or conditions among different distributors offering similar distribution services to the consumer; and

"(C) conduct such encryption in accordance with uniform standards for encryption of such programming approved by the Commission.

"(2) Standards approved by the Commission pursuant to paragraph (1)(C) shall be designed as far as possible to provide—

"(A) the public interest benefits of a universal encryption system which permits decryption at the television receiver of a cable television subscriber and a home satellite antenna user;

"(B) a system which operates without being subject to electronic interference;

"(C) consumer acceptability including price and the ability to choose optional features and ease of installation;

"(D) multiple sources of manufacture resulting in consumer choice;

"(E) the ability to pass through unencrypted programming provided on an audio subcarrier;

"(F) the ability to include parental lockout capability within the decoder; and

"(G) an adequate balance between the interests of security and price.

"(3) Any person aggrieved by any violation of paragraph (1) of this subsection may bring a civil action in a United States district court or in any other court of competent jurisdiction. Such court may—

"(A) grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain such violations; and

"(B) direct the recovery of full costs, to a prevailing plaintiff including awarding reasonable attorney fees, actual damages, and additional profits of the violator, or statutory damages for all violations in a sum of not more than $500,000 as the court considers just.".

DEFINITIONS

SEC. 4. Section 705(d) of the Communications Act of 1934 (as redesignated by section 2(1) of this Act) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) 'satellite cable programming' means programming transmitted via a domestic geostationary communications satellite intended for reception by cable television system subscribers;"

(2) in paragraph (4) by striking out "and" at the end thereof;

(3) in paragraph (5) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(4) by adding at the end thereof the following new paragraphs:

"(6) 'home satellite antenna user' means a person who utilizes a satellite reception antenna to view of listen to, in his home or residence, communications received directly from a communications satellite in Earth orbit; and

"(7) 'reasonable financial and character criteria' means commonly prudent business standards designed to facilitate payment to the programmer and maintenance of the business reputation of the programmer, which are calculated to facilitate the existence of multiple noncable distributors.".

Mr. FORD. Mr. President, I join with my colleagues, Senator BUMPERS and Senator GORE, in introducing the Satellite Television Security and Fair Marketing Act. I am pleased that we have been able to merge the best of both bills on this matter and we have joined together in a united effort to address the problems of the backyard satellite owner.

In July, the Senate Commerce Committee held hearings on the scrambling of cable programs. I found the hearings to be very informative in that it proved without a doubt that the marketplace is not working. As I have said many times, the question is not whether backyard satellite dish owners should or should not pay for the cable programming. They should pay. The question is how much the

backyard satellite dish owner should pay and if there will be any competition to the cable industry in providing program packaging.

I have heard from numerous cable operators in my State indicating that the backyard dish owner does not want to pay and that is the root of the problem. I have also heard from the 30,000 dish owners in my State. They are all willing to pay and just want to be treated fairly. Cable operators have raised the issue that they will be packaging programming so there really is no need for third-party groups to offer packaging. There are several cable operators in my State offering good packaging deals in their franchise areas. Unfortunately, the vast majority of the dish owners in Kentucky reside outside the cable franchise areas and will never have the opportunity to participate in the cable operators program packaging. There are many parts of my State which will never be wired for cable. Those citizens in the areas where it is not economicaly feasible to wire for cable only have one option to receive television program diversity and that is to purchase a backyard satellite dish.

Senator BUMPERS, Senator GORE, and I seek a solution to the rural backyard dish owners problems. Our bill is fair in that it does not regulate pricing, limit the ability of cable programmers to scramble, or address the issue of the transmission of network feeds. I believe that the bill will eliminate the immediate problems in the scrambling issue and guarantee a competitive price for programming to those areas which will never be served by cable.

I was very upset when I learned of the Captain Midnight episode. High-technology tricks do not aid the satellite dish owner or industry in their efforts to convince the Congress and media of their problems. Although the Federal Communications Commission is to be commended for their actions in locating and apprehending Captain Midnight, I was amazed at the light punishment for such an unfortunate act. I believe it is time to send the message that there are national security questions involved in such acts and the penalty should be as great as the offense. The penalty should be so great as to discourage future interruptions of communications.

I wish to thank my colleagues for working together on this legislation and it is hoped that all of the groups interested in the satellite dish industry will join with us in supporting this legislation.

SATELLITE VIEWING RIGHTS

Mr. COCHRAN. Mr. President, I join with my colleagues, Mr. GORE, Mr. BUMPERS, and Mr. FORD in introducing this legislation. The measure we are proposing today is consistent with previous legislative proposals we each have supported in the past designed to give some relief to the more than 1.7 million satellite dish owners.

This bill, the Satellite Television Security and Fair Marketing Act will provide satellite dish owners the opportunity to continue to receive satellite transmitted programming on fair and equitable terms. It will promote an open and competitive marketplace whereby programmers, cable distributors, satellite dish owners and dish retailers can work out the best way to provide a service to consumers who are willing to pay a fair price for what they receive.

We are not trying to prevent the programmers from scrambling their signals, nor are we dictating the rates that can be charged for receiving those signals. We are, however, trying to encourage the industry to maintain the spirit of competition in distributing their services.

I believe this measure addresses some very basic concerns of satellite dish owners, the retailers and the manufacturers—concerns which, up to this point, have not been resolved in a marketplace increasingly influenced by monopolistic forces. It is not likely that the current crisis will remedy itself without congressional intervention.

I urge my colleagues to support this bill.

Mr. SASSER. Mr. President, I am pleased to join with my colleagues today in introducing S. 2823, the Satellite Television Security and Fair Marketing Act.

As I talk to Tennesseans in communities across the State, a constant concern is the unavailability of unscrambled television programming at fair market prices. And this is a very legitimate concern, Mr. President. For a fully competitive market for scrambled programs has not developed. Many programmers are already scrambling their signal and others have announced plans to do so soon. However, they have not provided a fair and equitable mechanism for satellite dish owners to receive satellite signals.

Currently, satellite dish owners who wish to receive descrambled programming must pay a fee to either a cable company or to the programmer—a fee which is often double what a cable company subscriber pays for the same services. This cost is on top of the great expense incurred by the satellite dish owner in installing his own equipment. Now, the satellite dish owners that I have talked to do not object to paying a reasonable fee for programming. But they do object to paying more for programming than cable subscribers.

The inequities of the current system are apparent in my State of Tennessee. Almost 50 percent of Tennessee is rural. Cable services will never come to these areas because they simply do not have the population density to make cable profitable. In fact, in the mountains and hilly areas of my State even network reception is often unobtainable. Many of my constituents have had to purchase a satellite dish to obtain any television reception at all.

I do not believe that the current system—of making a satellite dish owner purchase an expensive descrambler and then pay monthly fees at double the cost available to other viewers—is a fair one.

The legislation we are proposing today provides a mechanism so that viewers may obtain television programming at fair and equitable rates. It requires programmers to allow third parties to market programming packages to dish owners. It also asks the FCC to set uniform standards for decoding devices to assure satellite dish owners that they need only purchase one such device to view all scrambled programs.

I believe this is a reasonable approach to the problem of signal scrambling and I look forward to working with my colleagues to ensure that our citizens in rural areas may obtain a full range of television programming.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, the economy of the United States——

The PRESIDING OFFICER. I am advised it will take unanimous consent for the Senator to proceed.

Mr. MELCHER. Mr. President, I ask unanimous consent that I may speak as if in morning business.

The PRESIDING OFFICER. Without objection, the Senator is recognized.

ECONOMY SLIDING AS TRADE POLICY FAILS

Mr. MELCHER. Mr. President, the economy of this country is sliding downhill as a result of two deficits, two huge deficits—the huge Federal deficit that we have and the huge trade deficit.

These two deficits have forced some reality on the markets. After all, if it is a market for commodities and you cannot trade the stuff and it must go abroad or there is too many imports coming in of a particular commodity or whatever your production is, the reality is that you are losing out.

The Reagan administration has attempted to rationalize the sluggish economy, but you cannot rationalize it away. They must now face reality, as we all must face reality, and that is that, unless there is a change of this slipping economy, we may be setting the stage for economic disaster, like an avalanche rolling down upon us.

These imbalances—both trade and the Federal deficit—have been building for 5 years. And it is no longer pos-

sible to just simply explain it away with some sort of gobbledygook that only ends up to be voodoo economics, as one of our great Americans pointed out a few years ago. This economy is weakening quite fast and the slide must be reversed.

But let us look at some of the highlights of this and particularly in regard to the trade imbalance. In agriculture, our producers are very efficient. They are more efficient than the competition throughout the world. But yet we find that the exports of agriculture commodities is going downhill very rapidly and we find the imports of agriculture commodities coming in in a greater extent to this country—that is, less food going out as exports, more food coming in as imports—so that now the imported stuff, the imported food, is greater than our exports.

You know, we had the 1985 farm bill. The 1985 farm bill set as policy for this country a continued big farm production—big production. But the 1985 farm bill also balanced that with enhancement of exports, and in particular enhancement of export programs for developing countries. These are countries which really do not have the cash to pay in full, but if we extend them credit or if we donate part of the food to them we build trading partners for the future. That is how the bill balanced out as policy—the big production versus broadening exports, particularly in the developing countries. But those programs for developing countries have not even been taken off the shelf by the administration. They have not been used, although they are part of the bill.

The other part of it is: Who is in charge? Who is in charge of expediting exports? And the answer to that is no one, let alone the President. No one is in charge.

The farm bill mandated a special advisor to the President for agricultural exports and food assistance. That job still is not filled, even though the bill was signed last December. We have had congressional attempts to increase food assistance to help the African countries, for the Philippines and for India, but they have all been thwarted by blockheaded bureaucrats within the administration.

Well, Mr. President, if it is not too late, perhaps the long-expected retrenchment of the stock market drop to align the price of stocks with the profitability of their respective companies will jar the administration out of its lethargy.

The stockholder reaction to a gyrating Dow Jones average of what the stock market is doing each day, if you listen to the stockholders' explanation, you quite often find that they say the market is worried about whether interest rates are going to go higher—they really want them to go lower, which is likely—or whether inflation is going to increase, which is unlikely.

But the real drag on the U.S. economy is the fact that there have been negligible profits for the corporations, with most of them showing yields of less than 4 percent. And so the companies are not profitable, much of it because of a poor trade policy, too many imports or not enough exports; agriculture is suffering because of the loss of markets; and the flood of imports continues to dry up jobs around the country.

□ 1030

And rural America and the manufacturing in this country is stagnated. That is the best term we can give it. That is the most optimistic term—stagnation. Actually, it is worse than that. Too many are going broke. But when taken all together, all of those, that is really most of America.

Mr. President, chickens come home to roost. The mistakes of this administration will have to be accounted for. The President is out campaigning around the country. Whenever he can find time, he is campaigning for a Republican controlled Senate saying that he needs Republicans in control of this Senate so he can continue his programs. I think that is poor campaigning, very poor. The people obviously need someone to control Reagan. The last thing they want is somebody else sitting in this Senate who is a complacent follower to vote for some more of this terrible trade policy. I think the President is handing the Democrats the real issue. The real issue is: It is getting this country back on the right track. That means changing, correcting, modifying, straightening out this administration's domestic mistakes.

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, with statements therein limited to 5 minutes each.

TRIBUTE TO DETECTIVE SGT. LEO BLAIS

Mr. LEAHY. Mr. President, Vermont is extremely fortunate in having very high caliber law enforcement personnel. One who epitomizes the best of the dedicated men and women in law enforcement in Vermont is State Police Detective Sgt. Leo Blais.

I have watched Sergeant Blais' career for 20 years with great pride. I was fortunate enough to have Leo Blais as the first investigator in my office when I was State's attorney of Chittenden County, VT.

Recently the Burlington Free Press wrote an excellent article about Sergeant Blais, and I ask unanimous consent that it be included in the RECORD.

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

FOR POLICE DETECTIVE, MATCHING THE CLUES IS THE JOY OF HIS JOB

(By Ted Tedford)

For nearly five years Carolyn Desmarais had waited for some sign that her son, Craig "Cooley" Jackman was still alive.

She and her daughter Susan had last seen him Jan. 26, 1981, when he left the family's Lincoln Street home.

Despite an exhaustive investigation by Essex Junction police, claims by two psychics that Jackman was living in Florida, help from a national child location group and Desmarais' fervent prayers, no trace of him was found—until Nov. 18 last year.

It was an unusually warm day for deer hunting as a St. Albans man walked through the woods in Westford near the Milton town line. The temperature would reach a high of 51 degrees, hardly the kind of day Vermonters expect that time of the year.

The hunter, who has not been named, looked down as he trod the woods and spotted a human skull lying in the dry leaves. The discovery ended his hunting for that day and he drove to the state police barracks in St. Albans, turned the skull over to police and told them where he found it. A search later that day, a Monday, was fruitless, but things were different the next day.

State Police Detective Sgt. Leo Blais, 45, tall and rugged, with straight hair and a bushy mustache, joined a search team the next morning. He placed himself at the end of a long skirmish line that slowly made its way through the woods. It wasn't long before he spotted what he said last week looked like a coat. What he found were the skeletal remains of a body.

In the trouser pocket he found a wallet with identification still intact enough to reveal information that led Blais to determine that the body was that of Craig Jackman, 16 and a student at Essex Junction High School.

The identification was confirmed by dental records. An examination by Dr. Paul Morrow, the state's chief deputy medical examiner, confirmed Jackman had been killed by repeated blows with an ax.

Blais was assigned to the case and it was to occupy much of his energy and time for nearly four months. The investigative work involved is what the detective, a statetrooper for 20 years, likes the most about his job.

Blais said he is happiest when he is out on the road investigating crimes such as the Jackman murder or some of the other serious crimes he has solved.

It was Blais whose investigative work led to the conviction of George Ladabouche for killing Gary Bevins in Winooski in January 1983. Ladabouche was sentenced to 30 years to life.

Blais' last big case was unraveling the complicated financial dealings of Bakersfield Town Clerk and Treasurer Linda Hall. She faces 127 criminal charges arising out of the alleged theft of more than $500,000 in town and school funds.

He made history when he became the first state police trooper assigned to a state's attorney as an investigator. He fondly remembers working for then-Chittenden County State's Attorney Patrick J. Leahy before

Leahy was elected a Democratic U.S. senator in 1974.

Blais, who spent several years on road patrol and more in the state police Bureau of Criminal Investigation as a detective, says he has no hankering for police administration. "I like investigative work," he said, pointing at his desk with a pen in his hand, "right here."

Blais' investigation of the Jackman case led to the arrests of two of the teen's friends, Brian Wimble and Timothy Crews, both 25, of Burlington, on charges of first-degree murder.

Wimble was arraigned in Vermont District Court in Burlington Feb. 4. Crews, who had fled the state and was serving time in California for car theft, fought extradition for nearly six months, and was arraigned last Monday. Both pleaded innocent. Wimble is free on $50,000 bail. Crews is in jail for lack of $250,000 bail.

From an interview with Blais and from his affidavits on file with the court, his investigation unfolded this way:

As Blais began talking with Jackman's friends, he heard rumors of a stolen check and Wimble's name kept coming up. Blais said he learned that Jackman had cashed a $300 check for Wimble Jan. 3, 1981.

Blais said Wimble lied to him at first. "You could drive trucks through his story, the loopholes were so large," Blais said.

Wimble later admitted having taken the check from his employer, Foodsciences Inc. in South Burlington. Crews told Wimble he himself was being blamed for stealing the check and he wanted to get even with Jackman. Crews would later tell Blais that Wimble had asked him to help "do away" with Jackman because Wimble was afraid he would go to jail if Jackman talked to police, affidavits say.

The details of the killing eventually would come out after, Blais said, he accepted the fact that the theft and cashing of the $300 check was the motive.

"I put it aside for a time," Blais said last week, "because it didn't make sense." But as his investigation continued and he talked to more people, he began to believe it.

Jackman—described by his mother as a boy with lots of friends and by Blais as not a bad kid who was determined to finish high school—left his mother a note the night he was killed, saying he was going out but would be back early.

On that night, Wimble claims, he and Crews were driving to Essex Junction and they "just happened" to meet Jackman near a beverage store on Park Street. Crews later said Wimble had called Jackman and asked him to meet them there, affidavits said.

Jackman got into the car when Crews told him they were going to drive to Westford to get some marijuana they had stashed in the woods there. That's where Jackman was killed. Crews claims he hit Jackman once with the blunt end of the ax, but Wimble actually killed him. Wimble claims it was Crews who committed the murder, according to affidavits.

Blais and John Churchill, Chittenden County chief deputy state's attorney, ended up in Los Angeles early this year where Crews was being held at the county jail. Crews talked about the murder to the two Vermonters and Blais said another prisoner told them Crews had bragged to him about the killing.

Before taking the Jackman case, Blais spent a year with the Vermont Drug Task Force, in charge of the men in the field.

He confessed he misses working with the assistant U.S. attorneys at the Federal Building who prosecuted all the drug cases the task force investigated. "It was nice working in the federal system," Blais said.

ORDER FOR STAR PRINT—S. 2813

Mr. PROXMIRE. Mr. President, I ask unanimous consent that a star print of S. 2813 be produced correcting a vital omission made by the Government Printing Office.

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

S. 2781—NATIONAL APPLIANCE ENERGY CONSERVATION ACT OF 1986

Mr. CRANSTON. I am delighted to join with the distinguished Senator from Washington [Mr. EVANS] and other Senators in introducing legislation to amend the Energy Policy and Conservation Act to set national efficiency standards for major household appliances.

This bill is a substantial revision of S. 1360, a bill I introduced in June 1985.

Since then, extensive negotiations have occurred, and the bill we are introducing has the complete support of the trade associations representing the appliance industry, as well as the National Resources Defense Council and other groups primarily interested in conserving energy and other precious national resources.

It is several years since the term "energy crisis" echoed through our homes as we faced the last energy shortage. But we still have not insured that America will have sufficient, affordable, clean energy to meet our future needs.

The National Appliance Energy Conservation Act of 1986 is an important step toward insuring America's energy future. But this legislation also provides near-term benefits for the American people.

First, it will benefit consumers who operate new energy-efficient appliances, because they will save money on their electric bills. One-third of the energy we use in our homes operates electrical appliances, and this percentage is increasing.

Second, all utility rate payers and shareholders will benefit, because as consumers use more efficiently the electricity that utilities generate, the need to build expensive new powerplants to meet anticipated electric load growth will diminish, and the operation of inefficient, costly to run powerplants can be curtailed.

With the effective national appliance efficiency standards provided in this bill, we will save enough electricity to avoid the need to build the equivalent of 15 new nuclear powerplants, costing more than $45 billion, according to the Lawrence Berkeley Laboratory.

By replacing with high-efficiency models the 12 million refrigerators and freezers in use just in California in 1982, California consumers can reduce energy use in the State by an estimated 5 percent, about 1,700 megawatts, the capacity of two new nuclear powerplants.

Purchasing the new appliances would cost about $705 million—much of which people would spend routinely for appliance replacement—while building the two nuclear plants would cost more than $6 billion, more than six times as much, and produce radioactive waste and other problems.

Third, with national standards and the strong State-preemption language in this bill, manufacturers of major home appliances will benefit by avoiding having to face a rapidly multiplying patchwork of varying standards in each State in which they choose to do business, and will have their ability to compete in foreign markets enhanced.

Congress has supported a Federal program to improve consumer applicance efficiency since 1975.

Congress mandated national appliance efficiency standards for each of the 13 major household appliances when the Energy Conservation and Policy Act was enacted in November 1978 requiring regulations implementing national standards by December 1980.

By the time Congress acted, 10 States—including California—had already enacted appliance efficiency standards.

The contemplated national standards were less stringent than those California standards already in place, but the Nation as a whole would have gained from adopting national standards.

I fought to make sure that mere passage of the Federal law did not preempt prematurely the existing State standards before the Federal standards took effect.

It is a good thing I did, Mr. President.

Despite the clear congressional mandate, the Carter administration left office without adopting the standards, due at the end of their tenure, and, under the Reagan administration, the Department of Energy has claimed to meet the requirement for national efficiency standards by adopting regulations that say that no standards are necessary.

In terms of encouraging increased energy efficiency, these standards are meaningless, if not counterproductive.

Meanwhile—to aviod preemption by this nonstandard, States such as California, Florida, New York, and Kansas, among others with their own standards, successfully petitioned the administration for exemption, in effect restoring the situation that ex-

isted before national regulations were adopted.

Then several of the States, along with the National Resources Defense Council and Consumers Union, succeeded, in 1984, in over-turning the Reagan administration "no-standard standard" in the courts.

This created a regulatory vacuum: a congressional requirement for standards that the administration declined to meet.

In California, State standards worked so effectively that the State legislature decided to broaden them.

Manufacturers selling in California and other States with appliance standards are required to produce more efficient appliances.

But without effective national standards, manufacturers face the costly and increasing dilemma of meeting differing State standards in each State in which they chose of do business.

By adopting clear national standards that meet the needs of the States, this bill will resolve the dilemma.

At the same time, the bill will provide States with the ability to respond within the regulatory scheme to substantial or unusual local energy problems, such as high electricity, gas, or heating oil prices, high dependence on oil, or fuels whose price is tied to oil, unusual climatic conditions, or adverse environmental or health and safety conditions that can be alleviated by energy conservation in appliances.

Mr. President, before California adopted its appliance efficiency standards, refrigerators and refrigerator-freezers consumed 12 billion kilowatt hours of electricity each year, according to the California Energy Commission.

But in 1983, as a result of the appliance standards on refrigerators and refrigerator-freezers, residential users saved around 213 million kilowatt hours of electricity.

The energy operating cost savings on refrigerators alone was worth $18 million.

In 1983, an efficient central air conditioner retailed for about $225 more than a nonefficient one. Eighty percent or more of air-conditioner purchases are made by builders or apartment house owners—who often seek the lowest cost appliance available and do not necessarily benefit from lower utility bills. To them, the higher price of efficient appliances is a disincentive to purchase an energy-efficient air-conditioner, even when the cost can be passed along to the ultimate user of the appliance.

But, when efficiency standards eliminate the nonefficient, cheap appliances from the marketplace, the consumer soon recovers the extra cost of the appliance.

For example, a consumer using an energy-efficient air conditioner in 1983 saved about $47 on utility bills in California in that one year alone.

The average life of a central air conditioner is 13 years.

Over the expected life cycle of the central air conditioner, a consumer would save $611 on utility bills in 1983 dollars, benefiting by $386, despite the initial higher cost of his appliance.

Yet, information on so-called "life-cycle costing" is not readily available to those consumers who do purchase their own appliances, and not usually considered when purchases are made by others. This legislation addresses both of those problems.

The total savings on all home appliances covered by California's efficiency regulations—central and room air conditioners, gas and electric water heaters, gas space heaters, refrigerators, refrigerator-freezers—exceeded $173 million in 1983.

And, California's electric power utilities saved the energy equivalent of 2 million barrels of oil that year which would have been wasted were it not for the more efficient appliances in use in the State. That means cost savings to ratepayers of some $50 million, plus a substantial expansion of our available energy supply.

Over the next 20 years, the regulations will reduce the average monthly residential electricity bill by around 7 percent for all Californians—even those not using new energy-efficient appliances—because utilities shut off the most inefficient and costly plants first, as the demand for electricity drops, and all utility ratepayers benefit.

Of course, those who acquire energy efficient appliances will save the most.

The cumulative electricity cost savings on appliances covered by the California standards between now and the year 2002 could total $13 billion according to California Energy Commission estimates.

And that's just California, Mr. President. The national standards provided by this bill could save roughly 10 times as much.

Several manufacturers of fuel-efficient appliances have already demonstrated that the technology is available to make the improvements these standards would require.

Why not then just leave the energy savings to informed consumers and the free operation of the marketplace, as some have suggested?

First, because the State regulations have restructured the marketplace.

Second, because stimulus-response relationship between crude oil and other utility fuel prices and the purchase of electrical appliances by utility customers is too indirect.

Third, because as much as 80 percent of the major residential appliances are not purchased by those who will ultimately use them, but by builders, apartment house owners, and others who find lower appliance price a stronger incentive than lower electric bills over the life of the appliance.

Fourth, because the information for appliance users to calculate accurately the "life-cycle" cost benefits of efficient appliances are not readily available.

Fifth, because energy prices do not rise in constant trend lines. They fluctuate. But the national interest in using our energy resources efficiently is constant.

DOE now estimates that future needs for powerplants could cost utility ratepayers upwards of $1.8 trillion by the end of the century.

With efficient appliances, much of this needless use of capital and energy resources can be eliminated.

Mr. President, under California's new State standards, effective in 1987 and 1988, the need for new electric generation capacity will be reduced by almost 1,000 megawatts in 1996. Savings of an additional 7 million barrels of oil equivilant in 1988 will result just from the recently adopted improvements in the State's appliance efficiency standards. These savings will not be affected by our bill, which will phase in national standards of equivilant stringency from 1988 to 1993.

Manufacturers can meet the standards without undue hardship, and consumers, utilities, industry and the environment all benefit.

National use of efficient electric appliances will save consumers billions of dollars, ease utility load management problems—especially during peak periods, hold down future energy costs, free capital for other purposes, and permit the rapid and least costly reduction of emissions from coal-fired plants responsible for so much acid rain damage.

We have the technology available now to provide for our future energy needs without endangering our environment.

Mr. President, I understand that this bill is now on a very fast track in both Houses.

Nevertheless, it is long overdue.

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

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

□ 1050

CONCLUSION OF MORNING BUSINESS

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

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1987

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

The assistant legislative clerk read as follows:

A bill (H.R. 5234) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1987, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Proxmire-Humphrey Amendment No. 2777, to reduce the funds for the Forest Service for road construction. (By 43 yeas to 51 nays (Vote No. 258), Senate failed to table the amendment.)

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, if I recall correctly, the pending matter is the amendment offered by the Senator from Wisconsin [Mr. PROXMIRE].

The PRESIDING OFFICER. That is correct.

Mr. McCLURE. Mr. President, in a moment, I shall send two amendments to the desk and ask unanimous consent that they be considered en bloc and considered in order.

What these amendments do is amend the amendment of the Senator from Wisconsin in the following way: First, they reduce the committee's recommendations for Forest Service sales from 11.4 billion board feet to 11.2 billion board feet, which is the same as the House level. Second, it reduces the amount appropriated for timber harvest and sales administration by $7 million and the amount appropriated for roads by $8 million. This totals a $15 million reduction from the committee's recommendation and these figures are simply derivative of the reduction in the harvest level.

The reduction in the target level for lumber production from the National Forest lands will release, as I have indicated, $15 million of the committee's recommendations. Rather than just have the reduction, the amendment would restore that $15 million to various land acquisition programs, including wetland habitat, endangered species, hardships, inholdings, and recreation composites.

Five million dollars of the $15 million would go to the Fish and Wildlife Service, $5 million would go to the National Park Service, and $5 million would go the Forest Service for those purposes.

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.

□ 1100

Mr. GORTON. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

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

Mr. GORTON. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside.

The PRESIDING OFFICER. Is there objection? Hearing none, the request of the Senator is granted.

AMENDMENT NO. 2823

(Purpose: to extend the terms of leases that may be entered into by the Tulalip Tribes without the approval of the Secretary of the Interior)

Mr. GORTON. I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will read the amendment.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 2823.

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

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

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SEC. . Subsection (b) of the first section of the Act of August 9, 1955, as amended (25 U.S.C. 415(b)) is further amended—

(1) by striking "or" immediately before "(2)"; and

(2) by inserting immediately before the period at the end thereof the following: ", or (3) if the term does not exceed seventy-five years (including options to renew), and the lease is executed under tribal regulations approved by the Secretary under this clause (3)".

Mr. GORTON. Mr. President, this amendment to H.R. 5234, the Department of the Interior and related agencies fiscal year 1987 appropriations bill will enable the Tulalip Tribes of Washington to: First, lease its valuable residential, commercial and industrial lands for longer periods of time; and second, permit the tribal leadership to exercise a higher level of self-determination in the area of leasing. The amendment has been cleared by the Select Committee on Indian Affairs.

The Tulalip Reservation is located 30 miles north of Seattle and is adjacent to a major interstate highway. This is a high-growth area where prime sites for leasing purposes are at a premium. The tribe's 22,000-acre reservation includes the largest tract of undeveloped lands in the area. Over the years, the tribe has derived substantial income from residential and industrial leasing programs. Given the strategic location of the reservation, the best use of most of its lands lies in the area of residential, commercial, and industrial leasing.

Under existing law and policy, the Secretary of the Interior must approve a variety of leases entered into between Indian tribes and private individuals or entities. The Tulalip leadership has discovered that the existing authority is inadequate to accommodate major developmental leases that require a long period of time for debt retirement purposes. Although the tribe has been granted authority to lease its lands for terms not to exceed 99 years, such leases require Secretarial approval. Moreover, the regulations governing this authority are overly cumbersome and contrary to Indian self-determination and tribal self-governance.

I am pleased to support the progressive Tulalip tribal leadership by offering this amendment. Specifically, it amends Public Law 91-274 to permit the tribe to enter into leases not to exceed 75 years, with no option to renew. The tribe, however, would be required to develop a new regulatory scheme for the extended leasing authority. This legislation will permit the tribe to pursue its goal of economic self-sufficiency. The amendment will give the Tulalip tribes the flexibility to work out profitable leasing arrangements, flexibility that is needed to allow development of commercial, industrial and residential properties in Washington State.

Mr. President, I believe that this amendment has also been cleared by both the majority and minority managers of the bill.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Idaho.

Mr. McCLURE. Mr. President, I understand this amendment has been cleared with the authorizing committee and that there is no objection from the Department of the Interior in extending the period for which leases may be executed on the Tulalip Reservation. I have no objection to the amendment.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, we have cleared the amendment on this side.

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

The amendment (No. 2823) was agreed to.

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

Mr. GORTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2824

(Purpose: To strike a provision amending the Indian Self-Determination Act relating to tort claims)

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I send an amendment to the desk and ask the clerk to report.

The PRESIDING OFFICER. The Chair would point out to the Senator it takes unanimous consent to set aside the pending amendment before another amendment is in order.

Mr. THURMOND. Mr. President, if another amendment is in order, I do not want to go ahead.

Mr. McCLURE. Mr. President, I ask unanimous consent that the amendment be temporarily laid aside in order to entertain the amendment of the Senator from South Carolina.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. THURMOND) proposes an amendment numbered 2824:

On page 74, beginning with the word "Provided" on line 5, strike out all through "'agreement.'" on line 3, page 75.

Mr. THURMOND. Mr. President, I rise today to offer an amendment to H.R. 5234, the 1987 Interior appropriations bill. Currently, Indian tribes may contract with private physicians to provide health services. This amendment deletes a provision which would shift the liability from such physicians to the U.S. Government under the Federal Torts Claims Act. Section 2671 of the Federal Torts Claims Act explicitly states that contractors are not instrumentalities of the United States and therefore are not covered by the act. The exception in this bill creates a dangerous precedent and will undoubtedly lead to others similarly situated Government contractors to insist upon the same protection.

Our Government contracts with tens of thousands of contractors each year without providing them with an indemnification clause in their contracts or guarantee that the United States will assume their liability. The Federal Government simply cannot expose itself to such massive liability. Allowing for such protection in this legislation unwisely opens the door to numerous demands for similar treatment—each arguing that their situation is as unique and compelling as that facing the Indian Health Services. Even similarly situated physician contractors who work in military or veteran's hospitals do not have such insulation from liability.

This provision constitutes substantive legislation of dynamic proportions. Any provision of such significant impact on our Federal tort system must be given careful review and consideration by the Judiciary Committee with the full opportunity for all interested parties to be heard. No such opportunity has been afforded.

Given the significant precedent that would be set by this provision and based on the rationale set forth above I am compelled to offer this amendment to strike the provision in question.

□ 1110

Mr. McCLURE. Mr. President, the distinguished senior Senator from South Carolina and chairman of the Judiciary Committee is correct that the committee amendment is legislation on an appropriations bill; in fact, the committee report clearly identifies it as such. That in itself is not surprising as the reauthorization for the Indian Health Care Improvement Act has been languishing in Congress for several years.

The contention that covering contracted Indian Health Service hospitals and clinics under Federal tort claims with respect to medical malpractice claims would open the floodgates for contractors who do work on behalf of the Federal Government seems far fetched to this Senator. We have a government-to-government relationship with Indian tribes which can be claimed by no other contractors.

Further, we are not shifting new costs to the taxpayers. The costs of medical malpractice insurance obtained by tribal contractors are funded entirely with appropriated moneys and those costs are projected to increase by 100 percent between fiscal years 1986 and 1987. It is the position of the committee that those funds would be better spent in the provision of health care than in paying premiums to insurance companies for malpractice insurance.

Mr. President, I will not belabor the point except to say that the committee action represents a prudent approach to this issue. Unfortunately, such action required legislation on an appropriations bill. Unless there are others who wish to be heard on this subject, we will not object to striking the language.

Mr. JOHNSTON. Mr. President, I concur with the statements of the distinguished chairman of the subcommittee, and we have no objection to the amendment.

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

The amendment (No. 2824) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2825

Mr. MELCHER. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside.

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

Mr. MELCHER. Mr. President, I have an amendment which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] proposes an amendment numbered 2825.

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

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

The amendment is as follows:

On page 3, line 12 delete "$300,000" and insert in lieu thereof "$800,000".

Mr. MELCHER. Mr. President, this amendment will increase the appropriation for the Bureau of Land Management Land and Water Conservation Fund by $500,000. The funds will be used to purchase approximately 1,500 acres of land along the Upper Missouri River which will be used for public camping, waterway access, and preservation of cultural sites. The tracts involved represent the highest priority for acquisition within BLM.

I believe that the amendment is acceptable to the distinguished chairman of the committee and the ranking Democratic member of the committee, and I ask for its adoption.

Mr. JOHNSTON. Mr. President, the Senator is correct; we have no objection to this amendment.

Mr. McCLURE. Mr. President, we have no objection on this side of the aisle.

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

The amendment (No. 2825) was agreed to.

AMENDMENT NO. 2826

(Purpose: To prevent the Secretary of the Interior from entering into a contract for the operation of the Flathead Indian Irrigation Project Electric Power System)

Mr. MELCHER. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside.

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

Mr. MELCHER. Mr. President, I have an amendment which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] proposes an amendment numbered 2826.

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

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

The amendment is as follows:

At the end of the bill add the following new section:

"SEC. ——. Notwithstanding any other provision of the law, the exception provided for in P.L. 87-279 shall apply with respect to the Flathead Indian Irrigation Project Electric Power System."

Mr. MELCHER. Mr. President, the purpose of this amendment is to prevent the Secretary of the Interior from entering into a contract transfering operation of the Flathead Indian Irrigation Project Electric Power System. Public Law 87-279 states as follows:

Except for electric utility systems constructed and operated as a part of an irrigation system, the Secretary of the Interior is authorized to contract under such terms and conditions as he considers to be in the best interest of the Federal Government for the sale, operation, maintenance, repairs, or relocation of Government-owned utilities and utility systems and appurtenances used in the administration of the Bureau of Indian Affairs. The Secretary shall not execute pursuant to this section until he has submitted to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives a copy of the contract and a statement of his reasons for proposing the contract, and until such materials have lain before the committees for 60 days (excluding the time during which either House is in recess for more than 3 days) unless prior thereto, the Secretary is notified that neither committee has any objection to the proposed contract.

Prior to enactment of Public Law 87-279, the Secretary was required to obtain congressional approval over every transaction involving a contract for the sale, operation, maintenance, repairs, or relocation of Government-owned utilities and utility systems administered by the Bureau of Indian Affairs.

Public Law 87-279 gave the Secretary blanket authority to enter into these kinds of contractual arrangements except for those electric utilities which were constructed and operated as part of an irrigation system.

Senate Report 87-600 and House Report 87-0146, both accompanying S. 1501 which became Public Law 87-279, makes it clear that the primary emphasis of the statute was to provide a mechanism by which the Federal Government could divest itself of some or all responsibility with respect to some of the Bureau of Indian Affairs administered utility systems—except electric utility systems constructed and operated as part of an irrigation project—so as to continue to meet Bureau needs while facilitating improvement of services both to the Bureau and to any private communities affected. (H. Rept. 87-1046 at 2; S. Rept. 87-600, at 2-4.) The Senate report notes that without the authority granted in the provision, the Department of the Interior lacked authority to contract for the sale or operation of existing Bureau facilities unless they were surplus to the needs of the Government, even where such contract would have been in the Government's best interest and would have facilitated better service to all concerned. (S. Rept. 87-600, at 2.)

This observation by the Senate committee means that the Secretary had no other authority to enter into such contracts and that by excepting the specified form of electric utility from its reach, that the Secretary lacked authority to contract such utilities after the section's enactment.

The Flathead Indian Irrigation Project Electric Power System was constructed and has been operated as part of the Flathead Irrigation System and, as such, it is within the exception provided for in Public Law 87-279.

The legislative history pertaining to the FIIP Power System and district contracts, clearly indicates that the power system was constructed and operated as part of the irrigation system. It was contemplated in 1909 that power for pumping and resale would be developed along with irrigation. By the Act of March 3, 1909, 35 stat. 781, 796, Congress reserved for the development of the irrigation project, reservation lands valuable for reservoirs and power sites. One of the sites reserved for power development by the project was the present site of Kerr Dam. Furthermore, unexpended funds from appropriations to the irrigation project were used to begin construction of the power system (1928). In addition by the Act of May 10, 1926, 44 stat. 453, 464, and subsequent legislation, Congress conditioned availability of funds appropriated for construction of the project's power development on the formation of irrigation districts which could enter into contracts with the United States for reimbursement of the projects cost.

Under these circumstances, Public Law 87-279 prevents the Secretary from contracting for the operation of the power system.

The amendment I am offering today merely clarifies and reaffirms that Public Law 87-279 controls any questions of whether the Secretary of the Interior is authorized to contract the electric utility attached to the Flathead Indian irrigation project.

I understand that the amendment is acceptable to the distinguished chairman of the subcommittee and the ranking Democratic Member, and I hope it can be adopted.

Mr. McCLURE. Mr. President, I have discussed this amendment with the Senator from Montana and he is aware of the opposition to the amendment which has been expressed by the Department of the Interior. It may be difficult to hold the amendment in conference, but I will not object to its adoption.

Mr. JOHNSTON. Mr. President, we concur.

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

The amendment (No. 2826) was agreed to.

AMENDMENT NO. 2827

(Purpose: To increase the appropriation for the Creston Fisheries Center for Indian fisheries)

Mr. MELCHER. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside.

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

Mr. MELCHER. Mr. President, I have an amendment which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] proposes an amendment numbered 2827.

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

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

The amendment is as follows:

On page 26, line 21, strike out "$887,666,000" and insert in lieu thereof "$887,708,000".

On page 27, line 16, insert the following after the colon: "*Provided further*, That of the portion of such funds appropriated for Indian fisheries programs, $80,000 shall be available to the Creston Fisheries Center of the United States Fish and Wildlife Service:"

Mr. MELCHER. Mr. President, as the distinguished Senator from Idaho knows, for several years now the Bureau of Indian Affairs and the U.S. Fish and Wildlife Service have entered into memorandums of agreement. The purpose of these agreements is to establish a method whereby the Fish and Wildlife regions provide fish and wildlife technical assistance, hatchery produced fish, and biological data to BIA area offices, Indian tribes, and reservations. It is my understanding that the Appropriations Committee has provided $1,339,000 to fund this activity in fiscal 1987.

A September 2 memorandum from the BIA Billings Area Director to the Deputy Assistant Secretary for Indian Affairs states that $38,000 is budgeted for the Creston Fishery Center in Kalispell, Montana, but that $80,000 is required to provide adequate funding for the Fish and Wildlife Creston Fishery Center that serves a number of Indian tribes in Montana pursuant to the above mentioned memorandum of agreement.

The amendment I am offering today would assure that the Creston Fishery Center would be funded at $80,000 in

fiscal 1987. I hope that the managers will accept this amendment.

Mr. McCLURE. Mr. President, during fiscal year 1986 the Bureau of Indian Affairs found it necessary to transfer funds from the Lander, WY technical assistance office to Montana to meet fisheries needs in that area. The amendment offered by the Senator from Montana would provide the required funds for Montana so that resources would not be diverted from other programs during fiscal year 1987. The amendment is acceptable.

Mr. JOHNSTON. Mr. President, the amendment is acceptable on this side of the aisle.

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

The amendment (No. 2827) was agreed to.

Mr. MELCHER. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside for the purpose of entering into a colloquy with the distinguished chairman of the subcommittee and the ranking Democratic member.

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

The Senator is recognized.

Mr. MELCHER. Mr. President, we have had a couple of problems with the National Park Service in Montana over fencing which I would like to clear up.

If we are going to fence in the national parks, it is a questionable activity to begin with, because we tend to make large zoos out of Yellowstone and, for that matter, Glacier. We border Yellowstone, and in the State of Montana we surround Glacier on three sides. In both instances, for both parks, the question of fencing has come up. For Yellowstone, it is a question of controlling where the buffalo roam. There are about 2,500 of them in Yellowstone National Park, and sometimes the feed is short there. There is not enough grass for them, and they would like to get where the tall grass is.

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That sometimes causes some problems, and one of the solutions that has been mentioned is why not fence the whole Yellowstone Park?

I would oppose that most vigorously for the reason I just mentioned. We do not want to make a zoo out of Yellowstone.

The basic problem is the overgrazing in Yellowstone National Park with a herd or herds of 2,500 or 3,000 buffalo and about 20,000 elk. That is a very serious problem in regard to whether or not we are going to control erosion in the granddaddy of all of our national parks, Yellowstone, and there is every indication now that the Park Service has ignored overgrazing and indeed we are creating the situation where there will be some erosion and sedimentation of the streams, starting a whole series of bad consequences.

So fencing cannot be the answer. I think the real answer is, are we going to have a study instigated, started by the National Park Service by professionals to find out where is the overgrazing, why is it there, what are we going to do to correct it to make sure we do not have too many buffalo or too many elk gobbling up all the grass in Yellowstone.

I know to the public maybe that sounds like anarchy or something bad to say we perhaps have too many buffalo or elk in Yellowstone.

The fact is we have to be realists. If there are too many, there is a bad series of chain of events starting with overgrazing, loss of vegetation, erosion, sedimentation, and creating sort of a bad example in Yellowstone or Glacier. In Glacier it is a different problem. In Glacier National Park there is some fencing started by the Park Service ill advisedly because the clear state of the law is the Indian treaty where the Blackfeet Tribe ceded land they have that became the bulk of Glacier Park. That treaty says it cannot be fenced in, that they have to have access to it. Now, the tribe is objecting.

So I ask in this colloquy with the distinguished subcommittee chairman whether or not he agrees with me in both instances: first of all start a study on Yellowstone to see whether there is evidence of overgrazing, what should be done to avoid that; and on Glacier, whether or not we have his support in making sure that no fencing is done without agreement with the Blackfeet Tribe between the border of Glacier National Park and the Blackfeet Reservation.

Mr. McCLURE. Mr. President, it seems to me the request of the Senator from Montana is reasonable.

I believe our discussion today will direct the Park Service to conduct such a study and forward the results both to the appropriate congressional committees, including the Appropriations and the Energy and Natural Resources Committee, and will also direct the Glacier Park to cease fencing activity until formal agreement has been reached with the Blackfeet Tribe. I believe that will accomplish those goals.

I think the statement the Senator has made is an entirely reasonable one.

Mr. JOHNSTON. Mr. President, if the Senator will yield, I concur in that statement as well.

Mr. MELCHER. I thank the distinguished chairman and the distinguished ranking Democrat on the subcommittee, and, Mr. President, I now suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. McCLURE. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside.

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

NAVAJO NATION AND HOPI TRIBE LAND OWNERSHIP DISPUTE

Mr. DOMENICI. Mr. President, since the late 1800's the Navajo Nation and the Hopi Tribe have been involved in a dispute over land ownership in the Southwest. In 1972 Congress attempted to settle this dispute by passing Public Law 93-531 which required the partition of what is known as the "1882 Reservation" and the relocation of thousands of Indians. However, only about one-third of the relocation has been completed in the 12 years the Federal Government has been conducting the program. During the last year there has been a growing debate over the harshness of the program and the need to continue it in its present form. Although this is not the time to get into a discussion about the merits of the overall program, we do need to address the way the program is being conducted in its present form.

One of the key areas of disagreement is the priority in which the families that qualify for benefits should be relocated. According to information from the Navajo-Hopi Indian Relocation Commission, 4,107 families have applied for relocation benefits. Of those whose applications have been approved, 551 families have relocated to off-reservation homesites, 433 families have relocated to the Navajo Reservation, and 1,250 families have moved from the Hopi partition land [HPL] without receiving any benefits. Although no one knows for certain at this time, there may be as many as 400 families remaining on the HPL who will have to be relocated with benefits. Completion of the relocation may take several more years if it is done in the humane and generous manner that Congress mandated. Exactly how long it will take is still unclear and will depend on many things including the development of a comprehensive plan and the outcome of a law suit that alleges the Federal Government is not complying with the relocation legislation.

Because the relocation process will take a long time to complete, it is absolutely necessary that some kind of priority be established for relocation. In setting this priority I believe that the basic rule of fairness should prevail and that we should not try to take any short-cuts in the process.

Over 1,250 families have voluntarily left the HPL and they have been certified by the Navajo-Hopi Indian Relocation Commission as qualifying for benefits. Many of these families have waited as long as 6 years for the benefits that Congress mandated for them and they are still waiting. Because of the limited number of families that can be relocated within a certain period of time, those families that have been waiting for years must now compete with those who are still on the land. The House Interior appropriations bill recommends that to the maximum extent practicable they are to be relocated in the chronological order in which they became certified to receive benefits.

In other words, the rule of first come, first served shall apply when possible. The Senate bill has struck this language and has inserted report language which says that the first priority in relocation is to clear the Hopi partition land and to provide homes for those certified relocatees remaining on the HPL. A strict interpretation of this language could result in punishing those who first sought to comply with the law by forcing them to stand in line for a few more years. I believe that this is not the fair and just way to proceed and I believe that some clarification is necessary. According to research done by my staff, the commission has signed 152 contracts for relocation in fiscal year 1986. Of the 152 contracts for relocation, 32 are with Navajos on the Hopi land and the remainder, almost 80 percent, are contracts with Navajos who are no longer living on Hopi land. I believe that a flexible priority system as reflected by the commission's actual relocation efforts in fiscal year 1986 is the kind of priority the committee intends.

Mr. DECONCINI. Will the distinguished Senator yield for a question? Does the Senator mean that a substantial part of the appropriated funds may be spent to relocate certified non-HPL residents and that in so doing the intent of the legislation would be complied with?

Mr. DOMENICI. That is correct. Congress mandated that the relocation program "take into account the adverse special, economic, cultural, and other impacts of relocation * * * and * * * avoid or minimize, to the extent possible, such impacts." Unless the priority system has some flexibility which permits actual need to be taken into consideration as the committee has done, there would be a direct repudiation of the requirement to minimize the impact of relocation.

Mr. DECONCINI. I believe that the House priority language is a much more reasonable approach to the problem. However, insofar as the Senate Appropriations Committee's language is concerned, I agree with my distinguished colleague from New Mexico in his clarification. We are not tying the hands of the commission or the BIA in carrying out the relocation program. Instead we are leaving them with reasonable flexibility to administer the program in a way that meets the needs of the people.

Before we close the discussion on this issue, I will make one brief comment about the broader aspects of the Navajo-Hopi land dispute. I have been deeply involved in this issue for many years and there is a good chance that changing circumstances will make it unnecessary to move many of the Navajos remaining on the HPL. There is a growing awareness that the Relocation Program is unnecessarily creating severe social, economic, and psychological problems for the traditional Navajo people.

News stories over the last year have highlighted the tragic consequences of the Relocation Program and people across the United States have begun to question the need for a Federal program that has been described by many as a massive violation of human rights. At the same time official investigations of the problem have come to one general conclusion—there must be a comprehensive settlement of the many disputes between the Navajos and Hopis and such a settlement must minimize relocation. Judge Clark, former Secretary of the Interior, recommended such an approach in his report to President Reagan last year. This report was followed by the introduction of a bipartisan bill by Congressmen UDALL and MCCAIN. After a hearing on the Udall-McCain bill I introduced a similar bill in the Senate. In essence these bills would bring about a comprehensive settlement of all disputes and cut relocation by about 90 percent through land exchanges and monetary payments.

The clarification which Senator DOMENICI has made today will minimize any harm that may be caused by relocation, pending future congressional action. I agree that the failure to assist those families who have qualified for benefits and who have been waiting for years is in direct contravention of the act. We must make it clear that those who need the help the most are provided assistance as soon as possible.

OSM INSPECTOR POSITIONS

Mr. METZENBAUM. Mr. President, in the continuing resolution for fiscal year 1986, we added 44 new inspector positions for OSM, in order to strengthen inspection and enforcement activities.

OSM did not fill all of those positions in fiscal year 1986. A number of troubleshooters were not brought on board. I discussed this with the chairman of the Interior Appropriations Subcommittee during consideration of the fiscal year 1986 supplemental appropriations bill in June.

At that time, he and I agreed that OSM should be instructed to fill all the positions promptly, and that Congress expected all of the positions to be filled in fiscal year 1987.

Is it the understanding of the chairman that the allocation for OSM's regulatory program operations in this bill contains enough funds to fill those 44 positions through fiscal year 1987?

Mr. McCLURE. Yes.

Mr. METZENBAUM. Will my colleague work with me to draft language which will instruct OSM that Congress expects all 44 positions be filled promptly and remain filled through fiscal year 1987?

Mr. McCLURE. Yes.

Mr. METZENBAUM. If, for some reason, OSM is mistaken and there is not enough money in OSM's budget to fill those positions without sacrificing other inspection and enforcement positions, can the Senator assure me that he will work with me to secure any additional funds which may be needed?

Mr. McCLURE. That would be a conferenceable item and I would work toward that in conference if necessary. However, as the Senator from Ohio knows, this bill has an allocation problem which also needs to be solved before adding new funds.

Mr. METZENBAUM. I thank my colleague for his assurances and assistance on this issue. I look forward to working with him on this subject.

INDIAN CLINIC

Mr. ABDNOR. Mr. President, in fiscal year 1984 Congress appropriated funds to construct a 1,600-square-foot clinic at Sisseton, SD. On a recent visit to the Sisseton-Wahpeton area, I was informed that the clinic size could be increased to 2,500 feet without requiring any additional Federal funding.

I would like to inquire of the distinguished subcommittee chairman of the subcommittee, if it would be possible to provide for this expanded clinic in order to better meet the health care needs of the Indian people in this area.

Mr. McCLURE. Mr. President, we are informed that the area office just forwarded this request to the central office of the Indian Health Service a week ago. The proposal is currently under review to determine if the projected workload is sufficient to justify the expansion. IHS has been requested to inform the committee of their findings as soon as they are available. If their recommendation is to proceed with the larger facility, at no additional cost, I would ask the House to agree to conference report language approving the larger facility.

Mr. ABDNOR. Mr. President, I thank the floor manager of the bill for his consideration in this matter.

CLARIFY INTENT OF COMMITTEE REPORT LANGUAGE REGARDING NIPER

Mr. NICKLES. Mr. President, I would like to ask my friend the distinguished chairman of the subcommittee if he would be willing to engage in a brief colloquy.

The committee has included report language which recommends that the Department of Energy plan to renew its agreement with IITRI/or the operator of the National Institute for Petroleum and Energy Research [NIPER]. IITRI is a not for profit organization which was competitively selected as the operator of this federally owned petroleum research facility at Bartlesville, OK. The senior Senator from Oklahoma and I requested that this recommendation be included in the report. We are, however, aware that two committees of the House have also addressed the issue, although their specific recommendations are somewhat different. I am concerned that misinterpretation of the apparently divergent views could lead to undesirable consequences either for NIPER or for the parts of the integrated Federal petroleum research program performed by organizations other than NIPER, for example, universities, national laboratories, and private contractors with unique capabilities. I would like to clarify the committee's intent in this matter. The Senator from Idaho has a long interest in these issues and I am very grateful to him for his help.

Mr. McCLURE. I am happy to clarify the matter for the Senator. The committee intends to reconcile this issue with the House to assure continued operation of the federally owned facility in Bartlesville as the current Department of Energy agreement with the National Institute for Petroleum Energy and Research reaches its conclusion in September 1988. It is not our intention to impede the ongoing work of the facility, or related efforts at universities, national laboratories and private contractors.

Mr. NICKLES. I want to thank the Senator for his clarification. His leadership in fossil energy research is much appreciated by this Senator. It is important to assure productive continuity of operations of the only Federal petroleum research installation. This, I believe, is also the essential objective of the two House committees. All three recommendations basically say "no" to the Department's proposal to sell the facility, at least at this time. With the domestic petroleum industry in its current depressed state, it is simply good business to retain an asset for which we could hope to receive only a small fraction of its fair market value. Beyond this, however, is the valuable role that a federally owned, active research facility can play in the larger Federal petroleum research program and under times of national emergency. For example, this lab was critically important in World War II in assuring the supply of aviation fuel and in developing synthetic rubber for the war effort. NIPER now both performs federally funded research as directed by the Department and helps transfer the resulting technology by performing research for other Federal agencies—for example, Defense and EPA—and for private sponsors.

The Appropriations Committee has recommended continuation of operations under a renewal agreement with terms similar to the present agreement. The House Science and Technology Committee has recommended continuation of operations of the Bartlesville facility as a Government-owned, contractor operated [GO-CO] facility similar to the Department's national laboratories. The House Appropriations Committee has recommended continuation of operations on a basis similar to the Western Research Institute [WRI] and the University of North Dakota Energy Research Center [UNDERC]. While each of these seeks continued operations and productivity, they are quite different in implementation and could have quite different implications in terms of costs, effectiveness of NIPER's research, continuity of NIPER's staff, and implications for the funding available for federally supported petroleum research at universities, national laboratories, and others with unique capabilities. These implications are far-reaching, profound, and, at present, highly uncertain.

Is my understanding correct that the committee directs the Department to plan to continue operations of the Bartlesville research facility, to terminate its current efforts to dispose of it and to plan for the renewal of the existing cooperative agreement?

Mr. McCLURE. The Senator is correct. The intent of the committee is to assure continued, productive operations of the Bartlesville facility. The committee has directed the Department to work toward this goal during fiscal year 1987 by planning for a 5-year renewal of the existing cooperative agreement. The committee intends for the facility's support to be made up from DOE programs, including DOE fossil energy activities, other Federal agencies, and private sponsors as may be appropriate to the facility's capabilities.

Mr. NICKLES. Once again, I thank the distinguished chairman for these clarifications.

FORT LARNED NATIONAL HISTORIC SITE

Mr. DOLE. Mr. President, last year, at my urging, Congress appropriated $262,000 for the reconstruction of the blockhouse at Fort Larned National Historic Site, KS. Since that time, work has progressed on this project in a timely manner. However, recently I was advised that an integral part of the blockhouse has not been scheduled for reconstruction—particularly, the passageway/tunnel between the cellar of the blockhouse and the underground well.

Mr. McCLURE. The Senator from Idaho stands behind the original intent of the legislation passed last year.

Mr. DOLE. I understand that the regional office of the National Park Service in Omaha, NE has outlined some problems with the reconstruction of the passageway/tunnel and thereby refuses to proceed with its reconstruction. The following are the problems outlined by the National Park Service.

First of all, the regional office claims that to build such a passageway would be a violation of their policy of not destroying any historically significant remains during reconstruction. In regard to this first concern I ask, what good does it do to leave untouched a historical structure that has since been filled with dirt? It is my belief, that the reason for the Federal Government's funding of such a National Park Service facility is for the taxpayer to be able to turn back time and see how our ancestors lived.

Mr. McCLURE. I agree with the Senator from Kansas that such a facility should be reconstructed and open to viewing by those visiting Fort Larned.

Mr. DOLE. Second, the Park Service claims that rebuilding the tunnel would violate their policy that states that reconstruction of the facility is essential to the interpretation of Fort Larned. I suppose, Mr. Chiarman, that the argument as to the importance of this facility could go either way. However, I am certain that most visitors to the fort would be intrigued by the chance of viewing a tunnel constructed years ago to allow soldiers a passageway to a water source when the fort was under siege.

Mr. McCLURE. I am certain many visitors would enjoy the opportunity to view the reconstructed tunnel. This tunnel, most likely, would become one of the more popular attractions at the fort because of its uniqueness.

Mr. DOLE. Third, the National Park Service claims that it would be dangerous for a visitor to enter the tunnel because of its dimensions and construction. However, I am certain that one could show numerous examples of safety problems existing at other National Park Service facilities around the country. Yet, in the interest of the public seeing the facilities, they are kept open and special accommodations are made for safety.

Mr. McCLURE. I can assure my colleague from Kansas that other National Park Service facilities have overcome such safety barriers and have

made their facilities as safe as possible while still maintaining the integrity of the structure.

Mr. DOLE. It is also my understanding, that the National Park Service claims that the project will cost more than the appropriated amount. It is my contention that regardless of the National Park Services' concerns, the reconstruction of the tunnel was directed by Congress and should take place. Any cost overruns associated with the reconstruction of the blockhouse should be funded with available National Park Service funds and from any other funds made available through other project savings.

Is that also the chairman's understanding?

Mr. McCLURE. I share the interpretation of the majority leader on this matter and can assure the majority leader that the Senate conferees will insist that the conference report be drafted to make clear that the passageway/tunnel between the cellar and the underground well in the blockhouse at Fort Larned National Historic Site, KS be reconstructed. Further, any cost overruns associated with this project should be funded from available sources, including other project savings.

Mr. DURENBERGER. Mr. President, I appreciate the opportunity that consideration of the fiscal year 1987 Interior appropriations bill provides to focus congressional attention on the serious problems facing the National Park Service.

The committee is to be commended for recognizing the tight budgetary environment in which the National Park Service must operate and the negative affect this has on visitor enjoyment as well as the protection of the resources for which the parks were established.

The proposal before us would raise approximately $50 million to be expended at the discretion of the Director of the National Park Service to defray costs of collection, second for maintenance, interpretation, research and resources management at the collecting unit, and third, for maintenance, interpretation, research and resources management at all units of the National Park System.

I would like to suggest to Members of this body, Mr. President, that when we consider permanent legislation, we go beyond using entrance fees for basic operation and maintenance and reinvest these revenues for the resources for which the parks were established.

I would like to draw my colleagues attention to legislation I sponsored, S. 2130, the National Park System Resources Preservation and Revitalization Act of 1986. This legislation is designed to institutionalize resource management and protection as a higher priority within the National Park System, I ask unanimous consent that a copy of this legislation be printed in the RECORD.

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

S. 2130

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 "National Park System Resources Preservation and Revitalization Act of 1986."

FINDINGS

SEC. 2. The Congress finds that—

(1) the National Park System was established to protect and preserve unique natural and culture resources which constitute a major source of pride, inspiration, and enjoyment for the people of the United States and which have gained international recognition and acclaim;

(2) no comprehensive, long-term methodology now exists within the National Park Service—

(A) for detecting, measuring, and documenting resource problems;

(B) for setting priorities to address such problems; or

(C) for assessing the success or failure of the National Park Service in responding to problems identified;

(3) the National Park Service lacks sufficient staff with adequate technical capabilities to manage and interpret the resources of the National Park System effectively, as well as the strong research and analytical capability necessary to anticipate and address future resource problems;

(4) in a system whose perceived core responsibility has been its natural areas, the commitment of the National Park Service to the management and protection of cultural resources needs continued strengthening; and

(5) unless a comprehensive, multiyear program is undertaken to—

(A) preserve and revitalize park natural and cultural resources;

(B) provide improved stewardship for future generations;

(C) address a growing backlog of deferred restoration and protection needs;

(D) institutionalize scientifically based resource management and resource interpretation as higher priorities within the National Park Service; and

(E) ensure consistent funding levels for an adequate period,

resource degradation will continue, and future remedial measures will become prohibitively costly.

PURPOSE AND POLICY

SEC. 3. (a) In furtherance of the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4), it is the purpose of this Act to protect and preserve natural and cultural resources within the National Park System for the benefit of present and future generations by establishing a comprehensive resources revitalization and protection program, to be funded by the National Park System Resources Trust Fund established by Section 10 of this Act;

(b) The policy of the comprehensive resources revitalization and protection program shall be to—

(1) preserve, maintain, and revitalize natural and cultural resources;

(2) monitor and study the effects of park resource management policies and practices and human activity from within and outside the boundaries of National Park System units on natural and cultural resources;

(3) prepare every five years resource management plans for each unit of the National Park System and a systemwide assessment on resource conditions and steps being taken to address problems identified; and

(4) provide sufficient technical and scientific staffing and continuing education for effective resources protection, maintenance, management, interpretation and research.

DEFINITIONS

SEC. 4. As used in this Act—

(1) the term "Secretary" means the Secretary of the Interior acting through the Director of the National Park Service;

(2) the term "resource" or "resources" includes both cultural and natural resources and means—

(A) in the case of natural resources, the scenic, atmospheric, hydrologic, geological paleontological remains, and flora and fauna components of the indigenous ecological systems; and

(B) in the case of cultural resources, the historic and prehistoric districts, sites, buildings, structures, objects and human traditions associated with or representative of human activities and events, including related artifacts, records and remains;

(3) the term "unit" means a unit of the National Park System;

(4) the term "park" means a unit of the National Park System; and

(5) the term "Fund" means the National Park System Resources Trust Fund.

PRESERVATION AND REVITALIZATION

SEC. 5. (a) The Secretary of the Interior shall establish a comprehensive program to preserve and revitalize resources in the National Park System. The program shall be implemented as provided in subsections (b), (c), and (d).

(b) The Secretary shall prepare resource management plans for each unit of the National Park System and shall update such plans at least every five years. The plans shall address both natural and cultural resources of the park units and shall contain information, including inventories, necessary to understand the extent, location, and condition of resources and current and potential resource-related problems, and shall set forth actions necessary to deal with such problems.

(c) The Secretary shall develop criteria to establish priorities for addressing the resource problems identified in the resource management plans prepared pursuant to subsection (b), taking into account similar resource problems in other units, the severity of such problems, and feasibility of solutions.

(d)(1) Based upon the following information contained in the resource management plans and on the criteria developed pursuant to paragraph (c), the Secretary shall prepare a priority list of those cultural and natural resources within the National Park System units needing preservation and revitalization, and expend such sums as are necessary to address the most critical natural and cultural resource problems each year, to a maximum of $12,000,000 per year.

(2) In making expenditures under paragraph (1), the Secretary may expend funds in affiliated areas of the National Park System where the expenditure of Federal funds is not prohibited by law.

MONITORING AND RESEARCH

SEC. 6. (a)(1) Based upon the information contained in resource management plans

and on criteria developed pursuant to section 5(c), the Secretary shall prepare a priority list of unit and systemwide monitoring and research needs and devote such sums as are necessary to address the most critical natural and cultural resource research and monitoring projects each year, to a maximum of $12,000,000.

(2) In making expenditures under paragraph (1), the Secretary may expend funds in affiliated areas of the National Park System where the expenditure of Federal funds is not prohibited by law.

(b) In addition to the other requirements of this section, the National Park Service shall take such steps as are necessary to improve its ability to monitor resource conditions and enhance its knowledge of these conditions, including—

(1) establishing within the agency an independent research capability for the purpose of investigating the resources of the national parks, including problems of management, protection, and interpretation of these resources;

(2) collecting and disseminating statistics, data, and other information on resource conditions, problems, and trends; and

(3) seeking additional scientific advisory assistance and advice on a contractual or noncontractual basis from Cooperative Park Service Study Units, Park Service research programs, the National Academy of Sciences, universities and colleges, non-profit organizations, and other Federal, State and local agencies.

STAFFING AND TRAINING

SEC. 7. To ensure that an adequate number of trained personnel are available to protect, maintain, manage and interpret National Park System resources, the Secretary shall—

(1) establish national natural and cultural resources training programs within the National Park Service or in conjunction with universities or other institutions;

(2) provide comprehensive training courses for prospective resource management specialists each year for a minimum of 5 years after the enactment of this Act, and following each training course, place these specialists in permanent resource management positions within such units and offices of the National Park System as needed. Such courses may also enroll persons already employed in resource management positions who are in need of specialized training; and

(3) institute programs of training and mandatory continuing education available annually for personnel involved in positions concerned with the condition of park resources, including superintendents, park managers, interpreters, rangers, maintenance employees, and research scientists, as appropriate.

RESOURCE CONDITION ASSESSMENT

SEC. 8. (a) In order to—

(1) more effectively establish systemwide resource management and protection priorities;

(2) better evaluate the responses by the National Park Service to the priorities established;

(3) facilitate congressional oversight; and

(4) better inform the public about the condition of park resources,

the Secretary shall prepare and transmit to Congress an assessment of resource conditions, problems, possible remedial actions, and future needs for the National Park System to be submitted to the Congress every five years as part of the appropriation process.

RESOURCE PROTECTION CHALLENGE GRANTS

SEC. 9. For the purpose of developing and fostering innovative partnerships between the National Park Service and not-for-profit organizations, universities and colleges, and State and local agencies to preserve, revitalize, monitor and study, and interpret park resources, the Secretary shall make available the sum of $5,000,000 annually for grants, to be matched on a one-to-one basis with other funds or in-kind services. Highest priority in awarding such grants shall be given to preservation and revitalization projects and to research and monitoring projects.

PARK RESOURCES TRUST FUND

SEC. 10. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the National Park System Resources Trust Fund.

(b) Notwithstanding any other provisions of law, as of October 1, 1986, and for ten years thereafter, all receipts collected from fees or permits for admission or entrance to the National Park System, and all fees collected under subsections (b) and (c) of Section 4 of the Land and Water Conservation Fund Act of 1965 (78 Stat. 987; 16 U.S.C. 4601-6(a)) shall be deposited in the Fund.

(c) The sum of $50,000,000 shall be available annually from the Fund without further appropriations until September 30, 1996, to carry out the purposes of Section 3 of this Act for the benefit of all units, and to defray the costs of collection. Monies from the Fund shall only be used to augment National Park Service resource management, interpretation, and training programs using the FY'86 appropriated, level as the minimum.

(d) It shall be the duty of the Secretary of the Treasury to hold the Fund and to report to the Congress each year on the financial conditions and the results of the operation of the Fund during the preceding fiscal year and on its expected condition and operation during the next five fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(e) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

(1) on original issue at the issue price, or

(2) by purchase of outstanding obligations at the market price. Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price. The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

AMENDMENTS TO THE LAND AND WATER CONSERVATION FUND ACT OF 1965

SEC. 11. (a) Section 4 of the Land and Water Conservation Fund Act of 1965 (78 Stat. 987; 16 U.S.C. 4601-6(a) is amended—

(1) in the first sentence of subsection (a) by striking out the period and inserting in lieu thereof the following: ", except that any unit which provides significant outdoor recreation opportunities in an urban environment and to which access is publicly available at multiple locations may not be so designated.";

(2) in the first sentence of paragraph (1) of subsection (a) by striking out "for a fee of not more than $10" and inserting in lieu thereof "for a fee of not more than $25";

(3) in paragraph (2) of subsection (a) by—

(A) striking out "(2) Reasonable" and inserting in lieu thereof the following: "(2)(A) Except as provided in subparagraph (B), reasonable"; and

(B) adding at the end thereof the following: "(B) No fee shall be charged on a day designated by the Secretary as a fee-free day. At least one fee-free day shall be designated each month of the year.";

(4) in the second sentence of paragraph (4) of subsection (a) by striking out "without charge" and inserting in lieu thereof "for a fee of $10";

(5) in the third sentence of paragraph (4) of subsection (a) by striking out "other";

(6) in subsection (a) by adding at the end thereof the following new paragraph:

"(6) The Secretary of the Interior shall establish procedures providing for the issuance of special permits for persons or groups undertaking educational or research activities in a unit if such persons or groups apply for such permit. Such procedures shall assure that each special permit shall be issued only to persons or groups to be determined by the Secretary to be involved in legitimate educational and research activities on a not-for-profit basis. Such permit shall be nontransferable, shall be issued without charge, and shall entitle the permittee or any person accompanying said permittee in a noncommercial vehicle or vehicles or other means, to entrance to any area designated pursuant to the subsection.";

(7) in subsection (e) by adding at the end thereof the following new sentence: "When authorized by the head of the collecting agency, volunteers may sell permits and collect fees authorized or established pursuant to this section, and funds appropriated or otherwise available to the collecting agency shall be available to cover the cost of any surety bond as may be required of any such volunteer in performing such authorized services under this subsection."; and

(8) in subsection (f)—

(A) by striking out "(f) Except" and inserting in lieu thereof "(f)(1) Except as provided in paragraph (2) and except"; and

(B) by adding at the end thereof the following new paragraph:

"(2) For the period ending ten years from the date of enactment of this paragraph, all receipts collected from fees or permits for admission or entrance to the National Park System, and all fees collected under subsections (b) and (c) of this section with respect to the National Park System, shall be deposited in the National Park System Resources Trust Fund established by section 10 of this Act.

(b) TECHNICAL AMENDMENT.—Section 402 of Public Law 96-87, relating to entrance fees to units to the National Park System, is amended by striking out "in excess of the amounts which were in effect as of January 1, 1979, or charge said fees at any unit of the National Park System where such fees were not in effect as of such date," and inserting in lieu thereof "in excess of $5,".

Mr. DURENBERGER. Do I have the chairman's assurance that a significant amount of the revenues raised will go to resource protection management.

Mr. McCLURE. I am aware of the commitment the distinguished senior Senator from Minnesota has protect-

ing the valuable resources of the National Park System. I assure him that additional funds will go toward resource protection under this provision.

Mr. DURENBERGER. I thank the chairman. I appreciate his assistance and look forward to working with you in developing a long-term resource protection program.

MHD

Mr. MELCHER. Mr. President, we need to focus on the Magnetohydrodynamics Program and agree upon a reasonable 1987 appropriation.

In 1984, the MHD Program approved by Congress required that proof of concept testing be completed before proceeding to an integrated facility. In the last 2 weeks the Department of Energy announced a solicitation for the "prototypic" hardware which is required for proof of concept testing. Obviously, the MHD 1987 budget must be adequate to allow for continued progress including the prototypic equipment cost.

The House-passed version of the bill contains $30 million for MHD, which is a reasonable and minimum level. The Senate bill, on the other hand, includes only $23.5 million, a whooping reduction of $4.2 million from 1986. I am not satisfied with the rationale, if indeed there is any, for this cut.

Because I have heard some criticism of the cost-sharing aspects of MHD, I have checked on it for this year. In 1986, the MHD cost-sharing requirements for fiscal year 1986 were 10 percent for a certain portion of the program. Government agencies, Government facilities, universities, and not-for-profit institutes were exempted. I am pleased to note that the cost-sharing requirements for the private sector may well have been exceeded. That is, the dollar amount of cost sharing required was approximately $420,000 and although the final reports will not be in until year's end, the estimate for the private sector cost sharing is $500,000.

I am astonished to be defending MHD today and to have to make the argument for a reasonable level of MHD funding, because it seems to me that we are on the brink of abrogating MHD's potential on key energy research issues such as acid rain and clean coal technology. Our growing dependence on oil mandates continuing the search for more efficient uses of U.S. coal resources. For example, the Secretary of the Interior predicts that oil imports will increase by about 20 percent in the next year. This is only one of many reminders of the critical need to have a strong domestic energy capability. MHD will eventually enable us to increase the efficiency of electrical power generation through coal by about 50 percent without acid rain and sulfide and nitrous effluents. To renege on this commitment is foolhardy.

The Senate has a clear and consistent record of supporting MHD. We have always recognized that a certain level of funding is necessary to conduct an efficient program; the facilities cost a certain amount to maintain; the testing which is a critical step in the research costs a certain amount; and a certain level of progress must be achieved each year. The decision we make on MHD for 1987 is very simple: Either we appropriate enough money to continue making progress toward a goal which is important for the Nation or we cut the program and create stagnation.

For these reasons, Senator McCLURE, I strongly urge you to accept the House level for MHD. To do otherwise will cause a serious setback for a valuable national program and will reflect poorly on our commitment to a sound national energy policy.

I want to know want you intend to do about this Senator McCLURE. Will you accept the House level of appropriation for MHD?

Mr. McCLURE. Mr. President, as the Senator from Montana is aware, this bill is right at its 302(b) allocation, which is $600 million below the fiscal year 1986 enacted level. Because this allocation is so low, some projects were reduced while others were eliminated.

It will be difficult to increase funds for the MHD Program without an increased allocation. I will continue to work for an increased allocation in which case prospects for MHD would be vastly improved, but I can assure the Senator from Montana that this will be a conferenceable item even without an increased allocation.

Mr. EVANS. Mr. President, I am concerned about the committee's action in energy conservation R&D. These programs have already been reduced substantially from fiscal years 1981 to 1986. The administration's 1987 budget request proposed another substantial reduction from the previous year in the following conservation R&D subcategories: Buildings and community systems, industrial, transportation, and multisector. For example, in buildings and community systems, the administration's request proposed a $14.1 million level from a $39.8 million fiscal year 1986 base level. The committee chose to raise this amount to only $19.4 million, while the House raised it to $32.9 million.

I believe our Nation should not be lulled into a sense of complacency by the current glut of oil and gas in world markets. Energy efficiency is and will continue to be one of our most cost-effective resources. But many of the energy efficiency R&D efforts still require a Federal involvement while they are in the basic R&D phase prior to commercialization. We should not abandon these efforts prematurely. In particular, I am encouraged by the progress that has been made in the single and multifamily energy retrofit research and in least-cost planning.

The House Appropriations Committee has chosen a higher level of funding for energy conservation R&D. I strongly urge my colleague from Idaho to recede to the House numbers in conference, so that energy conservation R&D can be funded at a minimum level in fiscal 1987.

Mr. McCLURE. I understand the concerns of the Senator from Washington. I think that he understands the severe budgetary constraints under which my subcommittee is bound. In order to increase any program, however, the subcommittee will need an increased allocation. I do understand the importance of the Federal Government's continued role in funding certain energy conservation R&D programs.

Mr. EVANS. I thank the Senator from Idaho. I fully recognize the budgetary constraints under which the chairman operates. I would just add that many of these programs offer a substantial payback to our energy consumers and our country. I would hope they will be considered in that perspective.

Mr. McCLURE. 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.

□ 1130

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

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

Mr. McCLURE. Mr. President, I ask unanimous consent that the pending amendment be termporarily set aside.

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

AMENDMENT NO. 2828

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Idaho [Mr. McCLURE] proposes an amendment numbered 2828.

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

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

The amendment reads as follows:

On page 51, line 4, insert the following before the colon:

: *Provided further*, That no more than $154,321,000, to remain available without fiscal year limitation, shall be obligated for the construction of forest roads by timber purchasers,

Mr. McCLURE. Mr. President, when the Senate considered amendment No. 2775 on September 9, as described on page 22409 of the RECORD, the wrong amendment was sent to the desk. Therefore, I ask unanimous consent that amendment No. 2775 be modified to reflect the amendment I have now sent to the desk and that the amendment be adopted.

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

The question is on agreeing to the amendment.

The amendment (No. 2828) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. McCLURE. Mr. President, I have been in discussion with the Senator from Wisconsin with respect to the pending amendment or amendments and my understanding is that it is his desire that we have a brief period for debate following 2 o'clock and then we vote upon the matters which would then be pending before the Senate.

Mr. President, as I understand it, the regular order would have the Proxmire amendment as the pending business at this time.

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 2829 TO AMENDMENT NO. 2777

Mr. McCLURE. Mr. President, I earlier discussed the two amendments that I would submit and that it would be necessary, in order to submit those amendments, that they be considered en bloc; and that they be considered in order. I, therefore, send that amendment to the desk.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Idaho? Without objection, it is so ordered.

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Idaho [Mr. McCLURE] proposes amendments en bloc numbered 2829 to amendment No. 2777.

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

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

On page 1, line 2 of amendment number 2777, strike the first six numerals and insert in lieu thereof "268,130", and on page 1, line 4 of amendment number 2777, strike the first six numerals and insert in lieu thereof "252,654"

On page 9, line 18 of the bill, delete "36,755,000" and insert in lieu thereof "41,775,000"

On page 15, line 4 of the bill, delete "65,900,000" and insert in lieu thereof "70,900,000"

On page 50, line 4 of the bill, delete "1,144,894,000" and insert in lieu thereof "1,137,894,000"

On page 53, line 7 of the bill, delete "31,906,000" and insert in lieu thereof "36,906,000"

Mr. McCLURE. Mr. President, I ask unanimous consent that the amendments be considered en bloc and be considered in order.

The PRESIDING OFFICER. The request of the Senator is granted.

Mr. McCLURE. Mr. President, my understanding with the Senator from Wisconsin, if I understand it correctly, would be that we have a period for general debate on the pending amendments following 2 o'clock. I do not know how long the Senator would like that period to continue. How much time would the Senator like to have to debate the pending amendments.

Mr. PROXMIRE. Well, I expect to take between a half an hour and an hour. I am not exactly sure. I have not had a chance to go over my material.

Mr. McCLURE. Would the Senator like to use part of that time now and the balance following 2 o'clock?

Mr. PROXMIRE. Yes. I hope we would not schedule the vote at exactly 2 o'clock. I think there are some Senators who might want to speak briefly after 2 o'clock when we come back. So I would prefer not to set any specific time. This Senator does not intend to delay the vote. I would like to have the vote as soon as we can, but I do not want to foreclose the opportunity for Senators who would be gone, and who are gone now, to take part in the debate.

Mr. McCLURE. Mr. President, it is not the intention of the Senator from Idaho to forestall the debate at all. I recognize the necessity for some discussion. I will yield the floor so that the Senator may undertake that discussion at this time, having previously discussed the amendment and the effect of the amendment, and be happy to entertain the discussion of the Senator from Wisconsin. I hope we would be able to get a vote soon after 2 o'clock. I do not have a fixed determination in my own mind as to when that ought to be. I appreciate the fact that the Senator from Wisconsin has been very accommodating in this entire matter.

Mr. PROXMIRE. Mr. President, may I say to my friend, the chairman and the manager of the bill, that, as the Senator knows, we have a 2 o'clock meeting of the Appropriations Committee on the defense appropriations. The Senator from Louisiana and I are both very, very anxious to be present for that. We have to be present for that. It is going to be hard for us to be in two places at one times, so we want to do everything we can to act on this measure so we can get to the Appropriations Committee meeting.

Mr. McCLURE. I have the same conflict, of course. If we can entertain as much of the debate as possible now, then we will certainly accommodate the desire of the Senator from Wisconsin for a reasonable period of time later, if necessary.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Last week, during the debate on the Proxmire-Humphrey amendment, Senator McCLURE stated that our $90 million spending cut would, in fact, produce a net loss to the Treasury. His reason for this statement was the assertion that the Forest Service Timber Program and its road building component actually made money for the taxpayers. To support this claim, Senator McCLURE inserted in the RECORD at 22428 two tables that purport to display the net receipts and expenditures from the timber program.

Now, Mr. President, using those two charts, which Senator McCLURE himself put in, I can demonstrate two important points: First, the Forest Service Timber Program loses money; second, the Forest service never met a number it could not twist.

There are a number of timber program costs that were excluded from table 1 (22428) of Senator McCLURE's statement. The most important of those exclusions, which are also the least controversial, are as follows:

First. Reforestation and stand improvement costs. Even though these costs are clearly the direct and proximate result of timber harvesting under the timber sales program, these costs have been completely excluded from Senator McCLURE's table 1. Ironically, however, Senator McCLURE's table 2 on the same page sets those costs for fiscal year 1985 at $299.4 million. That is right—about $300 million. Since both charts are supposed to display the costs and revenues of the same program, it is extremely difficult to reconcile the exclusion of reforestation in table 1. But, on a closer inspection the reader notices that in table 1, the Forest Service claims to show a net gain for timber programs by excluding some costs. And, in table 2 the Forest Service and Senator McCLURE apparently admit what the Office of Management and Budget. [OMB] and the leaders of the 10 largest environmental organizations have claimed all along: in 1985 the timber program lost money.

Second. General administration costs. There are no general administration costs included in either Senator McCLURE's table 1 or table 2. This is because Senator McCLURE and the Forest Service analysis both assert that general administration cannot be

attributed to any program. However, the most recent draft of the Forest Service's own timber sale program information reporting system includes general administration in its cash-flow report. This draft prepared at the behest of Congress and based on actual test results of the costs of operating Forest Service region 8, shows general administration to the timber program is in the range of 50 to 60 percent of total general administration costs.

Third. Road maintenance costs. Table 1 of Senator McCLURE's statement excludes any road maintenance costs, yet the Department of Agriculture's budget explanatory notes for fiscal year 1985 lists those costs as $65.4 million; $65 million is quite an omission.

Mr. President, if only these three categories of costs are added to the costs listed in Senator McCLURE's table 1 as clearly they should be, then the Senator's own exhibit would result in a net loss to the Treasury of $330.5 million for fiscal year 1985. This is summarized below in a chart labeled "Revised Timber Program Costs and Revenues." Mr. President, I might add that if you subtract the total timber related costs listed in table 2 of Senator McCLURE's statement on page 22428 of the RECORD ($1.01 billion) from the receipts listed in table 1 ($793.5 million), you get a similar net loss—not gain, not profit, but net loss from the timber program—of $216.7 million for fiscal year 1985.

Mr. President, apparently, Senator McCLURE missed these inconsistencies when he placed these tables in the RECORD during our debate. But, I am certain the Forest Service did not miss the point, for that agency "never met a number it couldn't twist." If nothing else in this debate demonstrates my assertion that the Forest Service timber program and its road program are net losers for the Treasury, then please accept Senator McCLURE's and the Forest Service's own exhibits as the best evidence.

Mr. President, the Sierra Club in a letter after the debate had this to say:

Among the fallacious arguments used against the Proxmire-Humphrey amendment was the claim that additional money from the road returned substantial sums of money to the Treasury. This is false. Some national forests do return a profit to the Treasury but most do not. As a general rule, the most productive forests have completed road systems supply because the most cost-effective, low-elevation roads were built first. The least productive forests however receive the disproportionate share of current road-building efforts. These forests habitually cost far more for timber production than they return. Road building is the biggest expenditure in these deficit timber programs. Moreover, the most expensive individual roads are built in the most rugged, undeveloped, and least productive areas. Thus, not only are the roads environmentally destructive, they are economically wasteful. Spending more only increases the waste as well as the destruction.

Mr. President, let me read from a letter to the Honorable SIDNEY YATES, who is chairman of the Subcommittee on Interior, the opposite of Senator McCLURE, in the House. This is on the effect of the House amendment which is an even greater cut than ours.

The letter is signed by leaders from the Sierra Club, National Audubon Society, and the Wilderness Society. This is what the letter states:

We have carefully examined a series of Forest Service "briefing papers" provided the Subcommittee concerning proposed reductions in the fiscal 1987 Forest Road Program. It is apparent that in several important respects these briefing papers greatly overstate the effects of any Forest Road Program funding reductions.

First, these briefing papers were not the result of an analysis of the fiscal year 1987 budget. Instead, the agency chose to rework an ill-conceived, "programmatic" analysis of a $50 million cut in the fiscal year 1986 budget. Therefore, the Forest Service's current predictions of dire results are the products of extrapolation rather than analysis of the effects of reductions on President Reagan's fiscal year 1987 budget request. This methodology cannot be considered a reliable reflection of probable results, but merely presents a worse case scenario.

It is apparent that the predictions of reductions in Forest Service timber offer volume are highly speculative. For example, rather than identify the road mileage foregone and reporting the quantity of timber actually accessed by each project, the Forest Service has derived its timber offer volume prediction from regional timber production numbers and a coefficient that purports to translate road miles into timber volume. Unfortunately, this analysis ignores the fact that between fiscal years 1983 to 1985 the agency constructed or reconstructed 1,875 miles more of roads than it said it needed in its annual budget requests. Moreover, in the "out years", the analysis fails to redirect timber sales into previously roaded areas, even though this obvious alternative could eliminate the need for reductions in timber harvest volumes. These omissions cause the "opportunity costs" of budget reductions to be greatly overstated.

We believe the basic premises of the Forest Service analysis are seriously flawed. For example, a much more reliable answer could be derived by identifying the 808 miles of roads the agency proposes to construct and analyzing the actual volume affected. We have asked the agency for this information, but to date its has not been provided. Instead the agency contends that such information is not available to the Chief Forester. Furthermore, the agency has simply ignored the possible contributions from its enormous road backlog in analyzing timber volume effects although that information must be available to it. Under such circumstances, claims of massive effects on timber sales volume and catastrophic lay-offs in the private sector appear to be dubious at best.

Another example of the misleading nature of these briefing papers is found in the so-called "value of timber not sold" included in each analysis. In fact, this figure does not represent the net return to Treasury at all. Instead, that number is produced by multiplying average gross stumpage values by volumes foregone. It excludes costs of growing or selling the trees, the costs of reforestation, and the costs of the roads themselves. This "hypothetical" receipts figure excludes timber sale costs avoided and savings attributable to economies of scale. Thus, this approach does more than just overstate the effects of any funding cut. It identifies costs to the Treasury when a full analysis would show actual savings. Clearly, the only meaningful numbers should be net timber receipts to the Treasury. Furthermore, we believe that because of the widespread nature of "below-cost" sales within the National Forest System, the net effect of Forest Road Program reductions should produce savings for the Treasury.

The reduction of private sector jobs attributed to reductions in the Forest Road Program fiscal year 1987 budget is purely arbitrary. Here the agency equates the reduction of $10,000 in the Forest Road Program to the loss of one job in the private sector without providing any basis for such factor. Assuming a program cut of $100 million, the Forest Service claims that more than 100,000 private sector jobs would be lost. This is equivalent to one out of every six workers in all wood products industries in the country losing their job. This number is implausibly high, not only because timber harvest reductions from the national forests are inflated, but because the Forest Service analysis fails to consider that the marketplace would substitute private timber supplies for most national forest harvests that are indeed foregone. There will be some displacement of Forest Service workforce, but the vast numbers of private sector jobs cited by the agency should not be taken seriously.

In closing, let us restate our firm belief that the Forest Road Program must be restrained by deep budget reductions. We have proposed a $67.6 million reduction for fiscal year 1987 that would eliminate all new construction for one year. We believe such a reduction is reasonable in light of the 2,500 miles backlog of forest roads accumulated over the past five years and considering that reconstruction, maintenance and purchaser credit would remain fully funded.

□ 1150

With regards to jobs, Mr. President, soft demand for timber is causing job losses, not supply of timber, which is adequate, from all sources, to meet demand. In fact, lower supplies of timber—14 percent less—were proposed by President Reagan's budget. If the amendment is adopted—and I am talking about the first-degree amendment, not the amendment as modified by Senator McCLURE—if that first-degree amendment is adopted and the McCLURE amendment is rejected, Forest Service personnel losses should come from 550 temporary employees in construction engineeing, and 950 permanent employees should be unaffected.

The Forest Service uses a formula for determining job losses in the private sector related to timber road building. This figure assumes one job in the private sector equals $10,000 in forest roads appropriations. I referred to that earlier. But if that were true, the fiscal year 1986 Gramm-Rudman sequester costs would be 7,200 jobs in

the private sector from forest roads, and we all know that did not happen.

Losses on the national forest in timber supply can be shifted to the private sector. Assuming otherwise assumes an overstated job impact from Federal appropriations. In fact, subsidies to the users of national forest timber do not create jobs but only shift jobs away from private landowners to the Forest Service and to some timber purchasers.

Whether jobs are created and maintained by appropriations to subsidize some timber purchasers cannot be denied, but net job production is very low and mostly in the Forest Service.

Finally, Mr. President, I want to counter Senator McCLURE's argument that the timber buyout is almost over. The timber buyout program allowed 9.7 billion board feet to be returned. These areas have roads built. While Senator McCLURE claims this timber has been used up, 3.1 billion board feet is the maximum—not 9.7 billion board feet but 3.1 billion board feet—that could be reoffered in 1986. Therefore, plenty, and, in fact, 6.6 billion board feet, remains for future years.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MATTINGLY. Mr. President, I ask unanimous consent that the pending amendments of the Senator from Wisconsin and the Senator from Idaho be temporarily set aside.

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

AMENDMENT NO. 2830

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. MATTINGLY] proposes an amendment numbered 2830.

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

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

The amendment is as follows:

On page 22 of the bill, strike the period in line 6 and insert the following:

"; *Provided further*, That when in fiscal year 1987 and thereafter any permittee provides data and information to the Secretary pursuant to section 1352(a)(1)(A) of title 43, United States Code and such data and information is provided in the form and manner of processing which is utilized by such permittee in the normal conduct of his business, the Secretary shall pay such permittee the reasonable cost of reproducing such data and information for the Secretary and shall pay at the lowest rate available to any purchaser for processing such data and information the costs attributable to such processing."

On page 21, line 16, strike the figure "153,987,000" and insert in lieu thereof the figure "$155,187,000."

Mr. MATTINGLY. Mr. President, the amendment I am offering today is very simple. It merely allows the Department of the Interior to gather better information on potential oil and gas reservoirs on the Outer Continental Shelf. This makes good sense. It is the only way, I believe, that we can accurately assess the potential and, therefore, make certain that the Treasury benefits by ensuring that lease-sale bids are sufficiently high.

Mr. President, in fact, this amendment will make money in the long run and not cost money.

I am hopeful that the majority and minority sides will agree to the amendment.

Mr. McCLURE. Mr. President, we have no objection to the amendment.

Mr. JOHNSTON. Mr. President, we have no objection to the amendment.

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

The amendment (No. 2830) was agreed to.

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

Mr. McCLURE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1200

(Mr. DENTON assumed the Chair.)

AMENDMENT 2829 TO AMENDMENT 2777

Mr. McCLURE. Mr. President, I would not take the time to respond very directly to the Senator from Wisconsin except that I know that the response is not going to delay our consideration of the bill. I am anxious to get to a vote. My understanding is that the Senator from Wisconsin does not wish to delay the vote, either. In view of the circumstances with which we are confronted on the floor and the facts with which we are dealing, I shall take just a few minutes to respond directly and to make a further statement.

The Senator from Wisconsin, in his statement just concluded, makes reference to the tables the Senator from Idaho had printed in the RECORD as part of the debate on September 9. I call the attention of the Members of this body to the fact that the data that I submitted, which has now been thus criticized, has more than one table. His criticism of the facts contained in table No. 1 is in part referred to by the Senator from Idaho in making the statement because, if one looks on page 22428, following the table No. 1, the following statement appears:

This simplistic comparison, of course, incorporates some of the problems found in any cash flow analysis. For example, joint costs are not allocated between timber and other resources. In addition, some costs, most notably General Administration, are not included.

There are several other limitations expressed in the data which I submitted.

Immediately following that is table No. 2, which expresses not the Forest Service view, which appeared in subsection A of this inclusion which I have just referred to, but it is included in the Department of Agriculture view. While it is true that table 1 does not include within it a separate item on road maintenance, it is included in table No. 2, which is a different way of using numbers to arrive at conclusions, and road maintenance is included in table No. 2 and the cash net value of the timber program is positive. Both table 1 and table 2 are arrived at by different methodologies, including different elements, but both with the same conclusion, that indeed, there is a net to the U.S. Treasury whichever of those two ways you try to make the comparisons.

OMB's calculations follow, which is the third of three views I included in the RECORD at that time. I pointed out four critical errors in the OMB calculations and net returns: First, that some timber receipts were ignored; the seconds, all of the distribution of gross revenues mandated by law to be made to counties for county road maintenance and improvement and for local education have been subtracted for OMB purposes before determining whether there was profit or loss; third, that joint costs were allocated entirely to timber; and fourth, that general administration costs were allocated against the timber account.

I think I laid out three different views, with criticisms of each and with support for the validity within limits delineated.

I asked a quesiton at a series of hearings that we held in Idaho very recently. I asked the environmental representatives who appeared at those hearings whether or not they had ever seen the costs of a road allocated to hunting. No, they had not.

Had they ever seen any of the costs of a road allocated to fishing access and opportunity? No, they had not.

Had they ever seen the costs of a Forest Service road allocated to recreation? No, never.

Had they ever seen the costs of a Forest Service road allocated to camping? No, they had not.

Had they ever seen the costs of a Forest Service road allocated to berry picking? No, they had not.

Had they ever seen the costs of a Forest Service road allocated to general recreation? No, they had not.

The sum of that was simply that every cost of the road system is allocated singularly to timber harvest, in spite of the fact that there are multiple and a multiplicity of uses.

The Senator from Wisconsin, a few moments ago in his general remarks, made some reference to the fact that you certainly do not have timber harvest in a campground. As a matter of fact, almost without exception but with a few exceptions, you do not have a campground if you do not have a Forest Service road, because people get to campgrounds by Forest Service roads. The total cost of the road was allocated to timber harvest, although the people who used the campground got there by traveling that road.

The Senator from Wisconsin, a moment ago, said there is plenty of lumber available in the market today. Let me say, yes, indeed, that is true. The Canadian share of our lumber market has increased from less than 20 percent to about 34 percent in the last 4 years. There is a serious problem of balance of payments deficits for the trading of this country and we oftentimes point to the Japanese as the major problem, and indeed, on a country-by-country basis, they have the largest surplus in their account. What many of us forget is the second-largest surplus in account is with our friends to the north in Canada.

The International Trade Commission has just recently adopted rules in a court decision, the Carbon Black decision, which, applied to the timber program in Canada, will indeed show that there is a direct subsidy to the Canadian timber harvest which is greater than any actions by this Government. We are trying to recover those markets for people in this country and if, indeed, we did not have the great increase of volume flowing from Canada, we could not make the statement that there is an adequate supply of lumber. There would not be an adequate supply of dimension lumber in our markets in this country.

So, when you argue for a limitation, an artificial limitation, of production of lumber in this country, you are arguing for shifting the jobs from the United States economy to the Canadian economy. That is not a particularly constructive point of view, in the view of the Senator from Idaho.

I saw what happened in my State as increased shipments of lumber coming from Canada passing over the highway system in my State were going past unemployment lines of people who could not get jobs in our timber industry because of the great influx of Canadian timber.

□ 1210

Now, there is not any question that if you reduce timber management budgets you can reduce timber harvest. Now, it does not happen the first year. Indeed, you could keep timber harvest levels high in 1986 and appropriate little or nothing to timber sales preparation, to the kind of engineering that precedes the construction of roads that are necessary to timber harvest, to advertising costs for advertising sales, to personnel costs to conduct those sales that do not produce immediate timber harvest but produce harvest the second, third, fourth, or fifth year after those expenditures are made.

I think the figures that have been given by the Department of Agriculture and by the Forest Service are credible figures when they talk about the long-term effects of reduced budgets in the management of natural resources, and the fact that inevitably if we reduce the road building and supervisory accounts of the Forest Service you will not see an immediate reduction in timber harvest but you will see a long-term reduction in timber harvest, and if you plan for an even flow of material to the marketplace, if you plan for the RPA goals that are mandated by law and you start making the adjustments in the first year that are required for an even management flow based over several years, you would have an immediate reduction in the first year of the nature, if not the precise figure, that are included in the Forest Service and Department of Agriculture accounts given by me on Septemer 9 on the floor.

Mr. President, last week Mr. PROXMIRE and Mr. HUMPHREY offered the amendment which would cut $90 million from the proposed appropriation for Forest Service roads. After having reflected upon Mr. PROXMIRE's comments and having read the comments on the situation as dished out by the press, I feel that a few additional comments are necessary.

As I stated for the record last week, many of my colleague's arguments against funding the Road Program for the Forest Service are little more than a false front for concealing the real agenda of the environmental groups supporting the cuts. Perhaps my colleague was aware of the agenda when he offered his amendment. I like to think that he was not.

This is an easy issue for some of my colleagues because they have nothing to lose by supporting the proposed cuts. On the other hand, those of us who represent States with small populations and vast acreages of Federal land stand to lose much.

I would ask my colleagues to consider that in the upcoming vote on this issue. Sixty-five percent of my own State of Idaho is federally controlled. That means that only 35 percent of the land base remains on the tax rolls, and that is before you take out what is absorbed by Federal highways, by State ownership and management, and municipal government reduction of the tax base—very little more than 15 percent of the land area of my State is subject to taxation.

Without the flow of raw materials from Idaho's Federal lands, two of our basic industries—mining and timber—will be damaged and perhaps irreparably. The issue may be easy for some of you, but it is not easy for me and those who I represent. You have the tax base to support your school and county road programs. Without a dependable flow of commodity products from Federal lands, we do not. But why should you care about educating Idaho's children? Why worry whether or not roads in Clearwater County, ID, are full of potholes or why should you be concerned about the safety of our children in the winter when they must be bused to school over roads that the counties cannot afford to plow because the Forest Service is not able to sell any timber to support local communities and the tax base that they must have to survive?

And I really do not expect some of you to be concerned about whether or not some of our school districts must do away with vocational programs and that they must do with fewer teachers than many of your own States since we no longer have the flow of funds from Federal lands that are vital to many of our counties.

Environmental groups who support the massive cuts proposed in Mr. PROXMIRE's amendment do not like to discuss those issues. They know that most of you support adequate funding for education at the national, State and local level, just as I do.

Your vote on this issue, contrary to what you are being told, is not simply a vote for clean water, wildlife and forests. It is a vote against Idaho's working people, against our children's right to a quality education, and against people who have no choice but to depend upon the Federal lands for their living, their recreation, and their support for their families. The same is true of other Western States such as Montana, Washington, and Oregon.

We can remain good stewards of our national forests and still use the abundant commodities they provide. Contrary to what the public has been lead to believe, our elk herds flourish in Idaho where timber harvest has taken place. We are second only behind the great State of Colorado in hunter harvests and may well be first in the number of large bulls taken.

Roads provide the access for hunting those elk. Yet there are occasions where existing traveled roads do negatively influence elk production, but roads can and are being closed on a regular basis under current management practice.

Roads also provide access to otherwise remote fishing areas. Many of the environmentalists want to keep it that way, remote, hard to get to, and therefore available to only a relatively low percentage of national forest users.

I might note by way of personal observation and a footnote to that par-

ticular point I was making that Kelly Creek in central Idaho is one of the premier natural trout fisheries in the United States. Last year we had a hearing on wilderness areas in Idaho and the hearing was conducted in part by Congressman SEIBERLING, the chairman of the appropriate subcommittee of the Interior Committee in the other body. And we flew by helicopter to a landing strip alongside Kelly Creek which is also serviced by a forest road—I would say to my friend from Wisconsin, a forest road built by timber receipts—that goes up the banks of Kelly Creek for several miles, and the staffs that were there at that hearing had a marvelous wilderness experience walking up an old logging road for a quarter of a mile away from the stream. The access to Kelly Creek is critically dependent upon the construction of a road which is now being charged entirely and totally to timber harvest in the area.

Roads produce silt, environmentalists say. Roads do produce silt, especially those that are 30 or 40 years old. More recent construction methods now being used as the standard have minimized siltation.

We have more quality fishing and hunting in many places than we probably have ever had in recent history. We continue to improve habitat and opportunities despite the doomsday predictions of the so-called public interest groups supporting Senator PROXMIRE's amendment.

And I might note also that I know in the State of Vermont of one instance in which a timber harvest that is being criticized for being a deficit sale is being conducted to produce a mixed stand of trees for the benefit of wildlife, and that is supported by the environmental organizations, it is supported by the Forest Service. It is supported by critics as being essential to the enhancement of wildlife that that timber harvest take place.

I believe the same to be true in Virginia and West Virginia, in some place where the change of growing timber to produce a diversity is being done to improve wildlife habitat, not to destroy it.

□ 1230

My colleague argued last week that the proposed timber sale and Road Program is way over the President's budget. What he forgot to mention was that the President's budget would have been the lowest sale program in 25 years despite the recent record demand for softwood lumber and plywood. It has also been implied that the Forest Service does not see the need for a larger sale program and that their recommendation and the administration's program are one and the same. In fact, the Forest Service requested a larger program from the administration. We have never seen the Forest Service's request. What we in the Congress got was the OMB's program. I doubt few staffers at OMB even know where the Clearwater or Payette National Forests are located, much less how much timber they can produce on a sustainable yield for perpetuity. The program we were handed has little, if anything, to do with the wise management of our national forests.

As Senator DOMENICI so eloquently pointed out last week, rather than saving us $90 million, this amendment will actually cost the U.S. Treasury an estimated $35 million.

The further charges by Mr. PROXMIRE and his constituents that the subcommittee's bill is overly generous toward the Forest Road Program in view of soft timber markets is another sham argument. Markets are anything but soft. The demand for softwood lumber and plywood set new records in 1984 and 1985. Consumption at the midpoint of 1986 indicates that we are running almost 8 percent ahead of last year—a new 6-month record. I do not see the demand weakening in the near future for reasons that I have stated often before.

The old "roads around the world" trick is another smokescreen used by the opponents of commodity use of the national forests. The Forest Service manages about 191 million acres of land, an area approximately the size of Wisconsin, Minnesota, Michigan, North Dakota, and South Dakota combined. Total road density of the national forests is about 1.15 miles per square mile. However, a little closer examination reveals some interesting facts.

The mental picture that Mr. PROXMIRE paints for us at the behest of his environmental constituency is one of enough existing forest roads to circle the globe 14 times. And by making a comparison of these forest roads to our Interstate Highway System, my colleague manages to conjure up visions of six lane asphalt thoroughfares. Such comparisons are typical of the regard that the environmentalists have for the intelligence of this body.

Let me provide for you a look at the real world instead of the myth. Of the total 343,000 miles of so-called forest roads, almost half, about 165,000, are little more than jeep trails accessible only by high clearance, four-wheel drive vehicles. Many of those roads are closed to public access under current management policy. The remainder are the roads, many built with funds appropriated by this body, that provide important access for hunters, fishermen, hikers, berry pickers, and other public users of the national forests. Nationwide, about 95 percent of national forest use is directly related to accessibility provided by roads, most of them built with dollars associated with national forest timber sale programs. The remaining 5 percent of public use is on the 17 percent of the national forests already preserved as designated wilderness.

Another important point to remember is that virtually all forest roads are either dirt or gravel. For purposes of comparison, let me use Senator PROXMIRE's home State as an example. Wisconsin has 108,000 miles of public highways. That figure does not include many rural roads. With an area of 33-million acres, that is a highway density of 2.09 miles per square mile; almost two times the density on the already roaded portions of the national forests, enough miles of highway, incidently, to pave a highway around the world about 4½ times.

The blatantly misleading arguments that the Forest Service has been on a road building binge during the past few years was demolished last year by the House Interior Committee's own staff. It is inconceivable to me that my distingished colleague would allow himself to be caught carrying that argument into this debate.

Total road construction by the Forest Service has only been about 87 percent of the level funded by the Congress during the past 5 years. That certainly does not indicate any road building binge to me. Let me indicate at this point that the Forest Service has, indeed, exceeded construction targets for appropriated roads during the past 5 years. However, purchaser credit road construction has fallen short of targets. What is wrong with doing more than expected with appropriated dollars? Perhaps more agencies should take a close look at this program as a lesson in how to do more with less.

The Forest Service routinely exceeds funded targets in other areas, too. For example, in 1985, they accomplished 107 percent of their wildlife and fish habitat improvement targets; 103 percent of grazing targets; 102 percent of reforestation targets; 151 percent of its soil and water resource improvement targets; 109 percent of its trail construction/reconstruction targets; and 146 percent of its land acquisition targets. Many of my colleagues know that I do not always agree with the Forest Service and some of the things it does, but I do think, contrary to what the environmental groups would like you to believe, that they are capable of doing a good job.

Another half truth that you are being asked to swallow is that all the roads in the budget is new road construction. The Forest Service does not do a very good job of distinguishing between new and reconstruction in its budget request. Although figures are hard to derive, my own best estimate is that only about half of what you see in their request is for new construction. The remainder is for the recon-

struction of existing roads for any number of reasons.

I could go on dispelling all the other half truths that you have been told about what is in the bill before you. I will spare you further detail because I think that I have made my point. You each have to make a decision on how you are going to vote on this matter. I hope you do so based on the whole story and not just the half truths that you have been spoon fed during the past few days.

Sensible management of our national forests will insure that the timber, wildlife, and fish will continue to grow and to be harvested by loggers, and sportsmen long after all of us in this body are gone. Commodity programs are important to my State and many other public lands States. All I ask is that you vote with the knowledge that there is more to the story than you have been told by those who care little about the families that live in Idaho.

Mr. President, let me adjust a couple of other facts, facts not arguments, facts.

Chinook salmon run in the Salmon River system is at a critical stage. There are those who would have you believe that any forest harvest in that watershed is going to destroy the remaining fish run.

I am just as interested in that fish run as anyone could possibly be, white or Indian, East or West, forest worker or recreationist.

I am pleased to announce that the return of the run this year is the largest in recent history, larger than it has been in the recent past because we are taking affirmative action to correct some of the errors of the past and to enhance the fish resource in that area.

The second fact that I want to recite: A statement was made earlier that somehow the figures I had used last week on September 9 were inaccurate because they did not include costs for timber stand improvement. There are two categories. One is KB moneys; the other is appropriated moneys.

The Senator from Wisconsin did make reference to the fact that some of those dollars were not associated with timber harvest because they were done for the improvement of stands where fire had destroyed stands. You need to add to that I say to my friend from Wisconsin. There are a couple of other categories that are very obvious. One is insect destruction. Disease does invade forests. Forests die for reasons other than timber harvest. There again we could go into the sad but revealing story of the Targhee National Forest in southeastern Idaho where the Forest Service plans to harvest an overmature stand of lodge pole pine, an aged stand that does have mortality. The Forest Service plans to harvest that mature stand. There is objection to harvest of that stand in the very scenic area of my State just west of Yellowstone National Park. The Senator from Montana is very familiar with the area. Those sales plans were completely frustrated, disease and insects got into that mature stand, killed the entire forest, over 90 percent mortality, and now we are into harvesting dead lodge pole pine for firewood. They could have been converted into lumber for markets, pulpwood for markets, creating jobs in the local economy that are far more valuable than salvaging dead lodge pole for firewood.

So we do have some reasons for timber stand improvement and the expenditure of appropriated moneys for timber stand improvement that are not related directly to timber harvest and timber harvest alone.

As I said in my major remarks, I hope people will realize as they vote on the matters before us that we are talking about a critical need which is shared by environmental organizations and that is long-term resource management.

The easiest place to cut expenditures is on long-term resource management and it is one of the most devastating failures of Congress to maintain consistent targets for management over long periods of time when you have current budgetary problems.

But if the Federal Government wishes to own all of this land, the Federal Government, in my view, has a responsibility to be a good steward.

We spend millions of dollars on soil conservation districts, and I support it, to prevent soil erosion and to improve soil management techniques. And that certainly is a long-term goal. It is not a short-term goal, and I support it.

I think it is similarly important for us to maintain the funding that is necessary for long-term balanced management of the Forest Service lands.

Mr. President, I have a table that shows what the timber sales program provides to local units of government in support of schools and roads.

These payments represent 25 percent of the receipts on National Forest System lands. I ask unanimous consent that this table be printed in the RECORD at this point.

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

	Payments actual—						
	1980 NFF	1981 NFF	1982 NFF	1983 NFF	1984 NFF	1985 NFF	1986 NFF
State name:							
Alabama	893,892.02	952,876.75	1,444,326.77	1,243,261.34	2,247,058.73	1,893,720.41	1,625,255.50
Alaska	3,573,699.04	6,528,080.25	3,775,194.45	5,430,372.10	1,375,068.41	1,052,095.86	89,462.44
Arizona	4,678,306.43	4,234,378.83	5,735,555.32	2,223,802.07	3,364,727.32	5,153,109.17	4,187,260.26
Arkansas	3,590,133.16	4,271,837.87	3,727,690.96	2,413,837.92	5,302,970.40	5,782,479.65	5,233,489.71
California	50,452,044.83	37,551,016.98	42,015,820.49	18,930,648.79	42,551,120.38	44,113,495.82	36,085,848.82
Colorado	1,896,532.08	1,957,927.03	1,805,801.58	1,725,117.96	2,025,107.30	2,277,288.92	2,586,204.91
Connecticut							
Delaware							
District of Columbia							
Florida	1,285,895.72	1,614,694.81	1,564,731.18	1,956,376.35	2,559,030.46	2,479,321.23	2,853,572.52
Georgia	796,645.05	826,233.95	997,224.68	707,412.64	1,081,424.18	883,355.81	877,752.10
Hawaii							
Idaho	13,804,903.73	10,314,553.65	9,066,232.03	4,933,488.89	6,874,295.54	8,647,388.85	7,805,487.12
Illinois	52,978.95	54,782.00	98,386.19	141,867.16	85,465.01	109,126.27	96,295.31
Indiana	105,870.95	67,039.36	115,223.27	155,718.80	163,522.23	146,038.41	204,478.81
Iowa							
Kansas							
Kentucky	210,543.32	183,669.53	203,837.41	271,504.78	294,946.43	321,315.15	430,697.58
Louisiana	3,185,321.19	2,328,512.05	1,998,504.74	2,211,351.56	3,873,570.39	4,671,447.15	2,406,392.93
Maine	17,245.55	16,333.51	18,470.26	20,155.43	18,515.61	22,297.03	32,541.44
Maryland							
Massachusetts							
Michigan	729,628.63	827,948.56	807,638.31	891,802.63	943,444.21	1,212,582.79	1,115,267.72
Minnesota	401,830.99	427,373.00	426,545.21	552,581.91	662,933.36	862,780.91	902,861.84
Mississippi	5,025,070.78	5,682,029.17	5,781,472.74	5,395,693.11	6,773,430.29	6,502,017.94	6,369,959.83
Missouri	3,101,562.48	3,852,317.38	2,817,660.72	1,842,517.74	1,552,729.54	1,436,140.02	1,341,933.59
Montana	9,460,389.75	7,584,826.83	8,079,709.34	4,566,283.28	4,505,490.31	7,844,446.99	5,856,618.49
Nebraska	58,889.97	59,623.07	56,357.56	50,993.43	36,168.11	37,330.60	35,196.14
Nevada	255,229.30	310,545.59	285,596.69	278,992.14	251,732.09	296,103.45	290,200.43
New Hampshire	253,183.84	241,861.69	275,461.10	300,797.76	276,335.60	332,770.97	485,749.58
New Jersey							
New Mexico	2,890,293.19	2,428,874.99	2,483,085.24	1,078,360.57	1,284,181.82	1,828,664.80	1,576,568.93
New York						5,523.09	4,416.70
North Carolina	331,606.28	506,045.85	775,424.73	771,117.38	960,236.67	845,739.33	918,510.71
North Dakota	63.23	83.17	64.22	68.09	73.53	95.52	24.05

	Payments actual—						
	1980 NFF	1981 NFF	1982 NFF	1983 NFF	1984 NFF	1985 NFF	1986 NFF
Ohio	80,938.75	60,343.73	96,364.57	89,549.38	75,385.15	155,511.11	192,524.24
Oklahoma	516,919.38	605,037.29	506,462.81	280,024.81	700,136.67	775,175.17	716,941.87
Oregon	121,081,427.06	98,888,365.36	95,112,708.07	46,851,494.99	69,212,544.63	86,543,842.41	94,566,445.19
Pennsylvania	548,881.68	664,163.48	874,177.43	1,091,564.60	1,394,098.08	1,957,684.83	1,885,471.29
Rhode Island							
South Carolina	2,147,040.97	1,811,656.41	3,398,529.21	3,278,843.52	3,349,507.30	2,665,462.33	2,697,687.36
South Dakota	675,140.85	713,073.24	508,571.80	270,204.33	620,742.01	945,792.05	686,475.66
Tennessee	232,310.47	273,776.95	202,810.80	381,010.70	403,482.09	531,877.02	475,741.57
Texas	1,382,349.19	1,485,640.99	2,719,485.39	1,519,025.22	4,194,179.89	3,868,015.45	2,638,854.18
Utah	917,949.11	1,107,936.45	975,903.18	676,114.09	755,549.23	767,407.19	723,354.27
Vermont	68,313.65	156,355.32	104,815.23	110,245.42	120,018.62	119,684.12	166,895.95
Virginia	181,439.72	251,469.14	388,050.52	449,339.85	583,280.83	490,977.67	585,522.37
Washington	40,288,844.32	32,708,540.02	29,396,778.66	18,108,430.15	20,640,168.04	25,442,984.63	21,372,218.33
West Virginia	160,914.16	199,509.57	314,694.42	214,996.88	274,222.54	326,136.44	491,263.62
Wisconsin	391,788.56	469,578.85	498,722.22	512,580.78	556,391.49	728,284.73	620,478.54
Wyoming	1,251,512.06	1,397,123.28	1,024,103.71	659,614.42	750,867.11	851,465.62	991,652.92
Puerto Rico	7,295.49	6,574.92	7,660.09	13,516.24	12,848.40	9,663.56	14,564.88
Virgin Islands							
Total	276,984,825.88	233,622,610.87	230,485,853.30	132,600,679.21	192,707,000.00	224,936,640.47	212,241,139.70

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

The PRESIDING OFFICER. [Mr. BOSCHWITZ]. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

FUNDING FOR "THE AFRICANS"

Mr. PRESSLER. Mr. President, I would like to take a few moments to ask the chairman to comment on a serious matter which has come to my attention. As I understand the facts, next month a 9-hour television series entitled "The Africans" is to air over PBS. This film has been produced with $1.1 million of U.S. taxpayers' money, funded through the National Endowment for the Humanities, the Corporation for Public Broadcasting, and the Public Broadcasting Service.

As reported in a number of press accounts, Mrs. Lynne Cheney, the new director of the National Endowment for the Humanities, demanded that all NEH credits be removed from the film after reviewing the series pursuant to an additional funding request for publicity for the series. She found the film to be a one-sided presentation that "frequently degenerates into anti-Western diatribe" and informed the coproducer of the film, who applied for the grant, that the series violated NEH's program guidelines of objectivity and balance. Thursday, September 11, 1986, the Washington Post reported that the Federal Communications Commission agreed to waive provisions of the Communications Act that require parties who give money to a broadcast to be clearly identified. The FCC found that listing the NEH as an underwriter "may incorrectly imply that the program meets NEH guidelines or that the NEH endorses the views expressed in the program."

The following is an excerpt of Cliff Kincaid's article regarding the film's contents, as published in the September 8, 1986 Washington Times, page 2D.

Ali A. Mazrui, who is described in promotional material as a noted African scholar, is the author and narrator of the series. In the segment on Libya in Program 9, he says that Col. Qadhafi has used his oil wealth not to finance terrorism and subversion, but "for the greater glory of Africa as well as Islam." Mr. Mazrui says that, "Because of his support for the Palestinian fighter, Col. Qadhafi was seen by the West as a terrorist." This African scholar portrays Palestine Liberation Organization terrorists as just "fighters." And Col. Qadhafi himself is not a terrorist, he is only seen that way by the West.

* * * As photographs of Libyan infants apparently injured or killed in the U.S. bombing raid on Libya are flashed on the screen, Mr. Mazrui says, "American bombs dropped from the air killed children as surely as terrorist bombs left at an airport." Mr. Mazrui doesn't mention that the murderous attacks on the Rome and Vienna airports last December were blamed on Col. Qadhafi. Mr. Mazrui also fails to mention that the U.S. raid on Libya was specifically provoked by a Libyan-ordered attack on the West German disco that killed an American Army sergeant and injured more than 60 U.S. military personnel.

Film footage of Col. Qadhafi visiting wounded victims of the U.S. raid at a hospital is followed by excerpts from a speech by President Reagan, in which he calls on all "civilized nations" to condemn Col. Qadhafi and the murder of innocent people. The point is supposed to be that President Reagan is a hypocrite, and that the United States is no better than Col. Qadhafi.

Mr. Chairman, my question is, How did this gross misuse of U.S. citizens' money occur and what are we, as guardians of the American tax dollar, going to do about it? I am angered that over $1 million in public financial support was given to produce a film that is a slap in the face to the families and friends who have suffered so much grief and sorrow at the hands of Qadhafi's terrorists.

I support Mrs. Cheney's actions in removing the NEH's name from the credits, as it is clear that the program was not produced as the original proposal and grantees had pledged. However, the solution lies in prevention of such waste, rather than lamenting the issue after the fact. There is an obvious need for a system of checks and balances, so to speak, to ensure that a program is worthy of funding and meets all the requirements of the sponsor organization.

Does the chairman feel the money expended on the film project "The Africans" has been wisely and judiciously spent, given its blatant glorification and misrepresenatation of Qadhafi? Would a viable safeguard be to ask a specially appointed congressional committee to spend time reviewing every project of this nature? I am certainly not suggesting that expensive approach—but we in Congress must be made confident that there is some method to assure reasonable balance.

Would the Senator from Idaho consider it necessary or appropriate to require a content analysis for programs of this type funded by the National Endowment for the Humanities, the Corporation for Public Broadcasting, and the Public Broadcasting Service?

Mr. McCLURE. Mr. President, I share the concern expressed by the Senator from South Dakota regarding the Federal funding which has been provided to produce "The Africans." The National Endowment for the Humanities employs the services of peer review panels to determine which grant applications will receive support.

The grantees are also required to notify the Endowment if there are any significant changes in the proposal which was submitted for review. That part of the system did not work in this instance. The final product differs from the proposal in several areas considered significant by the Chairman of the National Endowment for the Humanities and the Endowment was not informed of these changes.

Currently, there is no requirement for screening by the Endowment prior to airing programs for public viewing and there is no mechanism to recover grant funds which were spent for purposes other than those stated in the proposal.

I certainly agree with the Senator from South Dakota that the American taxpayer should not be forced to foot the bill for films that favorably por-

tray terrorists like Qadhafi. In light of the fact that the current operation of the system allowed this error to go undetected until it was too late, it may be useful to review this matter in greater detail. I would also suggest that this question be presented to the authorizing committee, the Subcommittee on Education, Arts and Humanities.

Mr. PRESSLER. Mr. President, I thank the chairman of the Interior Subcommittee and I will relay the concerns raised here today to the authorizing committee.

Mr. McCLURE. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

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

AMENDMENT NO. 2831

(Purpose: To direct the Southeastern Fish Culture Laboratory to coordinate its research with the Alabama Cooperative Fishery Research Unit and Auburn University)

Mr. McCLURE. Mr. President, on behalf of Senator HEFLIN, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. McCLURE], for Mr. HEFLIN, proposes an amendment numbered 2831.

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

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

The amendment is as follows:

On page 8, between lines 22 and 23, insert the following:

"SOUTHEASTERN FISH CULTURE LABORATORY"

"The Southeastern Fish Culture Laboratory, in Marion, Alabama is hereby directed to coordinate some of its research in the conservation, management, investigations, protection, and utilization of sport fishery and warm water fish farming with the Alabama Cooperative Fishery Research Unit and the Department of Fisheries and Allied Aquaculture of Auburn University, toward a mission of improving the economics of farm aquaculture in the Southeast".

Mr. HEFLIN. Mr. President, the amendment I offer today directs the Southeastern Fish Culture Laboratory in Marion, AL, to coordinate some of its research in the conservation, management, investigations, protection and utilization of sport fishery, such as the striped bass, and warm water fish farming, such as tilapia, catfish, and freshwater shrimp, with the Alabama Cooperative Fishery Research Unit and the Department of Fisheries and Allied Aquaculture of Auburn University, toward a mission of improving the economics of farm aquaculture in the Southeast.

The Southeastern Fish Culture Laboratory and Auburn University both have extremely beneficial ongoing research in all areas of fisheries, including the testing and exchange of catfish germplasm. The Fish Culture Laboratory in Marion, AL, has an established history from many years of research and will continue this tradition in the years to come.

This amendment will ensure the cooperation of the Southeastern Fish Culture Laboratory with State agencies, and colleges and universities such as Auburn toward a mission of research management, protection, and utilization of sport fisheries, warm water fish farming, and germplasm testing to improve the economies of farm aquaculture in the Southeast.

Mr. McCLURE. Mr. President, I urge the adoption of the amendment. I think it has been cleared on both sides of the aisle.

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

The amendment (No. 2831) was agreed to.

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

Mr. MELCHER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1240

Mr. McCLURE. Mr. President, it is my understanding that both Senator PROXMIRE and myself desire that no further proceedings be taken with respect to the pending amendments of the Senator from Idaho and the Senator from Wisconsin prior to the hour of 2 p.m. Without taking formal action in that regard, I state that as the understanding of the proponents of the amendments and an appropriate request will be made to accomplish that, if necessary, between now and the hour of 2 p.m.

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.

□ 1250

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded, and that the pending amendment be laid aside temporarily.

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

AMENDMENT NO. 2832

(Purpose: To credit the reimbursement costs of providing security, maintenance, and other services at the Jefferson National Expansiom Memorial National Historic Site)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. DANFORTH] offers an amendment numbered 2832.

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

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

The amendment is as follows:

At the appropriate place in the bill, add the following:

SEC. . Notwithstanding any other provision of law, funds received by the National Park Service as reimbursement for the cost of providing security, law enforcement, interpretive, and other services with respect to the operation of facilities at the Jefferson National Expansion Memorial National Historic Site shall be credited to the appropriation bearing the cost of providing such services.

Mr. DANFORTH. Mr. President, this is a very simple amendment dealing with the Jefferson National Expansion Memorial, more familiarly known as the St. Louis Arch. The St. Louis Arch serves as the site of a variety of meetings, receptions, and events for groups in the St. Louis area. The National Park Service is required to provide security, maintenance services, cleaning services, utilities, and so on, for the operation of the arch during those receptions and meetings.

This amendment would simply allow the National Park Service to accept donations from event sponsors to cover the Park Service's costs.

It would allow the continuation of civic events despite budgetary cuts.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. We have no objection to the amendment.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. We have no objection to the amendment on this side.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Missouri.

The amendment (No. 2832) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, I would like to engage in a colloquy with the Senator from Idaho and chairman of the Subcommittee on Interior and Related Agencies, Senator McCLURE, and the Senator from Louisiana and acting ranking minority member, Senator JOHNSTON, relative to the funding for the FDR Memorial Commission for fiscal year 1987. By providing this

funding, the subcommittee rejects the suggestion of the Office of Management and Budget [OMB] that the Commission operate in fiscal year 1987 only on its carryover funds from fiscal year 1986. I am pleased that the chairman, acting ranking minority member and the subcommittee have acted wisely on this subject, as I have a strong interest in the Commission and its goal.

Mr. President, the OMB has also suggested that the Commission terminate its activities at the end of fiscal year 1987 when its funds are exhausted. I would like to ask the chairman and the acting ranking minority member if the subcommittee's action implies any intent regarding the Commission after fiscal year 1987?

Mr. McCLURE. The fact that we reduced funding for the FDR Memorial Commission in fiscal year 1987 has no implications regarding our intent for fiscal year 1988 and beyond. I appreciate the Senator's bringing his matter to the attention of the Senate.

Mr. JOHNSTON. I agree with my colleague, the Senator from Idaho, Mr. McCLURE, in this indication that the subcommittee's action implies no intent regarding funding for the FDR Memorial Commission for fiscal years beyond 1987.

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

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

ILLEGAL DRUG TRAFFIC

Mr. GOLDWATER. Mr. President, I realize it is a little bit early and ahead of time to be discussing the recently passed narcotics bill, or dope bill, in the House. But we are going to have it over here shortly. I want to exercise this opportunity of not much business to put forth some ideas of mine on this.

Mr. President, my State of Arizona is not vaccinated from the subject of narcotics. We have a border with Mexico of approximately 400 miles. This 400 miles constitutes part of a 1,875-mile border with Mexico by the States of California, Arizona, New Mexico, and Texas.

Mr. President, 1,875 miles is a long distance.

□ 1300

It has been proposed in the House of Representatives that our military patrol the areas of the United States contiguous to other countries from which narcotics flow.

I propose, Mr. President, that this would require almost half of the entire division strength of our Army to properly do. That is one major problem in the approach taken.

Another major assumption is that we have an overabundance of aircraft such as the AWACS which could do this patrolling at night and even in the daytime.

This is not so. Every AWACS aircraft we have is not only badly needed but we need more of them. We are not going to be able to provide them this year because of a very low military budget.

But, Mr. President, the thing about the House action that disturbs me the most is allowing men in uniform to make arrests.

The Coast Guard is the only quasi-military organization we have whose members are allowed to make arrests, and I think that is very proper. But after the Civil War, we passed legislation to prohibit a man in uniform from making an arrest in this country. I think that is very, very wise, and I think it is very dangerous that either House in this Congress would suggest doing away with it.

I think all of us can remember the days of Hitler and Mussolini, and the days that we see now in dictator run countries to the south of us, in fact all over the world, where the military are used as the police. So it becomes a whim of the commanding officer or the commander in chief as to what these people will be used for, as to what crimes they may have perpetrated, if any crimes at all, and the man in uniform is allowed to go to the door and knock on the door and that person is under arrest.

I think this is extremely dangerous. I think it could mark the end, Mr. President, of our concept of a republic and a democracy. It is completely opposed to all ideas that we hold. I would be very hopeful that when the legislation reaches the Senate floor, the Senate will have the courage to withstand the pressures and knock out this particular part of the narcotics bill.

There is no question that narcotics pose one of the greatest dangers to our future of anything I can think of, particularly when we see teenage children in our grade schools using some form of narcotics; when we see adults using it almost as a way of life, and what used to be considered as something abhorrent in this country is now pretty well accepted.

I do not think the average American family can be accused of anything in that direction, but the growth in the use of narcotics has been large enough to require the attention of the President and his wife, the attention of the Congress, the attention of the 50 States of this Union, their Governors and their legislative bodies.

I have no answer for this problem, except the age-old answer to any breaking of law and that is to penalize and punish the people responsible—not necessarily the user but those people who constitute the so-called leaders of crime in this country. Make it a very extreme penalty for them.

I am not at all opposed to the death sentence for these types of people, but I do not want to see us pass legislation that will be a death sentence to the freedom of our people and the freedom of our country.

Mr. President, I appreciate the opportunity to say these few words because as time goes on, and we only have about 16 days left in this session, it is going to become increasingly difficult for anyone to stand up and have their say about something so important to the United States as narcotics.

We have dillied and dallied and spun our wheels and listened to more speeches in the last week or so than any time I can remember. It is time when this body should be getting to work and not shirk the jobs which are ahead of us. We still have a tax bill. We still have the military authorization and appropriations. I do not see how this body can finish its work in the 16 days.

I will have more to say on this, Mr. President, when this body becomes engaged in this subject matter, but I wanted to let go of a few of my feelings on the matter at this time.

I yield the floor.

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

The PRESIDING OFFICER (Mr. ROTH). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1310

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

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

RECESS UNTIL 1:45 P.M.

Mr. BOSCHWITZ. Mr. President, I move that the Senate stand in recess until 1:45 p.m.

The motion was agreed to and, at 1:11 p.m., the Senate recessed until 1:45 p.m.; whereupon, the Senate reconvened when called to order by the Presiding Officer [Mr. STAFFORD].

Mr. HEFLIN. 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.

□ 1350

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

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

EXECUTIVE SESSION

Mr. WEICKER. Mr. President, I ask unanimous consent that the Senate return to executive session.

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

NOMINATION OF WILLIAM H. REHNQUIST TO BE CHIEF JUSTICE OF THE UNITED STATES

(Mr. GRASSLEY assumed the chair.)

□ 1400

Mr. WEICKER. Mr. President, in my opinion there is no more important word in America's governmental lexicon than the word "justice." It is the priority and reverence accorded justice that has taken a piece of geography and made it a great nation. America, the New World, call it what you will, did not come with justice—we have had to work at it. Justice was not native to New England with its religious persecution or the South with its slavery. It was not native to suburbia with its prejudices, nor to the retarded in the United States who are now our special olympians. Whether today's bag lady huddled on a grate in the big city, or yesterday's Japanese American interred in a California concentration camp. Whether today's victim of AIDS or yesterday's congressionally hounded writer or actor.

Whether Irishmen in 1900 or Hispanic in 1986. For all these and more, life in freedom with opportunity and dignity has come to pass by a nation striving to live up to the ideals of justice as expressed in the Declaration and the Constitution of the United States.

Mr. President, I ask that the Senate be in order.

The PRESIDING OFFICER. The Senator from Connecticut has made a request that the Senate come to order. The Chair would respond to that request and ask any Senators disrupting to halt.

The Senator from Connecticut.

Mr. WEICKER. Thank you very much, Mr. President.

Justice in America needs no prefix such as first or chief or paramount or ultimate to give it place. Its history and promise accord it preeminence.

Twenty-six years—I first was elected in 1962 to the State legislature in Connecticut—in elected office, executive and legislative, has made me proud of the creativity, integrity, and vision exhibited by colleagues of all philosophies at all levels of government. But the legacy of courage to achieving justice in the face of political neglect or persecution—that uniquely belongs to the American judiciary.

Surely all of us are more or less of some political bent—judges included. And most assuredly the President of the United States, in this instance, Ronald Reagan, has every right to nominate persons to the judiciary of his general philosophy. So on the matter of the numbers or philosophies of President Reagan's nominees to the Federal bench I have no quarrel. If America wants to change Reagan's appointees, that is more properly done in the voting booth than ex post facto with confirmation votes in the U.S. Senate.

In light of what admittedly is an idealistic view of the role of justice in our society, my worry as it related to the nomination of William H. Rehnquist to be Chief Justice of the United States is his unrelieved predisposition toward achieving a specific philosophical end while leaving reality unexplained or misspoken.

Even thought I am one, fortunately all the world is not a lawyer. When the Chief Justice speaks Americans should not have to rush to Shepard's Citator or acquire the United States Code Annotated to understand what has been said. The perception should be that justice has been done to the facts.

That is not the perception that we get in the various discrimination decision or memoranda of Justice Rehnquist. Whether in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), *Bob Jones University* v. *United States*, 461 U.S. 574 (1983), or a myriad of other cases, the perception is neither one of justice or reality. It is a perception that separate is equal.

Again, with religious discrimination cases *Wallace* v. *Jaffree*, 86 L. ED 2d 29 (1985) or *Larkin* v. *Grendel's Den*, 459 U.S. 116 (1982). Chief Justice nominee Rehnquist leaves the reader with the clear-cut perception that getting government in the business of religion can be an OK thing. Such a perception has potentially explosive ramifications for religious freedom in this Nation.

Mr. Rehnquist's views relating to women as they translate into defining sexual discrimination defy constitutional promise and fact. The bottom line perception of *Frontiero* v. *Richardson*, 411 U.S. 677 (1973) or *Craig* v. *Boren*, 429 U.S.C. 190 (1976), and *Duren* v. *Missouri*, 439 U.S.C. 357, 370-78 (1979), is one of inferior individuals and inferior opportunity. That is not fact. It will never be justice.

Were Justice Rehnquist to be a candidate for Press Secretary to the President of the United States these words would be gratuitous and my vote of little consequence.

The job is Chief Justice of the United States. Not only is the operative word justice the end must be justice.

Despite the brilliance of Justice Rehnquist's mind, his abilities have been used to weave plausible logic suited to a philosophical end rather than a beginning of justice.

Such exercises in sophistry abound these days both in Congress and at the White House. They are not needed from a Chief Justice.

Therefore, my vote is no to this nomination.

NOMINATION OF JUSTICE WILLIAM REHNQUIST

Mr. ROTH. Mr. President, today, as we consider the nomination of Justice William Rehnquist, I believe it is most important to reconsider the proper role of the courts in our representative form of government. I believe it is important to keep in mind that our duty is not to select and advance those individuals who will carry our political ideologies to the hallowed chambers of the Supreme Court, but to approve those who are dedicated and faithful to the Constitutional plan. I firmly believe Justice Rehnquist has a proven record in this area, both as a brilliant scholar of our Constitution and as one who exercises judicial restraint.

His opinons in cases like Roberts versus Louisiana, National League of Cities versus Usery, Trimble versus Gordon, and Railroad Retirment Board versus Fritz are examples of such restraint.

What a tremendous responsibility we have—to approve our justices and see that they are of this caliber. As Members of this distinguished legislative body, it is important that we understand the genius behind our Constitution—that through distinct levels of government and the separation of powers the American people possess optimum control over their government. Whereas certain later amendments to the Constitution are well-known to embody substantive values, the original Constitution is basically a procedural document. This is how it was conceived; this is how it should be.

Within this framework, the substantive value judgements concerning the Government of America—or the making of laws—were assigned to those officials politically accountable to the people. These laws were to represent the will of the people, provided that they fit within the division, separation, and limitation of powers set forth in our Constitution. And it was the responsibility of the courts to apply the law to cases, to ensure its enforcement except where it conflicts with the higher law of the Constitution. It should be remembered that the Constitution is itself and expression of the will of the people. Its original articles and subsequent amendements were all proposed by representatives of the people and ratified by representatives of the people.

When proposed and ratified, the provisions of the Constitution had spe-

cific meaning. That meaning should be given effect. Therefore, there is no place in the constitutional plan for the courts to impose their own notions of what is right or just or popular. As elected officials, this is our responsibility, and if we fail to carry it out to the desire of our constituencies we can be voted out from office.

Chief Justice Marshall simplified what I am saying when he said that if the popular branches of government—State legislatures, the Congress, and the Presidency—are operating within the authority granted to them by the Constitution, their judgment and not that of the Court must prevail. Implicit in our form of government is the fact that the popular will embodied in the legislative acts be given effect except where it is clear that the people speaking throughout the Constitution have said otherwise.

Unfortunately, history holds examples where these principles have gone astray—where the theory of judicial restraint has given way to judicial activism. At times our Supreme Court has violated the constitutional plan by holding legislative acts as unconstitutional for reasons other than the popular will speaking through the Constitution. To find these instances, one need only look at the Supreme Court decisions that struck down legislative attempts to curb the spread of slavery before the Civil War, legislative decisions to protect our labor force from the excesses of the industrial revolution, and legislative efforts to overcome the devastation of the Great Depression. These, of course, are examples of judicial activism by conservatives who thought that social policy was being set too swiftly by the legislatures.

In contrast, judicial activism on the left is characterized by impatience with the evolution of social policy. This form of judicial activism does not have legislative acts before it to strike down, primarily because the liberals believe the legislatures often are not acting quickly enough to do what they perceive is in the peoples' best interest. In this vein the courts have usurped State responsibility over schools, in cases of busing; and over welfare, where courts are determining the responsibilities of States to illegal aliens.

Of course there are times when liberal judicial activists strike down legislative acts because, in their view, they are insufficiently progressive. An example here is capital punishment where these activists believe State and Federal laws, over time, have come to violate the eighth amendment. Changing attitudes toward the death penalty should not be taken as authorization by the judiciary to strike down capital punishment as cruel and usual. If these changing attitudes truly reflect the popular will, then Congress and the State legislatures are perfectly capable of declining to impose the death penalty. The decision for change in this area belongs to the legislatures since the framers of the eighth amendment never intended that the ban on cruel and unusual punishments apply to the death penalty.

One might note that in this regard flogging has passed from the American scene, not because the Supreme Court has declared it "cruel and unusual," but because legislatures, reflecting contemporary standards, have declined to impose it. This is how it should be.

It is because the Court has been used to advance political agendas that some liberals are very concerned about the political ideology of Justice Rehnquist—just as some conservatives might have been concerned with the appointments of Justices Frankfurter and Holmes. These two Justices were faithful adherents to the doctrine of judicial restraint. Such restraint is never appreciated by those with a political agenda, left or right.

In my opinion Justice William Rehnquist is of equal stature. He, too, is a champion of Judicial restraint—restraint that is not affiliated with party politics or ideology, but rather with the values of liberty, democracy, and stability. He is well-liked by his peers and highly recommended by the American Bar Association. His opinions since 1971 have been sound and steeped in constitutional theory. He is well recognized for his legal ability, leadership qualities, and integrity. And I believe there is little doubt that he will serve in the capacity as Chief Justice not as a moral or social reformer but as an objective expounder of the law, a strong defender of our constitutional form of government of distinct levels of government and the separation of powers.

LIBERAL MCCARTHYISM

● Mr. GOLDWATER. Mr. President, the debate on Justice Rehnquist has now stretched on for 4 days of hearing and 4 days in the Senate. I hope we are ready to vote.

My remarks will be brief. I merely want to look at the new criteria being raised by the critics of the nominee and show why they are so badly wrong.

The case against elevating Justice Rehnquist to the office of Chief Justice of the United States seems to boil down to an attack on his personal integrity. He is charged with holding opinions he disavows, and he is even condemned for groups he did not join.

Under the new standard raised by liberals, a man is guilty of insensitivity to individual liberties if he did not play an activist part in the civil rights movement of the 1960's and 1970's. This is guilt by "disassociation."

But even worse, Justice Rehnquist is accused of having beliefs which he has emphatically rejected. Time after time he has been falsely charged with opposing the Supreme Court ruling that desegregated public schools. This charge is made even though the record shows that Mr. Rehnquist testified eloquently on the fundamental correctness of this case, Brown versus Board of Education.

Speaking expressly of the ruling in Brown, Mr. Rehnquist said in 1971:

> I have, long before my nomination to the Supreme Court was made, felt strongly that the law of the land should be carried out in every part of the country and that resistance to it, whether in the name of interposition or something else in the South * * * couldn't be tolerated.

Yet he is charged with endorsing a school segregation memo he prepared alone or jointly with a fellow law clerk to Justice Robert Jackson back in 1952. Mr. Rehnquist explained that the position taken in this memo, which rejected judicial action to end classroom segregation, did not reflect his views. He was directed to take this line by Justice Jackson himself.

The opponents of Justice Rehnquist now make a serious accusation. They impugn the integrity of the nominee by proclaiming that his explanation "is not true."

Mr. President, it is not only the truthfulness of Justice Rehnquist they are doubting, it is that of Justice William O. Douglas, too.

Unlike the doubters, Justice Douglas was actually present in the conferences of the Supreme Court when the desegregation case was discussed. According to Bob Woodward and Scott Armstrong, authors of the Brethren, Justice Douglas:

> The only remaining member of the Court that had decided the Brown cases, examined a copy of Rehnquist's testimony. Rehnquist was correct, he told clerks. The views were, in fact, Jackson's.

Thus, not only do the accusers of Justice Rehnquist unfairly dishonor him, they also diminish the memory of the Justice who was widely recognized as the Court's "great libertarian."

Mr. President, in my statement on last Thursday, I called this frame of mind "liberal bigotry." Today, I have another name for it. More accurately, it might be termed "liberal McCarthyism."

If someone has not been an outspoken worker for liberal causes, he is un-American—unfit for high office. That is what the detractors of Justice Rehnquist seem to be saying.

His record is picked at selectively and distorted. The many cases in which Justice Rehnquist has decided for a civil rights plaintiff are ignored or dismissed out of hand. The cases in which he ruled against a civil liberties claim on the ground of statutory interpretation or federalism are portrayed as deliberate hostility to minorities or gender.

71-059 O-87-41 (Pt. 16)

Heads you win. Tails I lose. The opposition to Justice Rehnquist is that simplistic.

However much his critics may alter the facts, the truth is that Justice Rehnquist often joins with a liberal outcome when respect for the legislative branch or the tradition of federalism points toward such a result.

In Shopping Center versus Robins, 1980, Justice Rehnquist sustained the California Supreme Court in expanding the scope of free speech to a broader public forum.

In Moore versus Sims, 1979, Justice Rehnquist's opinion for the Court sided with a Texas statute granting greater protection to children, who it was feared, were the victims of child abuse.

In Ray versus Atlantic Richfield Co., 1978, Justice Rehnquist adopted a position, in dissent, that would have increased the environmental safety of the State of Washington's sounds and coasts.

In Kassel versus Consolidated Freightways, 1981, a Rehnquist dissent would have allowed Iowa to protect its motorists from the danger and annoyance the State government believed was posed by double trailer trucks.

And, in Meritor Savings Bank, decided June 19 of this year, Justice Rehnquist wrote the opinion of the Court upholding the right of a female employee to bring claims of sexual harassment against a bank vice president and the bank itself.

This case may be the leading women's rights case of the year. Justice Rehnquist's opinion hardly sounds like the grunts of a male chauvinist, as his critics have made out.

In fact, the minority views of the report on his nomination by the Judiciary Committee does not even mention this case. It does not fit their predetermined image.

Yet in this decision, only 3 months ago, Justice Rehnquist supported the individual rights of a midlevel female bank employee against the power and wealth of a big financial institution.

Contrary to his detractors, who argue that Justice Rehnquist stands for backsliding in civil rights, he broke new ground by deciding that title VII of the Civil Rights Act of 1964 is not limited to "economic" or "tangible" discrimination, but covers the entire spectrum of disparate treatment of men and women, including sexual harassment.

Not only did Justice Rehnquist uphold women's protections under title VII beyond the economic aspects, he held that the bank as well as its officers may be liable for sexual discrimination of this form.

Mr. President, his opponents are absolutely wrong when they bandy about charges of disdain for individual rights concerning Justice Rehnquist. They have not done their homework and are unfairly smearing a dedicated jurist who has a real human warmth and sensitivity to the interests of other individuals and their needs.

Justice Rehnquist possesses an abiding fidelity to the Constitution and his oath to uphold this sacred charter. He will make an excellent Chief Justice and I urge that we end the debate and confirm him posthaste.●

LEGISLATIVE SESSION

Mr. WEICKER. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1410

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

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

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1987

The Senate continued with consideration of the bill (H.R. 5234).

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, I rise in strong opposition to the Proxmire amendment. It seeks to delete $90 million from the Forest Service budget for road construction. The roads in question are needed to provide access to national forest timber. The national forests supply about 23 percent of the softwood lumber products produced in the United States. Rough calculations indicate that the Forest Service timber sale program will be cut by about 25 percent if this amendment passes. To put it another way, according to Forest Service estimates, 24,000 people now working in the lumber industry will, in all probability, be out of work in the next few years. Mr. President, a few years ago we talked a lot about the misery index. I submit that this amendment will raise the misery index substantially, especially in the small Western communities where the sawmill that generates most of the towns payroll is heavily dependent on Forest Service timber.

If the Forest Service Timber Harvest Program was the scam and the pork barrel that proponents of this amendment seem to think it, is I would have to vote with them. Given the size of the deficit, it would be very hard to support a timber sale program that added to that deficit. However, I am convinced that the Forest Service Timber Program returns money to the Treasury. It is difficult to get a precise figure for several reasons. Probably the major problem is assigning values and costs to the nonmarket outputs that are associated with timber harvesting. A very significant share of the cost of the Forest Service Timber Sale Program is associated with providing for other resource and values. How much of this is charged, or should be charged, to the Timber Program?

Similarly, the cost of building Forest Service roads and harvesting Forest Service timber is often dramatically increased by provisions for protecting and enhancing other resources. How much of this should be charged directly to the timber sales? There are basic questions that involve subjective judgment. There will probably never be totally correct, precise answers. However, Forest Service calculations show net receipts of $107 million in 1985. I do not think that anyone else has a more accurate estimate. Remember, 1985 was a year of high demand but very low lumber prices because of the deluge of imported lumber from Canada.

Some of the rhetoric used in pushing this amendment is not very convincing. We are, for instance, told that the Forest Service just likes to build roads, and that they, therefore, build too many roads and build roads that are too big. I just do not believe this. The road builders—the engineers—do not dominate the wildlife managers, the landscape architects; the recreation specialists and the forest planners. By law and by practice the national forests are managed under the strategy of multiple use. No single use dominates although 95 percent of national forest receipts come from the sale of timber products. All major decisions are subject to public scrutiny and public input. The roads that are built are needed and they have to be justified. The Forest Service does practice multiple use.

We are also given the fascinating but irrelevant information that the mileage of roads on national forest land is equal to 14 times the diameter of the Earth. The additional calculation showing 1 mile of road per square mile of national forest land might be a little more meaningful. Incidently, this is much less than the road density usually required for efficient timber harvesting.

The real question is whether the road system is adequate to meet the objective of national forest management. On balance, I think it is. It bothers me that this debate has centered almost exclusively on the timber resource. It is true that most of the Forest Service roads are built—and fi-

nanced—as a function of the timber sale program. However, they serve a variety of other purpoes. For example, in fiscal year 1985 Idaho's national forests received 10 million visitor days of recreation use. Most of this use is tied directly to road access. Over the years, driving for pleasure has been identified as the most popular recreation use of the national forests. Again, most of the national forest roads were financed by the timber sale program. Without the timber sale roads many, many people would not be able to enjoy the national forests.

Out in Idaho and other Western States one of the worst fire seasons in many years is drawing to a close. Tens of thousands of acres of timber and grass land have been blackened to date in Idaho. It has been a real disaster. Much of the burned acreage was unroaded. An adequate road system, other things being equal, makes it much easier and much less expensive to control forest fires. Certainly, it is safe to say that without the miles of road that have been built to harvest timber the devastation would be even greater. Equally, an adequate road system facilitates other phases of forest management.

This issue is more than an abstract exercise in deficit cutting rhetoric to the people of Idaho. Extrapolating the national situation to Idaho indicates that, in the next few years, Idaho could lose about 10 percent of the jobs in its second most important industry if this amendment passes.

The lumber industry in the public land States is largely a captive of the Forest Service. The agency manages much of the available timber, dictates how it is to be harvested, fixes a minimum price for it and, by law, requires that other uses be accommodated equally in management decisions. At the other end of the chain, the Government, by controlling interest rates, controls the price the lumber will bring in the marketplace. It is totally unreasonable to expect every Forest Service timber sale to yield a profit. The laws directing the agency are not designed primarily to yield a profit. They are designed to provide the people of the United States with the most beneficial mix of goods and services over the long term from the national forests. This requires that an adequate investment be made in roads and other long-term improvements.

Mr. President, this amendment would damage the overall management of the national forests as well as the economy on many communities and the Western, public land States. It should be defeated.

Mr. President, I would like to praise the senior Senator from my State, the chairman of the committee, for the arguments he has presented. I would like to make a couple of additional very important points.

The national forests supply about 23 percent of the softwood lumber products produced in the United States. Rough calculations indicate that the Forest Service Timber Sale Program would be cut by about 25 percent if this amendment is adopted.

To put it another way, according to the Forest Service estimates, 24,000 people now working in the lumber industry in all probability would be out of work in the next few years, if the Proxmire amendment passed.

Mr. President, we have talked about the misery index a lot over these past years. I submit that this amendment will raise the misery index substantially, especially in the small western communities where the sawmill that generates most of the town payroll is heavily dependent on Forest Service timber.

Mr. President, we have counties in my State where 90 percent of the land is owned by the Federal Government, by the U.S. Forest Service. That makes these communities highly dependent on Federal land for their ability to obtain resources and provide jobs.

I think if this really were some kind of a scam or pork barrel, I would vote with my good friend from Wisconsin. But the proponents of this amendment really, I think, have missed the point.

It is necessary to have access to Government ownership lands in the Western States so that we can manage these lands in a proper fashion, with good watershed control, fire control, production control; so that we can harvest these trees as they grow old and stop growing, and replenish them with new trees. Then we will have forest growing for the next generation of Americans who will be coming on in the next 50 to 60 years.

This would be a very, very short-sighted amendment to not properly finance the building of roads in the national forest system.

Mr. President, I share the position of the senior Senator from Idaho.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, Senator McCLURE's perfecting amendment is a token gesture. His tiny cuts of just $7 million in timber preparation costs and $8 million in roads offer little comfort to taxpayers while proving my point about economically inefficient sales.

In fact, the road cut would be less than 10 percent of the amendment that passed the Senate by a 50-to-43 vote would achieve.

He states that his amendment would bring the amount of timber cut down to the House level of 11.2 billion board feet. What does this mean? He proves that the extra roads he provides are indeed going into the least productive, most economically marginal areas. Here is why.

The President's budget provides $178 million for a 10 billion board feet cut for a cost of $17.8 million for each billion board feet.

By contrast Senator McCLURE reduces the timber cut by 200 million board feet but saves just $8 million in roads. This means that the President's timber offering is two and one-half times as efficient economically as the timber program added by Senator McCLURE.

Therefore, Senator McCLURE proves my point that his extra $59 million in roads over the President's budget goes to the most economically marginal areas for timber product and timber receipts to the Treasury.

No wonder we have so many below cost timber sales.

Mr. President, another point Senator McCLURE made this morning was that the Chinook salmon have returned to the Lower Salmon River, despite nearby logging. He is right, but why? It took 20 years for this great fishery resource to return to its normal level and restore the area to its condition prior to construction of a logging road. This proves my point that road building is the most environmentally damaging forest activity.

What is even worse, now the Forest Service is planning new road building activities in the very same area.

Mr. President, some forests make money and some do not. The most productive areas already have roads, like western Oregon. The best timber is also the most accessible and roaded first.

New funding for roads is going to the least productive, least accessible areas—rugged and at high elevation. That is the same area with the most below-cost sales.

In other words, the most expensive roads will go to least productive lands, lands which are underdeveloped for a good reason.

Most forests lose money and we throw good money after bad. To use the capital investment analogy is false. We never make up these deficits—Oregon and Washington make so much money in good years they cover losses in other areas, but a large proportion of the other areas are big losers.

Mr. President, the basic first-degree amendment cuts only $22 million below the President's level.

The Appropriations Committee added almost $70 million above the President's level. The committee's level provides more money than the administration thinks is needed to support its planned timber harvest.

The Forest Service has already built more roads than it needs to meet timber sales goals. The road system in

our national forests is 14 times the Earth's circumference. The system is cummulative, expanding each year, and absorbs almost one-third of the forest system expenditures.

There is plenty of timber which can be cut without resorting to increases in the forest roads budget such as use of purchaser credit roads.

The current timber market is soft and massive volumes of contracted for timber were returned to the Government under the timber buyout.

The Government loses money on timber sales in areas which will be accessed by new roads. The best, most productive timber areas like western Oregon are already roaded. New roads are being built into the more remote, least productive forest areas leading to even more loser sales. In other words, the most expensive new roads are going into the least cost effective areas.

Environmental damage is cummulative. Road building is the most environmentally damaging activity in the forest, even more than forest fires.

Roads eliminate wild land character. Lands with roads cannot be considered for wilderness designation.

This is the first Senate floor vote on public lands policy since the 1980 Alaska Lands Act. It is supported by 10 major environmental groups.

The Forest Service has enough money to habitually build more than the number of roads they have planned for—about 2,500 excess miles in the last 5 years alone. Every forest region enjoyed part of this surplus.

The OMB says that Forest Service costs for timber and mineral management exceeded the Federal share of forest receipts by $621 million in 1985.

Mr. President, I ask unanimous consent that a letter from the National Taxpayers Union dated today, September 16, 1986, supported the basic first-degree amendment and clearly opposing the amendment offered by Senator McCLURE be printed at this point in the RECORD.

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

NATIONAL TAXPAYERS UNION,
Washington, DC, September 16, 1986.

DEAR SENATOR: The National Taxpayers Union urges you to support the Proxmire-Humphrey Amendment to H.R. 5234, the Interior Appropriations Bill. This Amendment would cut $90 million from the Forest Service road building program.

Since 1981, the Forest Service has built 2,500 more miles of road then originally planned by the Agency.

The network of logging roads is over 8 times longer than the entire Interstate Highway system.

The length of mileage of national forest roads is enough to circle the circumference of the earth 14 times.

The United States taxpayers shoulder the burden of the timber industry because the Forest Service spends more for this program than it gets back in receipts.

OMB estimates that the timber program lost about $600 million for the current fiscal year.

The biggest cost in the timber sales program is building logging roads.

Right now when it is imperative to cut spending, we believe it is contrary to the national interest to increase this area of the budget by $56.7 million which is in excess of the Administration request of $178.5 million and $110.7 million in excess of the House appropriations.

Sincerely,

JILL LANCELOT,
Director of Congressional Affairs.

Mr. PROXMIRE. I yield the floor.

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, I just want to make a comment. I heard the comments of my good friend from Wisconsin. I think the record should be very clear on his reference to the South Fork of the Salmon River.

Mr. President, it is true that there were some roads put into the South Fork of the Salmon River and there was a siltation problem. What was not brought out was that the same siltation of the Salmon River took place in the winter of 1905 and silted the river up and it took a few years for the river to clean itself out again so that the Chinook salmon could come back up the river.

There were no roads in the area in 1905, but the weather and climatic conditions caused the siltation that went into the river.

These points need to be made clearly. We are captives of the Federal Government in those national forest communities. The Federal Government on one hand has programs and policies that have implications on interest rates, on home building, et cetera.

On the other hand, we have a Government monopoly that has control of the soft wood timber supplies in the Pacific Northwest and then they make it difficult, by the land laws we have passed, for the private enterprise wood processors to be able to bid for the timber. There are two sides on this.

Mr. President, this amendment would be clearly discriminatory and hostile to jobs and to people's ability to have homes and access to the national forests for all kinds of circumstances. I think it simply is in error to leave it here on this floor that somehow road building is bad for the environment in the national forest system.

It makes for better management, for better conservation, for better environments, for better recreation. I could go on and on.

I yield the floor.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I fear that this vote has been designated by certain lobbyists as "the environmental vote" of this session.

Mr. President, that is far from true.

Mr. President, let me just indicate the largest timber production State in the Union happens to be my State of Oregon. For 8 to 10 years there was what we called the roadless area studies No. 1 and No. 2.

□ 1420

During that 8- to 10-year period, those lands became de facto wilderness. They were withdrawn from actual access for any timber sales. During that 8- to 10-year period, there was overcutting on that restricted Federal forest land base, severe overcutting in some instances.

Mr. President, this issue is not a question of road construction or road-building alone. Let me remind Congress that in 1984, when the Oregon wilderness bill, which I offered, came to the floor and was acted upon, we had what we call release language in that bill, to release some 1 million acres of Federal forest land to be returned to multiple use and thereby broaden that base upon which the timber economy of Oregon depends and upon which the multiple-use forest management practices provide timber resources. In effect, that million acres of land have been restricted from any access for timber sales and we continue the overcutting policies on this restricted timber base.

I suggest that the way it could be applied in Oregon, this would be an environmental vote supporting environmental policies of a wise character to vote against the amendment by the Senator from Wisconsin and support the chairman and the subcommittee of appropriations headed by Senator McCLURE. For in effect, by providing the moneys for these roads, we can access some of that area that has been statutorily returned to multiple use and which has been, in effect, locked up, precluded from actually assessing and making judgments on a multiple-use basis.

In other words, we are going to continue to overcut Federal forest lands, which is not sound environmental practice, if the amendment of the Senator from Wisconsin is supported. It is an antienvironmental vote, that is what it is, because you are destroying Federal forest lands, in effect, slowly by overcutting. Give us an opportunity to fulfill the statutes that were passed in 1984 relating to release language and broaden that timber harvest base, at least in region 6 and particularly in the largest timber-producing State in the Union.

Mr. President, I appreciate the debate which has taken place over the matter of Forest Service roads and want to express my thanks to those of my colleagues who have given us an

opportunity to explain our position with regard to this matter.

Since we first brought this matter to the floor last week, and after talking with a number of my colleagues, I have come to realize that it has been almost 2 years since the full Senate has debated a major Forest Service matter and that there has been an unfortunate void of information about the status of Forest Service planning with regard to timber harvesting, road construction, and other recreational and wilderness uses.

I would like to take just a moment and depart from the Forest Service road issue, per se, and put into a broader perspective what we are dealing with here today.

Simply put, the issue is not funding for roads and how many miles of road will be built. The issue is whether millions of acres of land, which were being studied for potential wilderness designation but which were statutorily released by the Congress, can now be considered for potential access as timber lands.

I should point out that most of these lands were not available for timber harvesting during the nearly 8- to 10-year period in which the Forest Service was studying the wilderness issue and during which time Congress considered State wilderness bills. Because we give these lands temporary wilderness status until such time that Congress officially enacted wilderness bills, timber harvesting during this 8- to 10-year period took place on a small fraction of the total available land base causing severe overcutting on some national forests. It was our intent in passing these State willderness bills to finally decide which lands would be permanently protected as wilderness, and which lands would now become available for potential timber production and other multiple use purposes.

Without road money, those lands which were specifically released from wilderness designation by Congress will in fact continue to be managed as though they were wilderness. This defacto wilderness treatment is a serious breach of congressional intent which affects every Member of this body who has an enacted wilderness bill. It affects almost 1 million acres of released lands in the State of Oregon, and has the effect of nearly doubling the approximately million acres which we statutorily designated as permanent wilderness in 1984.

Mr. President, it is this question which is at the heart of the road debate and which should be very carefully considered by each of my colleagues. Are we going to allow congressional actions which were intensely debated for almost 8 years be undermined through the budget process? While I recognize that many of my colleagues were not a party to those original State wilderness bills, I for one, who authored the very first State wilderness bill with so-called release language, intend to uphold those original commitments to designate permanent wilderness lands in exchange for releasing other lands for multiple use purposes.

Mr. President, not only does a reduction of necessary road funding deny access to statutorily released lands but, as has been mentioned already in the debate, without these funds the Forest Service will be required to harvest timber off of already overharvested lands.

I thank my colleagues for the opportunity to explain this important piece of congressional history which is absolutely essential to understanding our position with regard to Forest Service road appropriations.

Mr. McCLURE. Mr. President, I suggest that anyone who wishes to participate in the debate should let us know, because I believe we are ready to vote. I shall not debate with my friend from Wisconsin any further. I do want to reiterate what the pending amendment that I have offered does.

First, it reduces the committee's recommendations for Forest Service sales from 11.4 billion board feet to 11.2 billion board feet, which is the same as the level established in the other body. By doing that, it reduces the amount which is necessary for timber harvest and sales administration by $7 million and the amount appropriated to roads by $8 million. This totals a $15 million reduction from the committee's previous recommendations.

Third, this amendment would redistribute that $15 million—$5 million to the Fish and Wildlife Service; $5 million to the National Park Service; and $5 million to the U.S. Forest Service—to various land acquisition programs including wetland habitat, endangered species habitat, hardships, inholdings, and recreation composites.

Mr. President, if there be no other Member seeking recognition for the debate, I suggest we have the vote with respect to the McClure amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment by the Senator from Idaho to the amendment of the Senator from Wisconsin.

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

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. WARNER (when his named was called). Mr. President, I have a live pair with the senior Senator from Utah [Mr. GARN], who is now in the hospital, as we know, recuperating. If he were present, he would vote "aye." If I were permitted to vote, I would vote "nay." I therefore withhold my vote.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Pennsylvania [Mr. SPECTER] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Missouri [Mr. EAGLETON] and the Senator from Louisiana [Mr. LONG] are necessarily absent.

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

The result was announced—yeas 53, nays 42—as follows:

[Rollcall Vote No. 261 Leg.]

YEAS—53

Abdnor	Ford	Melcher
Andrews	Goldwater	Mitchell
Armstrong	Gorton	Moynihan
Baucus	Gramm	Murkowski
Boren	Grassley	Nickles
Boschwitz	Hatch	Packwood
Broyhill	Hatfield	Pressler
Burdick	Hecht	Quayle
Byrd	Heflin	Rockefeller
Chafee	Helms	Simpson
Cochran	Inouye	Stennis
Cohen	Johnston	Stevens
D'Amato	Kassebaum	Symms
Denton	Laxalt	Thurmond
Dole	Mathias	Wallop
Domenici	Matsunaga	Weicker
Durenberger	McClure	Wilson
Evans	McConnell	

NAYS—42

Bentsen	Harkin	Metzenbaum
Biden	Hart	Nunn
Bingaman	Hawkins	Pell
Bradley	Heinz	Proxmire
Bumpers	Hollings	Pryor
Chiles	Humphrey	Riegle
Cranston	Kasten	Roth
Danforth	Kennedy	Rudman
DeConcini	Kerry	Sarbanes
Dixon	Lautenberg	Sasser
Dodd	Leahy	Simon
Exon	Levin	Stafford
Glenn	Lugar	Trible
Gore	Mattingly	Zorinsky

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Warner, against.

NOT VOTING—4

Eagleton	Long
Garn	Specter

So the amendment (No. 2829) was agreed to.

□ 1450

AMENDMENT NO. 2777, AS AMENDED.

Mr. McCLURE. Mr. President, I ask unanimous consent that the order for the yeas and nays on the Proxmire amendment be vitiated.

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

The question is on agreeing to the Proxmire amendment, as amended by the McClure amendment.

The amendment (No. 2777) as amended, was agreed to.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which

the Proxmire amendment, as amended, was agreed to.

Mr. MELCHER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. Mr. President, I have an amendment that will take a very short period of time.

I understand the Senator from Illinois requested time first.

I yield to the Senator from Illinois.

Mr. McCLURE. Mr. President, I understand that the parliamentary situation is that the remaining committee amendment is the pending business.

I ask unanimous consent that it be temporarily set aside so that we may entertain the amendment of the Senator from Illinois.

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

The Senator from Illinois is recognized.

AMENDMENT NO. 2833

Mr. DIXON. Mr. President, on behalf of Senator SIMON and myself, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DIXON] for himself and Mr. SIMON, proposes an amendment numbered 2833.

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

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

The amendment is as follows:

"The Secretary of the Interior shall designate the visitor center to be associated with the headquarters of the Illinois and Michigan Canal National Heritage Corridor as the "George M. O'Brien Visitor Center" in recognition of the leadership and contributions of Representative George M. O'Brien with respect to the creation and establishment of this national heritage corridor."

Mr. DIXON. Mr. President, very briefly, this amendment sent to the desk on my behalf and on behalf of my distinguished colleague, Senator SIMON, reflects a vote of the Illinois congressional delegation, all 22 Members of the House and the two Senators, to name the visitor center at the I&M Canal Park in honor of George O'Brien, the distinguished representative and Congressman from that district who passed away a few weeks ago.

The chairman of the committee has graciously acceded to my request to accommodate me and the Illinois delegation in connection with this amendment.

I believe that there is no opposition to the amendment, it having been cleared by the manager of the bill and the ranking minority member.

Mr. McCLURE. Mr. President, we have no objection to the amendment.

Mr. MELCHER. Mr. President, this side agrees with the amendment also.

Mr. DIXON. Mr. President, I am very pleased that the distinguished floor manager of the Interior Department appropriations bill, Senator McCLURE of Idaho, has agreed to accept my amendment naming the visitor center for the Illinois and Michigan Canal National Heritage Corridor after the late Illinois Congressman George O'Brien.

This is, indeed, a fitting honor to the memory of a man who, as much as any other, was responsible for the creation of the National Heritage Corridor.

George O'Brien passed away on July 17, but the contributions he made to his State and his country will live on for a very long time.

He was as dedicated a public servant as I have ever known, and by designating this visitor center with his name, we make him a permanent part of the project he worked so hard to bring into existence.

Mr. President, it was my honor to serve with George O'Brien in State government in Illinois and for almost 6 years in Congress.

He was, as I have said on this floor before, a charming man, a decent man, a fine man.

He was greatly beloved in his home district and in his hometown of Joliet—as well he should have been.

This National Heritage Corridor that he worked so hard on will, I think, ultimately, serve as his greatest legacy to the people of that district. It will bring tourism and other kinds of economic development to a part of our State that has faced difficult times in recent years.

It will bring jobs to the district, and new people to the district.

When they look around them and see the historic restoration projects that are a part of the corridor, and the recreation areas that are part of the corridor, and all the other things attributable to the corridor that will improve the quality of life in that part of Illinois, I hope they will think of George O'Brien.

Mr. President, naming the visitor center after George O'Brien will make it that much easier to think of him, and I am grateful to my colleagues in the Senate for accepting this amendment.

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

The amendment (No. 2833) was agreed to.

Mr. McCLURE. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside so that the Senator from Washington may be recognized to offer an amendment.

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

The Chair recognizes the Senator from Washington.

AMENDMENT NO. 2834

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Washington, [Mr. EVANS] for himself and Mr. GORTON proposes an amendment numbered 2834.

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

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

The amendment is as follows:

On page 51, line 1, delete ":" and insert in lieu thereof the following: ", of which $165,000 is for completion of flood repairs at the Monongahela National Forest, of which $100,000 is for preliminary design and survey work on the Hat Point and Dug Bar Roads in the Hells Canyon National Recreation Area, of which $8,473,000 is for roads and parking at Mount St. Helens National Volcanic Monument, and of which $6,731,000 is for trail construction:".

Mr. EVANS. Mr. President, this amendment restates what is in the committee report with relationship to the amount of money to be set aside for the nonforest road portion of the large appropriation for forest roads.

It would specifically mention the amount of moneys for completion of flood repairs at the Monongahela National Forest, some money for preliminary design and survey work on the Hat Point and Dug Bar Roads in the Hells Canyon National Recreation Area, money for Mount St. Helens National Volcanic Monument roads and $6.7 million for trail construction.

My hope is by doing this we will ensure that those appropriations are clearly stated in the bill, that they will not be subject to the kinds of argument we might get into in conference as it relates to the remainder of the appropriation, that dealing with the forest roads themselves.

I believe it has been cleared on both sides of the aisle.

The PRESIDING OFFICER (Mr. ARMSTRONG). The Senator from Idaho.

Mr. McCLURE. Mr. President, we have no objection to the amendment.

Mr. MELCHER. Mr. President, this side agrees with the amendment.

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

The amendment (No. 2834) was agreed to.

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

Mr. MELCHER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1500

Mr. METZENBAUM. Mr. President, is it my understanding that the floor is open for amendment at this time?

The PRESIDING OFFICER. The pending business is the committee amendment.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the committee amendment be set aside so that I might be accorded the opportunity to offer an amendment having to do with the Mound City Group National Monument.

The PRESIDING OFFICER. Is there objection? Without objection, the committee amendment is set aside.

AMENDMENT NO. 2835

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 2835.

On page 15, line 4, strike "70,900,000" and insert in lieu thereof "71,900,000"

Mr. METZENBAUM. Mr. President, my amendment appropriates $1 million to add 150 remaining acres to the authorized boundaries of the Mound City Group National Monument in Chillicothe, OH.

These additional acres, called the Hopeton Earthworks, have been designated as a national historic landmark and have been authorized since 1980 for addition to the National Park System.

The Mound City Group National Monument was established in 1923 to commemorate the Hopewell Mound Builders, whose interesting culture flourished between 300 B.C. and A.D. 600. The addition of the Hopeton Earthworks will greatly enhance the archeological significance of the monument.

This site is thought to have been the religious center of the Hopewell civilization, and archeologists believe that it may be the most significant Hopewell Earthworks in North America. Further research at this site promises to reveal a great deal more about the Hopewell Mound Builders and about America's native societies in general.

We must act now to protect the valuable resources on this site from farming and other commercial activities, which unfortunately have already damaged the site. In fact, the Hopeton Earthworks has been placed on the list of damaged and threatened national historic landmarks.

The current owners can no longer afford to withdraw this land from commercial use, and continued farming activities on this land will forever destroy its historical value. Therefore, it is imperative that Congress appropriate the full $1 million for the urgently needed acquisition of the Hopeton Earthworks at Mound City Group National Monument.

Mr. McCLURE. Mr. President, my understanding is that the Congressman in whose district this is located, Congressman McEWEN, supports this amendment.

Mr. METZENBAUM. That is correct.

Mr. McCLURE. Mr. President, I have no objection to the amendment.

Mr. MELCHER. Mr. President, we have no objection to the amendment, either.

The PRESIDING OFFICER. Are you ready for the question on the amendment? The question is on agreeing to the amendment.

The amendment (No. 2835) was agreed to.

Mr. METZENBAUM. Mr. President, if I may have the floor for just a few moments in connection with a colloquy having to do with the Cuyahoga Valley National Park.

Mr. McCLURE. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

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

The Senator from Ohio.

CUYAHOGA VALLEY NATIONAL RECREATION AREA

Mr. METZENBAUM. Mr. President, I thank the manager of the bill.

Mr. President, the House Interior appropriations bill contains $4.5 million for land acquisition for Cuyahoga Valley National Recreation area. The Senate version of the bill does not contain those funds. I believe it is important to continue to acquire acreage for this park which provides so many recreational opportunities for Ohio.

I understand the problems that the subcommittee chairman will face in conference in reaching an agreement within the budget resolution totals. I also understand that he has also agreed to provide funding for a number of Ohio land acquisition projects.

I merely ask the chairman whether or not I may have his assurance that he will give serious consideration to the needs for this additional funding for the Cuyahoga Valley National Park.

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

Mr. METZENBAUM. I certainly do yield.

Mr. McCLURE. Mr. President, the Senator correctly states our dilemma. The limitations of our 302(b) allocation gives us very, very tight authorization and outlay ceilings. Within that, we must necessarily establish priorities.

The Cuyahoga land acquisition did not meet that test in the current round of deliberations. It will be a new issue and it certainly will be—I should not say new, but it will be again raised in the conference and we certainly will give it very serious consideration at that time.

Mr. METZENBAUM. Mr. President, I appreciate the chairman's willingness to do that. Cuyahoga Valley National Park is one of the few urban parks located between the west coast and the east coast. It has been a real asset to people in that area and has given them an opportunity to enjoy some of the parklands that are quite limited in that particular part of the State.

I very much appreciate the chairman's willingness to give this matter serious consideration. I hope he will look favorably upon the allocation at the time the conference committee is in its deliberations.

EXCEPTED COMMITTEE AMENDMENT

Mr. McCLURE. Mr. President, I believe we are ready to adopt the remaining committee amendment and I would ask that it be presented and voted on.

The excepted committee amendment reads as follows:

EXCEPTED COMMITTEE AMENDMENT

Provided further, That for expenses necessary to carry out the mission of the National Park Service for a period of time not to extend beyond fiscal year 1987, the Secretary of the Interior is authorized to charge park entrance fees for all units of the National Park System of an amount not to exceed $3.00 for a single visit permit as defined in 36 CFR 71.7(b)(2) and of an amount not to exceed $7.50 for a single visit permit as defined in 36 CFR 71.7(b)(1); *Provided further*, That the cost of a Golden Eagle Passport as defined in 36 CFR 71.5 is increased to a reasonable fee but not to exceed $25.00 until September 30, 1987: *Provided further*, That for units of the National Park System where entrance fees are charged the Secretary shall establish an annual admission permit for each individual park unit for a reasonable fee but not to exceed $15.00, and that purchase of such annual admission permit for a unit of the National Park System shall relieve the requirement for payment of single visit permits as defined in 36 CFR 71.7(b): *Provided further*, That funds derived from increasing National Park Service entrance fees pursuant to this Act shall be credited to the Operation of the National Park System appropriation account and shall be available, without further appropriation, for expenditure as determined by the Director of the National Park Service, first, to defray the cost of collection; second for maintenance, interpretation, research, and resources management at the collecting unit; and third, for maintenance, interpretation, research, and resources management at all units of the National Park System during fiscal year 1987.

The PRESIDING OFFICER. Is there further discussion? If not, the question is on the committee amendment.

The committee amendment was agreed to.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which

the committee amendment was agreed to.

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

The motion to lay on the table was agreed to.

TIMBER SALES

Mr. PRESSLER. Mr. President, I would like to engage in a brief colloquy with the chairman concerning the timber sales portion of the amendment. I am concerned that if a reduction in timber sales is agreed upon it will all be taken out of one or two regions of the Forest Service. This could cause an economic disaster for certain areas. For example, the timber industry in South Dakota has less than 2 years supply of timber under contract with the Forest Service. This is a dangerously low level. If the Black Hills received a sizable reduction in timber offered for sale in 1987, several small sawmills in the area could be forced to shut down. The loss of one or two sawmills in the Black Hills would be a severe blow to the region. Mr. Chairman, under your amendment would any of the Forest Service regions have their total timber sales reduced below 1986 levels?

Mr. McCLURE. No. None of the Forest Service regions timber sales would be reduced.

Mr. PRESSLER. Under the amendment, the Black Hills National Forest would offer at least the same amount of timber for sale in 1987 as was offered in 1986?

Mr. McCLURE. Yes. There would be no reduction in timber sales for the Black Hills National Forest.

Mr. PRESSLER. Could the Black Hills National Forest potentially receive an increase in timber sales?

Mr. McCLURE. Yes. An increase in timber sales could possibly occur.

Mr. President, I know of one more amendment to be offered. There may be one other, but I would urge that if any Members are listening or if their staffs are listening, that they be advised that I think we are about to complete action on this bill.

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

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

AMENDMENT NO. 2836

Mr. McCLURE. Mr. President, I send an amendment to the desk on behalf of myself, Senator BAUCUS, Senator GORTON, and Senator EVANS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Idaho [Mr. McCLURE], for himself, Mr. BAUCUS, Mr. GORTON, and Mr. EVANS, proposes an amendment numbered 2836.

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

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

The amendment reads as follows:

On page 50, strike lines 9 through 18, and insert the following:

The Forest Service is to continue to complete as expeditiously as possible development of land and resource management plans to meet the requirements of the National Forest Management Act of 1976 (NFMA). Notwithstanding the date in section 6(c) of the NFMA (16 USC 1600), the Forest Service may continue the management of units of the National Forest System under existing land and resource management plans pending the completion of plans developed in accordance with the Act. Nothing shall limit judical review of activities on management units of the National Forest system, provided, however, such challenges are not intended to invalidate in its entirety any existing land and resource management plan developed under authorities other than section 6(c) of the NFMA.

Mr. McCLURE. Mr. President, this amendment arises out of a provision in the bill which deals with the status of the management of Forest Service units that have existing plans that have not been restated in the adoption of the new plans required by current law. That language appears on page 50 of the bill.

There was some concern that the language used by the committee was less precise than we had believed it to be and there were those who suggested that a change should be made to eliminate any possibility that the language might inadvertantly, or some might have felt intentionally, impinge upon the enforcement of provisions of the Endangered Species Act and a variety of other independent statutes. It was never the intention of the committee to do so.

There has been ongoing discussion over the last several days and intensive discussion in the last several hours to try to arrive at an accommodation that more clearly expresses both what was intended and what was not intended with respect to that provision. This amendment which has now been offered encompasses that agreement. I hope that all the parties who are involved are satisfied with what is a genuine attempt to come to an agreement on what the language should say.

Senator BAUCUS has been particularly helpful. He and his staff have worked very difficult language through the discussion process. Senator EVANS and Senator GORTON have also been very directly involved in those discussions, as have their staffs. There are others also who have been involved.

I think this is a good agreement of a potentially contentious issue and I believe—and hopefully I state as a fact—that it has removed the contention. I urge the adoption of the amendment.

The PRESIDING OFFICER. Is there further discussion on the amendment?

Mr. BAUCUS. Mr. President, I commend the Senator from Idaho, the chairman of the appropriations subcommittee, for his very diligent work in this regard.

I understand the intent of the Senator from Idaho to try to move the forest plans along and also in a way which does not obstruct other laws that we have in our country, namely, environmental laws, as well as NEPA.

The language was not as clear, probably, as it could have been at first. We have worked very conscientiously on all sides to make it clear that, while the Forest Service continues to operate the forest plans, they be operated in a way that does not contravene or make obsolete—or nugatory, if I can use that word—frankly, the other environmental laws which would apply.

□ 1510

That is, the NEPA as well as the Endangered Species Act and other relevant environmental laws should apply here. They should not be overruled. They should not be exempt from the application of the forest lands by the Forest Service.

I commend the chairman for working out this language. I am glad we have a resolution of this rather than another attempt to frankly offer an amendment to strike the language which I think would cause more problems than it would solve. So I thank the Senator.

I commend the committee for including language in the Interior appropriations bill to encourage the Forest Service to complete as expeditiously as possible development of land and resource management plans to meet the requirements of the National Forest Management Act [NFMA] of 1976. Congress needs to do all it can to encourage the Forest Service to implement the plans required by section 6 of the NFMA.

When the National Forest Management Act was passed in 1976, a target date of September 30, 1985, was included in the bill as a goal for the Forest Service to shoot for as the date to have all plans required by the act in place.

To date, 69 national forests out of the 123 national forests in the systems do not have final plans in place.

While the number one goal is to complete the development of these final plans, in the interim, there is a need for forest management activities to continue. The National Forest Management Act envisons that during this

interim period, existing land and resource management plans may be available for the Forest Service to use.

The passage of the September 30, 1985, implementation goal dates leaves open the question of whether these existing plans are available to provide management direction for national forests during the interim.

We should not subject the timber industry, recreationists, conservationists or any user of our public lands to the uncertainty of not having a plan in place to guide management of a national forest.

While I comment the chairman for attempting to remove this uncertainty, I am concerned that by adding the phrase, "notwithstanding any other provision of law," in the language of the committee bill, the Forest Service would be broadly exempted from a variety of environmental laws, land management statutes and court decisions.

The National Environmental Policy Act, the Clean Water Act, the Endangered Species Act, the Wilderness Act, the Multiple-Use Sustained Yield Act, the California versus Block judicial decision as well as all of our other environmental and land use statutes would be voided.

This language would have provided a "carte blanche" authority to ignore provisions of these laws. The only requirement on the Forest Service would be to ensure that any timber management decision comply with an existing unit or other management plan.

This language would have just the opposite effect of getting national forest management plans in place. It would have created a huge incentive to continue using existing plans since they would be exempt from all environmental laws.

It is my understanding that it was not the intention of the chairman to have this broad of a reach.

I want to commend the chairman for his willingness to try to find a way to narrow the scope of his amendment.

The chairman has expressed a concern that, without some protection of existing plans while NFMA plans are being developed, a national forest unit could find itself in a situation where some group or individual successfully challenges an existing plan in court, resulting in a forest having no management plan in place.

A national forest would then find itself forced to go back and redo the existing plan when Congress has clearly stated that it is its intent that the plan required by the National Forest Management Act be completed as quickly as possible.

This concern is a valid concern that I share with the chairman. It is in no one's interest to have a situation where a national forest must make a choice between expending large sums of time and effort to correct an existing plan or to risk doing a haphazard job of completing the plan required by the National Forest Management Act.

Plans developed under the National Forest Management Act are meant to set the direction for the management of our national forests for the next 50 years. They need to be conceived carefully and implemented carefully.

It is my understanding that the chairman's concern goes most directly to National Environmental Policy Act challenges.

While we need to avoid judicial challenges which overturn entire plans, it is critically important that individual activities be fully challengeable.

When Congress passed the National Forest Management Act in 1976, it was implicitly recognized that pre-NFMA management activities were, and would continue to be, subject to compliance with NEPA. According to 16 U.S.C. 1604(g)(1), the Forest Service was directed to develop regulations which would "specify procedures to ensure that land management plans are prepared in accordance with the National Environment Policy Act." In explaining this language, the Senate report stated that the provision "is neither intended to enlarge or diminish the Forest Service's responsibilities under [NEPA]." (U.S. Code Cong. & Ad. News, 94th Cong., 2nd Sess. 27, p. 6693) Exempting the Forest Service's activities from NEPA compliance changes the Forest Service's obligations under NEPA in a manner not contemplated when the statute was passed.

As a practical matter, the proposal amends both the National Forest Management Act, by exempting pre-NFMA activities of the Forest Service from NEPA review, and the National Environmental Policy Act, by exempting a significant proportion of an agency's activities from its scope. This proposal is properly the province of the Senate Energy and Natural Resources Committee, and the Senate Environment and Public Works Committee. However, no proposal to amend NFMA in this manner has ever come before either committee. Nor has this proposal in any form been the subject of public hearings in either the authorizing committees or the appropriations committee.

Under current law and established practice, the Forest Service is obligated to assure that its activities comply with NEPA. Road construction and timber sale activities in particular have environmental consequences which are properly examined under auspices of NEPA, and Council on Environmental Quality and Forest Service regulations implementing that statute. Certain programmatic activities with long-term environmental implications also fall under NEPA. For example, long-term timber sale plans may govern timber management activities on national forests for decades. If the Forest Service is exempted from compliance with NEPA, there is: first, no assurance that proposed activities will be adequately scrutinized to assure that environmental laws are complied with and environmental values protected; second, the Forest Service may continue to propose or carry out timber management activities which will degrade environmental quality in national forests not governed by new forest plans; and third, the public will have no way of assessing the environmental compatibility of proposed forest management actions or of taking legal action to assure that the environment is protected.

While a distinction between NEPA challenges to individual activities and NEPA challenges to plan can be made in theory, these types of distinctions are almost impossible to make in fact. Plans provide the basis for individual activities. Although individual forest activities such as a timber sale often involve the development of new data and, therefore, an expanded NEPA review, they are generally based upon some plan. There is no clear fixed line between the two actions.

An artificial legislative distinction between plans and activities could be drawn, but its language would need to be so vague that it could actually lead to more litigation and delay rather than less. We would arrive at exactly the opposite effect that I desire to see.

I commend the chairman for his willingness to address this difficult policy issue. I offer a substitute amendment that first, encourages the Forest Service to expeditiously complete plans required by the National Forest Management Act; second, maintains existing plans until NFMA plans are in place; third, ensures that individual activities remain subject to all environmental laws; and fourth, clearly states that it is the intention of Congress that entire existing plans not be invalidated.

The amendment the chairman offers as a substitute is intended to address the concerns that have been raised without violating any of our environmental or land use laws. I appreciate the chairman's willingness to work with me to resolve this issue and rise in support of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Idaho.

The amendment (No. 2836) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. MATHIAS. Mr. President, in 1978 I sponsored legislation authorizing the purchase of a historic property in southern Maryland known as Habre de Venture. This was the home of Thomas Stone, who, as one of three Maryland delegates to the second Continental Congress, signed the Declaration of Independence on July 2, 1776. In 1771, Thomas Stone built his plantation near the thriving river town of Port Tobacco. He lived in the house throughout his most politically active years, and on his death in 1787, was buried next to his wife in the family graveyard near the house.

Shortly before the legislation authorizing the property's purchase by the National Park Service was passed, tragedy struck Habre de Venture in the form of a fire early on New Years Day 1977, severely damaging this historic house. Since then, the property, now officially known as the Thomas Stone National Historic Site, has been deteriorating and is now in danger of being lost.

I bring this to the attention of the Senate because I feel it would be a grave error if the National Park Service allowed this historic property to decay beyond the possibility of restoration. I hope the Senate will encourage the Park Service to undertake expeditious efforts to restore this property and to open it to the public for educational and cultural purposes.

Mr. McCLURE. Mr. President, I concur with the concerns expressed by the Senator from Maryland. It would indeed be unfortunate for such a significant treasure of American history to be lost forever while it is in our capability to act quickly to preserve Habre de Venture. As chairman of the Interior Subcommittee of the Appropriations Committee, I will look forward to receiving specific plans from the National Park Service for the restoration of this historic property in the immediate future.

Mr. MATHIAS. Mr. President, I thank the Senator from Idaho for his concern for the future of the Thomas Stone National Historic Site. With its location so convenient to the Nation's Capital, I hope we all shall soon be able to visit a restored Habre de Venture. More Americans will then be able to appreciate its architectural merit and its significance as the home of a distinguished Marylander and a founder of our country.

Mr. MURKOWSKI. Title I of H.R. 5234, the Department of the Interior appropriations bill, authorizes the National Park Service to charge park entrance fees for all units of the National Park System. Is it my understanding that this provision would not supersede section 203 of the Alaska National Interest Lands Conservation Act which states that "no fees shall be charged for entrance or admission to any unit of the National Park System located in Alaska." Is my understanding correct? Would an amendment to the legislation be necessary to clarify this interpretation?

Mr. McCLURE. The Senator's understanding is correct, and no amendment to this provision is necessary.

Mr. MURKOWSKI. Are there any parks in Alaska not established by ANILCA that would be authorized to charge recreational fees?

Mr. McCLURE. Currently, none of the 23 units of the National Park System in Alaska may charge entrance or admission fees. This legislation would not change that situation.

Mr. MURKOWSKI. I thank the Senator for that clarification.

AMENDMENT NO. 2837

(Purpose: To fund the acquisition of land in Lake Clark National Park and Preserve)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Idaho [Mr. McCLURE], for Mr. STEVENS, proposes an amendment numbered 2837.

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

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

The amendment is as follows:

On page 15, line 4, strike out "$71,900,000" and insert in lieu thereof "$73,400,000

Mr. STEVENS. Mr. President, my amendment would add $1.5 million to the Park Service's land acquisition account to fund the purchase of approximately 3,000 acres on the shores of Lower Tazimina Lake in the Lake Clark National Park and Preserve from the Native corporation for the village of Nondalton.

The purchase of this high-quality recreational land was originally funded in the fiscal year 1986 Interior Appropriations Act, but the Park Service, for reasons that I have not yet uncovered, chose to reprogram those funds. My amendment will allow the Lower Tazimina Lake purchase, arrangements for which are nearly complete, to go forward.

I believe that my amendment has been cleared by the managers of the bill on both sides.

Mr. McCLURE. Mr. President, we have no objection to the amendment.

Mr. MELCHER. Mr. President, we have no objection on this side to the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Alaska.

The amendment (No. 2837) was agreed to.

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

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

The motion to lay on the table was agreed to.

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

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

AMENDMENT NO. 2838

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] proposes an amendment numbered 2838.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

No more than $400,000 made available to the Forest Service for obligation in fiscal year 1987 shall be expended to support Washington office staff in the development of the RPA: *Provided*, That this shall not reduce funds available for the development of forest plans pursuant to the National Forest Management Act of 1976.

Mr. MELCHER. Mr. President, the bill contains a limitation of $500,000 to be made available for the Forest Service during fiscal year 1987 to be spent on sections 3 and 4 of the Forest and Rangeland Renewable Resource Planning Act.

Mr. President, I object to the language as it is in the bill in identifying sections 3 and 4 which are pretty basic in the whole RPA process. The accommodation or agreement that has been reached between myself and the manager of the bill, the distinguished Senator from Idaho, the chairman of the subcommittee, has been that we will limit it to $400,000, and that we do not mention sections 3 and 4 which are sort of preliminary and basic work for the whole RPA, but that we limit it to how much can be spent right here by the Forest Service in Washington, in headquarters.

This will get the attention of the Forest Service which we would like to see. Most of the RPA work is done out in the field anyway. That is where the trees, the grass, the wildlife and the rivers and the streams are. Let them do it out there. That is where they

should be doing the work for RPA, and also we hope they will be more prompt in bringing their RPA work up to an acceptable level and timeframe. We think this amendment might accomplish that purpose.

I am pleased that the distinguished Senator from Idaho is willing to accept this amendment.

Mr. President, for purposes of clarification, I ask unanimous consent that I may be permitted to modify my amendment in the form that I send to the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

Mr. MELCHER. I thank the Chair.

The amendment (No. 2838), as modified, is as follows:

On page 59, strike lines 6-11, and insert the following:

No more than $400,000 made available to the Forest Service for obligation in fiscal year 1987 shall be expended to support Washington office staff in the development of the RPA: *Provided*, That this shall not reduce funds available for the development of forest plans pursuant to the National Forest Management Act of 1976.

Mr. McCLURE. Mr. President, there is no objection to the amendment on our side of the aisle.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Montana.

The amendment (No. 2838), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HART. Mr. President, will the distinguished Senator from Idaho yield?

Mr. McCLURE. I am happy to yield to the Senator from Colorado.

Mr. HART. Mr. President, for purposes of clarifying what procedure we are going to follow now, the Senator from Montana as well as the Senator from Colorado are interested in a proposed settlement by the Interior Department having to do with a rather large number of acres of oil shale lands.

If I could have the attention of the Senator from Montana, I would just ask how the distinguished minority floor manager would care to proceed on this issue. I have an amendment which would affect this issue. I know he has given some thought to the same matter. We can proceed as he wishes.

Mr. MELCHER. To respond to the distinguished Senator from Colorado, both he and I have about the same amendment. I would suggest we join together in offering the amendment regarding the shale settlement in Colorado.

Mr. HART. The Senator from Colorado is certainly agreeable to that. I can offer my amendment at this point with the Senator as cosponsor or vice versa, either way.

Mr. MELCHER. I would appreciate being a cosponsor.

AMENDMENT NO. 2839

(Purpose: To prohibit for a period of 180 days the use of funds appropriated in this Act for the patenting of any unpatented oil shale claims filed prior to passage of the Mineral Lands Leasing Act of 1920)

Mr. HART addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Colorado [Mr. HART], for himself and Mr. MELCHER, proposes an amendment numbered 2839.

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

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

The amendment is as follows:

At the end of title I, add the following new Section,

SEC. 112. Notwithstanding any other provision of law, no funds appropriated by this Act shall be available for the implementation, by the Secretary of Interior or the Attorney General or any other officer acting on behalf of the United States, of the "Agreement to Settle Pending Litigation Between the United States and the Owners of Certain Oil Shale Mining Claims in Colorado," dated August 4, 1986, or for the patenting of any other oil shale placer claims located prior to passage of the 1920 Mineral Leasing Act, for a period of 180 days from the date of enactment of this provision, in order to provide a period for Congressional review of this agreement.

□ 1520

Mr. HART. Mr. President, this amendment would prohibit the use of Interior funds to implement a settlement reached this summer by Federal attorneys transferring 82,000 acres of public land in Colorado to private ownership.

The proposed transfer of these acres has disturbed a great many people in my State. And it ought to disturb a great many more people, wherever they live. I know that a number of other Senators and Members of Congress have read of this settlement with disbelief.

The amendment would postpone execution of this settlement for 180 days. This would allow Congress the opportunity it has thus far been denied—the opportunity to review this settlement and examine both its logic and its consequences, and its soundness as public policy in the interest of the stewardship of public domain and public resources.

The House of Representatives tried in August to obtain time for such review and was denied on a procedural technicality. Since then, the distinguished ranking minority member of the Senate Energy Committee, the Senator from Louisiana [Mr. JOHNSTON] has sought documents from the Department of the Interior so he could assess the settlement. He waited a month before receiving those documents last week.

The legal history behind this case is complicated. But the current situation is plain enough. The Federal Government has signed a voluntary agreement conveying title to more than 80,000 acres of public land in Colorado to private ownership. And the price is an absurd $2.50 an acre.

This settlement has disturbed ranchers who graze their livestock on these lands. It has disturbed wildlife enthusiasts, who know these lands as the habitat of the largest herd of migrating deer in the country. It has disturbed public officials at the local, State, and Federal level, many of whom discovered the existence of this settlement in the newspapers. And it has disturbed taxpayers, who have seen their land sacrificed at a microscopic fraction of its true value.

But when this deal was struck, Mr. President, there were no ranchers at the table. There were no spokesmen for the hunters, no conservationists, no State officials, no local officials, no elected representatives and no advocates for the taxpayer.

The deal was done on the quiet. It was revealed to the public only by the efforts, apparently, of a few public servants who were angered by the undermining of the public trust.

And so there is no misunderstanding on this score, we should note what the negotiators did when they found out Congress wanted to let a little sunshine in on their proceedings. They met into the night to finish before Congress could have a look at what they were up to. That ought to tell us something.

Mr. President, setting aside for a moment the agreement itself, the way in which this agreement was reached suggests we should have had a look at it, long ago. I hope it is not too late to look at it now. And that is what this amendment is about.

The Government's own attorneys have been quoted in the press saying that portions of this land could sell for $2,000 an acre. And when oil shale was last attracting attention, leases were sold in the area for as much as $40,000 an acre.

The Government attorneys who signed this settlement tell us they had to settle because of an unfortunate ruling by a Federal district judge. But

experienced attorneys in natural resources—attorneys who have worked on this issue, inside the Government and out, for a quarter century—tell me that district court decision was so extreme as to demand appeal.

Both the Colorado director of the Bureau of Land Management and the Department's regional solicitors urged the Washington office to appeal. But the decision in Washington was to throw in the towel instead.

The Interior's attorneys tell us their chances in appellate court were not worth the risking of what they call their precious litigation resources. But this Senator finds it remarkable that the Interior solicitor's office—and even the Department of Justice—fancy themselves free to weigh their internal budgets against their responsibility to the public and in the public interests. If this judge made a bad decision, Mr. President, it should be appealed on principle.

We are also told the district judge's decision would harm Federal rights with respect to other minerals—minerals that Interior must value more than oil shale. If that is so, then it is all the more reason to appeal this decision and root it out of the law.

We are told that a loss on appeal would be worse than a settlement, but let us consider what we are left with now. We have the district judge's decision, fully reported and published, and a promise that it will be vacated as moot under the agreement.

But decisions so vacated have been cited before. Moreover, other claimants wait in the wings, eager to patent claims on three times the acreage involved in this case—claimants who now know just where to turn for jurisprudence.

And we now have a clear signal from Interior for the oil companies: Your claims may have languished for generations—you may not have even proven the actual discovery of oil shale—but now you can own Federal lands for less than it costs you to park at the courthouse.

For the ranchers whose costs will rise, for the hunters whose grounds will be closed, and mostly for the taxpayers who have a right to expect far more in exchange for public resources, this Government ought to do better.

Mr. President, I believe we can do better. In the other body, the chairman of the Mining Subcommittee of the Interior Committee has introduced a sensible bill. It would clarify the intent of the 1972 Mining Act once and for all, which is the principal legal and policy issue here.

It would make clear that claimants were always expected to demonstrate a continuing interest in their claims through regular assessment or development work. It would make clear that mining claims were meant to be mined. If no resource is present that can be mined for profit, these claims serve no purpose other than land speculation. And no one has ever contended the 1872 act was intended to facilitate land speculation.

That bill is now before the House Interior Committee. This Senator intends to offer a companion version of this bill in the Senate, and this Senator hopes that full hearings on that bill will be held in due course.

In the meantime, Mr. President, we can make the first, simple step toward stopping this abdication of responsibility right here and now—by adopting this amendment.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER (Mr. HELMS). The Senator from Montana.

Mr. MELCHER. Mr. President, as the Senator from Colorado has stated, this litigation extends back for more than a quarter of a century. It might be argued that if anything is in court that long, maybe it is a good thing to settle it, as the solicitor, off the top of his head, decided. I am speaking of the solicitor for the Department of the Interior, who decided to get out of court. He said "There is too much litigation."

Well, I cannot believe that we knew what we were doing when we confirmed that solicitor.

Do you know what is involved here? What is involved is the 1872 Mining Act and people who want to say, "Well, it is outdated."

It is not outdated so much that we cannot sort out the facts. The question is whether these applications, which were made beginning in the early days of this century, have remained valid claims. The judge in Colorado in the Federal district court found some rationale and he ruled they were valid.

You just do not get these claims for nothing. You have to have some annual work, some performance, on these claims or you lose your rights. Often it is hard to demonstrate whether the proper amount of work was done. To think that anybody did much work on these claims prior to 1920 or after 1920 to maintain the validity of the claim is really stretching the point.

It was fully intended by the attorneys out there in Colorado working for the BLM, for the Department of the Interior, that after the judge finally ruled it would be appealed to a higher court. All of a sudden the solicitor decided there would not be any appeal, and that he would just make a settlement.

What does a settlement mean in this case? It means that the clear title to these acres of Federal land will be transferred to the companies in the settlement once they have paid $2.50 per acre for the cleared title.

Well, land values have gone down, but not that much. Not that much at all. I do not know why a solicitor would decide on his own to settle. The policy of Congress has always been, for at least years, that we retain Federal land.

For example, it was enunciated in the Federal Land Policy Management Act of 1976 that we would retain Federal land and Federal ownership and use it for multiple-use purposes. So, it seems to me that some of these corporations would be particularly embarrassed by this settlement.

□ 1530

It might be argued by the solicitor, or by anybody on this floor, or anywhere else in this town, that all that claimants are allowed under the law to pay for this land is $2.50. I do not think that arguments gets very far on the Senate floor, in the other body, or in this town or anywhere else in the country.

The amendment is rather straightforward. It says that there will not be anything done further on the "Tosco Settlement" for 180 days in order to provide for some time for Congress to review it. I think Congress had better look at it.

I cannot imagine that corporations such as Exxon want to have this tag placed on them: that they are picking up land out of the graciousness and the generosity of the solicitor of the Department of the Interior for $2.50 an acre.

Exxon has not called me—I hope they do—to tell me whether they think it is good public relations to create that kind of public image. I do not think they do.

I do not know whether the Federal judge in Colorado thought that his ruling would not be appealed. I would speculate that he probably felt it would be appealed. But if there were going to be a settlement by the Department of the Interior to sell the land, I would think they would want to consult with Congress on whether it would be acceptable. And particularly would it be acceptable at the ridiculously low figure of $2.50?

We just talked about the current value of the land. Is there any likelihood that there will be oil shale development? Probably not. I know we have spent some Federal dollars in experimentation to see whehter it could be developed if oil were costing, say, $50 or $65 a barrel. Nothing has proved satisfactory yet. Whether oil would be developed, out of this shale, I do not know. If it were to be developed, it should not pass out of Federal ownership.

As far as we know now, if you can extract the oil from this shale, you will end up with a different type of material, which perhaps we should not call shale any more. You will end up with a material which is about three or four times larger than it was when

you started. And where is that supposed to go? What would be done with it? That is part of the experimentation that is necessary to see whether development will ever be feasible. So, if there were a lot of oil to be extracted out of this shale, we would still have the problem of what happens to the land afterwards. What do you do with a material which has a greater volume than you started out with, particular when it is three or four times greater, unless there is a better technology. Maybe at some time there will be a better technology but it is not here with us now.

What would be the effect on the land? I thought the Senator from Colorado was quite restrained in his remarks that ranchers really did not know much about this when it was done; the sportsmen out there did not really know much about it before the agreement was struck; and Congress certainly knows very little about it. In fact, it is a most unusual procedure to dispose of public land as a settlement in a court case, at the Federal district court level, when the people involved—those working with BLM, the Department of the Interior and the Department of Justice—felt it was going to be appealed. Particularly when the Department of Interior just jerked the rug out from under the appeal process and said, "Well, we are going to sign a settlement."

The House had a hearing on this, I understand. It is my understanding that none of the people who had been directly involved in the case from out in Colorado, those working for the BLM, were permitted to testify. I find that rather strange. I find that highhanded. I also find it ridiculous. What is there to hide? These tactics make the situation all the more interesting and intriguing.

On the surface, it looks stupid for the United States to be selling land at $2.50 an acre. If there is any merit to it, we had better examine it carefully. I at this moment do not see much merit in the settlement. But, if there is merit to it, I am willing to listen. I certainly would want to listen to people who had been working on the case in Colorado at the Bureau of Land Management and at the Department of the Interior, to get the true facts as they saw them. It is only fair to examine whatever rationale the solicitor had when he suggested this type of settlement. I want to do so.

The amendment simply provides that opportunity. It just says that for 180 days nothing more will be done on the so-called Tosco settlement, by restricting the spending any more funds, which in the past has proven effective. I hope that we either will accept this amendment as it is, without a vote, or, if we are not going to accept it—I of course would want to vote on the amendment. It would, then, at least be recorded that I want to look at it. I feel a responsibility that the people of the United States be given an opportunity to examine it, after we have had the chance to gain access to all of the facts involved.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I believe $5 million is asked by the National Park Service land acquisition account this afternoon. I wonder if the two managers would consider lending their support in making legislative history here that $2 million of those funds, would be earmarked for land acquisition at the New River Gorge National River in West Virginia.

Mr. McCLURE. Would the Senator yield?

Mr. BYRD. Yes, I yield.

Mr. McCLURE. Mr. President, I would make a little broader statement than that, not only in an effort to be helpful to the Senator from West Virginia but also to make certain that we do not mislead anyone with respect to the presentation with respect to the $5 million that was added.

□ 1540

I think the $5 million that was added certainly makes it easier to make this statement. I have no objection to earmarking out of the land acquisition funds generally available in the bill an expectation that $2 million are specifically earmarked for the acquisition of lands in the New River Gorge. I would not want it to be understood that that was necessarily taken out of the $5 million that was added today.

Mr. BYRD. Very well. That would be very pleasing to me. I can appreciate the reasons why the distinguished manager of the bill has made this statement. That will be very satisfactory and I thank the distinguished manager.

Mr. MELCHER. Mr. President, we would on this side agree very wholeheartedly with the statement just given by the distinguished Senator from Idaho.

Mr. BYRD. Mr. President, I thank the distinguished ranking minority manager for his equally supportive statement. I am very grateful again to both managers, may I say.

AMENDMENT NO. 2840

(Purpose: To clarify the treatment of qualified registered professional land surveyors under the Surface Mining Control and Reclamation Act of 1977)

Mr. BYRD. I ask unanimous consent that the pending amendment by Mr. HART be laid aside temporarily for not more than, say, 2 minutes that I may call up an amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

Mr. BYRD. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 2840.

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

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

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . Section 515(b)(10)(B)(ii) of the Surface Mining Control and Reclamation Act of 1977 is amended by inserting after "qualified registered engineer" the following: "or a qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans".

Mr. BYRD. Mr. President, in 1983, in the fiscal year 1984 Interior appropriations bill, I had language which constituted an amendment to the Surface Mining Control and Reclamation Act of 1977 that would allow land surveyors to prepare and certify certain maps, plans, and cross sections for surface mining permit applications. The intent of that language, which I offered by way of amendment, was to resolve a conflict in the Surface Mining Control and Reclamation Act with State laws that authorized land surveyors to perform such work. However, the rule promulgated by the Office of Surface Mining as a result of that amendment does not provide for land surveyors to certify the completed work at certain impoundments to assure that they are structurally stable and have been constructed in accordance with the specifications and design. The amendment that I am offering at this time would correct the situation to fully allow land surveyors to certify such completed work. It will apply only to States, such as my own State of West Virginia, which authorize land surveyors to certify such work. Any State that does not authorize surveyors to perform such work would not be affected by the amendment. There are 700 land surveyors certified to conduct business in West Virginia. They are subject to rigorous certification requirements. The rule promulgated by the Office of Surface Mining on April 24, 1985, places a hardship on those professionals as well as on our mining industry. Efforts to correct conflicts between the Surface Mining Control and Reclamation Act of 1977 and State law faced by the registered land surveyors have been ongoing since 1980. This amendment addresses the remaining conflict and I urge its adoption.

Mr. McCLURE. Mr. President, it is my understanding that the administration has no problem with the amendment. Based on that under-

standing, I certainly have no objection and urge its adoption.

Mr. MELCHER. Mr. President, we on this side are in agreement with the amendment.

Mr. BYRD. Mr. President, I thank both managers and I hope the Senate will adopt the amendment.

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

The amendment (No. 2840) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I thank all Senators.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Colorado [Mr. HART].

Mr. ARMSTRONG. Mr. President, as I understand it, the chairman is seeking the advice of the Department about the pending Hart amendment. And while he does so, I will take a moment to try to share with my colleagues the background of the situation as I understand it. I guess I have done about everything around here and so now I shall attempt to practice a little public lands law. And I want to at the outset make it clear that I am taken somewhat aback by the amendment because while I am not completely surprised it has been presented, I do not quite understand the theory under which it comes to us.

I listened with interest to the comments of my colleague from Colorado and also to the discussion of the issue by the Senator from Montana. I do not take lightly what they have said, nor do I take lightly the evident fact that they feel a sense of emotional commitment to the issue. It seems to me that the thing is pretty much pure vanilla, and so I am a little surprised at the way this thing has developed and perhaps will know more when we have the advice of the Department, which I understand will be forthcoming shortly.

But the validity and patentability of oil shale claims made prior to 1920 has been the subject of administrative proceedings and litigation for the past 66 years. The issue, as I am advised at least by legal counsel on my staff, is that the Federal Government has sought to block the claims of private citizens to these oil shale lands and the argument that they have made, if I can just nub it down to the essence, is that the Government, not the private citizens, is the proper custodian of this land.

Now, a number of individual citizens and some companies have contended that they have legally valid claims, not that they are seeking to buy the land, as the Senator from Montana indicated, but that they already own it; that as a matter of law and regulation they have a legal right to this land.

Well, this has been litigated up and down the courts and on a number of occasions, I am advised, various Federal courts, including the Supreme Court, have twice ruled on this issue and sided with the private citizens.

Finally, on August 4 of this year a settlement was reached between the Federal Government and the claimants on some 525 claims involving 82,000 acres in western Colorado. Now, I am told that the reason for the agreement comes down to this: That the Government had once again decisively lost a case in the court of the presiding Judge Finesilver in the U.S. District Court for Colorado, who ruled in May 1985 that the 82,000 acres in question were in fact private lands and required by his ruling to transfer all title of the land to the claimants.

Now, the Government after looking this over determined that they did not have a good chance to win on appeal and therefore they were interested in a settlement. The private parties involved agreed to the settlement, I am advised, not because they feared the appeal but because they feared the prospect of another 66 years of litigation.

This has been going on for a long, long time. In at least some cases we are talking about land which was initially claimed three generations ago and at least in some cases is claimed for ownership by persons who are in excess of 80 years of age, so the prospect of continued litigation stretching out over a long period of time is not appetizing either to the Government, which feels it has incurred a substantial litigation expense and has even now a continued exposure for the cost of litigation, or for the claimants who would like to get it out of their hair. So that is where the settlement came from according to what I have been advised.

□ 1550

In the settlement, the claimants retain the oil shale rights and title to the surface land, which is necessary for oil shale development. The Government retains the royalties to all oil, gas, and coal, including currently producing fields in Garfield and Rio Blanco Counties; the State of Colorado can maintain its 50-percent share of royalties on Federal mineral leases; valid existing right-of-ways and hunting access are preserved; ranchers can continue to graze their livestock on existing terms; development besides oil shale is prohibited for 20 years; State water rights are preserved, since BLM will give up its claims; and all parties agree to vacate the Finesilver decision so it will not set a precedent for other mineral cases.

The settlement preserves many mineral rights for the Government and surface uses of the land for local governments, ranchers, and hunters and avoids the difficult precedents in TOSCO. Resolving the issue without further litigation is a concept that has been endorsed by the Colorado State House of Representatives, the Rio Blanco County Commissioners and the Associated Governments of Northwest Colorado.

In fact, I think my colleagues would be impressed, as I was, that in 1983, the Colorado General Assembly passed a resolution urging the Department of the Interior to immediately resume a fair and orderly process to quickly resolve the status of pending unpatentable claims. The Rio Blanco County-Commissioners and the Associated Governments of Northwest Colorado, which comprises Rio Grande, Garfield, Moffat, and Mesa Counties, also has endorsed this proposed settlement.

The Grand Junction Daily Sentinel, which is a newspaper published in this general area, and which, probably of all the newspapers in the world, is the most knowledgeable about the specific issues of public land law as it relates to oil shale development—because the daily paper is in what has become to be known as oil shale country—characterizes the opposition to this settlement as "a lot of irony and no small part of hypocrisy."

There are a lot of reasons why we should go forward, particularly when we think of the cost already incurred by the Federal Government, which I am told is estimated to be about $100 million.

Mr. President, here is the background of it:

The Mining Law of 1872 sought to open public lands and encourage resource development. Under this law, a citizen could "claim" land with valuable minerals and apply for a patent—ownership—to the land for a fee. The Green River Formation in Colorado, Wyoming, and Utah was known for its oil shale deposits and much land was claimed for oil shale development. In the Mineral Leasing Act of 1920, the law was changed to say that future mineral claims had to be leased from the Government rather than allowing the claimant to obtain outright ownership as in the 1871 law. There was an exception—known as the "savings clause"—however, in the new law that allowed pre-1920 claims to continue to be patentable under the 1872 law. The claimants applications for patents on the pre-1920 claims have been the subject of this litigation.

What we are talking about are claims that were filed prior to 1920.

Mr. MELCHER. Mr. President, will the distinguished Senator yield at that point?

Mr. ARMSTRONG. If the Senator will forgive me, it is my preference to sort of try to lay out what my legal counsel has advised me, so that other Senators will at least be aware of the arguments in support of the settlement. Then I would be happy to yield.

I want to make it plain, however, that I have no desire to involve myself in a lengthy dispute about the details of it, because I think the Senator from Montana is more knowledgeable about public law than I shall ever be or desire to be.

I want to be sure the facts are on the record and let the Senate make its own decision.

I reserve my decision as to how to treat the Hart amendment until I hear more advice from the Department. I would like to complete my presentation of the background, and I will be happy to hear the Senator's comments, and I think we can come to some resolution when we have the opinion of the Department.

Applications for patents to pre-1920 oil shale claims were denied until 1935, when the Supreme Court ruled the basis of the Department of the Interior's [DOI] denial erroneous. In 1935, DOI began a 26-year period of approving patent applications for pre-1920 claims on about 350,000 acres. In 1961, however, DOI reversed its previous position and started contesting private oil shale claims. This policy reversal triggered 25 years of extensive litigation, ending with the Finesilver decision on May 1, 1985. The settlement reached between DOI and the claimants on August 4, 1986, entitles the claimants to the oil shale mineral rights and surface area and reserves other mineral rights and royalties for the Government and preserves current surface uses of the land.

Earlier in the decade, Judge Finesilver ordered DOI to proceed with contest hearings for the purpose of once and for all bringing all charges by the Government into a single proceeding.

It was the thought of the court, and surely Senators would agree, that this dragging matters out from one generation to the next served no good purpose for the Government, for the owners of the claims—if they are owners, as the court seems to think—or for anyone else.

That is pretty much where it stands.

Just to sum it up, let me share with my colleagues some questions I put to my staff when this matter came to my attention.

I asked: "Why has this come up so suddenly?"

It was pointed out to me that it did not come up suddenly. Judge Finesilver told the parties to enter into negotiations in May 1985, and these negotiations continued for 14 months, which seems to me plenty of time to carry it out. In granting an extension on June 27, the U.S. Court of Appeals for the Tenth Circuit said it would not grant a further extension, although 2 additional weeks were given. The parties were under pressure to wrap this up, and they did so.

I asked: "Who in Colorado supports the settlement?"

I have said that in 1983 the legislature got behind this idea. The local governments involved support the notion. It is generally, I think, a popular issue to get the matter behind us and get it settled.

My own disposition is to do so, and I hope we can find some formula by which we can resolve this to the satisfaction of everyone this afternoon.

One final note to this: The question of whether we should have a delay was raised in the other body recently, and it is my understanding that they thought it over a little and determined that they did not wish to delay further. I think there was a proposal for a shorter delay, and that was declined by the other body. Maybe that is what we should do.

I am going to defer to the recommendation of the chairman. If there are good reasons for us to adopt this amendment and put off the final decision for 180 days more, I guess we can live with it; but, at the moment, I am not persuaded that that is a good idea.

Mr. MELCHER. Mr. President, the distinguished Senator from Colorado [Mr. ARMSTRONG] has just told us that we should be reasonable and that we ought to wait to hear what the attitude of the Department of the Interior is on the amendment. That is the problem. That is really the problem, because it is a foregone conclusion that the Department wants this expedited; they want to get this behind them very quickly. They certainly do not want it sitting out under public view very long.

This happens to be the last chance for Congress to say, "Let us examine it before you rush headlong into this proposed settlement."

The Senator from Colorado [Mr. ARMSTRONG] said that the House looked at it and did not do anything. What we have before us is the House bill on the appropriations for Interior, which was received in the Senate in July. I do not have the date. It is not on the face of this bill, but it was in July.

The Solicitor of the Interior hatched out this settlement after that time—August 4 to be exact. I have to say that I feel somewhat outraged that we have a Solicitor acting on a matter like this without any consultation with Congress, because this sets a very far-reaching precedent.

□ 1600

Let me tell you what it does just for oil shale. There are 83,000 acres involved in the "Tosco" settlement. But there are another couple hundred thousand acres like those involved in this case, in question. I suppose if this settlement is allowed to stand that it will be a precedent for settling the rest of the acreage in question.

But, all the debatable points aside, the real question is what should we, the Congress, be looking at? What should the public be looking at?

First of all, you would want to look at the ruling that was given by this Federal district judge in Colorado and also to listen to the people who have worked with this over the last 25 or more years to seek their opinion on this ruling. Why should it not be appealed? We should have a review period of at least 6 months to find out whether we can clarify this.

I am the first to admit here in the Senate that we should be on top of this in an oversight function and that we should be reviewing the basic law which pertains to this settlement. In order to do this, the Interior appropriations bill is absolutely the last train out of the station.

We are told that the Department of the Interior is rushing the paperwork to get patents signed and sealed; that is, they are expediting the actual transfer of the land title.

These two aspects of the settlement agreement elements of Judge Finesilver's decision must be reviewed very seriously. First, he decided that an oil shale claimant who has expended $500 is held to have substantially complied with the statutory assessment work requirement of the law. I know of no one in the professional staff of the BLM in the Department of the Interior that agrees with that. That is No. 1.

A second point in the judges' ruling raises some very serious questions, I think. He ruled that the burden of proof on lack of assessment work rests with the Government instead of the mining claimant. What that would mean to the Federal Government—all the employees of Bureau of Mines, the Bureau of Land Management, the Solicitor's Office and the Justice Department is that they had to prove that the assessment work was not done. They, frankly, cannot agree with that.

The judge's ruling could go much further than just oil shale. It very possibly would have to do with all mineral claims. On the other hand, the agreement purports to say it is not to set a precedent.

I do not know how you can write that into an agreement with a few corporations and say that it does not set a precedent for all the rest of the mining claims that are pending here in the United States.

Although there are probably a lot more reasons to support a congressional review of the settlement, these are the two key ones which give me real concern. I want to know whether or not the Department of the Interior is acting wisely. I know Congress should do something, and I want to know why we do not do something. Six months is a fairly short period of time, but at least it would give us some amount of time to determine whether or not this was a good settlement.

On the surface, it looks very bad to say that the land is available for $2.50 an acre, and that is exactly what it does. It says just fork over the $2.50 per acre and the United States will give you the deed.

I think this is outrageous, but if it can be demonstrated as making sense I will try to approach it with an open mind. On the surface it seems outrageous. The least this Solicitor could do is come to Congress and say, "We want a settlement, but the $2.50 is ridiculous and not in the public interest and we want full land value." That would be the least he could do. There is one final point.

Mr. ARMSTRONG. Mr. President, will the Senator yield for a moment before he makes the final point?

Mr. MELCHER. After I make this final point I will be delighted to yield.

We have operated under the 1872 mining law and have tried to enforce it for well over 100 years. Under the law, if you are going to have a Federal claim to bring it to a patent and actually get title, the claimant must be able to demonstrate that a mineral of value will be extracted. The oil that can be extracted from shale certainly has value. The fact that it cannot be extracted under current market conditions means that the value involved is questionable. That may cause a great deal of concern beyond oil shale. What does that mean? Could it mean that if a trace of a valuable mineral is demonstrated, but the claimant is not ready to extract it, that a patent is issued for that land anyway?

I would hope not. This never has been done before. The law has always required a claimant to demonstrate a mineral could be extracted and put on the market. They have not demonstrated they can extract the oil and put it on the market. But yet they are getting the patent.

Yes, I am delighted to yield.

Mr. ARMSTRONG. Mr. President, I am grateful to my friend for yielding.

I want to pin down one point that I understand is certain. If the point he is making is correct it would be of concern to me as well.

As I understand it, the Senator's contention is that to sell or transfer the land for $2.50 an acre is far too little a price to pay for this land. The point I want to be sure I understand correctly is this: the court decision as I understand it says that the land already belongs to the claimant; the $2.50 per acre is simply a fee. It is not a consideration in the sale is my understanding. Is that the nub of the dispute that we have here?

Mr. MELCHER. No.

Mr. ARMSTRONG. In other words, If the Government is not selling the land, their position is that the court has ordered them to turn over this land, so they are just complying in effect to what the court has said.

(Mr. EVANS assumed the chair.)

Mr. MELCHER. The nub of the problem is that although this particular Federal judge ruled that they had completed everything to be eligible, the professional Department of the Interior people on the scene said, "No, that is not true."

Second, the last point I make is that the law requires a demonstration that you are going to extract a valuable mineral. None of these companies can demonstrate that. Indeed, they have failed in doing so.

Therefore, that is the real nub. How can they qualify? That is, you could even set aside the argument on whether or not they expended the $500 in work, and agree that they took care of all those 50-odd years or more, since these claims were filed were before 1920 and go back 70, 80 years.

So, Congress did not intend the right to pick up title to land unless those two bases were satisfied. First, that the assessment work, had been completed and the investment required is a great deal more than $500, it is $100 a year. Second, it is required to demonstrate that valuable mineral will be extracted which will do the public good by placing it on the market. Those two points are the real nub of the issue.

From everything I know, there is no demonstration that they are going to extract the oil and put it on the market or that they have done their proper assessment.

□ 1610

Mr. ARMSTRONG. If the Senator would yield just a moment further, as I see it, it does come down to the question of law. Were the Congress to agree to an 180-day delay, would it be the Senator's thought that the litigation would proceed during that period, that an appeal would be filed, and somehow brought to a conclusion, or would it be the thought of the Senator that new legislation might be passed to overturn the finding in the case that was decided in May of 1985?

Mr. MELCHER. Well, I answer the Senator, just on my feeling today. I want to review the circumstances on the claim itself. I want to know where the assessment work has been done, which can be established by facts. I want a review of others in the legal profession on the judge's declaration, which I find to be strange, which held that the burden of proof on the assessment work rested with the Government rather than with the claimant.

Unless these problems could be resolved to the satisfaction of the Congress, I would hope that the Department then would appeal for a clarification. There may be a great deal we are going to have to do with this law if this ruling holds.

In fact, the Department of the Interior and the Justice Department lawyers working on the case indicated they wanted to appeal and in fact took the proper steps to file the appeal. It was felt, that within Interior a clarification of this by the appellate court or by the Supreme Court, if that were necessary, would be for the forthcoming and then we would go from there.

As I said, there may be a lot of work we have to do with the law, but specifically, as I feel today, I think that the timeframe suggested in the pending amendment would allow a review of the facts. Then either the Department of the Interior becomes convinced that no appeal should be filed or they would change their minds and go for the appeal.

Mr. HART. Will the Senator from Montana yield?

Mr. MELCHER. Yes, I am delighted to yield.

Mr. HART. Mr. President, I would like to respond, if I may, to the question raised, legitimately raised, by my colleague from Colorado as to the options available. And I think there may be two, maybe more.

The Senator from Montana indicated one would be to have hearings in the appropriate committees of the House and the Senate in which the Department would appear and, in fact, lay out the agreement and the justification for it.

I, frankly, see no reason why that should not be done, since the Congress itself enacted the original laws and has constitutional responsibility ultimately for the public lands and the public trust.

The second option would be, as a result of those hearings, either the Department would change its mind on appeal and carry the case forward to the court of appeals and perhaps even eventually the Supreme Court, or, on the other hand, the Congress would see fit to clarify the original intent, its own original intent of the 1872 law as to what kind of assessment work had to be performed and whether or not, in this case, it actually was.

My colleague from Colorado does in fact raise a number of key questions and I think he raises them in the finest spirit of the Senate. If I may, I would like to briefly respond to each, if I could.

My colleague, I think, unnecessarily limited his own knowledge of this area, because he is very knowledgeable

about public resource policy and management. On the other hand, let me qualify myself. I not only, as my colleague has, have represented the State with the primary oil shale deposits, but in a previous public service area of my own life coordinated a task force in the Department of the Interior in the 1960's, some 20 years ago now, or more, the purpose of which was to try to resolve these claims. So this Senator from Colorado has some rather extended background in this area.

In that context, let me respond to the questions raised by my colleague. First, he asks, and I think with sincerity, why the amendment is being offered and indicates some confusion about that. The amendment is being offered, as I think the Senator from Montana indicated, because without Congress acting the agreement goes into effect and 82,000 acres of very valuable public land go into private ownership.

The amendment is offered on this bill because it seems that it is both the appropriate and the only vehicle available before the Congress adjourns sine die and/or the agreement rights under the agreement vest. So that, I think, is an effort to respond to the question of why this amendment and why now.

The Senator from Colorado, rightly and historically, cites the length of some of these claims. They do go back 60, 70, 80 years, some of them; a long time. But I think the point here is not the length of the claim, it is whether requirements under the law have been met during that period. Rights do not vest to public land in general because of the length of the claim. The law requires something to be done during the claim. It matters not how long it has been going on, it is whether or not the requirement has been met and that is the issue here—factually, have the requirements been met?

The Senator from Colorado suggests, on the advice of his own legal counsel, that the Supreme Court has rendered opinions and his suggestion was that those opinions are fairly consistently in favor of the claimants. It might be simpler if that were the case, but it is not the case. I will just cite what I think are the three principal Supreme Court decisions here.

The first one was the so-called Krushnic decision of 1930, in which the Supreme Court ruled the Department of the Interior could not invalidate an oil shale claim based on the failure to perform the annual assessment work in only 1 year. That was the issue at stake in that case. The Court further held that failure to perform the assessment work or the labor in any year is without effect where, in its terms, a total of $500 in annual assessment work has been performed.

What then happened was a case came back up trying to refine even further that ruling, and it was called Ickes versus Virginia-Colorado Development Corp. It appeared in the Supreme Court some 5 years later, in 1935. In that case, the Court ruled a claimant is entitled to preserve his claim by resuming annual assessment work after defaulting but before another party relocates a claim.

Then a very interesting thing happened. After the 1935 decision, the Department went forward for 2½ decades, 25 years—roughly 1935 to 1960—and patented close to a third of a million acres of oil shale claims. I think specifically, as I recall, 350,000 of oil shale claims were, in fact, patented by the Department under various political parties and administrations over a 25-year period. So it was not as if the Department has consistently every year resisted every oil shale claim. A lot of this land, an awful lot of this land, has gone into private ownership.

Then came yet a third Supreme Court decision resulting from those patents in 1970 and it was called Hickel versus Oil Shale Corp., 1970. There, the Supreme Court, to a degree, reversed itself, not reversed itself but qualified the 1930 so-called Krushnic decision on the issue of annual assessment work ruling that what it called token assessment work or assessment work that does not substantially satisfy the annual assessment requirement of the Mining Act is not sufficient to maintain a claim.

The only reason I go into all of this detail is to qualify the suggestion that this issue has been consistently before the courts up to and including the Supreme Court and year in and year out the Supreme Court has consistently ruled in a certain direction. The rulings are very, very narrow and very targeted to a specific question having to do with the validity of the claims and do not, I think, represent a clear pattern on the issue.

On the question of whether the House of Representatives has not disposed of it, let me just say the vote that occurred in the House a couple of weeks ago was a vote on a point of order. The point of order challenging the ability of certain House Members to raise the issue was upheld.

□ 1620

That is to say the House never voted, if you will, on the merits on the question of whether or not additional clarifying legislation should be passed.

Finally, Mr. President, let me say this: This is an issue of the public trust. No one is accusing the present administration of bad faith or of being casual about the public trust, although that has been suggested by some. I think the real issue is if you are going to dispose of 82,000 acres of extremely valuable land—not valuable today, potentially valuable, as I suggested, in the thousands and thousands and thousands of dollars per acre—then the Congress ought to be involved to some degree in at least knowing what the rationale behind the very dark-of-the-night kind of negotiations were, and whether in fact there is good public policy at this time, what its implications are for tens of thousands of acres of equally or even more valuable oil shale lands, and finally whether the Department's interpretation of the intent of Congress is in fact a valid one and whether the Congress in this 180-day period may want to clarify that interpretation.

I think Congress does have a role in this issue. I think we ought to have been consulted and advised, and it is for that purpose that this amendment is offered.

Mr. METZENBAUM. Mr. President, I rise in support of the amendment of my colleagues from Colorado and Montana. It is time for this body to take action and stop an absolutely outrageous act by the Department of the Interior.

I refer to the unwarranted giveaway of 82,000 acres—that is 130 square miles—of public land, along with valuable oil shale deposits and water rights to a group of speculators.

At issue is a large number of mining claims filed under the 1872 Mining Act. That allowed claimants to receive title to land for $2.50 per acre, as long as they had a legitimate discovery and performed at least 100 dollars' worth of work on the claim each year. In all of the claims involved here, the Department has found that the miners failed to perform the required annual work. In some cases, no work was done for periods of 20 and 30 years. Clearly, such claims were not good faith attempts at opening a working mine. Rather, they were obvious speculating actions.

The Government's attempts to withhold title to all such claims has been a long fought, sometimes erratic effort. Since the late 1920's, the Interior Department has attempted to withhold title and recover the claims which were not legitimately discovered or maintained. Two Supreme Court decisions in the 1930's, based on very narrow, unusual circumstances, led the Department to erroneously misinterpret its authority under the law for a number of years, and led to the give away of hundreds of thousands of acres of land, even though claims had not been maintained according to the law.

However, the Government corrected its position in the late 1950's and early 1960's, and put a halt to the unjustified give away of Federal lands. Its position was strongly and unequivocally upheld by the Supreme Court in 1971, which maintained that annual work must be done, and noted that the 1930 cases were narrow exceptions which should not serve as a precedent for the

majority of claims being reviewed by the Department.

Yet, many of the speculators persisted in their claims, and in 1985 the U.S. district court in Colorado ruled that the Government must hand over title to 82,000 acres.

The history of this issue certainly argued for the United States to appeal the decision. In fact both the Interior Department's regional solicitor and the BLM Director for the State of Colorado strongly recommended that the Federal Government appeal the decision.

The regional solicitor prepared a comprehensive 180-page draft appeal of the district court decision, in which she noted that it "errs in virtually every legal and factual conclusion."

The State director noted that the decision was incorrect for the 82,000 acres in question, that it set dangerous precedents which would jeopardize the Government's control of another 280,000 acres of land involved in similar disputes, and would result in undue constraints on the Government's enforcement of many other land and mining laws.

But, the Department, dead set on relinquishing the public's land and resources as fast as it can, ignored this informed advice and proposed a settlement which would turn over full title, water rights, and grazing and hunting rights to these speculators. Of course, once this happens, it will be very difficult for the Government to do much different with the other 280,000 acres which are also being contested.

Consider the facts here. Those who hold the claims did not fulfill their responsibilities under the 1872 law, and a 1971 Supreme Court decision strongly upheld the Government's position on this. Yet, the Government's proposed settlement would give up 82,000 acres for a pittance of $2.50 per acre, even though the lands are valued at $110 to $200 per acre—$9 million to $16 million in all, and also contain an estimated 1 billion dollars' worth of oil shale deposits. The Government also loses valuable water rights and hunting and grazing rights.

Moreover, this settlement sets a dangerous precedent for another 280,000 acres which are also in dispute.

Think of it—a total of 360,000 acres containing an estimated 10 billion barrels equivalent of oil shale—handed over to speculators who did not even fulfill their obligations under the law, for the sum of $2.50 an acre.

The Government's lack of concern for public rights and resources in this case is disgraceful. We cannot allow it to relinquish public property with such impunity.

Since the Government will not fulfill its responsibilities, it is up to Congress to protect the public rights to these lands. This amendment provides us with the vehicle to do so, and I urge my colleagues to adopt it.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE Mr. President, I really am puzzled to know what is the right course of action here. I can sympathize with those who say we do not know enough about what is in the settlement to determine whether or not it is a good or bad idea and that Congress ought to have time to review a decision that has been made and try to determine whether there is something Congress should, would desire to, or could do about the decision.

The other side of that is there is much to lose as well as much to gain in that process. Those who seek to gain the opportunity of the Congress to look at it also hazard the risk of that attempt in delaying the settlement, which might invalidate the settlement and therefore cost more.

So it is kind of a draconian choice in many respects. Before proceeding further, I might also notify others that we know of no other amendments other than this one before final passage of the bill. If this debate takes much longer, we may well request that the pending amendment be the only amendment in order prior to third reading of the bill. I make that announcement so that we may assist in a clearance process for such a unanimous-consent agreement when and if we offer it.

But this is not a new issue. The settlement is new. But the issue is not. The Senator from Montana indicated that these claims must predate 1920 and indeed they do. Because when the Mineral Leasing Act of 1920 was passed by the Congress, there was a specific provision that said that the unpatented claims that were then pending were not barred by the passage of the Mineral Leasing Act of 1920.

So for 66 years and more these patents and these issues, not this issue, it is more complex than that—these issues have been known. This is not the first time it has been subject to court decisions because it has been in the courts periodically in one form or another over the years, and it has been to the Supreme Court three different times in the last 66 years, and each time the Government has lost its position. Was the Court right? I do not know.

You know the old song, I know my friend from Colorado, Senator HART, has heard it before. The Supreme Court is not final because it is infallible. It is infallible because it is final. So the Court has the capacity under our Constitution to be wrong, and only by definition we have said they are right. The constitutional definition says they are right. We may disagree with the Supreme Court decision. I often times do. But whether I do that as a Senator, a member of the legislative branch, or whether I do it as an individual citizen who is offended by the position taken by the Court, I am equally a loser because the Court has the authority under our Constitution to make decisions. And three times the Supreme Court of the United States has ruled on specific issues dealing with this group of unpatented mining claims, has said the Government's position is wrong, and the people who hold the unpatended mining claims are entitled to go forward in spite of the particular issues that may be raised in those cases.

Mr. HART. Will the Senator yield?

Mr. McCLURE. Surely. I am happy to.

Mr. HART. The Senator from Colorado's recollection, and I think it is important for the record to be correct here, is that the 1978 Supreme Court case, the Hickel case, may have been a loss for the Government's efforts to invalidate mining claims, but it did reinstate as opposed to the earlier 1930 decision, the so-called Krushnic decision a necessity of performance of annual assessment work which is a very crucial issue in this matter. It is not a collateral issue. So the issue of whether the Government won or lost in its efforts to invalidate claims may be secondary to the point the Court reinstated or reasserted the necessity for performance of annual assessment work.

I merely wanted to make that clarification.

Mr. McCLURE. The court, if my summary is correct—I hope it is—was asked in a case started in 1966 in which Tosco versus Udall in the district court in Colorado, and the court reversed the Department's decision invalidating claims for failure to perform the assessment work. In 1969, the court of appeals in the same entitled case reversed the Department and affirmed the district court. Before that was heard in the Supreme Court, there had been a change of administration. So what had started out as Tosco versus Udall, by the time it reached the Supreme Court had become Hickel versus Tosco. It is the same case.

And the Supreme Court did reverse the court of appeals and held that the Department had jurisdiction to determine whether there had been substantial compliance with the assessment work requirement. It was not a specific reversal of the earlier cases decided in the 1930's as to what was sufficient to meet substantial compliance with assessment work requirements. So in part, the Senator from Colorado is correct. I hope to the extent that my remarks may have been slightly different in context, we are at least closing in on what the facts are.

But the fact is in that particular case the Court had determined initially that the Department was wrong in invalidating claims, that the district court had stated, because they did not have the jurisdiction to determine whether there was substantial compliance. The Supreme Court says, oh yes, they do have the right to determine whether or not there is substantial compliance.

Mr. HART. If the Senator will yield for a comment, the importance of the case also is that their were arguments made by claimants that after the Krushnic case in 1930, they did not have to perform assessment work and in the language of the 1970 Hickel decision the Court made it very clear that you did have to perform assessment work. In this case, it ruled against the Department as to whether or not it had been performed. But there were a lot of people arguing that after 1930 the whole assessment work requirement was for all practical purposes null and void.

Mr. McCLURE. I think the Senator may be correct in that statement. I am not an expert in this particular case and its convolutions over the 66 years. But I should point out that was followed again by a change of Secretaries in the case now known as Tosco versus Morton, in which following the Supreme Court decision in Hickel versus Tosco the Department sought to invalidate their claims for failure to substantially comply with the assessment work requirement. This is a follow-on of the same court proceedings that started in 1966.

□ 1630

In 1973, in that proceeding, the district court in Colorado reversed the Department's efforts to invalidate the claim, and that was appealed. The appellate court vacated the district court's decision and remanded for consideration of all issues. There were no substantive holdings. That court of appeals simply remanded for further proceedings. That was, again, with a different Secretary of the Interior, which was entitled at that time Tosco versus Kleppe.

In 1977, the following year, after the appeal in Tosco versus Kleppe, the U.S. district court in Colorado, in Eaton Shale Co., reversed the Department's efforts to cancel patents issued for oil shale claims.

In the next proceeding, again with a different Secretary, now entitled Shale Oil Co. versus Andrus, the district court reversed the Department's decision invalidating oil shale mining claims for lack of discovery, and in the court of appeals in 1979, the court of appeals reversed the Department and upheld the district court on the discovery issue.

In 1980, the Supreme Court reversed the Department and affirmed the court of appeals in upholding the Freeman versus Summers doctrine that oil shale deposits are valuable mineral deposits, the Department having by that time decided that patents should not issue because those claims were not valuable minerals.

In 1985, the district court in Colorado, with now another Secretary of the Department of the Interior, in a case entitled Tosco versus Hodel the court reversed the Department on assessment work issues and reversed the Department on discovery issues.

I did not cite the earlier cases, Freeman versus Summers, Wilbur versus the United States on the relation of Krushnic, those decisions, the first of which referred to potential legislative actions and the second being a district court case which affirmed the Department's invalidation of claims, were appealed and the court of appeals reversed the Department and the district court and reinstated the patent applications, and the Supreme Court in 1930 reversed the Department and affirmed the court of appeals.

Mr. MELCHER. Will the chairman yield?

Mr. McCLURE. In just a moment I will.

In Ickes versus Virginia-Colorado Development Corp., the district court again reversed the Department's invalidation of claims and the court of appeals reversed the Department and affirmed the district court, and the Supreme Court reversed the Department and affirmed the court of appeals.

In the Shale Oil Co., in 1935, the Department reversed all earlier decisions and regulatory contrary decisions of the Supreme Court.

That, I think fills out the list of court actions that deal with this issue. I take the time of the Senate to recite that only to indicate this is not a new issue, a new set of issues, but has been before the Department for a half-century or more. It has been in the courts for a half-century and has been subject to extensive debate within the administration, the several administrations, the court actions having almost universally run against the contention of the Department.

I am happy to yield to the Senator from Montana.

Mr. MELCHER. In one of the cases cited, the Supreme Court decision in 1970, the Court held that Department of the Interior had jurisdiction to determine whether respondents' claims were maintained; that is, whether or not the claim had the proper assessment work.

The assessment work under the 1972 act had to be $100 per year each year.

First of all, these claims do involve claims originating before 1920. I would not suppose that any of the claims originated with either Exxon or Tosco or Union Oil, but they were filed by entrepreneurs, just individuals who felt there was some possibility. They were willing to do the paperwork, make the proper filing, and then agree to the $100 assessment work each year, which would have been quite a little assessment work in the early part of this century.

The ruling of the judge in this district court in Colorado was that an oil shale claimant who had expended $500 had expended enough to comply with the statutory assessment work requirement. That is the part which drives the people who are working on this out in Colorado and also the ones representing the Land Division of the Justice Department up the wall. The notion proposed by the court, that you could clear everything by doing 500 dollars' worth of work when the statute is clear that it had to be $100 for each year was one of the main reasons why everyone anticipated that this would be appealed.

The language in the 1972 act may be outmoded in that $100 assessment work each year is not nearly enough. However, this judge is ruling that it does not make any difference; he is ruling that $500 is plenty when clearly it should have been $100 each year from when the claim was filed, which over 70 years, if that is the average would be $7,000. That is not a huge sum, but it does bring up the point of why we should give the land to the claimants for $2.50 an acre, a ridiculously low figure in this day and age. This is particularly true if you have not done the claim work and have not demonstrated that you are going to extract a valuable mineral, which is the only way of determining whether the patent can be issued.

Mr. McCLURE. I am going to make a proposal to the Senators who are offering the amendment and I have no idea whether it will be acceptable. I cannot assess what will happen or what the alternatives are whether we accept or reject the amendment at this time. I simply do not know. I recognize that the passage of time changes things. I am not trying to gain a standing nor attempting to gain some advantage by suggesting a delay.

□ 1640

We need to pass the current bill and we shall get to a vote on this amendment one way or another, dispose of the amendment one way or another. But both of the opponents of the amendment and the manager of the bill happen to be a little bit uncertain as to what the effects of this amendment will be. I say that because we have an ongoing dynamic situation in the courts. I am not here either to defend or condemn the judgment by Judge Finesilver. I am not here to indicate whether or not the appeal would be granted, whether the Gov-

ernment would be successful in the appeal if they make it, or whether they would fail. This is not a win-win situation or a lose-lose situation; it is one in which there is the opportunity for gain and the opportunity for loss, depending upon the point of view of the various parties, inherent in this situation.

What happens as a result of the settlement agreement? As I understand it, Judge Finesilver, in that court decision, said the parties that brought the appeal are entitled to the issuance of patent to all of the minerals in and under those lands—that includes all the oil and gas, conventional oil and gas, on those—and that in effect, the Government should issue the patent. The Department of the Interior, looking at that court decision, which they resisted but, nevertheless, it was made by the court, has been able to negotiate with the parties, who said, "Look, we are not after the oil and gas, we are after the oil shale in place. And if you will grant the patents, we will turn back the oil and gas."

That is the agreement between the parties which they now seek to carry forward.

If we adopt this amendment and the Department perfects the appeal, as I know the distinguished Senator from Colorado desires, and they lose the appeal, then Judge Finesilver's judgment stands and the parties are entitled to the patent. If the parties are entitled to the patent and the Department must then issue the patent, then the Government has lost to these claimants—lost, if that is the right term—to these claimants not only the oil shale in place but all oil and gas that lies under the lands, too.

I do not know whether Congress was right in 1920 when they decided to say that the Minerals Leasing Act would not apply to these minerals, the oil shale in place. I am not sure that the courts were right in the several decisions they have had up until this time, saying that the parties are entitled to the issuance of patents, and that the effect of the aggregate of all the court decisions to this date is that Tosco is entitled to patents with no restrictions.

That may well be carried out. And it may well be that by the adoption of this amendment at this time, we invalidate the agreement and perpetuate the thing which I think would be least acceptable to the people who are objecting to the settlement agreement. That is the issuance of unrestricted patents.

My suggestion is that maybe we not try to resolve the issue today until all the parties have had the opportunity to assess more fully the potential results of the adoption of the amendment. There is the continuing resolution coming down the line. There are other legislative vehicles in the next 2 or 3 weeks—hopefully no more than that—which are available if, at that time, it is clear to all the parties what their position ought to be.

It is certainly not clear to the manager of the bill on the floor as to whether this is the right thing to do at this time. I say that because I do not know, very frankly. I do not know. But I do know that both the Department of the Interior and the Department of Justice, looking at the court's records, knowing far better than I what is in those court records and in those decisions, has, in effect, determined to cut their losses by offering a settlement agreement which they are in the process of trying to finalize; and that if we upset that now, we may well have, from the perspective of the Senator from Colorado who has offered the amendment, lost more than we might otherwise lose.

Mr. HART. Will the Senator yield?

Mr. McCLURE. I am happy to yield.

Mr. HART. I can only respond in this way: The Senate may well adjourn sine die within 3½ weeks. This Senator is unclear as to what information will be provided to us or what data we are presently lacking that could turn up in the next 3½ weeks that would further clarify the situation so we will know how to act. My understanding is that some of the claimants may go to patent by the end of this month under the agreement. That complicates things considerably.

This is not an amendment, may I assure the floor manager and our colleagues who may be listening, that blocks the agreement, that nullifies the agreement. What it does is stay the agreement so we can in fact find out the facts and probably into the next Congress. I do not know if that is possible to do in the 3½ weeks available to us.

Mr. McCLURE. Will the Senator yield——

Mr. HART. Yes.

Mr. McCLURE. On that point, because that makes my point. As a mater of fact, it is my preliminary asessment of the settlement agreement—and very honestly, prior to last Friday when the Senator mentioned this matter to me, I had not looked at the settlement agreement at all. The terms I was aware of but I had not looked at it.

My understanding of the agreement is that it requires the parties to issue the patent within 30 days and to finalize all of their actions within 60 days of the date of the pending agreement, which is August 4. And if they do not complete those actions within that timetable, the settlement agreement is invalidated. The parties intend to complete the settlement agreement in those timeframes, then go to the court and say, now we have agreed, we have settled the matters between us, please vacate your judgment and take no further action.

But there is the potential of this amendment invalidating the settlement agreement and, as the Senator has noted, there is the potential for them to go ahead with the issuance of patents and moot the attempt of the Congress to deal with this particular court case. Both sides are presented.

Mr. HART. If the Senator will yield——

Mr. McCLURE. I shall be happy to yield.

Mr. HART. It seems to this Senator that very few Federal district judges, knowing of the interest of the Congress in this matter and knowing Congress had enacted a temporary delay in this matter for the purpose of clarification of a lot of legal and public policy issues, would not seek some continuation of that agreement until Congress can satisfy itself that it is a good agreement in the public interest. The judge could, in fact, thumb his nose at Congress. My inclination is to think he would not do so.

Mr. McCLURE. In this instance, it is not Judge Finesilver that would make that decision because the Department, in order to protect its position, had filed notice of appeal. They have been under extensions of time to file briefs on that appeal and the Circuit Court of Appeals has said on three separate occasions, "We grant this extension but no more." And at each of those subsequent times, the Department has come back before the Circuit Court of Appeals and said, "These things are happening, will you grant us a further stay or extension?" Each of those two subsequent times, the court has said, "Yes, we will grant this extension but no more."

Mr. HART. May I say to the Senator, none of those delays has been occasioned by actions of Congress. I think that is the new factor, if I may say so.

□ 1650

Finally, let me suggest one response to the lose-lose, win-win scenario. It seems to me if the Senator from Idaho is correct about the risks here, and I do not necessarily assume that he is, speaking only as one Senator and from a State that is mightly affected by this decision, the risk of the loss of incredibly valuable land to the public—this is land that is held in trust. It does not belong to Congress, it belongs to the public. The risk of the loss of land that belongs to the public, is held in trust for the public by the Government, as opposed to the risk of the loss of collateral minerals on that land, is no contest at all.

If we just use dollars and cents, the at-present market value, or certainly future market value of the oil shale, which it is principally valuable for, is so much vaster than any other possible minerals on that land that in

terms of protecting what is in the public interest it is not even a choice. I understand the agreement that was worked out and so on, but it is clear to the claimants that they are getting what is valuable about this land and that is the issue. If I were asked to gamble, to roll the dice right now, I would gamble in favor of appealing this decision and taking chances on that Federal District Court decision being upheld by the higher courts, because I think it would not be, and I think the value of what we are talking about here is so great, the public interest, that in my judgment at least we have no choice but to appeal all the way through the court system. I think if you were to weigh the risks, the risks are so much greater that the Federal District Court is wrong that we are disposing, at $2.50 an acre, of millions and perhaps hundred of millions of dollars of value to the public of this country that I would be willing to take that risk. But I have only one vote and I have just tossed that in, for whatever it is worth.

Mr. McCLURE. I thank the Senator for the contribution and obviously he is entitled to his own opinion as to what the odds are and which way he would roll the dice. There is a possible other compromise that might be offered that removes the risks on the down side, at least minimizes them, and that is if the amendment being offered were modified to provide that it is effective only if the court agrees to a stay for a 180-day period, provide that the Interior Department and Department of Justice make diligent and immediate efforts to obtain that stay, and the litigants agree to hold the settlement agreement open pending that 180-day period. Now, if the sponsors of the amendment could agree to that language, I would agree to accept the amendment as so modified, take it to conference and see how our colleagues in the other body would respond to such an amendment.

Mr. HART. Speaking only for myself as one of the two sponsors, if the proposal of the Senator from Idaho contains the language that the Department will with all due diligence seek that extension in good faith, I would be prepared to accept that modification, but I yield to the Senator from Montana for his thoughts.

Mr. MELCHER. Will the Senator yield to me?

Mr. McCLURE. Of course.

Mr. MELCHER. First of all, I do not know what the 60-day requirement is.

Mr. McCLURE. That is contained in the agreement, proposed settlement agreement which the parties are now attempting to execute.

Mr. MELCHER. I do not know where you find it but I would be glad to look at it. I have the agreement in front of me. The 60-day provision I am looking at refers to whether or not there would be provided time for paragraph 2.8, which is the requirement that Exxon, Tosco, and Union will have to provide some document to the Department of the Interior indicating that they are prepared to deliver the special warranty deed for the oil, gas, and coal as required by paragraph 2.4. That is where I see 60 days in this.

Mr. McCLURE. Well, again, the Senator from Montana may have had this agreement and analyzed it longer and much more exhaustively than I have, but it has been handed to me and I would point the Senator to page 8 of the proposed settlement agreement, provision 2.2.

Mr. MELCHER. That is what I was reading from.

Mr. McCLURE. Page 8, subsection 2.2 provides "Patents for such subject claims shall be issued within 60 days following entry of such a stay of proceedings." And earlier in that same section it provides that within 30 days after the entry of the stay of proceedings, and so on. Both the 30-day and 60-day provision are in that subsection.

Mr. MELCHER. Yes, but that is within 30 days of the entry of a stay of proceedings, and then 60 days following the entry of such a stay of the proceedings by the court, patents could be issued. It does not say they are going to revoke the agreement.

Mr. McCLURE. It does not say that they can issue the patents. It says the patents shall be issued. If that stay referred to were issued within the 180 days, and the Department could not issue the patents called for within the 60-day period, the agreement could be invalidated.

Mr. MELCHER. It does not automatically become invalidated. That is the only point I was going to make. But I might state in response that if I could get land at $2.50 an acre, I would not want it invalidated. I would want it to hang there so I would get that shot at land for $2.50 an acre. It is that simple. I do not believe Exxon or Tosco or——

Mr. McCLURE. Then I would assume, I say to the Senator from Montana, if his position is correct, the litigants would agree to hold the agreement valid for the 180-day period established in this amendment.

What I was suggesting is that if, indeed, the court agrees to the stay, as the Senator from Colorado has indicated he expects they would, and if the parties would agree to the 180-day extension, as the Senator from Montana has suggested, we write that into this amendment, I will recommend that the Senate accept it.

Mr. MELCHER. First, I would like to see the language. Second, I do not know why it is necessary but let me state that we have this opportunity to do something by congressional action. The Senator earlier said, "Well, what about doing it on the continuing resolution which would be before us in another 30 days or so?"

Mr. McCLURE. Less than.

Mr. MELCHER. Less than 30 days.

Mr. McCLURE. Less than that, I hope.

Mr. MELCHER. Yes. If people hear me say 30 days, which would be October 16, we will start a revolution around here if we are still in session. I do not know that anything is necessary, but if I could see the language and consult with learned staff, I would be glad to give a quick response to my friend from Idaho.

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

Mr. McCLURE. I will be happy to yield to the Senator.

Mr. ARMSTRONG. I want to congratulate the chairman and ranking member and my colleague from Colorado. I am greatly relieved at the direction this is going because, frankly, it is kind of a murky area and it does seem to me that the suggestion which the Senator from Idaho has propounded and that the others have at least tentatively endorsed is the course of wisdom and statesmanship. So if the Senators will put it together, I guess I will be the cheering section.

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

The PRESIDING OFFICER (Mr. QUAYLE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1700

Mr. GOLDWATER. 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. GOLDWATER. Mr. President, I ask my friend from Idaho if, during the consultation they are having, he might yield so that we can take up a conference report.

Mr. McCLURE. How long would the Senator expect that to take?

Mr. GOLDWATER. Well, it might take 20 minutes.

Mr. McCLURE. We can dispose of this bill in less time than that. If this discussion reaches agreement, we will be done in less than 20 minutes. If it does not, then I will be happy to do so.

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.

□ 1710

Mr. HART. 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. HART. Mr. President, I send a modification to my amendment to the desk.

The PRESIDING OFFICER. The amendment is so modified.

Mr. McCLURE. No President, the modification the Senator has sent to the desk accomplishes what we discussed earlier in the brief colloquy.

I have no objection to the amendment as modified and suggest its adoption.

Mr. ARMSTRONG. Mr. President, I think we are all in accord that it is our desire to expedite this. But could we ask the clerk to report? I think we understand it. It is only one or two sentences. I wish to be sure I understand it.

The PRESIDING OFFICER. The clerk will read the modification.

The legislative clerk read as follows:

At the end of Title I, add the following new Section,

SEC. 112. Notwithstanding any other provision of law, no funds appropriated by this Act shall be available for the implementation, by the Secretary of Interior or the Attorney General or any other officer acting on behalf of the United States, of the "Agreement to Settle Pending Litigation Between the United States and the Owners of Certain Oil Shale Mining Claims in Colorado," dated August 4, 1986, or for the patenting of any other oil shale placer claims located prior to passage of the 1920 Mineral Leasing Act, for a period of 180 days from the date of enactment of this provision, in order to provide a period for Congressional review of this agreement: *Provided*, That this provision of this amendment affecting the aforesaid Settlement Agreement shall be effective only if the United States Court of Appeals for the Tenth Circuit and the United States District Court for the District of Colorado approve a stay in the cases affected by such settlement agreement for 180 days and the parties to such agreement agree to continue to be bound by such agreement for the 180-day period: *And provided further*, That the Attorney General of the United States and the Secretary of the Interior are directed to immediately and in good faith seek concurrence of all parties to the agreement to continue such agreement for 180 days and to request such courts to issue stays for such period.

□ 1720

Mr. ARMSTRONG. Mr. President, I think that it is faithful to our earlier discussion. I thank the Chair. I thank the managers and the sponsor of the amendment, my colleague, the distinguished Senator from Colorado. I certainly support the amendment.

Mr. MELCHER. The addition to the amendment, the modification of the amendment, is acceptable here.

I might state that what we intend given the agreement that has been signed and sealed by the Solicitor for the Department of the Interior, that he at least back off slightly and give us a chance to review it more fully to see whether we can agree with it, "we," meaning the Congress. Because, so far, it just does not look like a meritorious agreement at all. It looks like something that is contrary to the public interest. We would like to review it.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2839), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

MHD RESEARCH FUNDING

Mr. BAUCUS. Mr. President, I want to express my appreciation to the chairman of the Interior Appropriations Subcommittee and to other members of the committee for including $23.5 million in this bill for MHD research. However, I also want to urge that in conference, the Senate adopt the House figure of $30 million so this vital program can continue at full strength.

Magnetohydrodynamic technology, or MHD, is an efficient, environmentally sound method of using coal to produce electric power. MHD could be the key to American energy independence in future decades, and it is vitally important that we continue to fund this basic research program. The $30 million provided in the House bill is needed to continue the proof-of-concept testing program that was approved by the Department of Energy in 1984.

As I said, Mr. President, I am grateful to the committee for including funds in next year's budget for continued MHD research. However, I am disturbed by some of the statutory and report language in the bill. The MHD program already requires appropriate and significant cost sharing by industry participants, pursuant to last year's agreement in the fiscal year 1986 Interior appropriations bill. The large increases in industry cost sharing proposed by the Senate bill this year would be a major change in the program, and could force key industry participants to pull out of the program.

I ask unanimous consent that the committee report language from this year's House Interior appropriations bill be included in the RECORD at this point.

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

Magnetohydrodynamics.—The Committee continues to support the proof-of-concept testing program developed in June, 1984, which now includes appropriate industrial cost-sharing as provided in the fiscal year 1986 appropriation. The Committee recommends an increase of $30,000,000 to continue this program, and urges the Administration to cease attempts to cancel the program. Such tactics only prolong the time for development and create inefficiencies and uncertainties in the program.

CLEAN COAL TECHNOLOGY PROGRAM

Mr. BAUCUS. Mr. President, I am not only concerned that this proposal for increased cost sharing makes unrealistic demands on key industry participants; in addition, I am concerned about the policy implications of requiring significant additional industry cost sharing for Government-sponsored basic research projects, and of changing the cost sharing requirements midstream. The private sector has a limited capacity to fund energy technology research and development, and by imposing these cost sharing requirements we may foreclose major future commercial technology development.

For instance, this bill also contains langauge addressing the new Clean Coal Technology Program, which I strongly support. Adoption of these cost sharing requirements for other emerging coal technologies would wipe out the carefully designed incentives in the new Clean Coal Technology Program. The Clean Coal Technology Program recognizes that private industry does not have the financial capacity to see advanced technology research and development on this scale through to its expected commercial potential.

Because we want to be sure of industry's commitment and confidence in new technology commercialization, the Clean Coal Technology Program requires 50 to 50 cost sharing in all stages of demonstration development. That is entirely appropriate. The cost sharing requirement at the demonstration stage spurs faster development of near-commercial technologies, and the multiyear funding mechanism in turn provides some assurance to the private sector that the Government will be a reliable partner in each project.

It has been demonstrated time and time again that U.S. utility companies and their suppliers and manufacturers can afford to invest only in those technologies that project a short-term payoff on their investment. MHD is still in the basic research and engineering phase, and does not offer investors any return in the near future. Despite the lack of a short-term return, industry has consistently contributed to the MHD Program and has agreed to a steady cost sharing plan.

In about 5 years, we hope to be ready to retrofit an existing coal-fired powerplant for a full-sized test of the technology. Industry has shown its confidence in MHD and its willingness to cooperate with the Government by submitting a 50 to 50 cost share proposal for that retrofit demonstration plant under the clean coal technology initiative.

INTERNATIONAL EFFORTS IN MHD RESEARCH

I should point out, Mr. President, that we are not the only nation interested in MHD techology. The Press Institute of India reported last year that a 5-megawatt MHD generator has been completed at Tiruchi, India. India thus became the eighth country in the world to begin major testing of MHD technology. They are planning to build a 200-megawatt powerplant by 1995 if their testing goes well, and they expect to retrofit existing coal-fired plants with MHD technology before then.

The bulk of this research is being financed by the Indian Government. Other countries with major MHD technology efforts include the Soviet Union, Japan, China, Poland, Italy, and the Netherlands. Last April, Senator HATCH noted with concern on the Senate floor that the Soviet Union has made significant advances in MHD technology, as part of their laser and other directed-energy weapons program.

CONCLUSION

Mr. President, I am grateful to the committee for agreeing to include significant funding in this bill for MHD research. I do not intend to offer any amendments to the bill. But I do ask the committee to give serious consideration to the need for full funding for MHD, and the problems of requiring increased cost sharing, during the conference with the House of Representatives.

Mr. SASSER. Mr. President, during consideration of this bill in full committee, I brought to the chairman's attention a problem regarding land acquisition on the Appalachian Trail. More specifically, a 200-acre tract in the Pisgah National Forest was the focus of my attention.

This property, known as the Peake Tract, on the Tennessee-North Carolina border, is perhaps the most outstanding property along the Appalachian Trail, but a heavily used spur trail ship. The Peake Tract contains not only a portion of the main Appalachian Trail, but a heavily- used spur trail that leads to Grassy Ridge Bald. This popular recreation area provides a breathtaking view across the spectacular Roan Mountain highlands. In addition to its scenic vistas, the property is home to two plant species nominated for listing as Federal threatened or endangered species, and provides excellent habitat for the northern flying squirrel, a listed Federal species.

The value of this property to the integrity of the Appalachian Trail has been recognized, not only by the Forest Service itself but by the States of Tennessee and North Carolina as well. The Tennessee Department of Conservation has encouraged the acquisition of this tract; the North Carolina Natural Heritage Program has recommended that the entire Peake Tract be the highest priority site for acquisition on the North Carolina side of the Roan Highlands, because of its great environmental importance. Yet, the Forest Service, after 14 years of negotiating with the Peake family for acquisition of the whole tract, apparently decided in 1984 that only a portion of this tract was needed for the Appalachian Trail corridor, and instituted condemnation proceedings on 54 acres of the Peake property.

The Forest Service's decision was very shortsighted. Foregoing action on the entire Peake tract exposed this national treasure to great harm. This fact was made clear this spring, when the Peake family bulldozed a long and ugly road up the side of Grassy Ridge Bald—visible to hikers along the Appalachian Trail for miles. This action suggested that the Peake family was contemplating development of the property. More important, this action made it clear that the scenic integrity of the Appalachian Trail would be jeopardized with anything short of acquisition of the entire 200-acre tract.

Despite this action, the Forest Service continues to refuse to acquire the property, even at the urging of myself and other Members of Congress. This reluctance poses a problem, not just for the protection of this property, but for the entire Appalachian Trail Program. Over 88 percent of the 2,100-mile Appalachian trail has already been permanently protected. With over 830 miles of the trail located within the boundaries of eight national forests, there are only 9.7 miles of rights-of-way that remain to be protected by the Forest Service through public ownership. These 9 miles include approximately 40 tracts of land, one of which is the Peake property. Now that the protection program is nearly finished, it is incredible to me that the Forest Service would stop short of completing this important project.

The Peake family made it known years ago that it was willing to sell the property, given the right price. Unfortunately, an agreement on price has never been reached between the family and the Forest Service. This reticence should not stop the Forest Service from fulfilling one of its fundamental obligations—to protect our natural resources.

Therefore, at my request, the Appropriations Committee included report language directing the Forest Service to protect the 200-acre Peake tract. The report language allows the Forest Service discretion in how it chooses to acquire the property. This assures the Peake family an opportunity for further negotiation with the Forest Service. Most importantly, it also assures the family an equitable price for their land.

Mr. President, I have made it a priority during my service in the Senate to ensure that adequate funds are appropriated for land acquisition along the Appalachian Trail. I am pleased with this bill's funding levels for Appalachian Trail-related land acquisition, and am happy to know that many of my colleagues concur with me on the need to finish protection of the Appalachian Trail corridor. I am dismayed to see the reluctance of the Forest Service in acquiring this outstanding tract needlessly jeopardize the integrity of the Appalachian Trail, for which many of us have fought so hard to protect. I hope that the report language included in this bill will add to the permanent protection of our preeminent national trail.

● Mr. McCLURE. Senators WALLOP, SIMPSON, and I have discussed the mine subsidence problem in Rock Springs, WY, and we have discussed several ways at arriving at a solution to the most pressing problem concerning the structural damage to 38 homes. My friends from Wyoming suggested that we might specifically earmark $211,500 out of the Abandoned Mine Land Fund to repair the structural damage to these properties. In reviewing this problem with the Office of Surface Mining, I have learned that the State of Wyoming had submitted a grant application on April 24, 1986, requesting these funds. The OSM determined that sufficient proof to meet the statutory requirements for granting these funds had not been presented by the State. In other words, the State was unable or unwilling to show that the damage to the property was due to subsidence abatement activities conducted between June 1985 and October 1985 and financed by previous OSM grants.

After a series of conversations with my friends from Wyoming, it is my opinion that the State should be given another opportunity to submit additional evidence to OSM that will establish a causal relationship between the property damage and subsidence abatement activities. And at this time I will direct OSM and the Department of the Interior to reconsider its decision and review any new or additional evidence submitted by the State of Wyoming. I strongly support the statutory requirements of having a full factual showing of causation. And clearly, as chairman of the Senate Appropriations Subcommittee on Interior I do not feel comfortable in trying to alleviate what is clearly the obligation of the State of Wyoming—and that is the burden of proof.

Mr. WALLOP. I thank my distinguished colleague from Idaho for his willingness to help on this issue. It is a most difficult one since we are talking about damages that affect human lives. I visited one of the affected homes when I was in Rock Springs this last July, and it is clearly heart

wrenching to see what problems this subsidence has caused. All three members of the Wyoming delegation have been active from the start on this issue, beginning with helping to write in Federal seed money of $3 million in AML funds for a subsidence insurance program several years ago. That is one avenue the State can continue to explore and develop in the meantime. Be that as it may, the Senator has already pointed out, that it is extremely difficult to earmark funds when the burden of proof has not been adequately met. I am also disturbed by the fact that the State of Wyoming certified in the March 5, 1984, Federal Register that it had addressed all known existing coal-related impacts in the State eligible for funding under the AMLR Program—a certification formally adopted in May of that year.

● Mr. SIMPSON. I too, appreciate the comments from my friend from Idaho and his support for the efforts of myself and my fine friend Senator WALLOP in having OSM reopen this issue. It cannot be disputed that the Abandoned Mine Land Program has been very, very important and helpful to the State of Wyoming. In the Rock Springs area alone over $10 million has been provided in fiscal year 1983 and fiscal year 1986 in order to provide for abandoned mine land subsidence abatement and related damages. Over the years the State of Wyoming has received more than $86 million from the AML Program to restore land and water resources affected by past unregulated mining practices. When all emergency funds are added in, the amount includes more than $15 million received by Rock Springs alone since the program began in 1977.

● Mr. McCLURE. I agree with both of the Senators from Wyoming, and would certainly suggest to the State of Wyoming that it consider requesting a rescission of the certification found in the 1984 Federal Register. I understand from preliminary figures supplied by OSM that the State would have received over $1 million in fiscal year 1987 for coal related projects if that certification had not been made. Some of that $1 million might have gone a long way to assisting Rock Springs' very real problems with subsidence. At this point, and in my opinion, the State of Wyoming has not been thorough enough in supplying proof of causation between the abatement project and the subsidence damage. I would strongly encourage the State to review the April 24, 1986 grant request material in order to make a stronger showing to OSM as quickly as possible. I thank my friends from Wyoming for bringing this important issue to my attention and I trust that this approach, with the necessary involvement of the State, will prove fruitful.●

Mr. McCLURE Mr. President, I know of no further amendments to be offered. I ask for third reading.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

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

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Washington [Mr. GORTON] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Missouri [Mr. EAGLETON] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chambers desiring to vote?

The result was announced—yeas 89, nays 8, as follows:

[Rollcall Vote No. 262 Leg.]

YEAS—89

Abdnor	Goldwater	Mitchell
Andrews	Gore	Moynihan
Armstrong	Grassley	Murkowski
Baucus	Harkin	Nickles
Bentsen	Hart	Nunn
Biden	Hatch	Packwood
Bingaman	Hatfield	Pell
Boren	Hawkins	Pressler
Boschwitz	Hecht	Pryor
Bradley	Heinz	Quayle
Broyhill	Hollings	Riegle
Bumpers	Inouye	Rockefeller
Burdick	Johnston	Rudman
Byrd	Kassebaum	Sarbanes
Chafee	Kasten	Sasser
Chiles	Kennedy	Simon
Cochran	Kerry	Simpson
Cohen	Lautenberg	Specter
Cranston	Laxalt	Stafford
D'Amato	Leahy	Stennis
Danforth	Levin	Stevens
DeConcini	Long	Symms
Dixon	Lugar	Thurmond
Dodd	Mathias	Trible
Dole	Matsunaga	Wallop
Domenici	Mattingly	Warner
Durenberger	McClure	Weicker
Evans	McConnell	Wilson
Ford	Melcher	Zorinsky
Glenn	Metzenbaum	

NAYS—8

Denton	Heflin	Proxmire
Exon	Helms	Roth
Gramm	Humphrey	

NOT VOTING—3

Eagleton	Garn	Gorton

So the bill (H.R. 5234), as amended, was passed.

□ 1740

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

(Later the following occurred:)

Mr. McCLURE. Mr. President, would the distinguished Senator from Arizona yield further?

Mr. GOLDWATER. Mr. President, I would be glad to yield, without losing my right to the floor.

Mr. McCLURE. Mr. President, I ask unanimous consent that it be in order that I now move for the appointment of conferees in order to complete action on the Interior bill.

The PRESIDING OFFICER. Is the Senator moving to insist on the Senate amendments?

Mr. McCLURE. Yes.

The PRESIDING OFFICER. And request a conference?

Mr. McCLURE. I ask unanimous consent that it be in order that I do so.

Mr. GOLDWATER. I yielded for that purpose.

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

Mr. McCLURE. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. McCLURE, Mr. STEVENS, Mr. LAXALT, Mr. GARN, Mr. COCHRAN, Mr. ANDREWS, Mr. RUDMAN, Mr. WEICKER, Mr. BYRD, Mr. JOHNSTON, Mr. LEAHY, Mr. DECONCINI, Mr. BURDICK, Mr. BUMPERS, and Mr. HOLLINGS conferees on the part of the Senate.

(Conclusion of later proceedings.)

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, while a goodly number of Senators are on the floor, I would like to ask the distinguished majority leader what the program is for the rest of the day, whether or not we will have rollcall votes, in his estimation, and what bills may yet be called up.

Mr. DOLE. Mr. President, could we have order in the Chamber?

The PRESIDING OFFICER. The Senate is not in order. The Senate will be in order.

The majority leader.

Mr. DOLE. Mr. President, I understand that this conference report may take about 1 hour. I think the Senator from Ohio wants about 20 minutes and I think there will be 20 or 30 minutes for Senators NUNN and GOLDWATER.

Will there be a record vote on the conference report?

Mr. NUNN. I do not know of anyone who has asked for a record vote. We have no need for one.

Mr. DOLE. Then that will probably take us to about 6:30.

Then, as I understand, there are still one or two Senators who would like to speak today on the matter of the nomination of Justice Rehnquist. If we could do that at 6:30, with three speakers, I think—Senator HEFLIN, Senator SARBANES, and Senator DECONCINI—if they would be willing to start their speeches following the disposition of the conference report, that will probably take us to at least 7:30.

At 7:30 I would hope to call up the D.C. appropriations bill. I do not believe that will take any length of time.

I do not intend to stay in real late this evening.

□ 1750

Mr. BYRD. Mr. President, if the distinguished Senator would make his statement with respect to the District of Columbia appropriations bill again, I believe there is a Senator on the floor now who might have an amendment to that bill. I am addressing my thoughts to the distinguished Senator from Michigan [Mr. LEVIN].

Mr. LEVIN. Mr. President, I am not ready now. If I am going to offer an amendment, it could be ready by tomorrow. I am not positive that amendment will be offered. If it is, it will be ready tomorrow. I did not realize the leaders wanted to proceed tonight. If I had, I would have resolved this matter.

Mr. DOLE. If we are going to keep waiting until tomorrow—we want to leave here on October 3.

Mr. LEVIN. I am happy to cooperate with the leader.

Mr. DOLE. If we could do it this evening, tomorrow we have already——

Mr. LEVIN. How long does the leader expect that bill would take?

Mr. DOLE. I am not certain. It could take a couple of hours; it could take longer, but much will depend on what the distinguished Senator from Ohio [Mr. METZENBAUM] might have in mind with reference to an amendment.

Mr. METZENBAUM. Mr. President, if I may be heard, I have no special concern about the D.C. appropriations bill. It is my understanding that as it comes to the floor, it does not deal with the subject of abortion. Am I correct in that? Does the majority leader know or does the distinguished Senator from North Carolina know?

Mr. DOLE. Let me yield, if I may—the distinguished Senator from North Carolina is familiar with that.

Mr. HELMS. Mr. President, I thank the majority leader for yielding to me.

If the Senator from Ohio will read the bill, he will see that it does deal with abortion. I propose that we vote on the committee amendment striking and inserting. There will be a rollcall vote on that proposition whenever the bill is considered.

Mr. METZENBAUM. Is this the same amendment that was known as the Humphrey-Armstrong amendment, with which we dealt in the 99th Congress on November 7, 1985, at 5:45 p.m.? Is that the same amendment?

Mr. HELMS. What we are talking about, if the Senator will continue to yield——

Mr. DOLE. I am happy to, Mr. President.

Mr. HELMS [continuing]. Is that the committee struck the House provision, which was the Hyde amendment.

Mr. METZENBAUM. The Hyde amendment.

Mr. HELMS. That is correct.

Mr. METZENBAUM. And the Senator from North Carolina intends to offer the Hyde amendment?

Mr. HELMS. No, Mr. President, he does not. I say to the Senator my intent is only to get a vote on the committee amendment.

Mr. DOLE. There will be no amendment offered.

Mr. METZENBAUM. I see, Mr. President. I do not know that that will tie us up that long to give it further consideration. I would just like to be certain that there is no intention to offer an amendment we previously had which was to prohibit any use of funds in the bill, Federal or District, to pay for abortions except to save the life of the mother. That is not intended in this instance by the Senator from North Carolina?

Mr. HELMS. I say to the Senator again my only purpose is to have a vote on the committee action which struck the Hyde amendment from the House-passed bill.

Mr. METZENBAUM. Mr. President, is there not another Hyde amendment about which we speak quite often?

Mr. HELMS. No, sir, not that I am aware of.

Mr. METZENBAUM. So this amendment is not in the bill and the Senator does not intend to offer it, is that correct?

Mr. HELMS. I am going to offer nothing. I just want a vote on the committee amendment which deleted the Hyde language.

Mr. METZENBAUM. I thank the Senator.

Mr. President, what would be the majority leader's intent with respect to action on that amendment? Would it be sometime late this evening or would it be tomorrow?

Mr. DOLE. I would like to dispose of the D.C. appropriations bill this evening. We still have transportation appropriations, we have other appropriations, we have agriculture appropriations that are now available. We also have this week reconciliation, we have the automatic vote on Friday unless we devise some way to avoid it. We still have the Rehnquist and Scalia nominations to dispose of. We are trying to pass the appropriations bills so we will have some benchmark in this giant continuous resolution that the House is going to start working on next week. So depending on the outcome of the amendment, I would assume if the outcome is the same as it was in November, whatever it was, the Senator from Ohio would have no objection and there would be no reason to discuss it at length.

Mr. METZENBAUM. The majority leader reads me correctly. I guess I am questioning—who is the manager of the bill on both sides, if I may ask?

Mr. DOLE. The distinguished Senator from Pennsylvania [Mr. SPECTER] will manage on this side.

Mr. METZENBAUM. Would the minority leader be good enough to advise, who handles the D.C. appropriations bill on this side?

Mr. LAUTENBERG. The Senator from New Jersey.

Mr. DOLE. I might also indicate we passed this, it has been passed one time in wrapup in the evening. We had to retrieve it because of the abortion question. It is not controversial except for this one area, as I understand it.

Mr. METZENBAUM. I understand that. I understand the Senator from North Carolina is not going to offer an amendment. I just question whether that is the kind of amendment that ought to be voted on at 9:30 at night, as it looks like it might be.

Mr. DOLE. Better than October 5.

Mr. METZENBAUM. I say to the distinguished majority leader, you run the Senate. I back off.

Mr. HELMS. Mr. President, if the distinguished majority leader will yield, I do want to say that I am offering no abortion amendment. I simply want a rollcall vote on the committee amendment.

Mr. METZENBAUM. I full well understand the Senator from North Carolina. I am delighted to hear that he is offering no amendment.

Mr. HELMS. I do not need to. I am satisfied with the House version.

Mr. METZENBAUM. I understand.

Mr. HARKIN. Will the majority leader yield for a question on the schedule?

Mr. DOLE. Yes, I yield.

Mr. HARKIN. I understand that we are going to have on D.C. appropriations, maybe one vote on it. Why not go ahead with that now and have that vote? I understand there are not many votes on the conference report on the DOD reorganization. Then there are a couple of other speakers tonight on Rehnquist. Why not go ahead and have the votes now, have the D.C. appropriations, and maybe by 7 or 7:15, we can get out of here and we would not have any votes to go over, rather have it the other way around.

Mr. DOLE. I would be pleased to do that. I do think they want to finish the conference report. They have been

waiting since 10:30 this morning. I do want to do the conference report. I would be willing immediately after the conference report to move to the D.C. appropriations bill. Maybe we will be finished with the conference report by 6:30 or thereabouts.

I am not certain there is just one amendment. I do not know that. I hope there will only be one. If there is only one amendment, it could be disposed of, as the Senator indicates, and we could be out of here by 7:30.

(Mr. HECHT assumed the chair.)

Mr. HARKIN. It sounds like there is only going to be one vote on that. If that is the case, we could be out of here and do the conference report after that.

Mr. DOLE. Maybe we had better proceed with the conference report and take another look. I did indicate we would not be in real late tonight. I think if we get started, maybe we can do that.

Mr. BYRD. Mr. President, I thank the distinguished majority leader. I thank the distinguished Senator from Arizona for yielding.

GOLDWATER-NICHOLS DEPARTMENT OF DEFENSE REORGANIZATION ACT OF 1986—CONFERENCE REPORT

Mr. GOLDWATER. Mr. President, I submit a report of the committee of conference on H.R. 3622 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3622) to amend title 10, United States Code, to strengthen the position of Chairman of the Joint Chiefs of Staff, to provide for more efficient and effective operation of the Armed Forces, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 13, 1986.)

Mr. GOLDWATER. Mr. President, it is with great pride and deep satisfaction that I present the conference report and statement on the defense reorganizatoin bill, H.R. 3622, for consideration by the Senate. This landmark legislation is one of the most important actions, if not the most important action, that the Congress will take during this session.

Those of us in the Senate, Mr. President, who have devoted much of the last 3 years to formulating and promoting this legislation fully understand its significance and how it will greatly enhance the security of this Nation. The substantial controversy that once surrounded this measure has subsided in the past 6 months. As a result, enactment of this legislation will receive little media or public attention. This will not, however, diminish its importance. In the years ahead, I have no doubt that America will be strengthened as a result of this legislation.

The Constitution, Mr. President, empowers the Congress "To raise and support armies" and "To provide and maintain a navy." We have, indeed, devoted considerable attention to these two duties. But the Constitution also empowers the Congress "To make Rules for the Government and regulation of the land and naval forces." To this last duty, we have given insufficient attention. This legislation, in fulfillment of this constitutionally mandated responsibility, seeks to correct the organizational deficiencies that have accumulated from decades of neglect and resistance.

BACKGROUND

Mr. President, in 1852, Victor Hugo wrote these timeless words: "An invasion of armies can be resisted, but not an idea whose time has come." Such is the case with defense reorganization—an idea whose time has come.

For 85 years, America has been struggling to structure its Military Establishment to provide for a more effective common defense. Previous efforts were turned aside by powerful interest groups, both inside and outside of the Military Establishment. America has unfortunately payed a high price in terms of blood, treasure, and prestige for the failure to put genuine national security needs ahead of narrow interests.

Almost 1 year ago, Mr. President, Senator NUNN and I gave a series of speeches on the floor of the Senate that identified the serious problems in the organization of the U.S. Military Establishment. We cited problems that have existed, at least in part, since the Spanish-American War and that have caused serious operational failures or deficiencies during the Second World War, the Vietnam war, and more recent operations, including the tragic bombing of the Marine barracks in Beirut and the incursion into Grenada.

Those speeches, Mr. President, initiated the final phase of a comprehensive and deliberate 3-year study of defense organization by the Armed Services Committee. In June 1983, under the leadership of former Chairman John Tower and the ranking minority member Scoop Jackson, the Armed Services Committee began its work on this subject. Since that time, the committee held 22 hearings during which it received testimony from 58 witnesses. The committee staff produced a 645-page study that analyzed 34 problems in the Department of Defense and their causes. The committee held a weekend retreat with several former Secretaries of Defense, Chairmen of the Joint Chiefs of Staff, and other former senior military officers and civilian defense officials.

In addition, Mr. President, we consulted the Department of Defense and the staff of the National Security Council in the formulation of this legislation. We worked very closely with the President's Blue Ribbon Commission on Defense Management, chaired by David Packard, a former Deputy Secretary of Defense. The Packard Commission made a number of recommendations on broad organizational issues, and this legislation is consistent with those recommendations.

The Armed Services Committee marked up the proposed legislation over the course of 30 days during which over 100 amendments were considered. Believe me, the committee's review was very thorough. There were many contentious issues. Not every committee member agreed with each provision, but I was delighted that our committee reported a defense reorganization bill by a vote of 19 to 0. The Senate considered this bill on May 7, and approved it by a unanimous-consent vote of 95 to 0. The House of Representatives passed its version of this legislation by a vote of 406 to 4.

Mr. President, this is a remarkable achievement: Only four votes in the entire Congress were cast in opposition to this far-reaching measure. Just 1 year ago, there were only a handful of legislators and former defense officials who supported defense reorganization. Now, the Congress has overwhelmingly endorsed this legislation. Seldom has the Congress spoken so clearly.

CONFERENCE REPORT

Given the complexity of defense reorganization issues, Mr. President, the conference committee had to work hard to resolve the differences between the Senate and House bills. This task was made considerably easier by the fact that the 2 bills shared 13 fundamental objectives. The conferees were thus able to select the best ideas from two excellent bills. I am extremely pleased by the resulting conference report. In this instance, we have a conference report that is better than either the Senate bill or the House bill.

The major provisions of the Senate bill are preserved, Mr. President, in the conference report. From the Senate perspective, the most significant changes were the addition of three key ideas from the House bill.

First, and foremost, is a requirement for the Secretary of Defense to establish policies, practices, and procedures for the effective management of military officers trained in, and oriented

toward, joint matters. Since the beginning of the Second World War, we have understood the need for the unified direction and operation of our Armed Forces. Despite this understanding, we have absolutely failed to prepare and reward military officers for duty in joint organizations, such as the joint staff and in the war-fighting commands around the world. For the most part, military officers do not want to be assigned to joint duty; are pressured or monitored for loyalty by their services while serving in joint assignments; are not prepared by either education or experience to perform their joint duties; and serve for only a relatively short period once they have learned their jobs. This is an intolerable situation which the conference report devotes considerable attention to correcting.

The second major addition to the Senate bill, Mr. President, relates to the headquarters staffs of the military departments. The Army and Air Force Departments have two separate headquarters staffs: The Secretariat serving the service secretary and the military headquarters staff serving the service chief. Because of its duel-service structure, the Department of the Navy has three headquarters staffs, one civilian and two military. The House bill proposed that the headquarters staffs in each military department be integrated into a single staff.

The Senate conferees opposed this staff integration because we believed that it could preclude the effective development and presentation of the military point of view in defense decisionmaking. Although the House receded on this provision, the conferees agreed that seven functions should be consolidated in the service secretariats. Each of these functions is civilian in nature or key to effective civilian control. Although located in the secretariat, the consolidated office responsible for each function will serve both the service secretary and service chief.

The third major issue in conference, Mr. President, was the degree of command authority to assign to the unified and specified combatant commanders. The Senate bill would have assigned "full operational command" plus authority over key aspects of administration and support. The House bill would have assigned "command" which would have been a much broader grant of authority. The conferees determined that neither the term "full operational command" nor the term "command," as currently used in the Department of Defense, accurately describes the authority that combatant commanders need to carry out effectively their duties and responsibilities. Accordingly, the conferees agreed to avoid the use of either term, but instead to specify the authority that the conferees believe the combatant commanders need.

RECOGNITION OF CONTRIBUTIONS

As with all great measures, Mr. President, this historic legislation would not have been possible without the great skill, courage, and perseverance of a number of dedicated Americans. I cannot possibly recognize the contributions of each individual who played an important role in this undertaking, but I would be remiss if I did not publicly thank the most important contributors.

At the top of any list must be Gen. David C. Jones, U.S. Air Force (retired). In 1982, while serving as Chairman of the Joint Chiefs of Staff, General Jones spoke out forcefully on the need for organizational reform. His criticisms started this entire undertaking. Moreover, General Jones has offered his valuable expertise as this legislation has been formulated. I salute General Jones' courage and wisdom.

Gen. Shy Meyer, former Chief of Staff of the Army, also deserves our thanks. He joined General Jones in criticizing the current system, and, thereby, reinforced the call for reform.

A former and a current Member of the House of Representatives also played key roles. During 1982, Congressman Dick White of Texas began the congressional inquiry into defense reorganization. Upon his retirement, Congressman BILL NICHOLS of Alabama provided the leadership to complete this important work in the House of Representatives.

On the Senate side, my hat is off to former Senator John Tower and the late Senator Scoop Jackson. These two giants of this generation had the courage, wisdom, and foresight to start the Armed Services Committee on this long-term project.

This legislation would not have been possible, Mr. President, without the expertise and skill of my good friend, Senator SAM NUNN. He worked tirelessly in formulating this legislation. I cannot express my appreciation for his great contributions and for the bipartisan spirit that he brought to this effort.

Two other members of the Armed Services Committee also must be recognized. Senators BILL COHEN and CARL LEVIN were intellectual forces behind this legislation. They ensured that every provision was carefully researched and thoroughly considered.

Mr. President, I mentioned the President's Blue Ribbon Commission on Defense Management. We were truly fortunate that this commission was chaired by David Packard, who forcefully brought to bear his years of experience as a defense official and business leader. Under Dave's leadership, the Packard Commission played an important role in building the consensus for defense reorganization.

We are also indebted to a number of former defense officials and military officers for their advice and assistance. Key among this group are former Secretaries of Defense Mel Laird, Jim Schlesinger, and Harold Brown. In addition, Phil Odeen, Bill Brehm, John Kester, and Gen. Paul Gorman made major contributions to the defense reorganization effort.

Last, Mr. President, I would like to recognize the contributions of Senate staff members. I might say that there was no way humanly possible for any committee like the Armed Services Committee to ever prepare a paper as was prepared by this staff. The effort benefited from outstanding staff work. I want to express my appreciation particularly to Jim Locher, whose never-ending application to this work brought the results we are talking about. There were Rick Finn, Jeff Smith, and Barbara Brown of the Armed Services Committee staff for their hard work and dedication. Mr. President, I also want to recognize the work of Hugh Evans, the deputy legislative counsel of the Senate. The quality of this legislation is in large part due to Hugh's outstanding contributions and expertise.

CONCLUSION

In conclusion, Mr. President, I have devoted much of my life to the U.S. military. I have always had a deep and profound love for the American man and woman in uniform. This may be the last piece of legislation that I will have the honor to offer for consideration by the Senate. If it is, I will have no regrets. I will have had the privilege of serving in the Senate on this day—the day that our soldiers, sailors, airmen, and marines were given the organizational and command arrangements that will enable them to effectively accomplish their vital missions without unnecessary sacrifices or loss of life. We owe nothing less to these brave patriots. I am gratified to have played a small part in making this historic day possible.

Mr. President, this defense reorganization legislation is one of the achievements in my life of public service in which I take the greatest pride. Coming so close to the end of my career, this legislation has a special place in my heart and mind. After I have departed from the Senate, I will rest assured knowing that the course has been set for a more secure future for my beloved country.

□ 1810

Mr. NUNN. Mr. President, as Senator GOLDWATER has indicated so well, this is indeed a historic day in the U.S. Senate, and I think a very important day in our Nation's move toward stronger national security. Not since the 1947 National Security Act and the 1958 amendments of President Eisenhower—almost 30 years ago—has such far-reaching defense reorganiza-

tion legislation been on the verge of enactment. The conference report on the Goldwater-Nichols Department of Defense Reorganization Act of 1986 makes comprehensive, sweeping, and landmark changes in the organizational structures and relationships of the entire Department of Defense.

This conference report, when signed into law by President Reagan—and I hope that will be in the next few days, certainly by the end of this month—will make very significant improvements in the way the Pentagon operates. I believe it will make the Department of Defense more effective in wartime and more efficient in peacetime.

PROBLEM AREAS

These changes are designed to correct problems that have been evident in the Department of Defense for many years. These problems include lack of interservice cooperation, poor quality of collective military advice from the Joint Chiefs, cumbersome chains of command, inadequate authority of the war-fighting commanders in the field and excessive bureaucracy at every level.

I want to note that the Department of Defense itself has recognized some of the problem areas and taken some corrective action. Progress was made during General Vessey's tenure as Chairman of the Joint Chiefs of Staff to improve the functioning of the Joint Chiefs of Staff, and this has been continued and intensified by Admiral Crowe and the Joint Chiefs who are now sitting.

The Joint Chiefs have now revised JCS Publication Two, which establishes the relationship of the unified commanders—those people in the field who are in charge of our forces and who would fight the wars—to the rest of the Department. JCS Publication Two was unintelligible the way it was written. Yet, it was the key document establishing the relationship between the fighting men and women in the field and the Department of Defense.

This document had not been thoroughly reviewed since it was first agreed upon in 1948 and the previous version preserved the services' influence in the unified commands. I am pleased that the revision of that document follows the outlines of the Senate bill which is largely preserved in this conference report.

A number of other changes have been made in the Department of Defense to implement the Packard Commission recommendations. The President, the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and the other members of the Joint Chiefs should be commended for these changes. But they do not go far enough. The fundamental structural changes in the defense organizations made by this bill are still necessary.

What, then Mr. President, is the significance of this conference report?

STRENGTHENS CIVILIAN LEADERSHIP

First, it strengthens civilian leadership of the military because it provides a new framework for centralized decisionmaking on key policy issues but decentralized execution of these policies in a more flexible manner.

Second, this bill will improve the quality of the professional military advice provided to the President, the National Security Council, and the Secretary of Defense. Under the old law, the Joint Chiefs of Staff was a committee and its advice reflected the weaknesses of a committee product—that is, it was watered down and muddled so that all of the Joint Chiefs could agree. Our bill makes the Chairman the principal military adviser; he can give advice in his own right. It puts him in charge of the Joint Staff. But it also ensures that individual service chiefs will have the right to provide their views or opinions, even if in dissent, to the President, the National Security Council, and the Secretary of Defense. This new procedure should enhance not only the quality and timeliness of military advice but in my judgment it will enhance the role of the military since their advice is more likley to be listened to and followed.

INCREASES AUTHORITY OF FIELD COMMANDERS

Third, the bill will increase the authority of the commanders in chief of the unified commands, those three- and four-star military officers who are in command of our forces in the field in peace and war. These are the individuals who look beyond the perspective of just one service and who must ensure that all elements of their command are ready to fight in a coordinated fashion. Under current circumstances, they are hampered by a web of bureaucratic constraints that require them to operate with essentially independent single service component commands that severely constrict their flexibility. Our bill gives these commanders in chief much greater authority and permits them to do such things as organize their commands as they see fit. This is decentralization as it should be—less authority in the Washington bureaucracies and more responsibility in the field where the action is. This should help avoid such episodes as the tragic bombing of our marines in Beirut where there were eight levels of command bureaucracy between the marines on the ground and the command authorities in Washington. When there are that many levels of command, responsibility is diffused. Because everyone is in charge, no one is in charge. Our bill will permit the commanders in chief in the field to organize their commands to best suit the tactical and operational needs of their area of responsibility.

For example, under this bill, there could have been only one layer of command between the marines in Beirut and the authority here in Washington.

□ 1820

Instead, we had eight layers of command between the marines in Beirut and the Commander in Chief here in Washington.

VICE CHAIRMAN

In a further effort to strengthen the joint military perspective, the act before us today creates the new position of Vice Chairman of the Joint Chiefs. The Vice Chairman will be the No. 2 military officer. This was a very controversial part of the bill but we thought it was a very important part of the bill. He will also serve as Acting Chairman when the Chairman is out of town or out of touch. As such, he will provide continuity for the Chairman's joint duties and serve as an additional focal point for the commanders in the field.

REDUCES BUREAUCRACY

Next, this bill will reduce additional layers of bureaucracy in the Pentagon and elsewhere. It provides for increased supervision and control of the defense agencies such as the Defense Logistics Agency and the Defense Contract Audit Agency. It also decreases the size of headquarter staffs in the defense agencies and military headquarters by almost 17,000 personnel in order to streamline the administrative and operational chains of command. It reduces the number of assistant chiefs of staff, deputy chiefs of staff and reduces the number of flag and general officers in the Washington headquarter by 15 percent. This will result in approximately 42 admirals and generals being moved out of the Washington bureaucracies. It is an attempt, simply put, to shift "writers" into "fighters."

SUPPORTS MEN AND WOMEN IN UNIFORM

Further, Mr. President, I would say that this bill is significant because first and foremost it will help the young men and women in uniform who are out there on the front line every day. It will mean that the Army, the Navy, the Marine Corps and the Air Force will begin—over a period of time—working together more as a team. This bill emphasizes those parts of the Pentagon that are charged with broad joint responsibility. It establishes a system to give the Secretary of Defense better military advice. It gives the Chairman of the Joint Chiefs a much stronger hand, both in terms as his role as the principal military adviser to the President and in his management of the joint staff. It strengthens the commanders in chief in the field who have to organize and command the young men and women in uniform to fight and win wars. And Mr. President, I would say that at the same time we are making these sweep-

ing changes, we are also preserving the hallowed tradition of the individual services. We have done nothing in this bill to diminish or alter the proud traditions of the Army, Navy, Marines, and Air Force which have produced the finest men and women in the world today.

All of these things have been done without diminishing the proud traditions of the Army, Navy, the Marine Corps, and the Air Force which have indeed produced the fine fighting men that have protected this Nation in the past and continue to do so today.

CONGRESSIONAL REFORMS

And finally, Mr. President, we have not overlooked the Congress. Very early on, Chairman GOLDWATER and I indicated the need to extensively revamp congressional procedures. While this bill alone does not contain all of the changes in Congress that I believe are necessary, it does make a modest beginning. We have reduced the burden of congressional micromanagement of the Pentagon by sunsetting about two-thirds of the more than 400 defense reports and studies now required by the Congress from the President and the Department of Defense. We have, in other legislation, provided for a 2-year budget for the Pentagon which is essential to break the gridlock of requiring annual review of every single line item in the defense budget by both the Pentagon and Congress. We have provided authority for milestone authorizations so that weapon systems can be approved for longer stretches at a time, thus providing greater stability and flexibility. We have begun to change the focus of our own committee process to look more at the output of the Department of Defense, particularly in the mission and joint arena, and to look less at budget inputs. But these things are only a start; much more needs to be done in terms of streamlining the cumbersome procedures and the bureaucracy in the Congress.

Mr. President, we also have tackled congressional reforms. We have not gone nearly as far as I would have liked, and not as far as we would have liked as a committee, but we cannot change the jurisdiction of other committees unilaterally. We did what we could. We dramatically reduced the number of reports that the President and the Pentagon have to submit to Congress and we all pledged to work for additional changes.

I personally believe we are going to have to tackle the redundancy of committees. We have three committees, Budget, Appropriations, and Armed Services that result in much duplication. We are all going to have to find an answer to that duplication in future months and years.

PROBLEMS MAY OCCUR

Mr. President, the changes incorporated in the Goldwater-Nichols Department of Defense reorganization bill are both sweeping and dramatic. They will, however, take time to implement and we certainly should not expect a 100-percent inprovement in all areas overnight. We are establishing a framework that will permit these changes to occur, that will shift the current power relationship in the Pentagon. However, Congress and the President will have to monitor this situation carefully to make sure that these changes have the intended results and that our defense capability is strengthened accordingly. We will also have to monitor the situation carefully to ensure that problem areas do not become serious. In this respect, I think we should be alerted early on that certain provisions may result in problems and may warrant changes.

JOINT OFFICER SPECIALTY

One potential problem area is the joint officers speciality. The conference report creates a "joint speciality" for military officers who are trained in and oriented toward joint matters. I generally support this concept because I believe it is essential to building more jointness into the system and to providing more rewards for such service. I am concerned, however, that some of the provisions may be overly rigid and unworkable. The joint officer speciality is phased in and there are a number of waivers which will mitigate some of this rigidity. I believe our committee will have to carefully monitor the implementation of this program and we may have to make some changes in the future as the problems become more apparent.

CONSOLIDATION OF MILITARY DEPARTMENTS

Another area that is of concern is in the consolidation of the military and civilian staffs in the military departments. The conference agreed to consolidate several functions, such as acquisition, comptroller, inspector general, and legislative liaison, under the Secretaries of the military departments and directed that the service chiefs not set up competing bureaucracies within their staffs. In the conference, I was concerned that we not create an impenetrable wall between the staffs of the service Secretary and the service chief. The goal of the consolidation is to reduce personnel and eliminate duplication. I believe we need to allow for what I would call dual-hatting. A number of changes were made to build some flexibility into the provision so this dual-hatting could occur. Although I would have preferred additional changes, the final version is certainly an improvement over the original provision but this is an area that may need revisiting.

In a related matter, I am concerned that the changes in this area not prejudice the Marine Corps because of its unique position as the smaller service in the Navy Department. A number of the other conferees shared that concern and we included specific language directing the Secretary of the Navy to ensure that the Marine Corps receives even-handed treatment. It is clearly the conferees' intent that the Commandant have access to the staff support he needs to carry out his responsibility.

I know Senator GLENN, my colleague from Ohio will have some concerns, particularly as to how this bill affects the Marine Corps.

We made some changes in the last stages of the conference, recognizing the uniqueness of the Marine Corps as a service that is under the Secretary of the Navy. We also recognized that the other services also may have some problems. We added language which we think has helped clarify and given more flexibility with respect to separation of the staffs of the service Secretary and the service chief.

But I would be the first to say, and I know the Senator from Ohio is going to address this in detail, that there will probably be some continuing problems. We are going to have to monitor these problems very carefully and we may very well have to make some changes next year.

Mr. President, we recognize that this conference report is an extremely complex piece of legislation and that we will have to review its implementation carefully and we will have to make corrections in the future when needed.

ACKNOWLEDGEMENTS

While it would take a book of acknowledgements to thank everyone who has helped with the legislation, I echo the sentiments of Chairman GOLDWATER in saluting the leadership of Gen. David Jones and Gen. Shy Meyer. Credit must also be given to the very major contribution of the Presidential Blue Ribbon Commission headed by former Deputy Secretary of Defense, David Packard. In addition, leading outside institutions, such as Georgetown University's Center for Strategic and International Studies and the Heritage Foundation assembled panels of distinguished Americans and conducted comprehensive studies of these issues. The House Armed Services Committee, with the able and distinguished leadership of BILL NICHOLS, also began a review, focusing particularly on the Joint Chiefs of Staff. Indeed, the House passed a bill reorganizing the Joint Chiefs in 1984 which was a key factor in moving this process forward. Former Congressman Dick White also took a major leadership role in the House on this issue. In the Senate, our former chairman and ranking member Senators Tower and Jackson were key initiators of this. Senators LEAHY and EAGLETON were early leaders as well. In particular, Senator EAGLETON introduced and ably supported his own bill to reorganize

the Joint Chiefs. He withdrew his bill as an amendment to the Defense Authorization Act in 1984 and 1985 on the assurance that our committee would take action. It is obvious that we have. Senator EAGLETON continued to monitor our efforts and was helpful as we considered this issue.

Mr. President, the members of our committee have all done an outstanding job. Senator COHEN has been involved in every facet of this legislation from the very beginning. He has been a stalwart. He served in every capacity. He has worked constructively on every area of this bill and has made a major contribution.

I would say the same of Senator LEVIN from Michigan. He has been diligent and has been bulldogged on the details that are required to put together this kind of legislation. He has been of great, great assistance to us.

Senator GLENN from Ohio has also played a very key role.

It has been helpful to us to have the views of people like Senator GLENN and Senator JOHN WARNER from Virginia who have had considerable experience in the Department of Defense. I know both of them had some reservations as we went along with respect to certain parts of the legislation, but their helpful and constructive assistance has been invaluable.

Mr. President, the process of producing this legislation was, as Chairman GOLDWATER mentioned, a long and arduous one. He has described the role that the committee played and I agree the cooperation and bipartisan work within the committee was excellent. He has also commended the staff.

I must add my words of praise to the staff. I have seen a lot of good staff work since I have been in the Senate. I would put this at the very top. We have to remember the origin of this legislation was the report, a very thorough staff report that was written by our capable staff headed by Jim Locher, Rick Finn, and Jeff Smith. They worked together as a team.

I have never seen a majority Republican staff and a minority Democratic staff work together as smoothly as they did in a total spirit of bipartisanship.

Particular thanks should also be given to Hugh Evans, the Deputy Legislative Counsel. Hugh put in enormous amounts of time and effort to produce this bill. This legislation benefited greatly from superb legal skills and comprehensive knowledge of national security legislation. Hugh has been providing such excellent help to our committee as far back as I can remember. He has played a key role in the drafting of much of our legislation, and I believe Hugh is on the floor today making sure we do not do anything wrong in the last stages of this important legislation.

I must also thank the House staff headed by Archie Barrett and House counsel Bob Cover, who deserve tremendous credit because they, too, worked long and hard on this measure.

Of particular note, Mr. President, is the work of the Senate Armed Services Committee's administrative staff—Barbara Brown and Pamela Powell—who not only had to support the drafting and publishing of the monumental staff study but also the conducting of all the hearings and transcripts that went with it, as well as the typing and retyping of many versions of the bill and report as it was being developed in the conference. No one is probably more happy to see this bill sent to the President than those two individuals since it is now too late for any more changes.

I must also add one final word of commendation, a very important one. There has been much coverage and discussion of defense reorganization in the news media. We certainly have had good, fair, and objective coverage by all elements of the news media, but today I want to salute particularly the Armed Forces Journal and editor Ben Schemmer for their early comprehensive excellent coverage which gave a much better understanding of these complicated issues to the thousands of readers they have, particularly in the military community, both active and retired. This was very important in this legislation and it was very constructive.

TRIBUTE TO SENATOR GOLDWATER

Finally, Mr. President, let me pay tribute again, as I have in the past, to Senator GOLDWATER, without whose leadership we would not be ready to pass this bill today. It is very appropriate that bill is named after BARRY GOLDWATER. He has devoted his life to this Nation and much of it has been focused on the defense of our Nation. He has the greatest respect on both sides of the aisle for his candor, his judgment, his hard work, his sense of humor and his determination to provide the very best defense possible for our country and to provide the very best conditions for people in uniform.

□ 1830

He is a master at utilizing his well-timed lack of patience in getting things moving when they get stuck. We have benefited from that many times.

So we are very proud of this product. The whole committee is proud of it. I am proud to serve on the Armed Services Committee under the direction of Chairman GOLDWATER and our distinguished colleagues on both sides of the aisle.

I urge my colleagues to adopt this historic piece of legislation this afternoon.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I rise today, as I did 4 months ago, in support of the Senate version of the DOD reorganization bill, to join my colleagues in supporting the conference-approved Goldwater-Nichols Department of Defense Reorganization Act of 1986.

As I stated in May, I have believed for some time that DOD organizational and procedural changes are necessary if we are to improve our warfighting capability. This is not just peacetime semantics we are talking about. We are trying to set up an organization that can deal with combat in a most effective way.

At the time we discussed this bill earlier, I was particularly critical of our ability even to conduct joint warfare operations following the Grenada invasion. There were many aspects of that operation, especially tactical communications, that indicated that considerable improvement was needed in joint operating capabilities.

Another area I have been concerned about is the relationship between our foreign policy and our defense requirements. I served for 10 years on the Foreign Relations Committee and have been on the Armed Services Committee for almost 2 years now. I am convinced that our defense requirements must better reflect our foreign policy.

I would prefer to see us clearly spell out the strategic interests of the United States with our allies around this world, then determine what our military requirements are to meet that kind of commitment strategywise around the world. We should build our combat units from the ground up, whether conventional forces or nuclear forces, either one, and then see what is needed on top, not go the other way and build from the top down.

I have even advocated that we combine the Senate Foreign Relations Committee and the Senate Armed Services Committee. I think that would make a lot of sense. I think it is something we have to very seriously consider in perhaps the next session of Congress, because we cannot set policy and then just have a military that somehow grows up on its own without any consideration of what policy is to be carried out. I plan to bring that up in the near future; I think our defense requirements must better reflect our foreign policy.

The DOD reorganization bill, which we are now considering, requires that the JCS Chairman assess whether individual service programs and budgets conform to strategic priorities and operational requirements; this should help substantially in bringing our for-

eign policy and defense requirements into synchronization.

In my opinion, however, the only compelling reason for changing the DOD organization is to improve the warfighting capability of our combatant commands. Although I believe this bill will go a long way in making such an improvement by strengthening the command authority of the unified and specified commanders, there is a specific provision in the bill before us that could in fact greatly reduce the military effectiveness of all our Armed Forces, especially the Marine Corps.

Mr. President, I refer to the provision in the bill that would integrate and combine many of the functions of the service secretaries and the military headquarters staffs within the departments of the Army, the Navy, and the Air Force. These functions include acquisition, auditing, comptroller, information managements, inspector general, legislative affairs, and public affairs.

According to Secretary of Defense Weinberger, the net effect of such integration would "weaken the effective management of our defense effort by blurring the distinct, unique, and vital roles of the service secretary and service chief."

At the same time, I think it is clear that it would also diminish the ability of the service chief to provide independent advice, which would be particularly significant with respect to the service chief's function as a member of the Joint Chiefs of Staff.

Although the consolidation of key functions will create a serious problem for all the services—and it will be one they will have to work through—it will be a critical problem for the Marine Corps. This is because of the existence of two separate armed services within the Department of the Navy—namely the Navy and the Marine Corps.

By consolidating such key functions as acquisition, comptroller, and Inspector General in the Office of the Secretary of Navy, we in effect will transfer the leadership of the corps from a professional marine officer to a civilian political appointee. That could be the effect.

We will also remove the corps as a separate service by de facto placing the Marine headquarters staff at the disposition of the U.S. Navy, which will always be dominant within the Navy Department.

Consolidation will also relegate amphibious warfare to the status of other historically underresourced naval warfare areas, as well as deny the Commandant of the Marine Corps the staff support necessary as a member of the JCS to provide the independent advice so critical to our system of checks and balances within the U.S. military structure.

Transfer of these key functions from the Commandant of the Marine Corps to the Secretary of the Navy will be tantamount to requiring that the Marine Corps perform its management functions the way the Navy does theirs; indeed, under direct Navy Supervision.

The Commandant would have no separate prerogative as to how the corps would function in many critical areas. This could have a negative impact on every aspect of how the Corps is run, from how we pay our Marines, to the type of rifle they carry, to how they maintain their combat essential equipment.

So I think, without question, it could have within it the possibility of seriously diminishing combat readiness and we would lose the unique qualities of the corps. And those are unique qualities.

The Marine Corps' purpose in being is readiness. It is not large. It is under 200,000 people; it is only about 198,000 at the present time. But it is America's ready force. We have units of the Marine Corps that have parts of equipment, major components of equipment, boxed and ready to go at any given time on any given day, so they are mobile, so they are ready to go, so that elements of the corps can move within 24 hours easily in a readiness function.

And they have within the corps the required supporting arms. We have artillery, we have air support, and we have all the other functions within one unit, small, ready to go. The corps is trained for amphibious operations, they are trained for land operations, they are trained for fast action or reaction, and they are kept on a ready basis. That is the unique quality of the corps.

I do not think that it was the goal of this House-sponsored provision—the original Senate bill, I repeat, did not have this provision in it—but I do not believe it was the goal of the House-sponsored provision to intentionally reduce the effectiveness of the Marine Corps. But the practical result is the same and I feel it is really unacceptable.

If, as I suspect, the purpose of the proposed consolidation of Headquarters Marine Corps staff functions with those of the Chief of Naval Operations and the Secretary of the Navy was included in the House legislation simply because of a desire to include all services for purposes of symmetry under this legislation, then, without consideration of their specific circumstances, we, in accepting it in the conference bill, will have done this Nation a disservice. Symmetry should not be the objective of this bill. The objective of this bill is combat effectiveness, and that includes the Marine Corps.

It is tantamount to the Senate and the House of Representatives consolidating our congressional staffs so that we nominally could achieve greater economy and effectiveness.

There may be those in the Senate who will say that I am unnecessarily alarmist—after all, according to the language of the bill, the Marine Corps has the Secretary of the Navy to look after its interests. To that I would reply that it was a Secretary of the Navy—or two—who presided over a major reduction of the Marine Corps at one time to the point where the Marine Corps was in danger of going out of existence.

□ 1840

Those were in the years between World War II and the Korean war, and I was in the Marine Corps at that time. So I know about that. The facts were that in 1950 when Korea started, only one Marine provisional brigade could be mustered when U.N. forces and the Marine Corps were called upon to hold the line in the Pusan perimeter. The long knives were out at that time. I can tell you. Time to time it has been repeated. So the Marine Corps has not always had the great support from the Secretary of the Navy that it now enjoys.

We should recall the situation which then confronted the 82d Congress in 1951. Into this area of jealousies, rivalries, interservice bickering, we found there was a long history of attempts by other armed services to abolish or emasculate the Marine Corps. These effects became particularly egregious in the period between the Second World War and the Korean war. A Marine Corps reduced from wartime strength of 486,000 men and women in 1945 to but 62,500 on June 27, 1950, the date of the outbreak of the Korean war. It was an attempt to have the Marine Corps reduced to barely 8 battalions and 16 squadrons of supporting aircraft at a time when according to the Congress, "The need for a force in readiness was at its greatest." But the Marine Corps at that time had been cut back to a bare, bare minimum.

In opposition to legislating the organization and mission of the Marine Corps by the Department of Defense and the Departments of the Army, the Navy, including the Secretary of the Navy and the Chief of Naval Operations, and the Air Force based on their representations, the statutory protection was not necessary.

It was clear then—as it should be today—that the Congress cannot forfeit or delegate its historic responsibility to the American public for the protection and maintenance of the Marine Corps. For, as Senator Walter George wrote in a letter to the Senate Armed Services Committee in 1952:

> • • •[t]he Congress has repeatedly tried to make it clear to the Executive Department that it wants a combatant U.S. Marine Corps available to carry out its traditional

role in the defense of our country. I am well aware of the fact that there are those who have piously stated that there is no intention of doing away with the Marine Corps, and in that statement I think they were factually correct. They never intended to do away with the Marine Corps as such, they simply intended to see that it could not carry out combatant missions. It could carry out ceremonial and guard duties.

I feel that it is clear both to us in the Senate and to our colleagues in the House that the American public wants in 1986—just as it did in 1952—to ensure an effective Marine Corps available to carry out its traditional combatant role in the defense of our country and to be the readiness force for our Nation.

Legislative history to protect the corps was written in 1947 and again in 1952 during Senate debate. In each instance, however, a further attempt to diminish the Marine Corps later resulted, but fortunately with no lasting detrimental effect, this in large measure because the U.S. Senate and the Congress as a whole took active steps to prevent it.

Today we must continue to preserve what we in the Congress have statutorily created—a Marine Corps responsive to America in time of crisis. Although there presently is report language in the DOD reorganization bill which recognizes the unique position of the Marine Corps within the Department of the Navy, I am absolutely convinced that to preserve the integrity of the corps, additional statutory language will be required.

Mr. President, I am under no illusions that this bill tonight will not pass. And I am certainly not trying to stop it. I would not try that. But I am very concerned about these matters I brought up.

If we thought we had the votes tonight to get the same thing over in the House side, I would far prefer to insist now that we send this back to conference. It could be done immediately. But I know we do not have the votes to do that tonight. I would prefer that to leaving the statutory language as it is written now and only depending on the report language to make certain that the Marine Corps is treated fairly and equally under this bill.

But I am a realist. I know we cannot hope to get the statutory language changed now. So we are going to have to resort to future change.

So to this end, I will urgently recommend to the chairman of the Senate Armed Services Committee that early next year we hold hearings and solicit testimony by the Commandant of the Marine Corps as well as testimony by the other service chiefs and the service secretaries on this very important issue of staffing integration and the particular nature in which it affects the Marine Corps.

Following that testimony, I would fully expect to introduce an amendment that will once again very clearly define the unique function of the Marine Corps within both the Department of the Navy and the Department of Defense—that statement and a legislative solution that will ensure that adequate staff authority is available to the Commandant of the Marine Corps to execute his statutory responsibilities.

I do not want to see any future Commandant hamstrung in his ability to keep our readiness force truly ready.

Mr. President, with the exception of this major caveat, I fully endorse the Goldwater-Nickles DOD Reorganization Act, and I intend to vote for it. I urge my colleagues to do the same.

But I would like to conclude, Mr. President, by joining my colleagues and Senator NUNN who has spoken eloquently here this evening as well as previously on the floor in praise of the leadership and the dedication of Chairman GOLDWATER, and I would add Senator NUNN there too in shepherding for well over 2 years the efforts on the Senate side leading to this historic bill.

Well, done, BARRY, and well done, SAM, and thank you, Mr. President.

We look forward to getting this bill passed. We look forward also to the modifications that I think will make the protections we need for the Marine Corps in the next session of Congress.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, I want to say a few words in response to the Senator from Ohio. He has been an invaluable member of the Armed Services Committee and, as we all know, he has a wealth of experience from his distinguished service as a Marine Corps officer. His concerns are not to be taken lightly or in any way dismissed or diminished.

I would simply point out that in achieving this compromise with the House the Senate prevailed on 90-95 percent of its provisions. In the area of consolidation of functions there is a statement contained on page 151 of the report worth noting:

> The conferees agreed that each service should have a separate military headquarters staff in the executive part of its military department. The staff should continue to conduct the function for which effective representation of the military point of view is invaluable to the work of the military department. Key among these functions are manpower and personnel, logistics—

It talks about the points the Senator was raising—

> installations, operations and plans, requirements and programs, and command, control, communications, and intelligence.

So I think we are certainly sensitive to the unique capabilities and needs of the Marine Corps. This particular type of provision is directed precisely to that point. So whatever deficiencies there are I think the Senator from Ohio has called our attention to it. I think he is correct in asking for hearings as promptly as we can have them in the next session.

But I do want to at least allay some of his concerns that we gave away the entire package to the House or through an insistence on symmetry may have carved out key items that will affect the military capability and readiness of the Marine Corps.

Mr. GLENN. Will the Senator yield for a minute?

Mr. COHEN. I yield.

Mr. GLENN. My concern is on the specific language of the bill. The report language is satisfactory. It indicates our intent. But a future Secretary of the Navy interpreting the very specific language of the bill could well interpret that in a way where he really does go ahead and say that the Marine Corps cannot do their own acquisition, auditing, comptroller, information management, inspector general, legislative affairs, and public affairs. Those seven items are spelled out specifically that cannot be done.

It does not say "may" at the Secretary of Navy level. It says specifically he shall not let anybody else perform those functions. That is what concerns me.

Mr. COHEN. I think the point is well taken. We should address that.

Mr. President, I would like to add a couple of comments concerning the title of this bill, the Goldwater-Nickles bill. I think in all fairness we ought to have, since we have a Gramm-Rudman-Hollings tripartite, a Goldwater, Nickles, and Nunn bill, because I do not know of anyone who has put more time into this particular effort than the Senator from Georgia. He worked not only on the committee but prior to that for at least a year on the Georgetown study group, the CSIS study, and the whole reorganization of the Department of Defense. So he is to be commended. If I had my choice he would be on the bill as well as the Senator from Arizona.

I would like to read a statement that I think the Members might find somewhat relevant or at least interesting:

> These various steps toward more effective coordination of our Armed Forces under one civilian head have been necessary, sound, and in the direction pointed by the lessons of modern warfare. Each such step however has prompted opponents to predict dire results. There have been allegations that our free institutions will be threatened by the new military leader, serving as the principal military adviser to the Defense Secretary and the Commander in Chief. There have been forecasts that one or more of the services will be abolished. As a result, the Secretary of Defense has never been free of excessive statutory restraints. As a result of well-meaning attempts to protect traditional concepts and prerogatives, we have impaired civilian authority and denied ourselves a

fully effective defense. We must cling no longer to statutory barriers that weaken Executive action civilian authority. We must free ourselves of emotional attachments to service systems of an era that is no more.

□ 1850

Mr. President, that might have been a statement uttered by the Senator from Arizona. It might even have been a statement uttered by the Senator from Georgia, Senator NUNN, or Congressman NICHOLS. It might have been uttered yesterday or here today on the Senate floor.

In fact, it was spoken by President Eisenhower in his message to Congress on defense reorganization back in 1958.

What makes this particular achievement so extraordinarily remarkable is that President Eisenhower for all of his popularity was unable to push through Congress changes virtually identical, or at least very, very similar, to what has been achieved by Senator GOLDWATER, working with Senator NUNN.

So it is a remarkable achievement and we have to place it in the proper historical context—this has been coming for 30 years. It is only by the effort, the reputation, the persistence, and indeed the courage of the Senator from Arizona that we are able to be here today to present this to our colleagues.

The tendency has been to denigrate the effort by calling it unpatriotic—implying that we are undermining the effective fighting forces of our country by even undertaking a study suggesting that we are inefficiently organized or ineffectively structured.

I recall some of that testimony indicating that we are engaged in unpatriotic acts.

So on the one side we have an attack on the motivation or indeed the intended goal of the legislation, while others simply denigrate it by saying it really is not all that significant; it is only a shuffling of boxes and what good does a shuffling of boxes do in terms of providing for a more effective military force?

I think everyone in this Chamber would agree that you can have good people but if there is not an equally good organization, you probably have a mess on your hands.

But the converse is also true: you can have a good organization but without having good people, you probably have a menace on your hands.

What Senator GOLDWATER and Senator NUNN attempted to do, and I believe achieved, was to try and put together a good organizational scheme to strengthen the chairman, to establish a vice chairman, to strengthen the theater commanders, and to make service on the Joint Staff something that is desirable and not the kiss of death in terms of promotions in the future.

So we have an effort made to put together a good organizational structure and combine that with the extraordinary people we have serving in our military forces today. That, to me, is the remarkable achievement that we are here commending to our colleagues.

I would just conclude with a quote regarding my friend from Arizona.

The last time we considered this measure, he was not on the floor and I was thankful for that. I did not want him to hear my words about him. But I must put them in the context that he has spoken of recently about Justice Rehnquist. I think his words were designed to show that he has always functioned in a nonpartisan fashion when the interests of the country were at stake.

One of my favorite Justices was Justice Oliver Wendell Holmes, Jr. He was speculating one time and said, Napoleon must have dreamed of conquering hundreds of countries and I bet that Shakespeare would have loved to have strung even more pearls of wisdom onto his wonderful words.

But Holmes said, "Alas, we cannot live our dreams. It is enough that we can give but a sample of our best and know in our hearts it has been nobly done."

Mr. President, I want to say that BARRY GOLDWATER's contribution to the defenses of this country is an effort that has been certainly a sample of his best—more than a sample of his best. But if it is only a sample, everyone in this Chamber knows in his heart that it has been nobly done.

I want to extend my congratulations to him for one of the finest contributions he could have made in his long service to his country.

Mr. GOLDWATER. Thank you.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, as a member of the Armed Services Committee, I certainly support the Goldwater-Nunn Department of Defense Reorganization bill. I think it is a significant step in the right direction.

I wish to associate myself with the previous remarks of our distinguished colleague from Arizona, Senator GOLDWATER, about whom I will have a little bit more to say in just a few moments. And also the remarks by Senator NUNN and the remarks by my other two colleagues on the Armed Services Committee who have spoken today, who have had a key role to play in this bill, the Senator from Ohio and the Senator from Maine, who just concluded some very important remarks, especially about the bill and especially about our friend and colleague from Arizona.

This is not the time, or the place, to heap praise upon Senator GOLDWATER because I am sure we will have ample time to do that at a later time. I just want to tell him now that it has been my high honor to serve under him as chairman of the Armed Services Committee. He is a man for whom I have had so much respect for a long, long time. He knows that.

We also smile and laugh from time to time as he knows that I was the State Democratic campaign manager when he ran for President of the United States and did everything I could to defeat BARRY GOLDWATER when he ran for President of the United States.

I do not apologize for that because, had he been elected, I would not have had the opportunity to serve with him in the U.S. Senate. Very honestly, I can tell you now that was the real reason I supported the Democratic ticket at that time.

I have had a great association with you and I think this is a fitting tribute that this bill carries your name. You have done a great job.

Now I want to say to you, to lighten it just a little bit, that now that we have finished reorganization of the Department of Defense and cleaned up the outmoded practices that I think have hampered our national defense effort to some extent for a long, long time, there is one more job that I would like to have you do before you leave this body.

Since this is out of the way, since I know the only thing you have left to do is to get out a defense authorization bill which is in conference with the House which we started on today, and I know that is going to a day-and-night operation for the next 3 weeks or 3½ weeks we are going to be here, somehow I would like to have you do some reorganization I think you are also an expert in. If there is one great disappointment I have, it is that you have completed this reorganization of the Defense Department, making it more streamlined and more effective, but you have not reorganized the U.S. Senate as I think it should be reorganized.

I would say the only sad part about this is maybe we can put the cart before the horse. Maybe we should reorganize the U.S. Senate simultaneously with the reorganization of the Defense Department.

I say that, and I see my friend from Arizona smiling as he knows what I am talking about, because he and I and several other members of the Armed Services Committee were here about 4 hours ago when we were supposed to start on this conference report but we did not. We were supposed to finish it up in a half hour. I have been waiting ever since to make these few remarks, but it is worth it, very seriously, Mr. President, when I can look across this Chamber and see

71-059 O-87-42 (Pt. 16)

my great colleague and great American, BARRY GOLDWATER.

I am very pleased, Mr. President, with the product that we are going to pass here tonight.

After many years of hard work and as a result of the conference on this bill, I believe that the Congress now has a reasonable and workable approach that will do much to improve the Nation's security. That is what this bill is all about.

Most of our attention here in the Senate is focused on major programs such as the MX or the strategic defense initiative. More and more we also seem to be distracted sometimes by parochial interests on programs such as pistols, training planes, and home ports.

What we tend to forget is that organizational factors and, perhaps more importantly, attitudes largely shape our defense policy.

This bill gets at the heart of the organizational factors and attitudes. It streamlines the massive bureaucracy that our Defense Department has unavoidably become. It strengthens our theater commanders who would actually execute our war plans. It establishes a much needed vice chairman of the Joint Chiefs of Staff and assigns the body a more meaningful role in guiding our military strength and our military programs.

Perhaps most importantly, its organizational changes and career emphasis on joint duties will encourage our services to cooperate one with another, better understanding each of the capabilities and limitations of the other.

Each of these changes will have a far more important and lasting postive impact on our Nation's security than any single weapons program.

□ 1900

In conclusion, Mr. President, let me say I was pleased to participate in the consideration of this bill as a member of the committee. I can think of no better lasting tribute to Senator GOLDWATER, my chairman on the Senate Armed Services Committee, ably assisted by the Senator from Georgia [Mr. NUNN]—and I am pleased to have been part of this overall effort—than if the Senate speedily passed this bill into law. It is needed.

Mr. President, I yield the floor.

Mr. GOLDWATER. Mr. President, because the Senator from Nebraska is still on the floor and everybody who said so many kind things about me has gone home, I just want to comment to my friend from Nebraska that if I took his suggestion and tried to reorganize the U.S. Senate, I remind by friend that it has taken over 200 years to screw this place up. I do not think I am going to live long enough to get it turned the other way. But It would be a lot of fun trying.

I assure my friend from Ohio [Mr. GLENN] that there will be many things in this legislation that we will have to go over from year to year. A reorganization program like this is not one on which we can say with any great finality that it is passed and we do not have to worry. I think one of the great efforts of this Congress is going to have to be its constitutional charge that we not only raise the armies and the navies, but we watch over them, we see that they do the things that we have told them to do. Under that observation, I am sure that if anything comes up that would bother the Marine Corps, coming Congresses will correct it.

You know, the Marine Corps is something like Notre Dame. Everybody has been to Notre Dame or they have been a marine. Although they are quite small, there is great affection in saying, "I was a member" of either one. So I would not worry about the Marine Corps at all.

I thank all of my colleagues for the action on this conference report. I again thank my committee. I have served in the Senate for over 30 years, and I have never served on a committee that is as dedicated or as loyal or competent as the Armed Services Committee.

Mr. THURMOND. Mr. President, the measure that the Senate is considering today is the most far-reaching reorganization of the U.S. defense establishment undertaken in almost three decades.

Mr. President, it is also important to note that many of the provisions contained in this legislation are consistent with the recommendations of President Reagan's Blue Ribbon Commission on Defense Management, which was chaired by David Packard. It has taken nearly 4 years of dedicated work by both Houses of Congress to bring about these changes.

Our main goal throughout the consideration of this legislation was to bring about a more effective integration of the capabilities of the Army, Navy, Air Force, and Marine Corps. This bill will do just that.

Mr. President, one of the major provisions of this legislation strengthens the position of Chairman of the Joint Chiefs of Staff by making him the principal military adviser to the President, the National Security Council, and the Secretary of Defense, and by giving him a strong Vice Chairman to assist him. Another of the more important provisions in the bill strengthens the joint war-fighting capabilities of the United States by improving the command and personnel authority granted to the unified and specified commanders.

Given the outstanding leadership of Senator BARRY GOLDWATER and Congressman BILL NICHOLS, the conferees agreed to name this bill the Goldwater-Nichols Department of Defense Reorganization Act of 1986. Both of these gentlemen have been strong advocates of change within the Department of Defense and have worked tirelessly to achieve agreement between the two Houses of Congress. Also, Senator SAM NUNN of Georgia should be recognized for his strong leadership and expertise in bringing this legislation to final passage.

Mr. President, I think it is also fitting that we mention the staff members that have worked so hard in recent years to support this effort. On the Senate Armed Services Committee staff, I would like to recognize Jim Locher, Jeff Smith, Rick Finn, and Barbara Brown for the outstanding job that they have done. On the House Armed Services Committee staff, Dr. Archie Barrett deserves recognition for his fine contribution to this legislation.

Mr. President, we may not see the positive effects of this legislation for a number of years, but the changes contained in this bill will certainly strengthen our ability to defend our great Nation. I urge all of my colleagues to support passage of the conference report.

Mr. LEVIN. Mr. President, one of the most important changes that the Goldwater-Nichols Department of Defense Reorganization Act of 1986 will make in our defense establishment is to enhance the influence of the Chairman of the Joint Chiefs of Staff. Although I have supported this change, we have, at the same time, worked to ensure clear and strong civilian control of our military forces. To that end, the Armed Services Committee acted to ensure that the JCS Chairman cannot be placed in the chain of command, nor have the authority to issue orders in his own name, nor have the authority to command military forces. That was the Senate position.

For instance, the Defense reorganization bill passed by the Senate would have specified that, unless otherwise directed by the President, the chain of command for the operational direction of the unified and specified combatant commands runs from the President to the Secretary of Defense to the combatant commanders. The Senate bill would have also authorized the President or the Secretary of Defense to direct that communications from the Secretary of Defense to the combatant commanders run through the JCS Chairman. The Chairman's role in transmitting communications would have been subject to the existing statute that prohibits the Chairman from exercising military command over the JCS or any of the Armed Forces.

On the other hand, the House bill on defense reorganization would have authorized the President or the Secretary of Defense to direct that the na-

tional military chain of command runs to the unified and specified combatant commanders through the JCS Chairman.

I would like to ask Senator GOLDWATER to explain how the conference committee resolved the differences in these two provisions.

Mr. GOLDWATER. I would be happy to respond to my distinguished colleague. The Senate conferees were able to convince their House counterparts to recede to the Senate position on the chain of command and the role of the chairman in transmitting communications. Other than two technical changes, the only change to the Senate provision was to authorize the President to assign duties to the chairman to assist the President and the Secretary of Defense in performing their command function.

Mr. LEVIN. I appreciate that explanation. In light of my longstanding concern over the role of the chairman in the chain of command, I am pleased that the Senate position on this issue prevailed in conference.

To further clarify this conference action, could Senator GOLDWATER explain the expectations of the conferees for the manner in which these new statutory authorities should be exercised?

Mr. GOLDWATER. The conference report authorizes the President to take two actions. First, he may direct that communications to and from the unified and specified combatant commanders be transmitted through the JCS Chairman. Second, he may assign duties to the chairman to assist the President and the Secretary of Defense in performing their command function.

Should communications run through the JCS Chairman, the orders that come from the chairman must be initiated by, authorized by, and in the name of the President or the Secretary of Defense. Even if the President should exercise these authorities, the conferees intend that the JCS Chairman would not be part of the chain of command, and the chain of command would not run through the JCS Chairman. The conferees determined that the role of the JCS Chairman regarding operational matters must be carefully prescribed in order to ensure the absolute and unquestioned integrity of the fundamental principle of civilian control of the military.

Mr. LEVIN. Again, Mr. President, I would like to thank the chairman of the Armed Services Committee for his helpful remarks.

On a related matter, the Senate bill on defense reorganization also would have ended the term of the JCS Chairman not later than 6 months after a new President takes office. Like the other provisions that Senator GOLDWATER and I have already discussed, this provision was intended to guarantee strong civilian control of a more influential Chairman of the Joint Chiefs of Staff. It would have given a newly elected President an automatic opportunity to release or retain the military officer who will serve as his principal military adviser.

This Senate provision was dropped in conference in favor of a House provision that specifies that, if a chairman did not complete his term, his successor would serve for the remainder of the unexpired term before being reappointed or replaced. Combined with beginning the chairman's term on October 1 of odd-numbered years, this conference agreement, in effect, reaches the same goal as the original Senate provision. A President will always be able to appoint a new chairman or reappoint the incumbent no later than October 1 of his first year in office.

Could Senator GOLDWATER confirm my understanding of this conference decision?

Mr. GOLDWATER. The Senator's understanding of this provision of the conference report is correct.

Mr. LEVIN. Mr. President, I am grateful to Senator GOLDWATER for his cooperation and patience in explaining these important provisions of the conference report pending before the Senate today.

Mr. GOLDWATER. Mr. President, there being no other amendments, I ask that the question be put on the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. GOLDWATER. I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

Mr. GOLDWATER. Mr. President, I thank the Chair. I yield the floor.

Mr. EXON. 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.

□ 1910

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

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

Mr. SARBANES. Mr. President, I ask unanimous consent to address the Senate as if in executive session, so that I might speak on the nomination of William Rehnquist to be Chief Justice of the United States.

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

NOMINATION OF WILLIAM H. REHNQUIST TO BE CHIEF JUSTICE OF THE UNITED STATES

Mr. SARBANES. Mr. President, I rise to speak to the nomination by the President of the United States of William Rehnquist, an Associate Justice of the Supreme Court, to be the Chief Justice of the United States.

Mr. President, as many of our colleagues have stated in the course of the debate on this nomination, this is perhaps as important a responsibility as any that the Senate is called upon to discharge, certainly as important a responsibility as we are called upon to discharge with respect to nominations to high Federal office.

I say this because of the special and unique place which the Supreme Court occupies in our constitutional system of Government. In fact as a democracy we have carved out a role for the Supreme Court which in many respects runs directly counter to democratic theory.

Upon mature reflection, however, I think the vast majority in the country recognize that a written constitution, including especially within it the Bill of Rights, the protection of individual rights from unbridled Government power, is fundamental to a system of free self-government, and that the complex system of checks and balances established under our Constitution has served our country well. It has provided flexibility to develop and evolve under changing circumstances, hence the 14th amendment adopted after the Civil War provided the means whereby we extended to minorities and women over time their citizenship rights and made them an integral part of our system of Government, central participants in the American experience, an essential part of American democracy.

So the Court has a unique place in our tripartite system of Government, and it is therefore exceedingly important that the Senate review carefully, very carefully, nominees to the Court and in particular the nomination of a person to be the Chief Justice. A nomination to be not the Chief Justice of the Supreme Court but as the Constitution says the Chief Justice of the United States, a position as important and powerful and as exalted as any under our constitutional system with the possible exception of the Presidency itself.

Now, in considering nominations to the Court, I do not accept the argument that a nominee is entitled to confirmation simply because he is the President's choice. I am prepared to recognize a presumption in favor of a Presidential nomination with respect to nominees to the executive branch of the Government, where the responsibility of the nominee will be to assist the President in the performance of

his executive duties and in the formulation of his administration's program.

But the situation is very different when we are talking about the third independent branch of Government, the judiciary, appointed for life with responsibilities to function as a separate, independent branch of our constitutional system of Government. In such instance it seems to me that the Senate is called upon to make much more of an original judgment with respect to the nominee—to regard the President's nomination as representing the judgment of the President as to who should go on the Court and to accord it respect as representing the decision of a coequal branch of Government, but then to press beyond that to make to a significant degree an independent Senate judgment representing the legislative branch of our national Government.

In fact, the constitutional fathers at the convention in Philadelphia in 1787 even considered whether judges should be selected by the Senate, a proposal which James Madison favored, and in the Virginia plan it was proposed to give sole authority to the Congress with respect to the judiciary.

I have engaged in this discussion on how we should think about nominations because I am becoming increasingly concerned about what I perceive to be the acceptance in this body of a nonindictable, noncertifiable standard for approving nominations by the President, including even nominations to the judiciary. What I mean by a nonindictable, noncertifiable standard is that people come along and say, "He hasn't been indicted for a crime and he hasn't been certified in terms of his mental stability, or instability, and therefore in the absence of finding that kind of disqualification, the nominee ought to be confirmed."

It seems to me that the question ought not to be why a nominee should not hold high public office. The question ought to be why a nominee should hold public office. In other words, what is it about their character and intellect, their ability and integrity, their record which would lead one to conclude that, indeed, they ought to hold high public office.

Now, in fact, I would extend that sort of questioning to nominees to the executive branch although, as I said, with a greater willingness to defer to the President's judgment since there it is people who are going to help him to execute the responsibilities of the executive branch of our Government. When it comes to the judiciary, we are talking about a wholly separate independent branch of Government, the third branch of Government. It seems to me the responsibility of the Senate is to take the President's nomination as the initiative by which the nominee comes to us to recognize that it represents the President's judgment, and then to proceed from there in order to make our own judgment with respect to whether we think the national interest will be served by having this person confirmed for high office.

□ 1920

I have indicated that in this process of examination, the Chief Justice holds a unique place. As the Society of American Law Teachers has stated in a letter to Members of the Senate:

> The office of Chief Justice is unique in our constitutional government. Only 15 citizens have served this country in that capacity. A Chief Justice must embody the spirit of our highest aspirations for honest, impartial judicial conduct.

Only 15 persons in our Nation's history have served in the office of Chief Justice of the United States. There is no other political office of consequence that has had so few occupants in the course of our Nation's history.

Now let me turn to some aspects of the Rehnquist record.

First of all, it is interesting in considering Mr. Rehnquist that in the 1971 hearing, to note that matters were raised which were never in a sense fully resolved, and to some extent the same thing is happening again.

I intend to vote against the cloture motion. In my view, there are still additional aspects of the Rehnquist record that need to be developed and examined, just as I believe there were in 1971.

First of all, Mr. President, we have the very disturbing question of the Justice Jackson memorandum. This came up in the previous confirmation hearings for Mr. Rehnquist. That memorandum came to light in 1971, at the beginning of the final week of the Senate debate on the Rehnquist nomination to be an Associate Justice of the Supreme Court.

Newsweek had printed a memorandum written by Mr. Rehnquist in the fall of 1952, when he was a law clerk for Justice Robert Jackson, a memorandum entitled "A Random Thought on the Segregation Cases." In that memorandum, it was argued that the Court should not intervene to end school segregation by overturning the decision of Plessy versus Ferguson, the 1896 decision of the Supreme Court that upheld racial segregation. That memorandum concluded:

> I realize that it is an unpopular and unhumanitarian position for which I have been excoriated by liberal colleagues, but I think Plessy v. Ferguson was right and should be reaffirmed.

I want to repeat the concluding sentence of that memo:

> I realize that it is an unpopular and unhumanitarian position for which I have been excoriated by liberal colleagues, but I think Plessy v. Ferguson was right and should be reaffirmed.

At that time, the hearing was not reopened and the memo was not carefully probed. But on December 8, Mr. Rehnquist wrote a letter to Senator Eastland, the chairman of the Judiciary Committee, in which Mr. Rehnquist said that the views expressed in the memo were not his own but, rather, were prepared as a "statement of Justice Jackson's tentative views, for his own use at conference," prepared at Justice Jackson's request.

In other words, he argued that the memo did not represent his views but was written to represent Justice Jackson's tentative views, at his request.

Mr. President, simply reading the memo makes that interpretation of it extremely difficult to come by. In fact, in my view, it is a disingenuous explanation of the memorandum.

Justice Jackson's long-time secretary, Mrs. Elsie Douglas, was obviously quite exercised about this. She wrote a letter to one of our colleagues on this matter in August of this year, in which she said, "I have been following the proceedings on the confirmation of Justice William Rehnquist for Chief Justice." I am now quoting from the letter of Mrs. Douglas, Justice Jackson's long-time secretary. She wrote:

> I have been following the proceedings on the confirmation of Justice William Rehnquist for Chief Justice. It surprises me every time Justice Rehnquist repeats what he said in 1971, that the views expressed in his 1952 memorandum concerning the segregation case then before the Court were those of Justice Jackson, rather than his own views.
>
> As I said in 1971, when this question first came up, that is a smear of a great man, for whom I served as secretary for many years. Justice Jackson did not ask law clerks to express his views. He expressed his own and they expressed theirs. That is what happened in this instance.

Mr. President, if Mr. Rehnquist was writing it for Justice Jackson, the memo would hardly end with the sentence, "I realize that it is an unpopular and unhumanitarian position for which I have been excoriated by liberal colleagues, but I think Plessy versus Ferguson was right and should be reaffirmed." The person who had been excoriated by liberal colleagues was law clerk Rehnquist, in conversation with other clerks.

In fact, one of the clerks, Donald Cronson, recently said in an interview in the Washington Post, "Unquestionably, in our luncheon meetings with the clerks, he, Rehnquist, did defend the view that Plessy was right."

Mr. President, I have two problems here: One is with the position which law clerk Rehnquist took at the time on Plessy versus Ferguson. Of course that was not a totally isolated position at that time.

□ 1930

Nevertheless, it says something about Mr. Rehnquist's constitutional vision then, and I am very frank to say that I think the constitutional vision reflected then on Plessy versus Fergu-

son has continued to be reflected in his approach to the very basic question of civil rights in this country and of equal justice under law.

But further is the question with respect to attributing the memo—shifting the memo away from law clerk Rehnquist, as representing his views, and associating it directly with Justice Jackson, who, of course, was deceased by that time and could not offer his own explanation. I simply quote again from Mrs. Douglas when she says:

> It surprises me every time Justice Rehnquist repeats what he said in 1971, that the views expressed in his 1952 memorandum concerning the segregation case then before the Court were those of Justice Jackson rather than his own views. As I said in 1971 when this question first came up, that is a smear of a great man for whom I served as secretary for many years. Justice Jackson did not ask law clerks to express his views. He expressed his own and they expressed theirs. That is what happened in this instance.

Mr. President, let me now turn to the ballot security program in which, by his own admission, Justice Rehnquist was involved in Arizona in 1960, 1962, and 1964.

It was brought out in the 1971 hearings, at the very end of the hearing process, that Mr. Rehnquist had participated in his home State of Arizona in a so-called ballot security program which, to be very blunt about it, involved activities designed to intimidate minority voters.

Mr. Rehniquist denied those allegations when they were first made in 1971 and continues to do so, but there was not time in 1971 to investigate them fully.

This is a second instance in the prior confirmation of Mr. Rehnquist in which serious questions are raised but not fully addressed.

I have already made reference to the Justice Jackson memorandum, which came up actually after the nomination was on the floor of the Senate, and I now make reference to the ballot security program in Arizona which came up too late, simply because they would not reopen the hearing to look into it fully in 1971.

Now in the recent hearings Mr. Rehnquist again denied it but there was extensive testimony from a number of witnesses about his activity in this ballot box security program.

Even if one were to accept the Rehnquist assertion that he did not personally engage in challenging voters, and as I said there is extensive testimony to the contrary, he did not deny that he helped to formulate, implement, and orchestrate the Arizona Ballot Security Program, a program, as I have said, whose end result was really to intimidate voters at the polling place and particularly minority voters.

Now similar programs of intimidation continue to take place. They occurred in New Jersey in 1981. They occurred in my own State of Maryland. They occurred in Texas and that came up before when we considered another nominee to the Federal bench.

I raise this to underscore again Justice Rehnquist's approach to the most fundamental right in our democratic system, and that is the right to vote.

It also reflects, of course, since we are talking essentially about minority voters, a continuing insensitivity to the inclusion of minorities in the operation of our democratic system, an insensitivity reflected as I have already indicated by Mr. Rehnquist when he was law clerk to Justice Jackson beginning back in 1952. The same attitude which marked that memo in 1952 with respect to Plessy versus Ferguson, was reflected in the early 1960's in this so-called ballot security program in Arizona.

There were witnesses who testified that they actually saw Mr. Rehnquist at the polling place challenging voters. Rehnquist denied that but admitted that he had been part of developing, formulating, and implementing the program. In fact, he was designated in 1960 as cochairman of the ballot security program. In fact, he was designated in 1960 as cochairman of the ballot security program. He was involved in teaching challengers the procedures they were to use and in 1964 he was chairman of the ballot security program.

So there is this whole program of voter intimidation and we have seen it continue to take place unfortunately in various parts of the country. The remedy obviously to ensure fair elections is to proceed through the mechanism established in each State and locality to guarantee fair elections, usually an election board that is charged with the responsibilities, and not to undertake to engage in a separate so-called ballot security program which results in the intimidation of voters.

Now, third, Mr. President, in the current hearings, another matter has come up, and this is somewhat reminiscent of what occurred in the two previous cases in 1971, and that is a matter which has not been fully answered before we are called upon to act on the nomination. It involves claims of a Mr. Harold Cornell concerning allegedly inappropriate conduct of Justice Rehnquist in his capacity as a private attorney—specifically, a trust drawn up for Mr. Cornell, who was Mr. Rehnquist's brother-in-law. It raises the question about whether Mr. Rehnquist was under some obligation to disclose the existence of the trust to his brother-in-law given the financial circumstance which Mr. Cornell encountered.

Mr. President, I am not arguing that Mr. Cornell's allegations upon investigation would be substantiated or would be found to have merit. I simply do not know the answer to that question. But four of my colleagues at the end of August wrote to the chairman of the Judiciary Committee asking him to have the FBI look into a number of issues involving Mr. Cornell.

It is my understanding that was never done, that the requests made in their letter were not complied with and therefore the questions raised remain outstanding.

I ask unanimous consent to print that letter at the conclusion of my remarks. It is a letter from Senators METZENBAUM, CRANSTON, KENNEDY, and SIMON to Chairman THURMOND of the Senate Committee on the Judiciary.

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

(See exhibit 1.)

□ 1940

Mr. SARBANES. I thank the Chair.

There are lawyers concerned with the question of legal ethics who have expressed the view that Mr. Rehnquist did not meet his obligation in this situation. I am very frank to tell you that I think the Senate ought to know the answer to this issue before it approves Justice Rehnquist to be the Chief Justice of the United States.

This is a matter which, if you were a practicing attorney in any town or village or city in America today, and this question were brought up, would be considered serious. It would be a matter that would have to be looked into and investigated because it would go to the very question of your responsibilities and obligation as an attorney and to the question of professional legal ethics.

It seems to me, very frankly, remiss on the part of the committee that they did not thoroughly examine this matter and, if there is nothing there, put it to rest. It should not have been brushed aside, just as the Jackson memo should not have been brushed aside in 1971 and just as the allegations with respect to the ballot security program should not have been brushed aside in 1971.

Mr. President, I want to turn to a matter that I regard as even more serious than the ones I have made reference to thus far and that involves the decision of Justice Rehnquist in 1972 not to recuse himself in the case of Laird versus Tatum.

Laird versus Tatum was a case that came up soon after Justice Rehnquist became a member of the Court. In that case, the plaintiffs had alleged that the Army and the Department of Defense had established a wide-ranging program of surveillance and infiltration of law-abiding domestic organizations, and that they maintained the information in computerized data banks and widely disseminated their intelligence reports to Federal, State, and local civilian agencies as well as

military offices. The plaintiffs claim that they were targets of the military surveillance program and that the surveillance program violated the first amendment.

The question was whether they had the right to litigate this matter, whether it was justiciable. And that case was working its way up through our court system because, if they had the right to litigate it, if it were justiciable, then they could undertake discovery, they could undertake in effect to find out what it was in every dimension that the Government was doing.

The appeals court held that it was justiciable, that they did have the right to bring suit and the case went up to the Supreme Court. The plaintiffs asked that Justice Rehnquist recuse himself because of some testimony he had given before Senator Ervin. Justice Rehnquist refused to do that, sat on the case, and the case was decided on a 5-to-4 vote against the plaintiffs—a 5-to-4 vote. In other words, had Justice Rehnquist recused himself, the Court would have divided 4 to 4 and the appellate decision would have stood and that decision was that the plaintiffs could go ahead with the case and they would have gone back to the district court level and proceeded with the case.

Prof. Geoffrey Hazard of the Yale Law School, perhaps our Nation's preeminent authority on legal ethics, has written a letter to my colleague from Maryland which has been made generally available to Members of the Senate and included in the RECORD. Professor Hazard, from 1969 to 1972, served as consultant to the ABA Special Committee on Standards of Judicial Conduct, during which the committee examined the canons of judicial ethics and produced the new code of judicial conduct adopted in 1972.

Later Professor Hazard served as reporter for the ABA committee that revised the standards of legal ethics. He has taught legal ethics for several years and has published books and articles on legal and judicial ethics.

Let me simply quote from the Hazard letter, because I think it sets out this problem very clearly. He acknowledges being asked for his opinion about the propriety of the conduct of Justice William Rehnquist in regard to Laird versus Tatum.

The essential facts as I have been given them are as follows: *Laird* v. *Tatum* was a suit to enjoin a certain Government information gathering and surveillance program that was adopted in 1969. The case was brought to the Supreme Court by the Government's appeal from a decision of the Court of Appeals, which had held that the lawsuit was maintainable. The effect of the Court of Appeals' decision was that the plaintiffs could have proceeded to the discovery stage and perhaps then on to the merits. The Supreme Court reversed, holding that the plaintiffs lacked standing and hence that the suit should be dismissed without going into the merits. Justice Rehnquist participated in that decision and, since the decision was 5-4, cast a vote necessary to the result.

When *Laird* v. *Tatum* came before the Supreme Court, a motion to recuse Justice Rehnquist was filed by the plaintiffs. They argued that Justice Rehnquist was disqualified by reason of his prior relationship to the case, in that he had expressed opinions on issues in the case and that he had presented the Justice Department's position before a Senate Committee hearing. Responding to the motion, Justice Rehnquist rejected these contentions . . .

In recent testimony before the Senate concerning his participation in the transaction out of which *Laird* v. *Tatum* arose, Justice Rehnquist stated, "I have no recollection of any participation in the formulation of policy on use of the military to conduct surveillance or collect intelligence concerning domestic civilian activities."

□ 1950

In fact, in answers put to him by Senator MATHIAS, written questions after the close of these hearings—after the close of these hearings—we have the following responses: "Question: What was your personal role in the preparation of this document?" This is a draft directive concerning the involvement of the government in such activities. "Answer: I have no recollection of my personal role in the preparation of this document."

Question: With particular regard to the portion of the document concerning civil disturbance planning and intelligence operations prior to outbreak, what was your personal role in its preparation?

Answer: I have no recollection of my personal role in the preparation of this document."

Senator MATHIAS then asked Justice Rehnquist about Robert Jordan's testimony (Robert Jordan was the general counsel of the Army at the time the surveillance policy was formulated because in testimony he made it appear that Mr. Rehnquist had a relationship to the surveillance program beyond that disclosed in his opinion in Laird versus Tatum. According to that evidence, the surveillance policy was formulated in the early months of 1969. At that time, Mr. Rehnquist was assistant attorney general in charge of the Office of Legal Counsel. On behalf of the Justice Department that office, the office which Mr. Rehnquist headed, negotiated with the Army in formulating the surveillance policy. The negotiations were extensive, and obviously the circumstances stronly suggest that Mr. Rehnquist was personally and substantially involved in them. This was, after all, a very important subject. The Office of the Legal Counsel is small in size, and actually Mr. Rehnquist himself sent a key transmittal memorandum.

The negotiations between the Office of Legal Counsel and the Department of Justice and the Army resulted in a policy statement that was adopted by President Nixon, and which in turn was the basis of the Government action complained of in the litigation in Laird versus Tatum.

In light of the above development of the facts, the question Senator MATHIAS also asked Justice Rehnquist about Robert Jordan's 1974 testimony on the role of the Army in domestic surveillance becomes particularly relevant. He asked whether language authorizing a domestic role for military intelligence first "* * * appeared in the March 25 draft prepared by your office and transmitted over your signature." Justice Rehnquist answered: "I have no recollection how the language referred to first appeared in the draft."

Senator MATHIAS also asked whether Justice Rehnquist "* * * knew of or participated in the formulation of policy on the use of military to conduct domestic civilian surveillance." Justice Rehnquist answered: "I have no recollection of any participation in the formulation of policy on use of the military to conduct surveillance or collect intelligence concerning domestic civilian activities."

"I have no recollection." "I have no recollection." I have no recollection." "I have no recollection." repeatedly marks Mr. Rehnquist's response on this important issue.

Mr. President, let me just quote what Professor Hazard says when he comments on the facts that have been set out above, and the whole question, whether Justice Rehnquist should have recused himself in the litigation of Laird versus Tatum. I am now quoting from Professor Hazard's letter.

I ask unanimous consent that the entire letter be included at the end of my testimony.

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

(See exhibit No. 2.)

Mr. SARBANES [reading].

First, in my opinion Justice Rehnquist's position as head of the Office of Legal Counsel constituted grounds of disqualification from participating in *Lard* v. *Tatum*, unless the significance of that relationship were overcome by additional evidence showing that he in fact was not involved in the matter it was in the office. In a matter of such substance and complexity as the surveillance policy, it is implausible that the head of the government law office responsible for development of its legal aspects would not be personally involved in considereable detail concerning the facts and issues going into the policy and its formulation. On that basis, Mr. Rehnquist was the responsible counsel in the matter in question, and as well a potential witness concerning any factual issues regarding the policy. Each of these two relationships is independently a ground for disqualification.

A lawyer directly involved in a transaction cannot properly later sit as a judge in a case in which that transaction is in dispute. As stated in the article by Mr. Frank, which Mr. Justice Rehnquist cited—

And this was at the time of his opinion on this matter in 1972:

Justices disqualify in Government cases when they have been indirectly involved in some fashion in the particular matter, and not otherwise.

Professor Hazard goes on to say:

Mr. Rehnquist's relationship to the transaction was essentially the same as if he had been involved as legal counsel for the Internal Revenue Service in working up a tax investigation program and then sat as judge in a case challenging the program, or while in the Justice Department passed upon corporate merger or electoral districting policy and then sat in a case involving the policy.

In his opinion in *Laird* v. *Tatum*, Justice Rehnquist stated that "I never participated, either of record or in any advisory capacity . . . in the government's conduct of the case of *Laird* v. *Tatum*."

Listen very carefully to that. What Justice Rehnquist said when he refused to recuse himself was that he "* * * never participated, either of record or in any advisory capacity * * * in the Government's conduct of the case." But as Professor Hazard goes on to point out, "* * * that statement is irrelevant if he was counsel in the transaction out of which the case arose, a basis of disqualification that was well recognized then as now."

In other words, it does not matter that Mr. Rehnquist was not of counsel in the case of Laird versus Tatum or did not serve in an advisory capacity in the Government's conduct of that case. That case was challenging a Government policy which Mr. Rehnquist had been involved in formulating. That was the challenge. The fact that Mr. Rehnquist was not involved in the specific case itself is not enough.

□ 2000

Having developed the policy within the Government as an attorney, he should have recused himself when the policy was being challenged.

As Professor Hazard stated:

Mr. Rehnquist's relationship to the transaction was essentially the same as if he had been involved as legal counsel for the Internal Revenue Service in working up a tax investigation program and then sat as judge in a case challenging the program, or while in the Justice Department, passed upon corporate merger or an electoral districting policy and then sat in a case involving the policy.

He then goes on to say:

Justice Rehnquist appears also disqualified because he was a potential witness, at least at the discovery stage in *Laird* v. *Tatum*.

In his testimony before the Senate, he denied having knowledge of "evidentiary facts." The standard relevant to the question is not evidentiary facts but facts relating to the subject matter of the litigation.

Second, when the case of *Laird* v. *Tatum* was before the Supreme Court, it was Justice Rehnquist's responsibility on his own initiative to address and resolve all issues concerning his disqualification. It was not the parties' responsibility to raise such matters, although they had a right to do so if they had access to the necessary facts. In his opinion in *Laird* v. *Tatum*, Justice Rehnquist referred, first, to the fact that he had not been counsel in the "case," i.e., the litigation that ensued after his involvement in the transaction—

The transaction being the formulation of the policy—

and second to his statements in public and as spokesman for the Justice Department before the Senate. Thus, Justice Rehnquist addressed only his publicly known involvements and omitted any reference to an involvement, as counsel in the transaction, that was at least as significant but which was not publicly known.

Professor Hazard goes on to say:

It was his duty to resolve both the publicly known possible bases of disqualification and those arising from an involvement that was confidential. Indeed, it is even more vital to fairness in adjudication that a judge resolve grounds of recusal which arise from confidential facts, for the parties ordinarly are helpless to raise such grounds.

Justice Rehnquist's addressing the publicly known grounds of recusal, but omitting reference to the confidential ones, would have been proper only if he had forgotten that his office in the Justice Department handled the surveillance policy negotiations, and that he himself was involved to a substantial extent. If when writing his opinion in *Laird* v. *Tatum*, Justice Rehnquist had not forgotten his involvement in the surveillance policy negotiations, than his opinion consituted a misrepresentation to the parties and to his colleagues on the Supreme Court. In such a matter, a lawyer or judge is expected to give the whole truth.

Finally, Justice Rehnquist has a duty of candor to the Senate in answering questions concerning *Laird* v. *Tatum*. The Senate hearing was an evidentiary inquiry into his qualifications for the office of Chief Justice. In making statements before such a tribunal, whether sworn or not, a lawyer or judge has an obligation to be fully truthful. Justice Rehnquist complied with duty only if his statement is accepted that he had "no recollection of any participation in the formulation of policy on the use of the military to conduct surveillance." Whether that statement should be accepted is a matter of judgment. It was made by a lawyer of the highest intelligence concerning sensitive state policy over which his office had direct responsibility early in his service in Government, and about which he had been asked to search his recollection on three official occasions.

Mr. President, Mr. Rehnquist was an Assistant Attorney General and head of the Office of Legal Counsel. The question of surveillance was not a small matter. It was a major matter involving negotiations between the Department of Justice and the Department of the Army. It was a matter important enough to be carried to the President for his approval. There is in existence a memorandum dealing with this matter by Justice Rehnquist, over his signature.

Mr. President, in my judgment Justice Rehnquist's involvement should have been revealed to plaintiffs in the Laird versus Tatum matter and Justice Rehnquist should have recused himself. This is no small matter, particularly when one is talking about the nominee to be Chief Justice of the United States.

I am very frank to say to you that I think in light of Justice Rehnquist's answers he really should come back before the committee so that the matter could be addressed further; so should the other matters to which I have alluded. Two of them were moved quickly in 1971—the Jackson memo, and the ballot box security program, both of which the committee had as a consequence to go back and examine carefully this time, and in which they found upon more thorough examination, very sharp differences in Mr. Rehnquist's conduct. The same deficiency now exists, I think, with respect to the Cornell matter and the matter of Laird versus Tatum.

Finally, Mr. President, I want to turn to a broader question. That is the breadth and depth, or lack thereof, of Justice Rehnquist's constitutional vision.

He himself in the Harvard Law Review in 1959 wrote:

Until the Senate restores its practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him, it will have a hard time convincing doubters that it could make effective use of any additional part in the selection process.

In looking at judicial philosophy, I think it is important to approach it in a broad and not a specific sense. I am not really concerned with specific cases except to the extent that they establish a pattern which, in turn, reveals a broad and consistent philosophy, a philosophy which raises important questions about the future direction and development of our society.

□ 2010

An editorial in the Baltimore Sun on the 11th of September said:

But the record Justice Rehnquist has compiled on the Supreme Court strongly suggests that this is a case of a great intellect in the service of a closed and narrow mind, one not functioning within the very broad boundaries of the conservative consensus. He has been the leading dissenter, often alone, from even this moderately conservative Court. The inappropriateness of his elevation to the highly symbolic office of Chief Justice is best seen in his votes in the civil rights area.

It goes on to say in closing:

After careful consideration of the record that unfolded in the Senate Judiciary Committee hearing this summer, we believe that Senators concerned about the direction of the Court in the Nation now and into the 21st century should vote against the confirmation of Justice Rehnquist as Chief Justice.

Mr. President, this nomination is a very important matter and it does not rest, as I said, on any one particular decision; in fact, I do not believe that one ought to undertake, as it were, a litmus test list of decisions: Here are 10 important decisions, how did you

rule on them? I differed with you on them, therefore, I am going to vote against you.

What one has to do is look at the decisions in their totality to see what they reflect about a judicial philosophy, to form some idea of where this nominee stands with respect to his colleagues on the Court and what it reflects about his basic attitudes and about his constitutional vision.

As my very able colleague from Maine [Mr. MITCHELL] pointed out yesterday in speaking on this matter:

"He views the Court's role as being one of preserving the framework within which the articles of the Constitution can be used to sustain majority rule"—in other words, an approach to the machinery of Government—"but in which the amendments to the Constitution—most notably the first 10 which make up what we know as the Bill of Rights—do not figure prominently."

In fact, as my colleague from Maine points out, Mr. Rehnquist argues that the Court should give great deference to legislatures, especially State legislatures.

Of course, this theory if not developed to recognize the role of the Supreme Court in protecting individual rights would render the Bill of Rights, the first 10 amendments, subsequently expanded through the 14th amendment, secondary.

The Constitution would never have been ratified but for the assurance that a bill of rights was going to be adopted. It was an essential issue at a number of the ratification conventions in the States subsequent to the Constitutional Convention in Philadelphia in the summer of 1787. The assurance of the Bill of Rights, now embodied as the first 10 amendments to our Constitution, was essential to the ratification of the Constitution.

As Senator MITCHELL went on to point out:

But even when the question of Justice Rehnquist's view of the Bill of Rights is set aside, his claimed deference to majority opinion that is expressed in statutory law—

a deference which he has consistently repeated as an operating principle of his constitutional interpretation—

does not lead him to defer to that majority, acting through their elected representatives in Congress, when the subject is civil rights.

This is very important to understand. Justice Rehnquist takes the general proposition in interpreting the Constitution, he is going to attach special weight, to defer to majority opinion as expressed in statute. If it is asserted therefore, that the statute is in conflict with the Constitution—an assertion frequently made by individuals asserting a right guaranteed to them by the Bill of Rights or the 14th amendment—Justice Rehnquist is going to be predisposed to the approach that affirms the statute against the claim that it is invalid because of conflict with the Constitution.

Many see this as a limited, pinched view of the Constitution when it comes to the protection of individual rights. But when you move beyond that question to the question of deferring to statutory laws expressed by the majority to protect individual rights, then Justice Rehnquist no longer defers to statute.

Careful analysis has shown that since 1971, the Supreme Court has disagreed, to some extent, on the application of Federal civil rights statutes in 83 specific cases. According to Justice Rehnquist's own carefully articulated standards, such statutes—the civil rights statutes—embody the majority will of the people duly expressed through their legislature. Yet he does not attach to them the same weight he attaches to noncivil rights statutes, in spite of his repeated avowals of the necessity of deferring to the judgments of the majority as expressed in statutory law—an assertion he makes repeatedly statutory law is asserted to be in conflict with a constitutional provision. Ordinarily when an individual comes before him and says, this statute is unconstitutional, I am being denied an individual right, Justice Rehnquist says, "No, I am strongly for upholding statutes, they represent the opinion of the majority; therefore, I am not going to accept your challenge to this statute under the Constitution; that is one of my major operating principles."

□ 2020

But then, despite this verbal deference to the judgment of the majority expressed in statutory law, in 80 of the 83 civil rights cases in which statutory law was on the side of the individual, in terms of asserting his or her rights, Justice Rehnquist joined in or wrote the dissenting opinion which most severely curtailed the exercise of the legislagive majority's powers. In about half of those cases the Court actually ruled with the individual asserting his civil rights. Justice Rehnquist—I want to underscore this point—in 80 of the 83 cases joined in or wrote the dissenting opinion which most severely curtailed the exercise of the legislative majority's powers. "In other words, his view," as my colleague, Senator MITCHELL, said, "is that we must defer to the will of the majority as expressed by legislative action—except when civil rights are involved."

Mr. President, engraved in stone over the entrance to the Supreme Court directly across from the Senate are four words: "Equal Justice Under Law." Any of us, if we stop for a moment to reflect, recognize that this principle lies at the very heart of our constitutional system. In my view, Justice Rehnquist's career, both before he went on the Court and in his opinions since going on the Court, reflect an insensitivity—more than insensitivity, a resistance—to this essential concept to such a degree that he ought not to be confirmed as Chief Justice of the United States.

This is not a minor question of judicial philosophy. This is central to one's constitutional vision for the Nation. This is not a matter of disagreement with a particular decision. After all, the Court has to make hard judgments. Justices differ amongst themselves. But this is a question of the consistent pattern which has existed from Mr. Rehnquist's very early, very early career.

What we have here is judicial implacability. We have, as was stated, an intellect in the service of a closed and narrow mind, not functioning even within the very broad boundaries of a conservative consensus.

I do not believe that this record—a record both of insensitivity to important questions of candor and integrity, and a lack of commitment at the very heart of one's judicial philosophy to the principle "equal justice under law" emblazoned above the Supreme Court, justifies confirmation as Chief Justice. On the contrary this record argues persuasively against confirmation. Therefore, I will vote against the cloture motion in order that some of these matters may be further explored, and intend to vote against Justice Rehnquist's confirmation as Chief Justice if we reach that point.

Mr. President, I ask unanimous consent that some newspaper editorials on this nomination be included in the RECORD.

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

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

THE REHNQUIST NOMINATION

Fourteen years ago, when William Rehnquist was nominated to be an associate justice of the Supreme Court, this newspaper opposed his confirmation because of the restrictive, almost cold-blooded view of the role of government that suffused his writings and public statements in the fundamental fields of civil rights and civil liberties. The intervening years and the opinions Justice Rehnquist has written on the Supreme Court have only reinforced these misgivings. For many of the same reasons we set forth in 1972, we urge the Senate to reject his nomination to be chief justice.

We accept that in most cases there is a strong presumption in favor of a presidential nominee, especially when, as in this case, the chief executive has won an overwhelming electoral victory. But judicial appointments, which are for life and to an independent branch of government, should be held to a higher standard than executive positions. The standard must be highest of all for Supreme Court justices, whose views are not subject to appeal and who can stray from the precedents that they themselves help form. So, while it is clear that Justice Rehnquist is well qualified by intellect, edu-

cation and professional experience to assume this high office, and while he is a man of sufficient integrity and moral character—the hearings, in our judgment, did not prove otherwise—we believe that the doctrinaire quality of his understanding and application of the law renders him unacceptable for the office of chief justice.

It is not simple conservatism that gives us pause but something much more—an inflexible position on the role of the federal courts in American life and an unvarying refusal to look beyond the consequences of that philosophy to its impact on individual Americans. Justice Rehnquist is a forthright proponent of legislative over judicial decision-making and the prerogatives of states over the demands of the federal government. His opinions consistently adhere to this framework even when the result is both avoidable and devastating to individual liberties and social justice. It is not necessary to believe that Justice Rehnquist favors the results to which his decisions lead—tax-exempt status for segregated private schools, for example. It is enough that he will not bestir himself—not take advantage of the considerable discretion that the Constitution affords Supreme Court justices for precisely such occasions—to avoid the result. Where the statute does not expressly vindicate the rights of individuals neither will he. Nor would he have judges second-guess the decisions of democratically elected state legislatures on constitutional grounds, even if these mean a continuation of second-class citizenship for some groups or an encroachment on the privacy of individuals. Justice Rehnquist is not always alone in these opinions, but he is unvarying.

What seems to be missing from his work is an acceptance of the court's responsibility to protect individuals from the majority, and sometimes the majority from itself. Some of the finest moments in the high court's history have occurred when justices have taken a stand, on constitutional grounds, against the prevalent views in legislatures. School desegregation, one-man one-vote, miscegenation laws and compulsory prayer in the public schools are only a few examples. It is unlikely that Justice Rehnquist would have been in the majority in these cases—decided before his time on the court—even to vindicate the constitutional rights of those who suffered because of discriminatory laws.

But the pattern goes beyond this. The Leadership Conference on Civil Rights made a study of Justice Rehnquist's opinions over the years. It found 83 cases involving civil rights that (1) were statutory, not constitutional, involving interpretation not of the intent of the Founders but the will of Congress, and (2) were not unanimously decided; they were close calls. Mr. Rehnquist, the conference reported, voted against the civil rights complainant in 80 of these 83 cases. In two of the remaining three, he voted for a narrower result than the majority. That is a record, not of conservative philosophy, but judicial implacability.

The other nominee before the Senate, Judge Antonin Scalia, of the Court of Appeals for the D.C. Circuit, lacks such a record at this point in his career. That is what distinguishes these nominations. Judge Scalia is a conservative jurist whose opinions, especially in cases involving the First Amendment, also cause us considerable concern. But he does not have a history of inflexibility that would lead us to the same conclusions that we have reached on Justice Rehnquist. After a review of his work, all 18 members of the Senate Judiciary Committee voted to recommend him for confirmation, and we cannot disagree.

If he is not confirmed as chief justice, Mr. Rehnquist will remain on the bench as an associate justice for as long as he chooses. He will undoubtedly continue to decide cases in the same manner, and he will have a vote equal to that of the chief justice, whoever that might be. And for the time being Judge Scalia will stay where he is. We are aware that the chances of the Senate's refusing to confirm Justice Rehnquist are small. Nevertheless, a vote to confirm him in the higher office seems to us to be a vote of confidence in his approach to the law and the Constitution. Our deep disagreement with this approach and its results leads us to urge a vote against him.

[From the New York Times, Sept. 11, 1986]

VALID DOUBTS ABOUT JUSTICE REHNQUIST

President Reagan has earned the right to try to shift the philosophy of the Supreme Court. But the Senate has an equal right to insist on high-quality appointments—particularly for Chief Justice, the noblest position in American law. The debate that begins today on the nomination of Justice William Rehnquist will properly turn on concerns beyond the mundanely partisan. The Senate's own investigation has raised valid questions about the nominee's credibility and convictions.

Justice Rehnquist has served on the high court for 15 years and there is no doubt about his legal ability or agreeable personality. But brilliance and courtesy are not enough. The Supreme Court's center seat demands a symbol of impartiality, fairness and integrity that resoundingly affirms America's commitment to equal justice. At critical junctures in his confirmation hearings, when senators sought to explore Justice Rehnquist's beliefs and past actions, he stonewalled with failures to remember and unpersuasive explanations of embarrassing facts.

As Assistant Attorney General in 1971, Mr. Rehnquist defended the Nixon Administration in Senate hearings into the military's surveillance of civilian protesters of the war in Vietnam. He testified then that plaintiffs suing the Defense Department had no case, yet still voted as a Supreme Court Justice in 1972 to throw out their lawsuit. When Senator Charles Mathias recently asked what role the nominee played in formulating the surveillance policy, he said that he couldn't remember. Does the Senate believe that?

Justice Rehnquist also testified this summer that he favored from the start the Supreme Court's 1954 school desegregation decision. A memorandum to the contrary that he wrote as a law clerk in 1952, he said, was not really his opinion but that of the late Justice Robert Jackson. Does the Senate believe that? And how does that testimony square with a memorandum that surfaced only last week in which Assistant Attorney General Rehnquist urged a constitutional amendment that would have permitted widespread evasion of this decision?

Confronted with restrictive covenants on two of his homes, the nominee first said he had been unaware of them. Then he wrote to the Senate Judiciary Committee that he had found a letter in his file cautioning that his Vermont home could not be sold to "anyone of the Hebrew race." He said he "undoubtedly" read that letter when buying the property in 1974 but did not recall doing so. If the Senate believes that, what does this say of the sensitivity of a Supreme Court Justice?

Accused of harassing black and Hispanic voters in Phoenix during turbulent elections in the 1960's Justice Rehnquist has categorically denied over the years lodging even a legal challenge to any voter's qualifications. Yet a former Federal prosecutor has testified that he encountered Mr. Rehnquist in 1962 at a polling place where voters were registering complaints and that while denying impropriety, Mr. Rehnquist never denied having challenged persons attempting to vote. Can the Senate rest easy with this unresolved conflict?

Justice Rehnquist's unhappy record on matters of civil rights, civil liberties and judicial ethics is a legitimate concern. He has frustrated the Senate's inquiry with evasive and unconvincing replies. The Senate's pride and the serious task of passing a candidate for Chief Justice ought to make it demand more. This venerated post should not be conferred midst so much nagging doubt.

[From the Evening Sun, Sept. 15, 1986]

REJECT REHNQUIST

The word prejudice means to judge on the basis of instinct, emotion, and personal attitudes without regard to reason or evidence. We are all subject to this human frailty to some degree, but it is a pernicious and wholly unacceptable trait when it infects the men and women we appoint as society's neutral arbiters of disputes. For a judge to harbor prejudice toward a party before him is the equivalent of a doctor deliberately to worsen his patient's condition, or a lawyer secretly to represent the interest of his client's adversary, or a journalist to print a story he knows to be a lie. So in a sense a prejudiced judge is a contradiction in terms; he is not a judge at all, but rather a advocate with a hidden agenda who gives absolution to injustice in the name of justice.

Is William H. Rehnquist a prejudiced man? Unhappily, the totality of his record in public as well as private life suggests that he holds indifference and outright hostility to the great American tradition of equal justice for all. As a young Supreme Court law clerk 35 years ago he wrote a memorandum urging that segregated schools were perfectly legal, and everything he has written since then suggests that he still holds such notions—not only for blacks but also for women and others who have suffered legal disabilities.

We would like to believe that Rehnquist has been chastened by having his past laid out for public view, but we fear this is a vain hope. His is a deep-seated prejudice which is as fundamental as his gender or the color of his skin.

The edifice which houses the United States Supreme Court is emblazoned with four words which capture the spirit of the Constitution with a simplicity that approaches ultimate truth: "Equal Justice Under Law." The confirmation of Rehnquist as chief justice would make a mockery of those words; he should be rejected.

[From the Baltimore Sun, Sept. 11, 1986]

A JUSTICE'S PREDILECTIONS

In his pre-Supreme Court career, as a law clerk, as a Republican leader in Arizona, and as a legal adviser to the Nixon administration, William Rehnquist supported segregation, before and after the Brown vs. Board of Education decision of 1954 and the Civil Rights Act of 1964, and he almost certainly

approved of and perhaps engaged in polling place intimidation of minority group voters.

His defenders say this is irrelevant. The test of his fitness to be chief justice is how well he has done as an associate justice since 1972. But as Chief Justice Charles Evans Hughes once said to Associate Justice William Douglas, "You must remember * * * [that] at the Constitutional level at which we work 90 percent of any decision is emotional. The rational part of us supplies the reasons for supporting our predilections." So it is not enough for Mr. Rehnquist's supporters to praise his brilliant legal skills and mind, as revealed in his opinions since 1972. His predilections are important, too.

If it were just his predilections, we would give him the benefit of the doubt. Lawyerly advice from a clerk, counselor or partisan is not necessarily a good indication of one's true views. But the record Justice Rehnquist has compiled on the Supreme Court strongly suggests that this is a case of a great intellect in the service of a closed and narrow mind, one not functioning within even the very broad boundaries of the conservative consensus. He has been the leading dissenter, often alone, from even this moderately conservative court.

The inappropriateness of his elevation to the highly symbolic office of chief justice is best seen in his votes in the civil rights area. Mr. Rehnquist's defenders often say his anti-civil rights votes are a reflection of his pro-majoritarian constitutional philosophy. But the NAACP Legal Defense Fund has identified 83 cases since 1972 in which the Supreme Court has disagreed over the meaning of modern civil rights laws—acts of congressional majorities. In approximately half the cases, this conservative Supreme Court sided with the minorities, but in all but one of the 83 cases Justice Rehnquist interpreted the law unfavorably to the minorities.

Is that rationality at work, or predilection? We believe it is the latter. To honor such a mind-set and record with the highest judicial office in the land, as the head of the branch of government that best protects the constitutional and statutory rights of the nation's minorities, is an insult to those minorities and a repudiation of at least the last 32 years of Supreme Court history. This is a reactionary, not a conservative, nomination.

After careful consideration of the record that unfolded in the Senate Judiciary Committee hearings this summer, we believe that senators concerned about the direction of the court and the nation now and into the Twenty-First Century should vote against the confirmation of Justice Rehnquist as chief justice.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, August 26, 1986.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, Washington, DC.

DEAR STROM: As you know the committee has been made aware of claims by Harold Dickerson Cornell. Mr. Cornell asserts and has documentary evidence of instances of allegedly inappropriate conduct of Justice Rehnquist in his capacity as a private attorney prior to his confirmation as an Associate Justice of the Supreme Court.

A recent article in the New York Times, August 15, 1986, (attached), reports Justice Rehnquist as having drawn up a trust in 1961 to provide monetary benefits to Mr. Harold Dickerson Cornell during a prolonged illness. According to the report, the trust was drawn up at the request of Justice Rehnquist's father-in-law, Dr. Harold Davis Cornell. Mr. Cornell has alleged that Justice Rehnquist and other members of the family concealed the existence of the trust from him. As a result, Mr. Cornell alleges that he became poverty stricken during a period when he was suffering from the debilitating illness of multiple sclerosis. Further, Mr. Cornell claims that Justice Rehnquist knew about his dire financial condition, yet never disclosed the existence of the trust to him.

A number of legal scholars have stated that an attorney is obligated to disclose the existence of a trust under these circumstances. Consequently, if these allegations are true, they raise serious questions about Justice Rehnquist's ethical conduct as the attorney who drew up this trust.

We understand that the FBI conducted a limited investigation of this issue, but that a number of fundamental questions remain unanswered. We would appreciate your forwarding to the FBI our request that the following additional issues be resolved.

1. Was Mr. Cornell ever paid any benefits from the trust during the period before he became aware of it in 1982? What were the amounts and dates of any benefit payments?

2. Did Mr. Cornell's standard of living drop below the level specified in the trust for benefits to be paid during the period 1961–1982?

3. Did Justice Rehnquist become aware, either through conversations with Mr. Cornell or anyone else, or in any other way, of Mr. Cornell's financial condition during this period?

4. Did Justice Rehnquist take any steps to inform Mr. Cornell of his rights under the trust or to encourage the trustee to provide benefits to him from the trust?

5. Did Justice Rehnquist or members of his immediate family stand to gain financially if any of the trust benefits were not paid to Mr. Cornell?

6. Were any withdrawals made from the trust other than payments to Mr. Cornell? What were the amounts, dates and purposes of these withdrawals? Was Justice Rehnquist aware of any of these other withdrawals?

In view of the importance of this information to the Senate in viewing the nomination of Justice Rehnquist to be Chief Justice, we request that the FBI inform us of the results of this additional investigation within one week of its receipt of this letter.

Thank you for your assistance.

Sincerely,

PAT LEAHY.
HOWARD M. METZENBAUM.
PAUL SIMON.
ALAN CRANSTON.

EXHIBIT 2

YALE LAW SCHOOL,
401A YALE STATION,
New Haven, CT, September 8, 1986.

Senator CHARLES MATHIAS,
United States Senate, 387 Senate Russell Office Bldg., Washington, DC.

DEAR SENATOR MATHIAS: You have asked my opinion about the propriety of the conduct of Justice William Rehnquist in regard to *Laird* v. *Tatum*.

The essential facts as I have been given them are as follows: *Laird* v. *Tatum* was a suit to enjoin a certain Government information gathering and surveillance program that was adopted in 1969. The case was brought to the Supreme Court by the Government's appeal from a decision of the Court of Appeals, which had held that the lawsuit was maintainable. The effect of the Court of Appeals' decision was that the plaintiffs could have proceeded to the discovery stage and perhaps then on to the merits. The Supreme Court reversed, holding that the plaintiffs lacked standing and hence that the suit should be dismissed without going into the merits. Justice Rehnquist participated in that decision and, since the decision was 5–4, cast a vote necessary to the result.

When *Laird* v. *Tatum* came before the Supreme Court, a motion to rescue Justice Rehnquist was filed by the plaintiffs. They argued that Justice Rehnquist was disqualified by reason of his prior relationship to the case, in that he had expressed opinions on issues in the case and that he had presented the Justice Department's position before a Senate Committee hearing. Responding to the motion, Justice Rehnquist rejected these contentions as insufficient to require his disqualification. In doing so he relied extensively on the analysis in Frank, "Disqualification of Judges: In Support of the Bayh Bill," 35 Law & Contemp. Prob. 43 (1970), which in my opinion correctly summarized the law of disqualification as it then stood.

In recent testimony before the Senate concerning his participation in the transaction out of which *Laird* v. *Tatum* arose, Justice Rehnquist stated, "I have no recollection of any participation in the formulation of policy on use of the military to conduct surveillance or collect intelligence concerning domestic civilian activities." From other evidence, chiefly the testimony of Mr. Robert Jordan, General Counsel of the Army at the time that the surveillance policy was formulated, it appears that Mr. Rehnquist, as he then was, then a relationship to the surveillance program beyond that disclosed in his opinion in *Laird* v. *Tatum* or revealed in his testimony before the Senate last month. According to this evidence, the surveillance policy was formulated in the early months of 1969. At that time Mr. Rehnquist was Assistant Attorney General in charge of the Office of Legal Counsel. On behalf of the Justice Department that office negotiated with the Army in formulating the surveillance policy. The negotiations were extensive. The circumstances strongly suggest that Mr. Rehnquist was personally and substantially involved in them. These circumstances are that the subject was highly important, the office is small in size, and Mr. Rehnquist himself sent a key transmittal memorandum. The negotiations resulted in a policy statement that was then adopted by President Nixon, and which in turn was the basis of the government action complained of in the litigation in *Laird* v. *Tatum*.

First, in my opinion Justice Rehnquist's position as head of the Office of Legal Counsel constituted grounds of disqualification from participating in *Laird* v. *Tatum*, unless the significance of that relationship were overcome by additional evidence showing that he, in fact, was not involved in the matter while it was in the office. In a matter of such substance and complexity as the surveillance policy, it is implausible that the head of the government law office responsible for development of its legal aspects would not be personally involved in considerable detail concerning the facts and issues going into the policy and its formula-

tion. On that basis, Mr. Rehnquist was the responsible counsel in the matter in question, and as well a potential witness concerning any factual issues regarding the policy. Each of these two relationships is independently a ground for disqualification.

A lawyer directly involved in a transaction cannot properly later sit as a judge in a case in which that transaction is in dispute. As stated in the article by Mr. Frank which Justice Rehnquist cited: "Justices disqualify in Government cases when they have been directly involved in some fashion in the particular matter, and not otherwise." Mr. Rehnquist's relationship to the transaction was essentially the same as if he had been involved as legal counsel for the Internal Revenue Service in working up a tax investigation program and then sat as judge in a case challenging the program, or while in the Justice Department passed upon corporate merger or electoral districting policy and then sat in a case involving the policy.

In his opinion in *Laird* v. *Tatum*, Justice Rehnquist stated that "I never participated, either of record or in any advisory capacity . . . in the Government's conduct of the case of *Laird* v. *Tatum*." But that statement is irrelevant if he was counsel in the transaction out of which the case arose, a basis of disqualification that was well recognized then as now.

Justice Rehnquist appears also disqualified because he was a potential witness, at least at the discovery stage in *Laird* v. *Tatum*. In his testimony before the Senate, he denied having knowledge of "evidentiary facts." The standard relevent to the question is not "evidentiary facts" but facts relating to the "subject matter" of the litigation.

Second, when the case of *Laird* v. *Tatum* was before the Supreme Court it was Justice Rehnquist's responsibility on his own initiative to address and resolve all issue concerning his disqualification. It was not the parties' responsibility to raise such matters, although they had a right to do so if they had access to the necessary facts. In his opinion in *Laird* v. *Tatum*, Justice Rehnquist referred, first, to the fact that he had not been counsel in the "case," i.e., the litigation that ensued after his involvement in the transaction, and, second, to his statements in public and as spokesman for the Justice Department before the Senate. Thus, Justice Rehnquist addressed only his publicly known involvements and omitted any reference to an involvement, as counsel in the transaction, that was at least as significant but which was not publicly known. It was his duty to resolve both the publicly known possible bases of disqualification and those arising from an involvement that was confidential. Indeed, it is even more vital to fairness in adjudication that a judge resolve grounds of recusal which arise from confidential facts, for the parties ordinarily are helpless to raise such grounds.

Justice Rehnquist's addressing the publicly known grounds of recusal, but omitting reference to the confidential ones, would have been proper only if he had forgotten that his office in the Justice Department had handled the surveillance policy negotiations and that he himself was involved to a substantial extent. If when writing his opinion in *Laird* v. *Tatum*, Justice Rehnquist had not forgotten his involvement in the surveillance policy negotiations, then his opinion constituted a misrepresentation to the parties and to his colleagues on the Supreme Court. In such a matter, a lawyer or judge is expected to give the whole truth.

Finally, Justice Rehnquist had a duty of candor to the Senate in answering questions concerning *Laird* v. *Tatum*. The Senate hearing was an evidentiary inquiry into his qualifications for the office of Chief Justice. In making statements before such a tribunal, whether sworn or not, a lawyer or judge has an obligation to be fully truthful. Justice Rehnquist complied with duty only if his statement is accepted that he had "no recollection of any participation in the formulation of policy on the use of the military to conduct surveillance." Whether that statement should be accepted is a matter of judgment. It was made by a lawyer of the highest intelligence concerning sensitive state policy over which his office had direct responsibility early in his service in government, and about which he had been asked to search his recollection on three official occasions.

Sincerely,

GEOFFREY C. HAZARD, Jr.

Mr. DOLE. Mr. President, I thank the distinguished Senator from Maryland.

The PRESIDING OFFICER. The distinguished majority leader.

DISTRICT OF COLUMBIA APPROPRIATIONS—1987

Mr. DOLE. Mr. President, let me indicate that the managers are now here and prepared to do battle on the District of Columbia appropriations bill. As I indicated earlier, we already passed it one time. It was retrieved, I guess is the appropriate term. We now have it before us. The distinguished minority leader is here.

I ask unanimous consent the Senate now turn to the consideration of H.R. 5175, District of Columbia appropriations.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will now report.

The bill clerk read as follows:

A bill, H.R. 5175, making appropriations for the Government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1987, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the District of Columbia for the fiscal year ending September 30, 1987, and for other purposes, namely:

TITLE I

FISCAL YEAR 1987 APPROPRIATIONS

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA

For payment to the District of Columbia for the fiscal year ending September 30, 1987, **[$414,147,000]** *$444,500,000*, as authorized by the District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93-198, as amended (D.C. Code, sec. 47-3406): *Provided*, That none of these funds shall be made available to the District of Columbia until the number of full-time uniformed officers in permanent positions in the Metropolitan Police Department is at least 3,880, excluding any such officer appointed after August 19, 1982, under qualification standards other than those in effect on such date.

FEDERAL PAYMENT FOR WATER AND SEWER SERVICES

For payment to the District of Columbia for the fiscal year ending September 30, 1987, in lieu of reimbursement for charges for water and water services and sanitary sewer services furnished to facilities of the United States Government, $28,810,000, as authorized by the Act of May 18, 1954, as amended (D.C. Code, secs. 43-1552 and 43-1612).

FEDERAL CONTRIBUTION TO RETIREMENT FUNDS

For the Federal contribution to the Police Officers and Fire Fighters', Teachers', and Judges' Retirement Funds as authorized by the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; Public Law 96-122), $52,070,000.

TRANSITIONAL PAYMENT FOR SAINT ELIZABETHS HOSPITAL

For a Federal contribution to the District of Columbia, as authorized by the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (98 Stat. 3369; Public Law 98-621), $35,000,000.

CRIMINAL JUSTICE INITIATIVE

For the design and construction of a prison within the District of Columbia $20,000,000 to become available October 1, 1987 together with funds previously appropriated under this head for fiscal year ending September 30, 1987: Provided, That the District of Columbia shall award a design and construction contract on or before October 15, 1986: Provided further, That, the District of Columbia is directed to proceed with the design and construction of a prison facility within the District of Columbia without respect to the availability of Federal funds: Provided further, That a plan that includes the construction of not less than a 700 bed, medium security facility on the South part of Square E-1112 as recorded in Subdivision Book 140, Page 199 in the office of the Surveyor of the District of Columbia is hereby approved: Provided further, That this approval shall satisfy the provisions as enumerated in Public Law 99-190.

DIVISION OF EXPENSES

The following amounts are appropriated for the District of Columbia for the current fiscal year out of the general fund of the District of Columbia, except as otherwise specifically provided.

GOVERNMENTAL DIRECTION AND SUPPORT

Governmental direction and support, **[$108,407,000]** *$108,353,000*: *Provided*, That not to exceed $2,500 for the Mayor, $2,500 for the Chairman of the Council of the District of Columbia, and $2,500 for the City Administrator shall be available from this appropriation for expenditures for official purposes: *Provided further*, That any program fees collected from the issuance of

debt shall be available for the payment of expenses of the debt management program of the District of Columbia: *Provided further,* That not less than $320,000 shall be used by the Office of Personnel exclusively for the administration of programs for the training of District of Columbia government employees: *Provided further,* That notwithstanding any other provision of law, there is hereby appropriated $3,772,000 to pay legal, management, investment, and other fees and administrative expenses of the District of Columbia Retirement Board, of which [$754,000] *$700,000* shall be derived from the general fund and not to exceed [$3,018,000] *$3,072,000* shall be derived from the earnings of the applicable retirement funds: *Provided further,* That the District of Columbia Retirement Board shall provide to the Congress and the Council of the District of Columbia a quarterly report of the allocations of charges by fund and of expenditures of all funds: *Provided further,* That the District of Columbia Retirement Board shall provide the Mayor for transmittal to the Council of the District of Columbia an item accounting of the planned use of appropriated funds in time for each annual budget submission and the actual use of such funds in time for each annual audited financial report: *Provided further,* That of the $100,000 appropriated for fiscal year 1987 for Admission to Statehood, $50,000 shall be for the Statehood Commission and $50,000 shall be for the Statehood Compact Commission: *Provided further,* That the District of Columbia shall identify the sources of funding for Admission to Statehood from its own locally-generated revenues: *Provided further,* That no revenues from Federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission.

ECONOMIC DEVELOPMENT AND REGULATION

Economic development and regulation, $129,460,000, of which $2,000,000 shall be for non-recurring pay-as-you-go capital projects of the Department of Housing and Community Development: *Provided,* That the District of Columbia Housing Finance Agency, established by section 201 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Code, sec. 45-2111), based upon its capability of repayments as determined each year by the Council of the District of Columbia from the Agency's annual audited financial statements to the Council of the District of Columbia, shall repay to the general fund an amount equal to the appropriated administrative costs plus interest at a rate of four percent per annum for a term of 15 years, with a deferral of payments for the first three years: *Provided further,* That notwithstanding the foregoing provision, the obligation to repay all or part of the amounts due shall be subject to the rights of the holders of any bonds or notes issued by the Agency and shall be repaid to the District of Columbia only from available operating revenues of the Agency that are in excess of the amounts required for debt service, reserve funds, and operating expenses: *Provided further,* That upon commencement of the debt service payments, such payments shall be deposited into the general fund of the District of Columbia.

PUBLIC SAFETY AND JUSTICE

Public safety and justice, including purchase of not to exceed 135 passenger-carrying vehicles for replacement only (including 130 for police-type use and five for fire-type use) and 14 replacement passenger-carrying vehicles for fire-type use without regard to the general purchase price limitation for the current fiscal year, [$580,765,000] *$600,165,000: Provided,* That the Metropolitan Police Department is authorized to replace not to exceed 25 passenger-carrying vehicles and the Fire Department is authorized to replace not to exceed five passenger-carrying vehicles annually whenever the cost of repair to any damaged vehicle exceeds three-fourths of the cost of the replacement: *Provided further,* That not to exceed $500,000 shall be available from this appropriation for the Chief of Police for the prevention and detection of crime: *Provided further,* That, notwithstanding any other provision of law, in the case of the 23 employees who retired from the Fire Department of the District of Columbia between November 24, 1984, and March 28, 1985 (both dates inclusive), and who on the date of the enactment of this Act are receiving annuities based on service in the Fire Department, the District of Columbia Retirement Board shall cause to be paid not later than October 15, 1986, to each such employee a lump-sum payment equal to three percent of his or her annuity: *Provided further,* That funds appropriated for expenses under the District of Columbia Criminal Justice Act, approved September 3, 1974 (88 Stat. 1090; Public Law 93-412; D.C. Code, sec. 11-2601 et seq.), for the fiscal year ending September 30, 1987, shall be available for obligations incurred under that Act in each fiscal year since inception in fiscal year 1975: *Provided further,* That funds appropriated for expenses under the District of Columbia Neglect Representation Equity Act of 1984, effective March 13, 1985 (D.C. Law 5-129; D.C. Code, sec. 16-2304), for the fiscal year ending September 30, 1987, shall be available for obligations incurred under that Act in each fiscal year since inception in fiscal year 1985: *Provided further,* That $50,000 of any appropriation available to the District of Columbia may be used to match financial contributions from the Department of Defense to the District of Columbia Office of Emergency Preparedness for the purchase of civil defense equipment and supplies approved by the Department of Defense, when authorized by the Mayor: *Provided further,* That not to exceed $1,500 for the Chief Judge of the District of Columbia Court of Appeals, $1,500 for the Chief Judge of the Superior Court of the District of Columbia, and $1,500 for the Executive Officer of the District of Columbia Courts shall be available from this appropriation for official purposes: *Provided further,* That not to exceed [$50,000] *$100,000* of this appropriation shall be used to reimburse Fairfax County *and Prince William County,* Virginia, for expenses incurred by the [County] *Counties* during fiscal year 1987 in relation to the Lorton prison complex. Such reimbursement shall be paid in all instances in which the District requests that the [County] *Counties* provide police, fire, rescue, and related services to help deal with escapes, riots, and similar disturbances involving the prison. The District shall make a quarterly report to the House and Senate Subcommittees on District of Columbia Appropriations regarding the amount and purpose of reimbursements made to the [County] *Counties,* and the amount of the authorization remaining for such reimbursements: *Provided further, That within 30 days after the date of enactment of this Act, the District of Columbia shall establish a free, 24-hour telephone information service, whereby residents of the area surrounding Lorton prison in Fairfax County, Virginia, can promptly obtain information from District officials on all disturbances at the prison, including escapes, fires, riots, and similar incidents: Provided further, That the District of Columbia shall also take steps to publicize the availability of that service among the residents of the area surrounding the Lorton prison: Provided further, That none of the funds appropriated by this Act may be used to implement any plan that includes the closing of Engine Company 3, located at 439 New Jersey Avenue, Northwest: Provided further, That none of the funds provided by this Act may be used to implement District of Columbia Board of Parole notice of emergency and proposed rulemaking as filed with the District of Columbia Register July 25, 1986.*

PUBLIC EDUCATION SYSTEM

Public education system, including the development of national defense education programs, [$540,718,000] *$540,872,000,* to be allocated as follows: $393,806,000 for the public schools of the District of Columbia, of which $8,000,000 shall be for non-recurring pay-as-you-go capital projects of the public schools of the District of Columbia; $58,800,000 for the District of Columbia Teachers' Retirement Fund; [$68,861,000] *$69,015,000* for the University of the District of Columbia; $16,646,000 for the Public Library; $2,368,000 for the Commission on the Arts and Humanities; and $237,000 for the Educational Institution Licensure Commission: *Provided,* That the public schools of the District of Columbia are authorized to accept not to exceed 31 motor vehicles for exclusive use in the driver education program: *Provided further,* That not to exceed $2,500 for the Superintendent of Schools, $2,500 for the President of the University of the District of Columbia, and $2,000 for the Public Librarian shall be available from this appropriation for expenditures for official purposes: *Provided further,* That this appropriation shall not be available to subsidize the education of nonresidents of the District of Columbia at the University of the District of Columbia, unless the Board of Trustees of the University of the District of Columbia adopts, for the fiscal year ending September 30, 1987, a tuition rate schedule which will establish the tuition rate for nonresident students at a level no lower than the nonresident tuition rate charged at comparable public institutions of higher education in the metropolitan area: *Provided further,* That of the amount made available to the University of the District of Columbia, [$1,146,000] *$1,300,000* shall be used solely for the operation of the Antioch School of Law: *Provided further,* That acquisition or merger of the Antioch School of Law shall have been previously approved by both the Board of Trustees of the University of the District of Columbia and the Council of the District of Columbia, and that the Council shall have issued its approval by resolution: *Provided further,* That if the Council of the District of Columbia or the Board of Trustees of the University of the District of Columbia fails to approve the acquisition or merger of the Antioch School of Law, the [$1,146,000] *$1,300,000* shall be used solely for the repayment of the general fund deficit.

HUMAN SUPPORT SERVICES

Human support services, $654,315,000, of which $298,000 shall be for non-recurring pay-as-you-go capital projects of the Department of Human Services: *Provided,*

That the inpatient rate (excluding the proportionate share for repairs and construction) for services rendered by Saint Elizabeths Hospital for patient care shall be at the per diem rate established pursuant to section 2 of an Act to authorize certain expenditures from the appropriation of Saint Elizabeths Hospital, and for other purposes, approved August 4, 1947 (61 Stat. 751; Public Law 80-353; 24 U.S.C. 168(a)): *Provided further,* That total funds paid by the District of Columbia as reimbursements for operating costs of Saint Elizabeths Hospital, including any District of Columbia payments (but excluding the Federal matching share of payments) associated with title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; Public Law 89-97; 42 U.S.C. 1396 et seq.), shall not exceed $71,200,000: *Provided further,* That $13,800,000 of this appropriation, to remain available until expended, shall be available solely for District of Columbia employees' disability compensation.

PUBLIC WORKS

Public works, including rental of one passenger-carrying vehicle for use by the Mayor and three passenger-carrying vehicles for use by the Council of the District of Columbia and purchase of passenger-carrying vehicles for replacement only, $204,748,000, of which not to exceed $4,150,000 shall be available for the School Transit Subsidy: *Provided,* That this appropriation shall not be available for collecting ashes or miscellaneous refuse from hotels and places of business or from apartment houses with four or more apartments, or from any building or connected group of buildings operating as a rooming or boarding house as defined in the housing regulations of the District of Columbia.

WASHINGTON CONVENTION CENTER FUND

For the Washington Convention Center Fund, $6,261,000: *Provided,* That the Convention Center Board of Directors, established by section 3 of the Washington Convention Center Management Act of 1979, effective November 3, 1979 (D.C. Law 3-36; D.C. Code, sec. 9-602), shall reimburse the Auditor of the District of Columbia for all reasonable costs for performance of the annual convention center audit.

REPAYMENT OF LOANS AND INTEREST

For reimbursement to the United States of funds loaned in compliance with an Act to provide for the establishment of a modern, adequate, and efficient hospital center in the District of Columbia, approved August 7, 1946 (60 Stat. 896; Public Law 79-648); the Departments of Labor, and Health, Education and Welfare Appropriation Act of 1955, approved July 2, 1954 (68 Stat. 443; Public Law 83-472); section 1 of an Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the Nation's Capital City, approved June 6, 1958 (72 Stat. 183; Public Law 85-451; D.C. Code, sec. 9-219); section 4 of an Act to authorize the Commissioners of the District of Columbia to plan, construct, operate, and maintain a sanitary sewer to connect the Dulles International Airport with the District of Columbia system, approved June 12, 1960 (74 Stat. 211; Public Law 86-515); and section 723 of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 821; Public Law 93-198; D.C. Code, sec. 47-321, note); and section 743(f) of the District of Columbia Self-Government and Governmental Reorganization Act, approved October 13, 1977 (91 Stat. 1156; Public Law 95-131; D.C. Code, sec. 9-219, note), including interest as required thereby, $204,514,000.

REPAYMENT OF GENERAL FUND DEFICIT

For the purpose of reducing the $244,934,000 general fund accumulated deficit as of September 30, 1985, [$20,000,000, of which not less than $11,325,000 shall be funded and apportioned by the Mayor from amounts otherwise available to the District of Columbia government (including amounts appropriated by this Act or revenues otherwise available, or both)] *$8,675,000: Provided,* That if the Federal payment to the District of Columbia for fiscal year 1987 is reduced pursuant to an order issued by the President under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177, approved December 12, 1985), the percentage (if any) by which the [$20,000,000] set aside for repayment of the general fund accumulated deficit under this appropriation title is reduced as a consequence shall not exceed the percentage by which the Federal payment is reduced pursuant to such order.

SHORT-TERM BORROWINGS

For the purpose of funding interest related to borrowing funds for short-term cash needs, $3,750,000.

CAPITAL OUTLAY

For construction projects, $310,551,000, as authorized by an Act authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes, approved April 22, 1904 (33 Stat. 244; Public Law 58-140; D.C. Code, secs. 43-1512 to 43-1519); the District of Columbia Public Works Act of 1954, approved May 18, 1954 (68 Stat. 101; Public Law 83-364); an Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the Nation's Capital City, approved June 6, 1958 (72 Stat. 183; Public Law 85-451; D.C. Code, secs. 9-219 and 47-3402); section 3(g) of the District of Columbia Motor Vehicle Parking Facility Act of 1942, approved August 20, 1958 (72 Stat. 686; Public Law 85-692; D.C. Code, sec. 40-805(7)); and the National Capital Transportation Act of 1969, approved December 9, 1969 (83 Stat. 320; Public Law 91-143; D.C. Code, secs. 1-2451, 1-2452, 1-2454, 1-2456, and 1-2457); including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: *Provided,* That $17,425,000 shall be available for project management and $24,139,000 for design by the Director of the Department of Public Works or by contract for architectural engineering services, as may be determined by the Mayor, and that the funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: *Provided further,* That $10,298,000 of the $310,551,000, shall be financed from general fund operating revenues to be allocated as follows: $8,000,000 for pay-as-you-go capital projects for public schools of the District of Columbia; $2,000,000 for pay-as-you-go capital projects for the Department of Housing and Community Development; and $298,000 for pay-as-you-go capital projects for the Department of Human Services: *Provided further,* That $19,218,000 of the $310,551,000, shall be available to the Board of Education of the District of Columbia for pay-as-you-go capital projects (maintenance improvements), for the construction of new roofs for various school buildings, and for school safety and building improvements projects, with $15,999,000 of these funds available for construction, $1,881,000 available for architectural design, and $1,338,000 available for project management: *Provided further,* That notwithstanding the last sentence of section 405(b) of the District of Columbia Public Postsecondary Education Reorganization Act, approved October 26, 1974 (88 Stat. 1423; D.C. Code, sec. 31-1535(b)), the Board of Education of the District of Columbia may procure contracts for its pay-as-you-go capital projects, for the construction of new roofs for various school buildings, and for school safety and building improvements projects: *Provided further,* That all such funds shall be available only for the specific projects and purposes intended: *Provided further,* That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1988, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1988: *Provided further,* That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

WATER AND SEWER ENTERPRISE FUND

For the Water and Sewer Enterprise Fund, $176,876,000, of which $32,834,000 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects.

For construction projects, $54,850,000, as authorized by an Act authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes, approved April 22, 1904 (33 Stat. 244; D.C. Code, sec. 43-1512 et seq.): *Provided,* That the requirements and restrictions which are applicable to general fund capital improvement projects and which are set forth in this Act under the Capital Outlay appropriation title shall apply to projects approved under this appropriation title.

LOTTERY AND CHARITABLE GAMES ENTERPRISE FUND

For the Lottery and Charitable Games Enterprise Fund established by the District of Columbia Appropriation Act for fiscal year 1982, approved December 4, 1981 (95 Stat. 1174, 1175; Public Law 97-91, as amended), for the purpose of implementing the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Code, secs. 2-2501 et seq. and 22-1516 et seq.), $5,458,000, to be derived from non-Federal District of Columbia revenues: *Provided,* That the District of Columbia shall identify the sources of funding for this appropriation title from its own locally-generated revenues: *Provided further,* That no

revenues from Federal sources shall be used to support the operations or activities of the Lottery and Charitable Games Control Board.

CABLE TELEVISION ENTERPRISE FUND

For the Cable Television Enterprise Fund established by the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 5-36; D.C. Code, sec. 43-1801 et seq.), $250,000.

GENERAL PROVISIONS

SEC. 101. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 102. Except as otherwise provided in this Act, all vouchers covering expenditures of appropriations contained in this Act shall be audited before payment by the designated certifying official and the vouchers as approved shall be paid by checks issued by the designated disbursing official.

SEC. 103. Whenever in this Act an amount is specified within an appropriation for particular purposes or objects of expenditure, such amount, unless otherwise specified, shall be considered as the maximum amount which may be expended for said purpose or object rather than an amount set apart exclusively therefor, except for those funds and programs for the Metropolitan Police Department under the heading "Public Safety and Justice" which shall be considered as the amounts set apart exclusively for and shall be expended solely by that Department; and the appropriation under the heading "Repayment of General Fund Deficit" which shall be considered as the amount set apart exclusively for and shall be expended solely for that purpose.

SEC. 104. Appropriations in this Act shall be available, when authorized by the Mayor, for allowances for privately owned automobiles and motorcyles used for the performance of official duties at rates established by the Mayor: *Provided*, That such rates shall not exceed the maximum prevailing rates for such vehicles as prescribed in the Federal Property Management Regulations 101-7 (Federal Travel Regulations).

SEC. 105. Appropriations in this Act shall be available for expenses of travel and for the payment of dues of organizations concerned with the work of the District of Columbia government, when authorized by the Mayor: *Provided*, That the Council of the District of Columbia and the District of Columbia Courts may expend such funds without authorization by the Mayor.

SEC. 106. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making refunds and for the payment of judgments that have been entered against the District of Columbia government: *Provided*, That nothing contained in this section shall be construed as modifying or affecting the provisions of section 11(c)(3) of title XII of the District of Columbia Income and Franchise Tax Act of 1947, approved March 31, 1956 (70 Stat. 78; Public Law 84-460; D.C. Code, sec. 47-1812.11(c)(3)).

SEC. 107. Appropriations in this Act shall be available for the payment of public assistance without reference to the requirement of section 544 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Code, sec. 3-205.44), and for the non-Federal share of funds necessary to qualify for Federal assistance under the Juvenile Delinquency Prevention and Control Act of 1968, approved July 31, 1968 (82 Stat. 462; Public Law 90-445; 42 U.S.C. 3801 et seq.).

SEC. 108. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 109. Not to exceed 4½ per centum of the total of all funds appropriated by this Act for personal compensation may be used to pay the cost of overtime or temporary positions.

SEC. 110. Appropriations in this Act shall not be available, during the fiscal year ending September 30, 1987, for the compensation of any person appointed to a permanent position in the District of Columbia government during any month in which the number of employees exceeds [33,355] *33,549*, the number of positions authorized by this Act.

SEC. 111. No funds appropriated in this Act for the District of Columbia government for the operation of educational institutions, the compensation of personnel, or for other educational purposes may be used to permit, encourage, facilitate, or further partisan political activities. Nothing herein is intended to prohibit the availability of school buildings for the use of any community or partisan political group during nonschool hours.

SEC. 112. The annual budget for the District of Columbia government for the fiscal year ending September 30, 1988, shall be transmitted to the Congress by no later than April 15, 1987.

SEC. 113. None of the funds appropriated in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name, title, grade, salary, past work experience, and salary history are not available for inspection by the House and Senate Committees on Appropriations, the House Committee on the District of Columbia, the Subcommittee on Governmental Efficiency and the District of Columbia of the Senate Committee on Governmental Affairs, and the Council of the District of Columbia, or their duly authorized representative.

SEC. 114. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making payments authorized by the District of Columbia Revenue Recovery Act of 1977, effective September 23, 1977 (D.C. Law 2-20; D.C. Code, sec. 47-421 et seq.).

SEC. 115. None of the funds contained in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name and salary are not available for public inspection.

SEC. 116. No part of this appropriation shall be used for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature.

[SEC. 117. None of the funds provided in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.]

SEC. 117. None of the Federal funds provided in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

SEC. 118. At the start of the fiscal year, the Mayor shall develop an annual plan, by quarter and by project, for capital outlay borrowings: *Provided*, That within a reasonable time after the close of each quarter, the Mayor shall report to the Council of the District of Columbia and the Congress the actual borrowing and spending progress compared with projections.

SEC. 119. The Mayor shall not borrow any funds for capital projects unless he has obtained prior approval from the Council of the District of Columbia by resolution, identifying the projects and amounts to be financed with such borrowings.

SEC. 120. The Mayor shall not expend any moneys borrowed for capital projects for the operating expenses of the District of Columbia government.

SEC. 121. None of the funds appropriated in this Act may be used for the implementation of a personnel lottery with respect to the hiring of fire fighters or police officers.

SEC. 122. None of the funds appropriated by this Act may be obligated or expended by reprogramming except pursuant to advance approval of the reprogramming granted according to the procedure set forth in the Joint Explanatory Statement of the Committee of Conference (House Report No. 96-443) which accompanied the District of Columbia Appropriation Act, 1980, approved October 30, 1979 (93 Stat. 713; Public Law 96-93), as modified in House Report No. 98-265, and in accordance with the Reprogramming Policy Act of 1980, effective September 16, 1980 (D.C. Law 3-100; D.C. Code, sec. 47-361 et seq.)

SEC. 123. None of the Federal funds provided in this Act shall be obligated or expended to provide a personal cook, chauffeur, or other personal servants to any officer or employee of the District of Columbia.

SEC. 124. None of the Federal funds provided in this Act shall be obligated or expended to procure passenger automobiles as defined in the Automobile Fuel Efficiency Act of 1980, approved October 10, 1980 (94 Stat. 1824; Public Law 96-425; 15 U.S.C. 2001(2)), with an Environmental Protection Agency estimated miles per gallon average of less than 22 miles per gallon: *Provided*, That this section shall not apply to security, emergency rescue, or armored vehicles.

SEC. 125. (a) Notwithstanding section 422(7) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 790; Public Law 93-198; D.C. Code, sec. 1-242(7)), the City Administrator shall be paid, during any fiscal year, a salary at a rate established by the Mayor, not to exceed the rate established for level IV of the Executive Schedule under 5 U.S.C. 5315.

(b) For purposes of applying any provision of law limiting the availability of funds for payment of salary or pay in any fiscal year, the highest rate of pay established by the Mayor under subsection (a) for any position for any period during the last quarter of calendar year 1986 shall be deemed to be the rate of pay payable for that position for September 30, 1986.

(c) Notwithstanding section 4(a) of the District of Columbia Redevelopment Act of 1945, approved August 2, 1946 (60 Stat. 793; Public Law 79-592; D.C. Code, sec. 5-803(a)),

the Board of Directors of the District of Columbia Redevelopment Land Agency shall be paid, during any fiscal year, a per diem compensation at a rate established by the Mayor.

SEC. 126. Notwithstanding any other provision of law, the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code, sec. 1-601.1 et seq.), enacted pursuant to section 422(3) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 790; Public Law 93-198; D.C. Code, sec. 1-242(3)), shall apply with respect to the compensation of District of Columbia employees: *Provided*, That for pay purposes, employees of the District of Columbia government shall not be subject to the provisions of title 5 of the United States Code.

SEC. 127. None of the funds appropriated by this Act may be used to transport any output of the municipal waste system of the District of Columbia for disposal at any public or private landfill located in any State, excepting currently utilized landfills in Maryland and Virginia, until the appropriate State agency has issued the required permits.

SEC. 128. The Director of the Department of Administrative Services may pay rentals and repair, alter, and improve rented premises, without regard to the provisions of section 322 of the Economy Act of 1932 (Public Law 72-212; 40 U.S.C. 278a), upon a determination by the Director, that by reason of circumstances set forth in such determination, the payment of these rents and the execution of this work, without reference to the limitations of section 322, is advantageous to the District in terms of economy, efficiency and the District's best interest.

SEC. 129. (a) Section 131 of the District of Columbia Appropriation Act, 1986 (H.R. 3067 as enacted by reference in section 101(c) of Public Law 99-190), is amended—

(1) by inserting "or leased" after "owned" in subsection (a); and

(2) by inserting before the period at the end of subsection (b)(3) the following: ", and includes any tax imposed with respect to the use or rental of a motor vehicle and levied on, with respect to, or measured by the sales price or market value of the vehicle or the gross proceeds from the rental".

(b) The amendments made by subsection (a) shall apply to all taxable periods described in section 131(c) of such Act.

SEC. 130. No later than 30 days after the end of the first quarter of fiscal year 1987, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia the new fiscal year 1987 revenue estimate as of the end of the first quarter of fiscal year 1987: *Provided*, That these estimates shall be used in the fiscal year 1988 annual budget request: *Provided further*, That the officially revised estimates at midyear shall be used for the midyear report.

SEC. 131. Section 466(b) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 806; Public Law 93-198; D.C. Code, sec. 47-326), is amended by striking out "sold before October 1, 1986" and inserting in lieu thereof "sold before October 1, 1987".

SEC. 132. The District of Columbia shall construct three signs which contain the words, "Sakharov Plaza". These signs shall be placed immediately above existing signs on the corners of 16th and L and 16th and M Streets, Northwest. These should be similar to signs used by the city to designate the location of Metro stations. In addition, a sign shall be placed on city property directly adjacent to, or directly in front of, 1125 16th Street designating the actual location of Sakharov Plaza. Hereafter all official correspondence with the Soviet Embassy in Washington shall be properly addressed to No. 1 Andrei Sakharov Plaza in accordance with United States law.

TITLE II

FISCAL YEAR 1986 SUPPLEMENTAL

DISTRICT OF COLUMBIA FUNDS

GOVERNMENTAL DIRECTION AND SUPPORT

For an additional amount for "Governmental Direction and Support", $1,738,000.

ECONOMIC DEVELOPMENT AND REGULATION

For an additional amount for "Economic Development and Regulation", $5,658,000.

PUBLIC SAFETY AND JUSTICE

For an additional amount for "Public Safety and Justice", $34,358,000: Provided, That the use of overtime funds in the Second Police District shall be discretionary.

PUBLIC EDUCATION SYSTEM

For an additional amount for "Public Education System" for the fiscal year ending September 30, 1986. $92,000 for the Commission on the Arts and Humanities: Provided, That of the amount available for the District of Columbia Teachers' Retirement Fund ("Fund") for the fiscal year ending September 30, 1986, $3,423,000 shall be transferred to the fund for the purpose of reducing the fund's unfunded liabilities.

HUMAN SUPPORT SERVICES

(INCLUDING RESCISSION)

For an additional amount for "Human Support Services", $1,563,000: Provided, That of the amount available from the revenue sharing trust fund for the fiscal year ending September 30, 1986, $2,463,000 are rescinded.

PUBLIC WORKS

For an additional amount for "Public Works", $4,216,000.

WASHINGTON CONVENTION CENTER FUND

For an additional amount for "Washington Convention Center Fund", $150,000.

REPAYMENT OF LOANS AND INTEREST

(RESCISSION)

Of the funds appropriated for "Repayment of Loans and Interest" for fiscal year ending September 30, 1986, $16,316,000 are rescinded.

PERSONAL SERVICES

(INCLUDING RESCISSION)

Of the funds appropriated for "Personal Services", within the various appropriation titles in section 101(c) of the Joint Resolution making continuing appropriations for the fiscal year 1986, and for other purposes, effective December 19, 1985 (Public Law 99-190; 99 Stat. 1224), $2,423,000 are rescinded with increases and reductions to be allocated as follows: For an additional amount for optical and dental costs for nonunion employees to be apportioned by the Mayor of the District of Columbia from within the various appropriation titles, $1,000,000; and for a reduction to personal services to be apportioned by the Mayor of the District of Columbia from within the various appropriation titles, $3,423,000.

ADJUSTMENTS

(RESCISSION)

The Mayor shall reduce authorized appropriations and expenditures within Object Class 30A (energy) in the amount of $1,000,000 within the various appropriation titles in section 101(c) of the Joint Resolution making continuing appropriations for the fiscal year 1986, and for other purposes, effective December 19, 1985 (Public Law 99-190; 99 Stat. 1224).

REPAYMENT OF GENERAL FUND DEFICIT

For the purpose of eliminating the general fund accumulated deficit, $5,000,000.

CAPITAL OUTLAY

For an additional amount for "Capital Outlay", $126,791,000.

WATER AND SEWER ENTERPRISE FUND

For an additional amount for "Water and Sewer Enterprise Fund", $300,000.

GENERAL PROVISIONS

SEC. 201. None of the funds appropriated for the fiscal year ending September 30, 1986, by section 101(c) of the Joint Resolution making continuing appropriations for the fiscal year 1986, and for other purposes, effective December 19, 1985 (Public Law 99-190; 99 Stat. 1224), shall be used by the Mayor of the District of Columbia ("Mayor") to pay the expenses of the U.S. Marshals Service for extraordinary evictions from housing units owned by the District of Columbia for evictions based solely on excessive numbers of persons occupying the unit unless and until the Mayor submits to the Council of the District of Columbia a reprogramming request and transmits with that reprogramming request the proposed criteria by which these units are to be selected, a proposed plan for the implementation of the proposed criteria, an estimate of the number of units that meet the proposed criteria, and if the proposed criteria involve the displacement of persons who will be unable to afford housing on the private market, an alternative plan for housing those displaced persons.

SEC. 202. Notwithstanding any other provision of this Act, appropriations under this title shall be available upon enactment.

This Act may be cited as the "District of Columbia Appropriation Act, 1987".

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER].

Mr. SPECTER. I thank the Chair.

Mr. President, the District of Columbia appropriations bill for fiscal year 1987 presented here today is a balanced budget. The bill includes $500 million in Federal funds, which is within the subcommittee allocations made under the budget resolution. This amount includes $444 million for the Federal payment to the District, $80 million for reimbursements to the city for services provided to the Federal Government, and a $35 million payment to the District required by the St. Elizabeth's Hospital transfer legislation. The District will take charge of the hospital beginning October 1, 1987.

The District's budget also includes $2.6 billion in locally generated revenue in addition to the already mentioned Federal funds.

The bill also includes advance appropriations of $20 million to complete the funding of the new prison to be constructed in the District of Columbia. This appropriation will bring to $50 million the amount provided to design and construct this facility.

It was back in January of 1985 that Mayor Barry first committed to building the prison in the District. The subcommittee has held numerous hearings on the prison problem, four in this year alone, and it is a well-known fact that the city's correction system is in a crisis.

We have been frustrated by the lack of progress by the District government on the new prison, and it is for that reason that the subcommittee has recommended language adopted by the full committee which requires that if the District does not have a design and construction contract in place by November 15, 1986, the city will lose the funds already appropriated for 1987 and the recommended advance for 1988, a total of $40 million. This is the most effective statement we can make to underscore our view of the urgency of the need to push ahead on this project.

Candidly stated, if the city does not move now the matter may well be dead in the foreseeable future. The subcommittee has put in a tremendous amount of work on the issue of public danger in the District of Columbia and now is the time to move ahead. We think this draws the line.

The bill also includes $5.5 million to renovate and operate space to provide minimum security bed space. Also included in the bill is $7 million for vocational and educational programs for the Department of Corrections. We have, Mr. President, made real strides as a model program for rehabilitation on the basic proposition that it is unrealistic to expect a functional illiterate without a trade or a skill to leave prison to do anything but return to a life of crime. The program has had certain problems. There has been an intense review by a committee chaired by David Ben-Veniste serving on a pro bono basis and we believe that this program will be a model to the Nation and can succeed but much more effort is needed to make it a success.

During the last 3 years the Congress has provided $41 million in special appropriations for these programs.

On June 6, 1986, I requested the General Accounting Office to audit these funds to ensure that these funds have been used efficiently. I think they have made significant progress in these programs to try to change the pattern where functional illiterates are released without a trade or a skill and return to a life of crime.

The committee is also recommending language in the bill which prohibits the D.C. Parole Board from implementing its proposed rule changes concerning use of PCP. Parolees who test positive for this drug are currently returned to prison. We feel strongly that if a parolee is using PCP and tests positive in that respect, that is a red flag that ought to require taking that parolee into custody for a further determination as to what ultimate action would be appropriate with a presumption being that if the parolee is on PCP, he does not deserve to be on parole. That is a factor which indicates a serious risk to the community.

□ 2030

Before closing, Mr. President, I want to thank the members of the subcommittee and particularly our ranking minority member, the Senator from New Jersey, for his time, interest, and knowledge in developing this bill. He has taken a leadership role in the matter of raising the drinking age in the District. He conducted a hearing on this matter on July 29, 1986, and has suggested report language which is included in the committee report strongly urging the District council to take prompt action on this matter. The committee and the Senate are indebted to him for his leadership on this issue. I also want to express my appreciation to the chairman of the Appropriations Committee, the Senator from Oregon [Mr. HATFIELD], for his support in bringing this bill to the floor.

GOVERNMENTAL DIRECTION AND SUPPORT

For the departments and agencies under this appropriations account, the committee recommends $108,353,000 the same as the budget request and House allowance.

Included in this amount is $700,000 and 10 positions for the retirement board that is to be funded from the general fund appropriation.

The retirement board controls and manages the retirement funds for police officers, firefighters, judges, and teachers. It also certifies the contributions required of the District and Federal Governments and of employees covered by the Retirement Reform Act, Public Law 96-122.

ECONOMIC DEVELOPMENT AND REGULATION

The committee recommends $129,460,000 for the activities under this appropriation account, this is $29,425,000 above the 1986 budget request.

These increases represent $17,026,000 and 37 positions above the appropriation and, the same as the House allowance.

The Department of Housing and Community Development goals are to provide decent and affordable housing; increase homeownership opportunities for low- and moderate-income persons; develop declining neighborhoods and preserve neighborhood diversity; and maintain all public housing in sound, standard condition.

PUBLIC SAFETY AND JUSTICE

For the public safety and justice appropriations account the committee is recommending $600,165,000.

A total of $70,784,000 and 1,871 positions are recommended for the fire department. This amount is $2,500,000 over the House allowance. The department currently operates 32 engine companies, 17 aerial ladder companies, 4 rescue squads, 22 ambulance companies and the fireboat.

The committee recommends $2,500,000 to keep Engine Co. No. 3 open, located at 439 New Jersey Avenue NW., by providing the required funding and positions for the new fire station to open at First and Atlantic Street SE. Engine No. 3 service area includes the U.S. Capitol, Supreme Court Building, Library of Congress, Union Station as well as the North Capitol Street corridor.

The committee also recommends $44,506,000 and 1,057 positions for the operation of the Superior Court of the District of Columbia. Included in this amount is $153,000 for communications; $113,000 and eight positions in the civil division; and $70,000 and two positions in the clerk of the superior court. The committee intends that these positions be used to speed processing and reduce delays.

PUBLIC EDUCATION SYSTEM

A total of $540,872,000 is recommended for fiscal year 1987 for the operation of the pubic education system of the District of Columbia. This is an increase of $25,656,000 and 140 positions above the fiscal year 1986 budget.

The D.C. public schools provide preschool, kindergarten, elementary, secondary, and continuing education programs for more than 88,000 District students. The committee recommends resources for the expansion of current services to support the projected increases in elementary school enrollment, the second phase of an extended full-day prekindergarten program, resources for needed improvements in special education services, and support for secondary math, English, and counseling services, among other areas.

HUMAN SUPPORT SERVICES

The committee recommends a total of $654,315,000 for fiscal year 1987 for the agencies and departments under the human support services appropriation title.

A total of $541,241,000 and 3,524 positions are recommended for the programs and activities operated by the Department of Human Services.

PUBLIC WORKS

For the public works appropriations account the committee recommends $204,748,000 for the activities relating to maintaining the infrastructure of the Nation's Capital.

WASHINGTON CONVENTION CENTER FUND

A total of $6,261,000 for the Washington Convention Center in fiscal year 1987. This amount will finance the difference between the convention center's estimated fiscal year 1987 op-

erating revenue of $4,346,000 and its total spending needs of $10,607,000.

REPAYMENT OF LOANS AND INTEREST

The committee recommends approval of the budget request of $204,514,000 for fiscal year 1987. This allowance is $6,105,000 above the 1986 appropriation.

REPAYMENT OF GENERAL FUND DEFICIT

The committee recommends $8,675,000 be applied toward reducing the District's accumulated general fund deficit which total $269,860,000. This amount is the same as the budget request and House allowance. The House required that the mayor identify an additional $11,325,000 for this account during the fiscal year.

DISTRICT OF COLUMBIA ENTERPRISE FUNDS

The committee recommends a total of $182,584,000 for the activities funded through this appropriation. This allowance is $22,252,000 above the 1986 appropriation, the same as the budget estimate and House allowance.

I thank Mr. Tim Leeth and the majority staff as well as the minority staff for their excellent work on the bill.

Mr. LAUTENBERG. Mr. President, I thank my able friend for his kind words and want to commend him for his hard work on this legislation. Senator SPECTER takes his responsibilities as chairman of the District of Columbia Subcommittee very seriously, and he devotes a great deal of his time and effort to the problems of the District and its citizens. His reputation as a reliable friend and protector of the Nation's Capital is well deserved.

BILL SUMMARY

The bill the committee is recommending to the Senate reflects this commitment to the District's welfare. I share this commitment, and I support the bill. In all candor, I must say that I have misgivings about the increases that are provided in the Federal funds account. But on balance, this is a good bill and it deserves the approval of the Senate. It is within the subcommittee's 302b allocation and provides, as is required under the Home Rule Act, for a balanced District budget. Would that we could do the same for the Federal budget.

FEDERAL FUNDS

The bill includes a total of $560,380,000 in Federal funds. This is an increase of $30,353,000 over the fiscal year 1986 postsequester level and the House allowance. This amount, together with the advance appropriation of $20 million for a new prison approved in last year's bill, would bring total Federal funds available to the District in fiscal year 1987 to $580,380,000, an increase of $50,353,000 above current level.

DISTRICT FUNDS

This bill also enacts the District's appropriated budget. Total district funds come to $3,009,098,000. This is an increase of $305,411,000 over the postsequester fiscal year 1986 level. It is $19.5 million more than the estimates and the House allocation. The additional $19.5 million over the request is allocated to the Department of Corrections for Vocational Education Programs, prerelease detention facilities, and payments to the Bureau of Prisons for the costs of incarcerating District prisoners. Otherwise, the bill provides the amounts requested by the Mayor and Council.

FISCAL YEAR 1986 SUPPLEMENTAL

Title II of the bill enacts District fiscal year 1986 supplementals and budget amendments, which net to a total increase of $31,567,000. The supplemental request approved by the Mayor and Council includes $67,023,000 in increases and $35,456,000 in rescissions. The net increase of $31.6 million is financed by additional local revenues owing primarily to tax receipts in excess of projections.

DISTRICT DRINKING AGE

Now Mr. President, last year when we had the District appropriation bill on the floor, I spoke at some length about the District's drinking age policy. Unfortunately, that issue is still unresolved. The District is still a mecca for teenage drinkers in the metropolitan region. The resulting carnage on regional streets and highways continues.

There should be no misunderstanding on this matter, Mr. President. The Congress and the administration are committed to achieving full compliance with the Uniform Minimum Drinking Age Act of 1984. The District is now the only jurisdiction on the entire eastern seaboard not in compliance with the act. Unless action is taken within the next few weeks, the District will lose $2.5 million in fiscal year 1987 Federal highway funds. In fiscal year 1988, $5 million in Federal highway funds will be withheld.

The city administration, I am glad to say, has decided that the best interests of the District will be served by complying with national policy. The Mayor has stated his support for raising the minimum legal drinking age to 21 and is submitting the necessary legislation to the Council. I want to commend the Mayor for choosing the responsible course of action on this issue.

Both the House and the Senate reports accompanying this bill reemphasize the depth of congressional concerns about the District's refusal so far to change its bloody border policy. These concerns should not be taken lightly. The bill before us contains a $19.5 million increase in the Federal payment. I do not believe the Council would be well advised to count on this increase to offset the loss of highway funds if it fails to enact the needed changes. I do not mean this as a threat. But, it is a realistic assessment, in my judgment, of the important role this issue could play in the conference on this bill. The increase in the Federal payment is, after all, unauthorized and the administration has threatened to veto the bill if the additional $19.5 million is included. So, I urge the Council to act on the Mayor's recommendations without delay.

Once again, Mr. President, I want to say what a pleasure it is to serve with the distinguished junior Senator from Pennsylvania on this subcommittee. He is always considerate and cooperative and he has done an exemplary job in moving this bill through the committee process We were, in fact, the first Senate subcommittee to mark up. He deserves the Senate's commendation.

Finally, Mr. President, we would be remiss if we did not take a moment to recognize the contributions of the staff. B. Timothy Leeth, the majority clerk, has done his usual solid, professional job. His assistance and cooperation are valued by Members on both sides of the aisle. I would also like to thank Jerry L. Bonham, our minority clerk, for his help and hard work on the bill. All of us, of course, rely on Lula Joyce and Dorothy Douglas. Without their skills and patience, none of us would get very far with our legislative duties.

Mr. President, I know of no other statements on this side.

We are prepared to proceed in what the majority leader describes as doing battle. We are ready to proceed in the usual fashion.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from New Jersey for his very kind remarks, and I acknowledge the contribution of Jerry Bonham and the minority staff—Lula Joyce and Dorothy Douglas. Their work has been exemplary.

Mr. TRIBLE. Mr. President, I rise today to discuss several proposals of mine relating to the District-run Lorton Prison in Fairfax County, VA.

For many years now, the Lorton facility has been a thorn in the side of northern Virginia. It is bad enough that the bulk of the District's prison population must be housed in a neighboring jurisdiction, my own State of Virginia. But over the years, frequent escapes, riots, and similar disturbances at the prison have imposed tremendous financial and emotional costs on my constituents who live in the area that surrounds the Lorton Prison.

For that reason, I have worked closely with the distinguished chairman of the D.C. Appropriations Subcommittee, Senator SPECTER, to help alleviate the burdens imposed on northern Virginia by the Lorton facility. I am pleased that the Appropriations Committee has already adopted two of my

amendments directed toward that goal. I would like to discuss those amendments briefly, and then proceed to offer two additional amendments relating to Lorton.

The first of the committee-approved amendments is designed to ensure that northern Virginia citizens do not bear the costs of responding to disturbances at Lorton. Frequently, escapes, riots, and fires occur at the prison. Indeed, a major fire took place at Lorton just over 2 weeks ago. The emergency Public Safety Services of northern Virginia jurisdictions must respond to such incidents, and in so doing, they often incur substantial costs.

My amendment ensures that the District of Columbia government will repay those costs to the affected jurisdictions in northern Virginia. It continues a proposal of mine approved by Congress last year, under which up to $50,000 in D.C. funds was made available to Fairfax County, VA. The amendment approved by the Appropriations Committee this year increases the reimbursement earmark to $100,000 for fiscal year 1987, and makes those funds available to both Fairfax and Prince William Counties.

The second of my amendments that the committee has approved is designed to help ease the uncertainty and fear that often beset residents of the Lorton area. While a siren is sounded in the event of an escape from Lorton, many of my constituents have complained that they simply are not informed of other disturbances at the prison, and are tired of reading in the morning papers that a major riot or fire occured the night before. To address that concern, the committee has adopted my amendment requiring the city to provide a 24-hour telephone information service to Lorton-area residents so that they can quickly obtain accurate information on disturbances at the prison.

Mr. SPECTER. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, with the exception of the amendment on page 24 beginning on line 1, down through line 14—because there is going to be a challenge to that one committee amendment dealing with the abortion issue—and that the bill as thus amended be regarded for purposes of amendment as original text, provided that no point of order under rule 16 shall have been considered to have been waived if the request is agreed to.

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

EXCEPTED COMMITTEE AMENDMENT

(The parts of the excepted committee amendment intended to be stricken are shown in boldface brackets, and the parts of the bill amendment intended to be inserted are shown in italic.)

[SEC. 117. None of the funds provided in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.]

SEC. 117. None of the Federal funds provided in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

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

Mr. SPECTER. I yield.

Mr. HELMS. Mr. President, I ask that it be in order for me to ask for the yeas and nays on the excepted amendment on page 24.

The PRESIDING OFFICER. The Senator does have the right to ask for the nays and nays.

Mr. HELMS. I do ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. HELMS. I thank the able chairman, and I thank the Chair.

Mr. SPECTER. Mr. President, there are two amendments which have been suggested by the distinguished Senator from Virginia [Mr. TRIBLE], who is now presiding. So, for the purpose of proceeding, I ask unanimous consent that the pending amendment be set aside.

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

AMENDMENTS NOS. 2841 AND 2842

Mr. SPECTER. Mr. President, I send to the desk two amendments on behalf of the distinguished Senator from Virginia [Mr. TRIBLE], and I ask for their immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for Mr. TRIBLE, proposes amendments numbered 2841 and 2842.

Mr. SPECTER. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 2841

On page 9, line 24, before the period insert the following: *Provided further, That the District of Columbia shall not renovate or construct prison bed space at the Occoquan facilities of Lorton prison beyond the number of prison bed spaces which were damaged or destroyed there during the fire that occurred on July 25, 1986.*

AMENDMENT NO. 2842

On page 29, after line 20, insert the following:

Sec. (A) The Congress finds that, more than 2,500 District of Columbia prisoners are now incarcerated in Federal prisons or at prison facilities belonging to Virginia, Maryland, and Delaware;

The continuing shortage of prison space within the District of Columbia has contributed to overcrowding and related problems at the Lorton prison in Fairfax County, Virginia;

The continuing shortage of prison space within the District of Columbia has helped to create a public safety crisis that could endanger the residents of the D.C. metropolitan area;

This public safety crisis is best resolved by the construction of additional prison space within the District of Columbia;

(B) It is the sense of the Congress that, in order to help alleviate the public safety problem facing the District and residents of the surrounding jurisdictions, construction should begin and be completed as soon as possible on the new permanent prison proposed to be built within the District of Columbia.

Mr. TRIBLE. Mr. President, the floor amendments I am offering to the D.C. appropriations bill relate to the prison construction situation facing the D.C. Department of Corrections.

The first of these two amendments stems from a severe fire that struck the District-run Lorton Prison in late July. In that fire, a number of prison bed spaces were damaged or destroyed at Lorton's Occoquan facilities. I understand that some of that bed space has already been renovated and is again in use by the District. But roughly 145 bed spaces have yet to be renovated and brought back on line.

This amendment stems from my concern that the District not use the planned renovation of those 147 bed spaces to expand the facilities at Occoquan. District officials have at times sought to expand their prison facilities in Lorton, VA, in order to help deal with the overcrowding problem. Neither I nor my constituents want to see the Occoquan facilities expanded, and this amendment simply ensures that any repairs or renovations at the Occoquan facility not exceed the roughly 147 bed spaces that were destroyed in the fire of July 25.

My second floor amendment deals with the urgent need for the District to proceed with the construction of new prison space within the city itself. The District's overcrowding problems are longstanding ones, and they are likely to worsen as more and more people are convicted under tough drug sentencing laws. But the answer to the prison crowding problem is not to continue to seek bailouts from the Federal Prison System, which already houses over 2,500 D.C. inmates. The answer is not to continue to dump prisoners into the Lorton facility in northern Virginia. And the answer cer-

tainly is not to grant early release to convicted persons.

Rather, the best solution is for city officials to get on with the business of building a new permanent prison within the District. I note that the Appropriations Committee has set a deadline of October 15 for the mayor to award a contract for the design and construction of a new prison, and I applaud this action. But I also believe the Senate should keep the mayor's feet to the fire beyond October 15 on the question of prison construction, especially given the city's repeated delays on this matter. To that end, my second amendment simply expresses the sense of the Senate that actual construction on the new D.C. prison should begin and be completed as soon as possible.

I believe these amendments are a responsible approach to the myriad problems facing the D.C. prison system. Their passage will do much to alleviate the concerns of my constituents in northern Virginia, and I believe they will help to resolve the public safety crisis that afflicts the D.C. corrections system.

Mr. SPECTER. Mr. President, I ask unanimous consent that the amendments be considered and agreed to en bloc.

The PRESIDING OFFICER. Without objection, the amendments are considered en bloc.

Mr. HUMPHREY. Mr. President, was that a request that they be adopted?

Mr. SPECTER. Yes. The request was that they be considered and agreed to en bloc.

Mr. HUMPHREY. Reserving the right to object, I would like to ask a question of the floor manager before we proceed to adoption of the amendments.

The one relating to the building of a prison—I confess that I did not hear all that was said.

Mr. SPECTER. There are two. One does relate to the construction of prison facilities.

Mr. HUMPHREY. What does that amendment provide?

Mr. SPECTER. It is a sense-of-Congress resolution that there is a need for the prison and we should build the prison. It is part of the bill as a whole. It is a simple statement that Congress really means business in what it said before, that we really need a prison.

Mr. HUMPHREY. What is the other amendment?

Mr. SPECTER. The other amendment says that during the repairs from the July fire, the city will not use this occasion to expand the existing prison in Virginia.

Mr. HUMPHREY. So this language restricts the District of Columbia with regard to expansion of the existing prison. Is that correct?

Mr. SPECTER. That is correct.

There is an issue as to whether there ought to be additional facilities at Lorton, in Virginia, and there is a consensus that there ought not be an expansion there, that there ought to be a prison built in the District of Columbia. That is the point the Senator from Virginia seeks to accomplish.

Mr. HUMPHREY. Does the Senator from Pennsylvania not think that the District of Columbia ought to be free to make that decision on its own?

Mr. SPECTER. I think that there are good reasons to limit expansion of Lorton and that is the reason as manager of the bill I agreed to the amendment.

Mr. HUMPHREY. The question I am getting at is, does the Congress, in view of the chairman of the D.C. Subcommittee on Appropriations, have the authority to restrict, as this amendment would, or any other restrictive amendment might, actions of the government of the District of Columbia? Does the Congress have that right?

Mr. SPECTER. I think Congress has the power. There is a question here, and I understand what the distinguished Senator from New Hampshire is moving toward. It is not this amendment. It is the one which is going to follow. There are very material differences.

The District of Columbia has chosen the site in the District of Columbia. That is their prerogative. That seems to make sense and that is where we are heading. Therefore, as the manager of the bill, I thought that when the Senator from Virginia asked there not be an expansion elsewhere, since the District has already said that, we are really saying we agree with what the District has done. There is no conflict between what the District of Columbia wants to do in building a prison in the District of Columbia and what the Senator from Virginia wants to accomplish in not having it expanded in Virginia.

Mr. HUMPHREY. I wanted to clarify the point. Is the Senate within its rights under the law and the Constitution to place restrictions upon the expenditures of the District of Columbia?

Mr. SPECTER. I would think that giving you a legal opinion that Congress would have such plenary powers if it chose to exercise them, it might not be good as a matter on home rule, but I would think as a constitutional matter, Congress could exercise those powers there.

Mr. HUMPHREY. There is actually no question I say, Mr. President. I think the Senator from Pennsylvania is really being too modest understating the case. There simply is no question the law which granted the District of Columbia home rule, so-called, Public Law 93-198, clearly gives to Congress reserves, not gives, reserves to Congress the power to pass judgment on the appropriations, to withhold appropriations or to extend them and to direct the District of Columbia Government in various ways.

So clearly the Senator from Virginia in offering this amendment is well within the law and the precedent, and I just wanted to stress that point now because, as the Senator from Pennsylvania correctly observed, there is going to be another amendment coming shortly with respect to abortion, not an amendment, but a vote on adopting or rejecting the committee amendment, that to some degree restricts expenditures for abortions in the District of Columbia.

So I just wanted to take this occasion, while hopefully Senators are listening either in person or over intercoms in the office, to point out that when we get to that point in the debate it will really be quite invalid to raise the argument to place restrictions on the funding of abortions in the District of Columbia somehow is an attack upon the rights of the District which Congress has no business making and no jurisdiction under the law. To do that, that just is not so.

We have the jurisdiction clearly under the law to do what the Senator from Virginia wants to do and to do in other matters notwithstanding home rule.

Congress reserved explicitly and clearly, no doubt with great deliberation, the right to restrict the appropriations of the District of Columbia wherever that revenue may be raised.

I thank the Senator from Pennsylvania.

The PRESIDING OFFICER. Is there objection to the unanimous consent request of the Senator from Pennsylvania [Mr. SPECTER]?

If not, the amendments of the Senator from Virginia [Mr. TRIBLE] (Nos. 2841 and 2842) are considered en bloc and agreed to en bloc.

Mr. SPECTER. I suspect when the question was raised the distinguished Senator from New Hampshire knew the answer to the question and, as he said, there was no question and that may have led to the understatement by this Senator but we have moved forward in the debate on the ensuing matter, perhaps as far as we ought to.

So for the purpose of moving ahead, I now move to reconsider the vote by which the amendments were agreed to, Mr. President.

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

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I rise in support of H.R. 5175, the District of Columbia appropriations bill for fiscal year 1987, as reported by the Senate Appropriations Committee.

The bill now before us provides $0.6 billion in both budget authority and outlays for the Federal payment to the District of Columbia and other programs associated with the Federal presence.

When outlays from prior-year budget authority and other completed actions are taken into account, the Senate subcommittee is less than $50 million in both budget authority and outlays under its 302(b) allocation under the fiscal year 1987 budget resolution.

I urge my colleagues to support the reported bill and to hold the line on Federal spending in this bill.

Mr. President, I ask that a table showing the relationship on the reported bill to the subcommittee's 302(b) allocation, the President's budget request, and the House-passed bill be printed in the RECORD at the conclusion of my remarks.

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

DISTRICT OF COLUMBIA SPENDING TOTALS—SENATE-REPORTED BILL

[In billions of dollars]

	FY 1987	
	BA	O
Outlays from prior-year budget authority and other actions completed	(1)	(1)
H.R. 5175, as reported to the Senate	.6	.6
Subcommittee total	.6	.6
Senate subcommittee 302(b) allocation	6	6
President's request	.6	.6
House-passed bill	.5	.5
Subcommittee total compared to:		
Senate subcommittee 302(b) allocation	−(1)	−(1)
President's request		
House-passed bill	+(1)	+(1)

[1] Less than $50 million

Note: Details may not add to totals due to rounding.

EXCEPTED COMMITTEE AMENDMENT

Mr. SPECTER. Mr. President, we are now to the point in the proceedings where we have before the Senate the substitute amendment which would delete section 117 which provides that:

None of the funds provided in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

And the committee substitute provides in section 117 that:

None of the Federal funds provided in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

Mr. President, the thrust of the committee amendment is to make a couple of changes in the bill as amended on the floor of the House of Representatives. One is to allow the District of Columbia to use funds which it has raised itself, contrasted to the funds provided by Congress in this act, to allow the District of Columbia to use the funds which it has raised on its own as it chooses.

Last year on an amendment this issue was condidered, and the Senate, by a vote of 54 to 41 voted to have such language inserted in the District of Columbia bill, and it is the sense that this matter ought to be accommodated as the committee has recommended.

I know there are arguments to be advanced by other Senators.

At this time I yield the floor to listen to their arguments and will have something to say at a further point in this proceeding.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. I thank the Chair for recognizing me.

For the benefit of Senators who may be listening in their offices, the excepted question is on page 24, lines 1 through 14, and the distinguished chairman of the subcommittee, Mr. SPECTER, has stated the case in terms of the committee proposing to strike the House language which has been the law since 1981 on the Labor-HHS appropriations bill.

We are talking about the Hyde amendment. We are also talking about something vastly more important.

Mr. President, Senators should understand precisely what is at stake with this pending committee amendment on the deliberate termination of innocent human life.

The House-passed version of the D.C. appropriations bill, H.R. 5175, contains what has become the standard Hyde amendment restriction on abortion funding. The original House-passed language is as follows:

None of the funds provided in this act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

That is it. That is the Hyde language. That has been the law on Labor-HHS appropriations since 1981.

This straightforward restriction on funding the deliberate termination of innocent human life was apparently not acceptable to the Senate Appropriations Committee. The committee proposed an amendment to strike the House language that I just quoted and replace it with language which was read into the RECORD by the distinguished Senator from Pennsylvania [Mr. SPECTER].

The language proposed by the committee is complicated and frankly it is convoluted, but its effect, Mr. President, is clear and unmistakable:

Wide-open taxpayer financed abortion in the Nation's Capital. Let me explain a bit further as to what has been going on with abortion funding in the District of Columbia.

□ 2050

Mr. President, since 1979 Congress has been playing a smoke and mirrors game with the abortion restrictions on funds appropriated for the District of Columbia. The game goes like this: Congress puts abortion restrictions on so-called Federal funds in the D.C. Appropriation Act, but leaves the so-called District funds totally unencumbered. The District then funds abortion on demand out of the so-called District moneys. The restrictions on the Federal funds thus become nothing more than a figleaf to cover wide open funding of abortion on demand.

And I am so grateful to the distinguished Senator from New Hampshire for driving home the point that needs to be understood. We are talking about taxpayers' money in this matter.

The flaw with this scheme is that all moneys available to the District of Columbia are in fact and in law appropriated by Congress. While there may be funds denominated Federal and District, and while there may be certain bookkeeping and other advantages in this distinction, it is Congress that appropriates all moneys for the District of Columbia.

Now what result has the current scheme produced, Mr. President? I think we ought to look with shame at what we have done in this body.

This little scheme has helped make the District of Columbia the "abortion capital" of the world—not just the United States; look anywhere and see if there is a worse record.

According to a recent Census Bureau report, the District of Columbia has the highest abortion rate in the country—1,517 abortions for every 1,000 live births. In addition, according to the National Right to Life Committee, the District has the most permissive policy on tax funding of abortion in the Nation, not only paying for abortion on demand for Medicaid-eligible women but also paying for abortion for women who do not qualify for Medicaid but have no private health insurance.

Thus, the District has achieved for itself the grisly distinction of leading the Nation in the deliberate termination of innocent human life. And I, for one, think it is time for us in Congress to eliminate this blight on the reputation of the Capital City of the United States of America.

Mr. President, as much as many in Congress would prefer to ignore, or minimize, or cover up the abortion issue, the fact is that it will not go away. And I am not going to let it go away. We are going to vote on it over and over again, because those innocent

unborn babies being deliberately destroyed here in the District of Columbia, using tax money, and throughout the country, keep making a silent but unmistakable claim on our conscience. They deserve the right to survive their mothers' womb and to live the life that God Himself has given them.

"We hold these truths to be self-evident," said Thomas Jefferson in the Declaration of Independence, "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."

Mr. President, the abortion issue presents squarely the question of whether we will secure the right to life for all human beings in this country, including those in the womb. Will we give these small but precious creatures their due, will we secure them justice, will we protect them through law from the mortal violence of abortion?

Mr. President, I wish we were today voting directly on this question. I wish we were voting on whether Roe versus Wade will stand, or whether, on the other hand, the right to life for unborn human beings will once again be recognized in our law. The reason I wish we were voting on this issue, Mr. President, is because some 30,000 innocent unborn babies are being killed every week in the United States by surgical abortion. This is an intolerable injustice, and words simply fail in describing so horrendous a crime.

But, Mr. President, we are voting today on a piece of this mammoth injustice—the question of whether the taxpayers of the United States, through an appropriation by their Congress, will fund the deliberate termination of innocent human life in the Nation's capital.

Fortunately, Mr. President, the House of Representatives took the just and forthright approach in this matter. It put an end to the charade of congressional abortion restrictions only on so-called Federal moneys but not on so-called District moneys. The House simply prohibited abortion funding, with moneys appropriated by Congress, Federal or District, in the District of Columbia. That is straightforward, that is honest, that recognizes the humanity of the unborn, and that is an approach worthy of the Congress of the United States.

The Senate Appropriations Committee, however, decided otherwise. It went in the direction of the figleaf, of the dual standard, of the charade. It put back in place the familiar language restricting funding of abortion in the District with Federal moneys but leaving wide open the funding of abortion with District moneys. Thus, the Senate Appropriations Committee—once you get through all the technicalities and doubletalk—opted in favor of funding abortion on demand in the District of Columbia with taxpayers' money.

Mr. President, some have argued the issue here as a matter of home rule for the local government in the District. They say Congress does not dictate to the States about local funding of abortion, and therefore, it should not dictate to the District of Columbia.

Well, Mr. President, there are at least two answers to this point. First, the District is not a state, and the constitutional amendment necessary to make it one was recently rejected by the States of the Union. The fact is that while Congress has permitted a degree of home rule, the District ultimately remains under the control of Congress by virtue of article I, section 8, clause 17, of the Constitution. Unless this provision is changed, complete home rule will be no more than wishful thinking on the part of home rule advocates.

Second, and more importantly, D.C. Home Rule, such as it is, cannot properly be used to cover the crime of abortion. Given a choice between saving the lives of unborn babies or acquiescing in extravagant claims of home rule, I will choose saving the babies every time, and I hope my colleagues will as well.

Mr. President, tonight we are having a vote up or down on the committee amendment. And a lot of people will be watching across this country to see how each Senator votes. I shall vote no on the committee amendment and I hope that the majority of other Senators will as well.

The PRESIDING OFFICER. The Senator from New Hampshire, [Mr. HUMPHREY] is recognized.

Mr. HUMPHREY. Mr. President, the issue once again is abortion. I hope that even though the hour is late and the Senate has considered this issue many times over the past several years, Senators could examine this issue, not as an abstract matter but instead to examine it and to consider it as the very real and commonplace occurrence that it is. What is abortion? Such a clinical sort of a name, so sterile and really abstract in itself. What is abortion?

Well, it is a medical procedure to terminate the life of a fetus. What is so bad about that? Well, the fetus is the offspring of a human being. An abortion kills the offspring of a human. That is what is wrong with abortion. If abortion did not kill a human being, then who would care? It would have no more consequence than the amputation of one's little finger. If abortion did not kill a human being, it would not be a controversial issue and it would not be an issue really that had much consequence at all.

But that is not the case. It is a matter of consequence because the offspring of human beings are human beings and abortion kills human beings. It kills them. That is the whole object of an abortion—to kill that living creature within its mother.

In fact, the complication that abortionists most fear and dread and detest, the complication they most fear is when an abortion fails and the child is born alive. Then they do not know what to do. And, as we all know, too often they leave it in a pan somewhere to starve or dehydrate to death; or we have heard in other cases they cover it with a damp cloth and smother it out of life, which the agents intended to kill the baby failed to do. That is really what abortion is all about.

You can put aside, please, I urge Senators to put aside during this moment of responsibility, these euphemisms about abortion, these slogans about abortion, and to examine the ugly and terrible heartbreaking reality of abortion. Abortion kills human beings.

That is not to say or dismiss the reality that unintended pregnancies engender great hardship in many cases. I am not dismissing that consideration at all.

But the greater consideration is the fact, the uncontestable scientific, biological fact that abortion kills human beings. That is what is wrong with abortion.

Now if you ask Senators and Congressmen and other public officials: "What is your position on abortion?" In about half the cases, you will get the response: "Well, I am personally opposed to abortion, but * * *."

What reason would any individual, whether a public official or not, have to personally oppose abortion? If abortion did not kill a human being, who could care less? Let us face it, those who say they personally oppose abortion do so because they know in their heart of hearts that abortion kills human beings and that it is wrong and it violates all of the values upon which our society, and upon which this country, in particular, rests. For abortion is not some abstract matter, it is something very real, something very terrible and unfortunate about which Senators ought to make a judgment, and particularly in this case.

□ 2100

I want to focus just briefly, and I shall not go on too long, on the argument about home rule. I hope that I have already dealt with that in the questions I raised to the Senator from Pennsylvania. Last year when we had this debate, some Senators who opposed the point of view espoused by the Senator from New Hampshire got up and said, this is terrible. We ought to let the District of Columbia administer its own affairs. After all, the District of Columbia has home rule and has had home rule for a decade or

more. But the fact of the matter is that it is limited home rule, and was explicitly and deliberately limited by the public law which granted that limited home rule.

Let me just cite a couple of the relevant passages from Public Law 93-198, Mr. President. Section 446, entitled "Enactment of appropriations by Congress" reads in part, "No amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been appropriated by an act of Congress." In other words, the District cannot spend any money, whether it raises it locally or gets it from the Federal Government, unless that money is appropriated by Congress, unless each Senator in this Chamber or a majority at least and a majority in the House agree to appropriate that money.

The responsibility is right here, my friends. You cannot shirk it. You cannot let us just pass this appropriations bill and let the District of Columbia officials take responsibility for how it is spent. You cannot do that. You can say you are doing that. But it is intellectually dishonest because, as Senators know, we have not only the authority but the responsibility that goes with that authority to exercise our judgment.

That is what we are about to do on this vote, whether to adopt the committee amendment or not. We will be exercising our judgment about an activity that will take place in the District of Columbia. There is nothing new about it. We do it all the time every year. We just did it with respect to the amendment of the Senator from Virginia, and this agrument about home rule is nothing but a lot of hoopla. We have a responsibility, the obligation, and the authority to pass judgment on these kinds of things. And there can be no shirking it by simply shrugging, adopting this committee amendment, and then blaming the District of Columbia officials as to what they might or might not do with the money.

Mr. President, to the credit of the Senate and the Congress for a number of years we have adopted the so-called Hyde amendment to the various bills which says in essence that the taxpayers will not be obligated to pay for abortions except where the life of the mother is at stake.

That is the language in the House bill which the Senate Appropriations Committee seeks to strike and replace with something far more liberal, far more permissive. Permissive in what way?

First of all, it will expand the authority of the District of Columbia to spend Federal funds in certain cases of abortion. Presently the District can only spend Federal funds where the life of the mother is endangered by carrying the child to term. Under the committee amendment, which we have been asked to adopt and to which I urge Senators to defeat, it would change the language of the House bill so that in addition to life of the mother abortions will be funded by the Federal taxpayers in cases of rape and incest. What is wrong with that, some might say. Let me go back to the fundamental argument about abortion. If you believe that the offspring of human beings are human beings, that abortion kills human beings, then the circumstances of conception does not change the humanity of that human being as unfortunate, terrible, and tragic as the circumstances might be in cases of rape and incest.

If you are against abortion because abortion kills human beings, then the circumstance of conception is not or should not in the opinion of this Senator change one's judgment on that.

So the committee amendment before us would strike Hyde in effect, would permit Federal funding of abortion not only where the mother's life is threatened but also in the case of rape and incest and going beyond that, we make it explicitly clear that with respect to the money raised by the District of Columbia, the District can do anything it wants with regard to abortion. It can fund them all under any circumstance and in all circumstances.

Let me just point out in closing that in this appropriations bill we appropriate every penny to be spent by the District of Columbia, not just money allocated by the Federal Government. But the money raised locally by the District we appropriate. We pass judgment on how the District can spend the money it raises locally. That is our responsibility under the Constitution and under the law. We cannot shirk that.

So I want to close by saying, Mr. President, that the principal differences between the House language which I urge Senators to uphold and the proposed committee amendment are these: The House language contains the standard Hyde boilerplate language that we adopted year after year. It would restrict funding of abortions to those cases only where the life of the mother is threatened by continuing the pregnancy to term.

This is the House language. What the Senate Appropriations Committee would have us adopt is to expand that to include cases of rape and incest, and to tell the District of Columbia that with respect to the money that it raises locally it can do anything it darned well pleases and there will be no restrictions whatever.

This is a very strong antilife amendment in the view of this Senator. I urge my colleagues to oppose it.

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I rise to express my profound admiration for the Senator from North Carolina and for the Senator from New Hampshire and to associate myself with the position which they have so articulately and thoughtfully laid before the Senate. I cannot let the moment pass without recalling that over the last decade our friend from North Carolina, JESSE HELMS, has raised this issue over and over again, and in large part as a result of his appeals to the conscience of this body and to the Nation.

There is a growing consensus that it is simply wrong as a matter of fundamental moral principle for the Federal Government or other governments to fund abortions.

But when he began that cause, that crusade, it was not a popular issue. It was not something that there were large crowds of supporters behind as is now the case. When he took it on it was a lonely, difficult task, and here tonight he is back again defending a cause which he deeply believes in and which many of us around the country have come to believe in as a result of his leadership.

I also want to compliment my friend and colleague from New Hampshire, who in the last 2 or 3 years has emerged as one of the most knowledgeable, best informed, and most thoughtful legislators in dealing with this complex and difficult part of the law.

I particularly want to compliment both of my colleagues, first, for their faithfulness for being here.

The hour is late. It would be easy to let this slide by and say it is late in the session and, gosh, we have fought this battle many times. They are not doing that. In fact, I sense JESSE, GORDON, and others who care about this matter are in fact drawing renewed strength from fighting the battle over and over again because there is a belief, a belief which I deeply share, that we are right; that justice is on our side, that this is our course, and that out in the country as well as in this Chamber there is an emerging majority of people who are eager to put an end to the tragedy of abortion.

I feel just as our colleague from North Carolina has said. I wish we were voting tonight on Roe versus Wade. That is somehow not in our capacity to do. The parliamentary situation does not permit it. The times are not quite yet right for that issue to be resolved, and that horrible decision, that travesty of miscarriage of justice to be reversed. That day is coming. It is not distant in my opinion.

But tonight we have a fundamental question of whether or not we are going to take a step backward by going

back to the pre-1981 more permissive abortion law. So I compliment my colleagues for their faithfulness.

Second, I compliment them for the dispassionate manner in which they have laid out the case. They have not come here waving their arms. They have not come here making floor appeals to emotion. They have set forth again tonight as they have on many occasions in the past, in a manner which will stand the most careful, logical inspection in a way which any thoughtful person can understand, and relate to, a carefully, tightly reasoned case of why it would be wrong, wrong in principle, wrong as a matter of legislative practice for us to adopt the committee amendment in the form it is presented.

I also want to compliment my colleagues for not arguing about the right of those who wanted to bring this amendment to the floor. One of the things we have been treated to recently, every time the question of abortion comes up, from the other side of the aisle—that is, when some of us are trying to find ways to shut down this horrible practice and bring up an amendment—somebody stands up and says, "Oh, they are bringing up that issue again. My gosh, we voted on that 900 times, and they go off like it was the worst possible thing."

□ 2110

Well, I congratulate my colleagues for not saying that. Any Senator has a right to raise this issue and much as I disagree with members of the Appropriations Committee who have sought to change the law back to the bad old days, I do not deny them or criticize them their right of offer such an amendment. It would be a tragedy if the Senate were to accept it, but I am glad we are not arguing about the right of Senators to offer it.

It is an important issue and I just hope later in this session when the shoe is on the other foot, when there are those of us who will offer an amendment on whether or not we ought to continue to provide taxpayers subsidy for abortion through the tax bill, that we will not be treated to some lengthy discussion of why we should not be raising this issue after we have voted on it over and over again.

Finally and most important, perhaps, Mr. President, I want to congratulate my colleagues for making the case in a manner which is absolutely, unmistakably clear. The issue is not home rule, not money, but the issue is life. If Senators believe that what we are talking about is the innocent life of unborn children, then the correct vote on the committee amendment is no.

That is not a question of how you feel about home rule because we are in the legislative body supposed to be the municipality here for the District of Columbia. It is a question of home rule.

Mr. President, the issue is not whether or not we spend some amount of money which though significant is modest in the overall scheme of things. The question is life and how we feel about it.

I recall, Mr. President, Edmund Burke said that all that is necessary for evil to prevail in the world is for the good men to do nothing. Here is a chance for some of us to do something and the issue is very clear. I hope the Senate tonight will take a stand for life and vote down the committee amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio [Mr. METZENBAUM] is recognized.

Mr. METZENBAUM. Mr. President, deja vu, deja vu.

To repeat, every time we get a bill, we have to go through it again on an abortion amendment. We had this same issue before us on November 7, 1985, an issue which was defeated by a vote of 54 to 41. This is the latest attempt to inject the abortion issue into every bill that comes along.

We are not satisfied to let the Members state their position on this issue once. It has to be stated over and over and over again.

The Senate Appropriations Committee's position was to retain the current law. But that is not good enough for those who insist on making abortion an issue at every turn.

Let us not kid ourselves. Current law is an antiabortion position. It is an antiabortion position. But those who would propose this, who would object to the committee amendment, say, "It does not go far enough. We have to go a little bit further. If we do not go a little further or a lot further, we think it is wrong. We have to prove ourselves day in and day out."

Every time we have an appropriations bill or a tax bill or a foreign aid bill or any other kind of bill, someone tries to cut back on the opportunity for women to exercise their constitutional right to an abortion. Someone wants to impress their constituents and inject this emotional issue into the Senate's business.

I recognize that they have an absolute right to do that. But those of us who disagree have an absolute right to indicate our opposition.

The D.C. appropriations bill is just another example, another effort, to try to stop women from exercising their rights as spelled out by the Supreme Court of the United States, recognized as a constitutional right.

But it is also an effort to overturn home rule in the District of Columbia.

There is some kind of absurdity to this position. What this amendment would do is go further than the Appropriations Committee has gone. The Appropriations Committee has provided restrictions with respect to the right to use Federal funds for abortions. This amendment would say much more than that. This amendment would say no matter how many dollars have been raised by the District of Columbia itself, those dollars could not be used in connection with an abortion.

How outlandish can we be? How far would we go? This amendment would not only limit the use of Federal funds for a limited category of abortions; it would stop the District of Columbia from using its own revenue to fund abortions if it chooses this option.

Are there those in this body who would say that we should pass a law telling Ohio or New Hampshire or North Carolina or Utah or any other State what to do with the money they raise from their own citizens? Where are those who cry out for States' rights? The District of Columbia is not a State, but the fact is it is a question of home rule. It is a question of their having a right to use their funds for whatsoever purpose they deem appropriate. And the Federal Government has no right to stick their nose in to tell the District of Columbia, "you cannot spend money for this and you cannot spend money for that," whether the issue is abortion or any other issue.

Do we not have any respect for these people who live in the District of Columbia? We deny them the right to participate in elections fully. They do not have any representatives in the U.S. Senate. They do not have a Representative in the House with voting privileges. And yet we would say to them, "You may not spend your money in connection with certain abortions."

This amendment, which would tell the District how to spend money the District has raised, takes away hard-won autonomy from the District. We should vote against this amendment because it would cut back on meaningful home rule in the District of Columbia.

But there is another reason why this amendment should be opposed. That is, I say to my colleagues in the Senate, I believe we have had enough antiabortion legislation. Nobody is trying to turn the clock back. Nobody is trying to change the present law.

The bill, as it comes out of the Appropriations Committee, does not change it, liberalize it. It just keeps the law as it is.

But since 1977, I want my colleagues to understand, we have had over 452 bills and amendments that have been introduced on this subject. There have been over 126 votes on abortion-related legislation. That is more legislation

on abortion than on youth unemployment. That is more legislation on abortion than on child abuse. That is more legislation on abortion than on teenage pregnancy. That is more legislation on abortion than on prenatal care.

Enough is enough is enough.

About 10 months ago another abortion amendment was offered on a totally unrelated bill. I said then and I repeat for my colleagues what I said at that time. At that time I said I have had it. No more amendments that go beyond the present law with respect to abortion. Mr. President, I want to say that the line in the sand has been drawn. We have gone far enough.

□ 2120

I say again tonight, we have gone far enough. We have had enough of people trying to cut back on the right to abortion every time we have a vote in Congress. I will fight this amendment. I hope that many of you will join me.

The last time, this same amendment was defeated. We need to make it clear that abortion is not going to be an issue every time the Senate takes a vote. I hope this amendment is defeated because if it is not, I plan to explain and spell out for the Members of the U.S. Senate in detail, I expect to educate the Senate on the past bills and amendments that have been brought before this body for consideration. I strongly feel that this amendment, this proposal to delete the Appropriations Committee amendment should, itself, be defeated. Therefore, I hope that my colleagues will see fit to vote "yea" and not "nay" in connection with the pending Appropriations Subcommittee amendment.

The PRESIDING OFFICER. Is there further debate?

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

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

Mr. SPECTER. Mr. President, I think it might be useful to spend just a moment or two before the vote by way of a very brief summary.

There have been a number of representations made that the committee amendment is a change from preexisting law. That is not so. This has been the law since 1980. There is a significant factor here as to home rule. That is a judgment for Congress to make. We can abridge home rule or we can allow it to stand. It is simply one of the factors. But if the House action stands, the District of Columbia would be told how to use its own revenue, something which Congress cannot do for any other city or State, because of the Federal provisions.

This amendment is somewhat complicated in that it allows Federal funding to be used only in the event that there is rape, incest, or the life of the mother is endangered.

As to the balance of the funds raised by the District of Columbia, then there would be broader rights for use of those funds for abortions in accordance with the decision of the Supreme Court of the United States.

Mr. President, I think the essential factors have been debated at length. The matter was considered last November 7 and the vote was 60 to 35 in favor of this amendment. There had been a reference to a 54-to-41 vote but that was on a different matter.

It seems to me that we have the issues before us and it is appropriate to bring the matter to a vote at this time.

The PRESIDING OFFICER. Is there further debate?

Mr. ARMSTRONG. Yes, Mr. President, there is and I shall take just a moment. It is definitely not my desire to engage the Senator from Pennsylvania in a lengthy discussion, certainly not about the legal implications, because he is undoubtedly one of the foremost lawyers of the body and I do not wish to quibble. But I do not think it is fair to the RECORD, if nothing else, to leave unchallenged the question of whether or not we are improperly meddling in the expenditure of local revenues.

It has already been pointed out that for the District of Columbia, this body and our brothers in the other body stand in the same general relationship to the District of Columbia that we would if we were the legislators of the general assembly of a State. We are the legislative body in that sense. We have that power and, having the power, we have the responsibility.

Even if that were not the case, I remind my colleagues that this is the same body that undertakes to heavily penalize every State, all 50 of them, including the District of Columbia, I guess, if they do not choose to adhere to our version of a national speed limit.

I just urge my colleagues to think seriously about that. If we think it is important enough that we actually penalize States, coerce States, in the rawest, most direct, most obvious manner if they fail to conform to our idea of a speed limit and if we do not think that is too much of an interference with States' rights, then it would seem to me this is not too much of an interference when life itself is at stake. So I shall vote no.

Mr. SPECTER. Mr. President, there are enormous differences. In a nutshell, when Congress sets requirements for speed limits, it does so in terms of specific moneys which Congress is providing to the States for highways. Here we have the appropriating process clearly in Congress. But there are two sets of funds—one which the District of Columbia raises on its own and the second which the Federal Government makes as a contribution in lieu of taxes. It is the funds which the District of Columbia raises on its own which this Senator submits it has broader powers on under the principle of home rule.

I do not disagree with my distinguished colleague from Colorado that it is a matter of judgment as to how far Congress seeks to exercise its authority. We have great, virtually unlimited authority if we seek to exercise it. I submit that we should not in this sense and this committee substitute ought to be adopted.

Mr. LAUTENBERG. Mr. President, I think it is important to understand what this debate is about. It is not about abortion, it is really about home rule. The examples that are used by the opponents of the committee amendment do not prove the case that the Federal Government has an overriding interest in this. We just heard from the distinguished Senator from Colorado an example that relates, as the Senator from Pennsylvania said, only to Federal funds. We do not try to restrict the State's use of its own funds for highway activities if the State's speed limit exceeds the limit established as a national policy objective. The restriction applies to Federal, not State funds.

□ 2130

So I think we ought to get on with this vote, get on with a conclusion to this matter once and for all. This is another attempt to impose restrictions on the District of Columbia that go well beyond the kind of prudent, sensible oversight that we have the right to do under the Home Rule Act. What we have tried to do in the Home Rule Act is strike a balance between local independence and the Federal Government's appropriate interests in the District as the National Capital. The fact that the Congress appropriates the city's own funds is not a warrant for indiscriminate interference in the District's local affairs. Let's be clear about this issue here. A vote against the committee amendment is a vote for Congress to return to the bad old days when this body treated the city of Washington like its private fiefdom. I do not think this is consistent with the consensus supporting Home Rule principles that exists in this body. The arguments have been lucid; they have been clear. Mr. President, I hope that we will proceed with this vote, keeping in mind the unfair and discriminatory implications of restricting the District's use of its own revenues while we

permit the other cities across the country to act as they would please in their own jurisdictions. I hope that we will support the committee amendment. There has been a lot of work and debate on it and I think it reflects a sensible compromise. It is time to end the discussion and proceed with the vote.

Mr. HUMPHREY addressed the Chair.

The PRESIDING OFFICER. Is there further debate? The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, I shall occupy only a moment. Before we vote I do want to correct what I perceive to be a clear error in the statement of the Senator from New Jersey. He says—and I forget his precise language—we are imposing a restriction on the District of Columbia which we have no right to do. Clearly, that opinion is mistaken. That opinion contradicts the public law which granted the District of Columbia home rule, which says with respect to appropriations this, which is very succinct and very clear, and on this note I will end this part of the debate. The Senator should not be under any misapprehension about this. Under the law and the Constitution we have a right to respond and to pass judgment on all appropriations of the District of Columbia. That is what this bill will do when we dispose of it in a moment. In the public law which I cite it says this:

> No amount will be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been appropriated by an act of Congress.

That is what we are about to do. We have the right under the law and the responsibility to do that. Any statement to the contrary is simply invalid on its face.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment of the committee. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], the Senator from Washington [Mr. GORTON], and the Senator from Utah [Mr. STAFFORD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Missouri [Mr. EAGLETON], the Senator from Hawaii [Mr. INOUYE], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Arkansas [Mr. PRYOR], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

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

The result was announced—yeas 48, nays 42, as follows:

[Rollcall Vote No. 263 Leg.]

YEAS—48

Baucus	Gore	Nunn
Biden	Harkin	Packwood
Bingaman	Hart	Pell
Bradley	Heflin	Riegle
Bumpers	Heinz	Rockefeller
Burdick	Hollings	Roth
Byrd	Kassebaum	Rudman
Chafee	Kerry	Sarbanes
Chiles	Lautenberg	Sasser
Cochran	Leahy	Simon
Cohen	Levin	Simpson
Cranston	Mathias	Specter
Dixon	Matsunaga	Stevens
Dodd	Metzenbaum	Warner
Evans	Mitchell	Weicker
Glenn	Moynihan	Wilson

NAYS—42

Abdnor	Ford	Mattingly
Andrews	Gramm	McClure
Armstrong	Grassley	McConnell
Boren	Hatch	Melcher
Boschwitz	Hatfield	Murkowski
Broyhill	Hawkins	Nickles
D'Amato	Hecht	Pressler
Danforth	Helms	Proxmire
DeConcini	Humphrey	Quayle
Denton	Johnston	Symms
Dole	Kasten	Thurmond
Domenici	Laxalt	Trible
Durenberger	Long	Wallop
Exon	Lugar	Zorinsky

NOT VOTING—10

Bentsen	Gorton	Stafford
Eagleton	Inouye	Stennis
Garn	Kennedy	
Goldwater	Pryor	

So the excepted committee amendment was agreed to.

□ 2200

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. ABDNOR). The Senate will be in order.

The Senate will please be in order.

The Senator from Pennsylvania.

Mr. LEVIN. I would like to ask my good friend, the distinguished chairman of the Subcommittee on the District of Columbia, about one of the more important provisions of the bill which begins on page 3. This is the section which provides an additional $20 million for the construction of a prison facility in the District of Columbia. I am concerned that this provision, as written, puts more of a straitjacket on the D.C. government in this matter than is necessary or wise.

Let me explain my concerns and ask the chairman to comment on them.

First, the committee bill requires the District government to award a design and construction contract for the new facility no later than October 15, 1986. By the time this bill is enacted, that deadline is likely to be only a week or two away. I certainly understand the need to keep the District government's feet to the fire on this matter and I do not disagree with the imposition of reasonable deadlines for getting on with the building of a new prison facility. But I seriously doubt that this deadline is a reasonable one, given the current state of the city's plans for a new prison. I understand that the consultant's report laying out the scope of this project—the only detailed proposal now available—was first submitted on September 2, 1986, and even that report leaves many basic questions such as the number of beds in the facility still to be decided. When this bill goes to conference, will the chairman be willing to consider extending this deadline for awarding a contract for a month or two so that all parties, including the chairman's subcommittee, have an adequate opportunity to be reasonably assured that this treatment facility is a sensible approach?

Mr. SPECTER. I am determined to hold the District government to a deadline for getting on with this vital project. I also recognize the need for adequate time for careful planning and contracting procedures. I am willing to consider any reasonable extension of the deadline contained in the bill for awarding a design and construction contract that is made in good faith and not just to further delay this project in the hope that the Congress will relent in its insistence that the District government build a new prison.

Mr. LEVIN. I thank my colleague for that willingness to be flexible on the question of timing so long as good faith efforts to move the process along are underway. I further understand that it is not the intention of the subcommittee to involve itself in the site selection process for this new prison facility. The bill's provision merely seeks to approve the site selected by the Mayor. However, it is also my understanding that the City Council has not yet involved itself in the site selection process, and that the subcommittee in last year's appropriation act directed the Mayor and the City Council to submit a plan for a new prison to the Congress. Is it the subcommittee's intention to prevent the Mayor and the City Council, if they could reach agreement in a timely way on a different site within the boundaries of the District of Columbia, from proceeding to locate the prison on that alternative site?

Mr. SPECTER. It is not my intention or the intention of the subcommittee to make the site selection for this facility. Again, if the elected officials of the District of Columbia can reach some rapid agreement on a different site for this facility, I would be willing to take some action to accommodate that decision.

Mr. LEVIN. I hope the chairman is aware of some of the criticisms which have been made of the site the Mayor has selected for this prison facility. I

71-059 O-87-44 (Pt. 16)

am particularly concerned about the appropriateness of locating such a facility in a residential area, next to a national historic site—the Congressional Cemetery—and within a few blocks of the National Historic District of Capitol Hill. It certainly seems more appropriate to this Senator to put such a facility in a commercial or industrial area, and I understand there are such sites available in the District, but again it is not up to us here in Congress to make this decision for the District government and its citizens. But even more importantly, I understand that the site selected does not comply with some of the important guidelines established by the American Correctional Association and the National Institute of Corrections in conjunction with the Federal Bureau of Prisons for the construction of adult correctional institutions.

Those guidelines recommend that such facilities be designed to house no more than 500 inmates, be located on sites of at least 150 acres, and not be clustered with other correctional facilities on a common site if possible. The justification for these guidelines includes not just the obvious security considerations, but also the experience of corrections professionals that as facilities get larger, "it becomes increasingly difficult to maintain a healthy atmosphere, promote open communications, provide programs tailored to indvidual needs, control tensions, and ensure the safety of both staff and inmates."

As you know, the Mayor's proposed facility would be for either 544 or 800 inmates, would be located on only 10.5 acres, and would be located directly adjacent to the D.C. Detention Center which houses 1,594 inmates. Furthermore, the guidelines call for the security of the facility to be assured by a minimum of 300 feet of buffer zone between the outer perimeter fence and the institution's property lines. Up to 600 feet is preferred, if possible. The site the Mayor is proposing would have a buffer zone of as little as 25 feet. Does my colleague not agree that these are important considerations in selecting the best site for this new correctional facility, and that the D.C. government should make every effort to comply with ACA standards and guidelines?

Mr. SPECTER. I understand what the Senator from Michigan is saying. It is my goal to get a good and secure prison built.

Mr. LEVIN. I hope my colleague will understand that I intend to work with the members of the conference committee from both this body and the House of Representatives to have the final bill's provision in relation to this matter include some reference to these important standards and guidelines. It certainly is important to have the District of Columbia government move forward with the construction of additional correctional facilities. But it is just as important that any such facilities be constructed consistent with the highest standards for modern penal systems so that the Congress has assurance that the funds we are providing are being well spent.

Mr. SPECTER. Mr. President, I ask for third reading of the bill.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed for a third reading and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5175), as amended, was passed.

Mr. SPECTER. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, there will be no more votes this evening.

Mr. HELMS. Mr. President, I ask unanimous consent that the RECORD indicate that if there had been a rollcall vote, I would have voted "nay" on final passage.

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

Just a moment, please. The Senate will be in order, please. Those who wish to converse will retire to the Cloakroom. The Senate will be in order. The Senate will be in order so we can proceed and finish up our business here.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives thereon and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer [Mr. ABDNOR] appointed Mr. SPECTER, Mr. HATFIELD, Mr. MATTINGLY, Mr. DOMENICI, Mr. LAUTENBERG, Mr. HARKIN, and Mr. STENNIS conferees on the part of the Senate.

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

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

The Senate will be in order. The Senate will please be in order.

The Senator from South Carolina.

PROVIDING THE MEDICAL UNIVERSITY OF SOUTH CAROLINA A WAIVER OF CERTAIN REQUIREMENTS OF TITLE XIX OF THE SOCIAL SECURITY ACT

Mr. THURMOND. Mr. President, on behalf of myself and Senator HOLLINGS, I send a bill to the desk and ask for its immediate consideration.

Mr. BYRD. Mr. President, reserving the right to object, I do not believe that is what the distinguished Senator wishes to do. I would have to object to that request.

Mr. THURMOND. I thought I would ask that and if you objected——

Mr. BYRD. No, the Senator is asking for immediate consideration.

Mr. THURMOND. I understand. That is what I would like to get, if you do not object. If you object, then I will ask for something else.

Mr. BYRD. Then I object.

The PRESIDING OFFICER. Objection is heard.

Mr. THURMOND. Mr. President, I now send a bill to the desk and ask for first reading.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 2825) to provide for a waiver of certain requirements of title XIX of the Social Security Act with respect to care and services provided by the Medical University of South Carolina.

Mr. THURMOND. Mr. President, I now ask for second reading of the bill.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, I intend to help the distinguished Senators from South Carolina to facilitate the placement of this bill on the calendar. I will object in order to do just that under rule XIV.

My earlier suggestion that the distinguished Senator was not proceeding in the right manner was in accordance with what I thought he was going to do, and that was to trigger rule XIV. But he had in mind that he would try to get the bill up for immediate consideration, and I understand that and I applaud him for that.

I do object, therefore, Mr. President, to the second reading.

The PRESIDING OFFICER. Objection is heard.

Mr. THURMOND. Mr. President, in October 1984, South Carolina implemented a Medically Needy Program to provide for the cost of health care to pregnant women and children under the age of 18. Federal participation and cost sharing in this program was authorized under Medicaid.

At the time of program implementation, the South Carolina Health and Human Services Finance Commission

and the South Carolina Department of Social Services made a concerted effort to insure that health care providers and potential recipients were aware of the existence of the program by conducting health care provider workshops and public service announcements.

Based on the expanded eligibility criteria of this program, the Medical University of South Carolina provided services to 1,345 inpatients between October 1, 1984, through June 30, 1985.

Because many rules under this new program were new and different from other health care programs for the indigent, and a large number of recipients were involved, the application process was very slow and ineffective during the first 6 to 9 months of program implementation. Individuals who may have been eligible were not covered because of these delays.

Due to these delays, the Medical University was unable to obtain reimbursement from the Federal Health Care Financing Administration [HCFA]. HCFA is prohibited by the Social Security Act from providing reimbursement beyond a 3-month period before the date an application is filed by a potential program beneficiary.

In sum, health care service for the indigent have been provided to those who would have been eligible under the new program. However, delays in determining eligibility prevented certain health care providers from receiving equitable reimbursement for those services. The State authorities merely seek another opportunity to establish eligibility under the program for those who were provided these necessary services between October 1, 1984, and June 30, 1985. In order to obtain Federal reimbursement the State would have to establish eligibility within 6 months after the date of enactment of this legislation.

Mr. President, I strongly urge my colleagues to support expedited passage of this legislation.

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

There being no objection, the text was ordered to be printed in the RECORD, a follows:

S. 2825

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

SECTION 1. WAIVER OF CERTAIN MEDICAID REQUIREMENTS.

Notwithstanding the three-month limitation set forth in sections 1902(a)(34) and 1905(a) of the Social Security Act, payment may be made under title XIX of such Act with respect to care and services provided by the Medical University of South Carolina, after September 30, 1984, and before July 1, 1985, to individuals—

(1) who are not described in section 1902(a)(10)(A) of such Act,

(2) who, upon application, would have been eligible as individuals under the age of 18 or pregnant women, for medical assistance under the State plan approved under such title at the time such care and services were provided, and

(3) who are determined by the State agency administering or supervising the administration of such plan to have been so eligible not later than six months after the date of the enactment of this Act.

□ 2210

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

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

WELCOMING PHILIPPINES PRESIDENT CORAZON AQUINO TO THE UNITED STATES

Mr. BYRD. Mr. President, on behalf of myself, Mr. DOLE, Mr. PELL, Mr. LUGAR, Mr. CRANSTON, and Mr. LEVIN, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 490) to Welcome Philippines President Corazon Aquino to the United States, and to Demonstrate Continued Support by the United States Senate for the Restoration of Philippines Democracy and for the Effective Stabilization and Enhancement of that Nation's Economic, Political, and Security Conditions

Whereas, on February 26, 1986, in S. Res. 351, the Senate praised the progress toward the restoration of democracy in the Philippines occasioned by the transfer of power to President Corazon Aquino and commended President Aquino for the peaceful methods employed to bring about this transition;

Whereas, in S. Res. 351, the Senate also praised the courageous commitment of the Filipino people to democracy and fully supported the U.S. Government's recognition of the legitimacy of the Aquino government;

Whereas, since the inauguration of President Aquino, her government has begun the process of restoring full democracy to the Philippines, and of addressing that nation's severe economic, political, and security problems;

Whereas the historical bonds of friendship and alliance between the United States and the Philippines, and between Americans and Filipinos, remain strong;

Whereas President Aquino arrived on September 15, 1986, for her first official visit to the United States, and will address a Joint Meeting of the Congress on September 18, 1986: Now, therefore, be it

Resolved,

SEC. 1. The United States Senate:

(A) on behalf of the American people, warmly welcomes President Aquino to the United States and expresses best wishes for a productive visit which will further strengthen the bonds between our two nations and peoples;

(B) reaffirms its strong support for the Government of the Philippines under the leadership of President Aquino, who clearly enjoys the support of a majority of the Philippine people;

(C) supports efforts to restore full democracy to the Philippines and to effectively address that nation's economic, political, and security problems;

(D) within the constraints of the United States' own budgetary limitations, will seek to help the Philippines to address its economic, political, and security conditions;

(E) urges the allies and friends of the United States to assist the Philippines in the restoration of its prosperity and the rebuilding of its democratic institutions;

(F) commends the Aquino government for its efforts to revitalize the private sector, including the active encouragement of increased foreign trade and receptivity to foreign investment; and

(G) commends President Aquino for her expressed intention to abide by the U.S.-Philippines military bases agreements, as amended, which serve the security interests of both nations.

SEC. 2. These findings and sentiments of the United States Senate should be conveyed personally to President Aquino during her official visit to the United States.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

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

The resolution (S. Res. 490) was agreed to.

The preamble was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, I thank the distinguished minority leader. I think it is an excellent resolution. I am pleased to join as a cosponsor along with other Senators.

Mr. PELL. Mr. President, I am pleased to join my colleagues in approving this resolution of welcome to President Corazon Aquino of the Philippines.

In February of this year, the American people were captivated by the spectacle of the Philippine nation rising to affirm the spirit and cause of democracy. Reposing their trust in Corozon Aquino, the Filipino people have now set out on the path to restore a plundered economy and to overcome deep national divisions resulting from years of misrule. Success in this challenge is by no means assured. It is therefore with a combination of admiration and solemn concern for her formidable task that we welcome President Aquino.

We look forward to constructive discussions and to further steps toward reestablishing the solid relationship that can only exist between two democratic states. American strategic interests, and our compelling moral and humanitarian interests in the Philippine future, come together to make Mrs. Aquino's cause our own.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, 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.)

MESSAGES FROM THE HOUSE

At 2:56 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 98. A bill for the relief of Cirilo Raagas Costa and Wilma Raagas Costa; and

S. 290. An act for the relief of Catherine and Robert Fossez.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

At 6:21 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolution:

S. 720. An act to establish a permanent boundary for the Acadia National Park in the State of Maine, and for other purposes; and

H.J. Res. 692. Joint resolution to designate the week of October 19, 1986, through October 26, 1986, "National Housing Week".

The enrolled bill and joint resolution were subsequently signed by the President pro tempore [Mr. THURMOND].

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. STAFFORD, from the Committee on Environment and Public Works:

Special Report on Budget allocations of the Committee on Environment and Public Works (Rept. No. 99-442).

By Mr. KASTEN, from the Committee on Appropriations, without amendment:

S. 2824. An original bill making appropriations for foreign assistance and related programs for the fiscal year ending September 30, 1987, and for other purposes (Rept. No. 99-443).

By Mr. MURKOWSKI, from the Committee on Veterans' Affairs, with an amendment in the nature of a substitute:

S. 2422: A bill to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans and the rates of dependency and indemnity compensation for surviving spouses and children of veterans; to improve the Veterans' Administration home loan guaranty program; to authorize certain debt collections; to authorize the Administrator of Veterans' Affairs to require additional information from certain fiduciary agents of veterans; to revise the authority of the Administrator of Veterans' Affairs to construct, alter, acquire, operate, and maintain parking facilities at Veterans' Administration medical facilities; and to authorize an administrative reorganization in the Veterans' Administration (Rept. No. 99-444).

By Mr. CHAFEE, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute and an amendment to the title:

S. 740: A bill to extend until October 1, 1995, the authority for appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands and other essential habitat, and for othe purposes (Rept. No. 99-445); pursuant to the order of May 20, 1986, referred to the Committee on Energy and Natural Resources for not to exceed 60 days.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. GOLDWATER, from the Committee on Armed Services:

Richard P. Godwin, of California, to be Under Secretary of Defense for Acquisition.

(The above nomination was reported from the Committee on Armed Services with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. GOLDWATER. Mr. President, From the Committee on Armed Services, I report favorably the attached list of nominations.

Those identified with a single asterisk (*) are to be placed on the Executive Calendar. Those identified with a double asterisk (**) are to lie on the Secretary's desk for the information of any Senator since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again.

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

(The nominations to lie on the Secretary's desk were printed in the RECORD of August 14 and September 9, 1986, at the end of the Senate proceedings.)

*1. Vice Adm. Paul F. McCarthy, Jr., U.S. Navy, to be reassigned (Ref. 1289).

*2. Rear Adm. (lower half) Paul D. Miller, U.S. Navy, to be vice admiral (Ref. 1291).

*3. In the Navy there are 20 promotions to the grade of rear admiral (list begins with Roger Francis Bacon) (Ref. 1304).

*4. In the Navy there are 2 promotions to the grade of rear admiral (list begins with Arthur William Fort) (Ref. 1305).

*5. In the Navy Reserve there are 10 promotions to the grade of rear admiral (list begins with John Edward Love) (Ref. 1306).

*6. Brig. Gen. Billie B. Lefler, U.S. Army, to be Assistant Surgeon General/Chief, Dental Corps, U.S. Army (Ref. 1312).

**7. In the Marine Corps Reserve there are 194 appointments to the grade of lieutenant colonel (list begins with Robert J. Agro). (Ref. 1323).

*8. Maj. Gen. Edward J. Heinz, U.S. Air Force, to be lieutenant general (Ref. 1335).

*9. Maj. Gen. Bradley C. Hosmer, U.S. Air Force, to be lieutenant general (Ref. 1336).

*10. Lt. Gen. Forrest S. McCartney, U.S. Air Force, to be reassigned (Ref. 1337).

*11. Maj. Gen. William Francis Ward, U.S. Army Reserve, to be Chief, Army Reserve (Ref. 1338).

*12. In the Army National Guard there are three promotions to the grade of major general (list begins with James A. Ryan) (Ref. 1339).

*13. Col. Thomas R. Tempel, U.S. Army, to be brigadier general (Ref. 1340).

**14. In the Air Force there are 1,944 appointments to the grade of captain (list begins with Richard O. Abderhalden) (Ref. 1341).

**15. In the Marine Corps there are 8 appointments to the grade of second lieutenant (list begins with Steven Barnett) (Ref. 1342).

**16. In the Navy there are 47 appointments to the grade of ensign (list begins with Susan D. Harvey) (Ref. 1343).

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 Mrs. HAWKINS:

S. 2822. A bill authorizing the Secretary of the Interior to preserve the Marshlands of the Nassau Valley in the State of Florida, to enhance the protection and interpretation of important historic and prehistoric sites in the vicinity of the Nassau, Saint Mary's, and Saint Johns River Valleys, Florida, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. GORE (for himself, Mr. FORD, Mr. BUMPERS, Mr. COCHRAN, and Mr. SASSER):

S. 2823. A bill to amend the Communications Act of 1934 to provide for security and fair marketing practices for certain encrypted satellite communications; to the Committee on Commerce, Science, and Transportation.

By Mr. KASTEN, from the Committee on Appropriations:

S. 2824. An original bill making appropriations for foreign assistance and related programs for the fiscal year ending September 30, 1987, and for other purposes; placed on the calendar.

By Mr. THURMOND (for himself and Mr. HOLLINGS):

S. 2825. A bill to provide for a waiver of certain requirements of title XIX of the Social Security Act with respect to care and services provided by the Medical University of South Carolina; read the first time.

By Mr. PACKWOOD (for himself, Mr. PROXMIRE, Mr. ABDNOR, Mr. BOREN,

Mr. BUMPERS, Mr. BURDICK, Mr. CRANSTON, Mr. DECONCINI, Mr. DURENBERGER, Mr. EVANS, Mr. HOLLINGS, Mr. KERRY, Mr. LEVIN, Mr. MOYNIHAN, Mr. PRESSLER, Mr. RIEGLE, Mr. SIMON, Mr. SPECTER, Mr. THURMOND, Mr. WARNER, Mr. BOSCHWITZ, Mr. NUNN and Mr. HEFLIN):

S.J. Res. 414. Joint resolution to designate March 16, 1987, as "Freedom of Information Day"; to the Committee on the Judiciary.

By Mr. BYRD (for Mr. MITCHELL (for himself, Mr. COHEN, Mr. DODD, Mr. METZENBAUM, Mr. KERRY, Mr. SIMON, Mr. SPECTER, Mr. HEINZ and Mr. D'AMATO)):

S.J. Res. 415. Joint resolution to provide for a settlement to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute; ordered held at the desk.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BYRD (for himself, Mr. DOLE, Mr. PELL, Mr. LUGAR, Mr. CRANSTON and Mr. LEVIN):

S. Res. 490. Resolution to welcome Philippines President Corazon Aquino to the United States, and to demonstrate continued support by the United States Senate for the restoration of Philippines democracy and for the effective stabilization and enhancement of that nation's economic, political and security conditions; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GORE (for himself, Mr. FORD, Mr. BUMPERS, Mr. COCHRAN, and Mr. SASSER):

S. 2823. A bill to amend the Communications Act of 1934 to provide for security and fair marketing practices for certain encrypted satellite communications; to the Committee on Commerce, Science, and Transportation.

(Statements on the bill and the text of the legislation appear earlier in today's RECORD.)

By Mr. PACKWOOD (for himself, Mr. PROXMIRE, Mr. ABDNOR, Mr. BOREN, Mr. BUMPERS, Mr. BURDICK, Mr. CRANSTON, Mr. DECONCINI, Mr. DURENBERGER, Mr. EVANS, Mr. HOLLINGS, Mr. KERRY, Mr. LEVIN, Mr. MOYNIHAN, Mr. PRESSLER, Mr. RIEGLE, Mr. SIMON, Mr. SPECTER, Mr. THURMOND, Mr. WARNER, Mr. BOSCHWITZ, Mr. NUNN, and Mr. HEFLIN):

S.J. Res. 414. Joint resolution to designate March 16, 1987, as "Freedom of Information Day;" to the Committee on the Judiciary.

FREEDOM OF INFORMATION DAY

Mr. PACKWOOD. Mr. President, I rise to introduce a joint resolution which authorizes the President to proclaim March 16, 1987 as "National Freedom of Information Day."

March 16 marks the 236th anniversary of James Madison's birthday. Mr. Madison, our fourth President and father of the Bill of Rights, is the American most responsible for many of the constitutional freedoms we enjoy today, in particular, freedom of speech and the press.

James Madison is considered the architect of our Bill of Rights, yet his contribution to our democratic society is all too often overlooked. Mr. Madison understood the importance of free speech and a free press to a democratic Government. He knew intuitively that if the American people had access to information about their Government, that Government would be more responsive to their desires. His vision of a society where everyone could openly express their thoughts has helped preserve the other freedoms guaranteed by the Constitution.

Thanks to the efforts of Mr. Madison and others like him, Americans can speak their convictions without fear of censure. A "National Freedom of Information Day" will remind the American people and the rest of the world that our freedom of expression plays a vital role in both shaping our country and preserving our liberties.

By proclaiming Madison's birthday as "National Freedom of Information Day" we will reaffirm the significance we attach to our most precious liberties. I urge my colleagues to join me in honoring Madison and the principles for which he stood.

ADDITIONAL COSPONSORS

S. 519

At the request of Mr. EVANS, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of S. 519, a bill to require a study of the compensation and related systems in executive agencies, and for other purposes.

S. 1322

At the request of Mr. HECHT, the names of the Senator from Hawaii [Mr. INOUYE], the Senator from Oregon [Mr. PACKWOOD], and the Senator from Washington [Mr. GORTON] were added as cosponsors of S. 1322, a bill to amend the Geothermal Steam Act of 1970.

S. 1640

At the request of Mr. GRASSLEY, the names of the Senator from Pennsylvania [Mr. HEINZ] and the Senator from Georgia [Mr. NUNN] were added as cosponsors of S. 1640, a bill to amend title XVIII of the Social Security Act to provide for coverage under the Medicare Program of services performed by a physician assistant.

S. 1817

At the request of Mr. TRIBLE, the name of the Senator from New Hampshire [Mr. HUMPHREY] was added as a cosponsor of S. 1817, a bill to suspend temporarily most-favored-nation treatment to Romania.

S. 2135

At the request of Mr. STEVENS, his name was added as a cosponsor of S. 2135, a bill to establish a commission for the purpose of encouraging and providing for the commemoration of the centennial of the birth of President Dwight David Eisenhower.

S. 2160

At the request of Mr. THURMOND, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 2160, a bill to clarify and improve the analysis of mergers under the antitrust laws.

S. 2421

At the request of Mr. GORTON, the name of the Senator from Pennsylvania [Mr. HEINZ] was added as a cosponsor of S. 2421, a bill to amend the Truth in Lending Act.

S. 2479

At the request of Mr. STEVENS, his name was added as a consponsor of S. 2479, a bill to amend chapter 39 of title 31, United States Code, to require the Federal Government to pay interest on overdue payments, and for other purposes.

S. 2675

At the request of Mr. BOSCHWITZ, the name of the Senator from Idaho [Mr. SYMMS] was added as a cosponsor of S. 2675, a bill to amend the Federal Meat Inspection Act to authorize the Secretary of Agriculture to determine the manner and frequency of inspection of meat food products under such act and to improve enforcement of such act, and for other purposes.

S. 2699

At the request of Mr. SPECTER, the name of the Senator from Nebraska [Mr. ZORINSKY] was added as a cosponsor of S. 2699, a bill to amend the Controlled Substances Act to provide mandatory minimum sentences for distribution of controlled substances to minors, to add enhanced penalties, including mandatory minimum sentences, for employment of minors in the distribution of controlled substances, and to allow States receiving forfeited assets to use such assets for youth drug abuse prevention and rehabilitation.

S. 2763

At the request of Mr. MURKOWSKI, the names of the Senator from Virginia [Mr. TRIBLE] and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of S. 2763, a bill to amend the International Claims Settlement Act of 1949 to provide that the value of claims be based on the fair market value of the property taken.

S. 2770

At the request of Mr. COCHRAN, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 2770, a bill to amend the Farm Credit Act of 1971 to provide the opportunity for competitive interest rates for the farmer, rancher, and cooperative borrowers of the farm credit system, and for other purposes.

S. 2791

At the request of Mr. HUMPHREY, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 2791, a bill to require certain individuals who perform abortions to obtain informed consent.

S. 2794

At the request of Mrs. KASSEBAUM, the name of the Senator from Nebraska [Mr. ZORINSKY] was added as a cosponsor of S. 2794, an original bill to regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents.

S. 2795

At the request of Mr. BUMPERS, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of S. 2795, a bill to improve agricultural price support for the 1987 through 1990 crops, and for other purposes.

S. 2799

At the request of Mr. MITCHELL, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 2799, a bill to consolidate and improve Federal laws providing compensation and establishing liability for oil spills.

S. 2810

At the request of Mr. BINGAMAN, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 2810, a bill to promote economic competitiveness in the United States, and for other purposes.

SENATE JOINT RESOLUTION 20

At the request of Mr. SYMMS, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of Senate Joint Resolution 20, a joint resolution proposing an amendment to the Constitution of the United States with respect to the English language.

SENATE JOINT RESOLUTION 359

At the request of Mr. NICKLES, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of Senate Joint Resolution 359, a joint resolution to designate March 17, 1987, as "National China-Burma-India Veterans Association Day."

SENATE JOINT RESOLUTION 385

At the request of Mr. RIEGLE, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of Senate Joint Resolution 385, a joint resolution to designate October 23, 1986 as "National Hungarian Freedom Fighters Day."

SENATE JOINT RESOLUTION 401

At the request of Mr. GORE, the names of the Senator from Idaho [Mr. MCCLURE], the Senator from Michigan [Mr. LEVIN], the Senator from Florida [Mrs. HAWKINS], the Senator from South Carolina [Mr. THURMOND], the Senator from Ohio [Mr. METZENBAUM], the Senator from Arkansas [Mr. BUMPERS], the Senator from Vermont [Mr. STAFFORD], the Senator from Alabama [Mr. HEFLIN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Massachusetts [Mr. KERRY], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of Senate Joint Resolution 401, a joint resolution to designate the week of October 12, 1986, through October 18, 1986, as National Job Skills Week."

SENATE JOINT RESOLUTION 404

At the request of Mr. SIMON, the names of the Senator from Minnesota [Mr. DURENBERGER], the Senator from Maryland [Mr. SARBANES], the Senator from Hawaii [Mr. INOUYE], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from South Carolina [Mr. THURMOND], the Senator from Maryland [Mr. MATHIAS], and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of Senate Joint Resolution 404, a joint resolution to designate October 1986 as "Polish American Heritage Month."

SENATE JOINT RESOLUTION 413

At the request of Mr. BUMPERS, the names of the Senator from Rhode Island [Mr. CHAFEE], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Florida [Mrs. HAWKINS], the Senator from Vermont [Mr. STAFFORD], and the Senator from Minnesota [Mr. BOSCHWITZ] were added as cosponsors of Senate Joint Resolution 413, a joint resolution to designate the month of October 1986 as "Learning Disabilities Awareness Month."

SENATE CONCURRENT RESOLUTION 145

At the request of Mr. STEVENS, the names of the Senator from Nebraska [Mr. EXON] and the Senator from New Hampshire [Mr. RUDMAN] were added as cosponsors of Senate Concurrent Resolution 145, a concurrent resolution to encourage State and local governments and local educational agencies to require quality daily physical education programs for all children from kindergarten through grade 12.

SENATE CONCURRENT RESOLUTION 154

At the request of Mr. D'AMATO, the names of the Senator from Virginia [Mr. TRIBLE] and the Senator from Maine [Mr. MITCHELL] were added as cosponsors of Senate Concurrent Resolution 154, a concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki monitoring groups.

SENATE CONCURRENT RESOLUTION 155

At the request of Mr. SIMON, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of Senate Concurrent Resolution 155, a concurrent resolution expressing the support of the Congress for a transition to democracy in Paraguay.

SENATE CONCURRENT RESOLUTION 160

At the request of Mr. SIMON, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of Senate Concurrent Resolution 160, a concurrent resolution expressing the sense of the Congress that the jamming of radio broadcasting is contrary to the best interests of the people of the world and should be terminated.

SENATE RESOLUTION 435

At the request of Mr. MOYNIHAN, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of Senate Resolution 435, a resolution to recognize Mr. Eugene Lang for his contributions to the education and the lives of disadvantaged young people.

SENATE RESOLUTION 490—WELCOMING PRESIDENT CORAZON AQUINO TO THE UNITED STATES AND EXPRESSING CONTINUING SUPPORT FOR THE RESTORATION OF PHILIPPINES DEMOCRACY

Mr. BYRD (for himself, Mr. DOLE, Mr. PELL, Mr. LUGAR, Mr. CRANSTON, and Mr. LEVIN) submitted the following resolution; which was considered and agreed to:

S. RES. 490

Whereas, on February 26, 1986, in S. Res. 351, the Senate praised the progress toward the restoration of democracy in the Philippines occasioned by the transfer of power to President Corazon Aquino and commended President Aquino for the peaceful methods employed to bring about this transition;

Whereas, in S. Res. 351, the Senate also praised the courageous commitment of the Filipino people to democracy and fully supported the U.S. Government's recognition of the legitimacy of the Aquino government;

Whereas, since the inauguration of President Aquino, her government has begun the process of restoring full democracy to the Philippines, and of addressing the nation's severe economic, political, and security problems;

Whereas the historical bonds of friendship and alliance between the United States and the Philippines, and between Americans and Filipinos, remain strong;

Whereas President Aquino arrived on September 15, 1986, for her first official visit to the United States, and will address a Joint Meeting of the Congress on September 18, 1986: Now, therefore, be it

Resolved,

SEC. 1. The United States Senate:

(A) on behalf of the American people, warmly welcomes President Aquino to the United States and expresses best wishes for a productive visit which will further

strengthen the bonds between our two nations and peoples;

(B) reaffirms its strong support for the Government of the Philippines under the leadership of President Aquino, who clearly enjoys the support of a majority of the Philippine people;

(C) supports efforts to restore full democracy to the Philippines and to effectively address that nation's economic, political, and security problems;

(D) within the constraints of the United States' own budgetary limitations, will seek to help the Philippines to address its economic, political, and security conditions;

(E) urges the allies and friends of the United States to assist the Philippines in the restoration of its prosperity and the rebuilding of its democratic institutions;

(F) commends the Aquino government for its efforts to revitalize the private sector, including the active encouragement of increased foreign trade and receptivity to foreign investment; and

(G) commend President Aquino for her expressed intention to abide by the United States-Philippine military bases agreements, as amended, which serve the security interests of both nations.

SEC. 2. These findings and sentiments of the United States Senate should be conveyed personally to President Aquino during her official visit to the United States.

AMENDMENTS SUBMITTED

COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS, 1987

DURENBERGER AMENDMENT NO. 2822

(Ordered to lie on the table.)

Mr. DURENBERGER submitted an amendment intended to be proposed by him to the bill (H.R. 5161) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1987, and for other purposes; as follows:

At the appropriate place in the bill, add the following section:

Sec. . Such amounts as may be necessary of the Polish currencies held by the United States which have been generated by the sale to Poland of surplus United States dairy products shall be available for construction and renovation projects to be undertaken in Poland under the auspices of the Charity Commission of the Polish Catholic Episcopate for the benefit of handicapped and orphaned children. Such currencies may be utilized without regard to the requirements of section 1306 of title 31, United States Code, or any other provision of law.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS, 1987

GORTON AMENDMENT NO. 2823

Mr. GORTON proposed an amendment to the bill (H.R. 5234) making appropriations for the Department of the Interior, and related agencies, for the fiscal year ending September 30, 1987, and for other purposes; as follows:

At the appropriate place in the bill, insert the following:

Sec. . Subsection (b) of the first section of the Act of August 9, 1955, as amended (25 U.S.C. 415(b)) is further amended—

(1) by striking "or" immediately before "(2)"; and

(2) by striking immediately before the period at the end thereof the following: ", or (3) if the term does not exceed seventy-five years (including options to renew), and the lease is executed under tribal regulations approved by the Secretary under this clause (3)".

THURMOND AMENDMENT NO. 2824

Mr. THURMOND proposed an amendment to the bill (H.R. 5234), supra as follows:

On page 74, beginning with the word "Provided" on line 5, strike out all through " 'agreement.' " on line 3, page 75.

MELCHER AMENDMENT NOS. 2825 THROUGH 2827

Mr. MELCHER proposed three amendments to the bill (H.R. 5234), supra as follows:

AMENDMENT No. 2825

On page 3, line 12 delete "$300,000" and insert in lieu thereof "$800,000".

AMENDMENT No. 2826

At the end of the bill add the following new section:

"Sec. . Not withstanding any other provision of the law, the exception provided for in P.L. 87-279 shall apply with respect to the Flathead Indian Irrigation Project Electric Power System."

AMENDMENT No. 2827

On page 26, line 21, strike out "$887,666,000" and insert in lieu thereof "$887,708,000".

On page 27, line 16, insert the following after the colon: "*Provided further,* That of the portion of such funds appropriated for Indian fisheries programs, $80,000 shall be available to the Creston Fisheries Center of the United States Fish and Wildlife Service:"

McCLURE AMENDMENT NO. 2828

Mr. McCLURE proposed an amendment to the bill (H.R. 5234), supra as follows:

On page 51, line 4, insert the following before the colon:

: Provided further, That no more than $154,321,000, to remain available without fiscal year limitation, shall be obligated for the construction of forest roads by timber purchasers.

McCLURE AMENDMENT NO. 2829

Mr. McCLURE. proposed an amendment to amendment No. 2777 proposed by Mr. PROXMIRE to the bill (H.R. 5234), supra, as follows:

On page 1, line 2 of amendment number 2777, strike the first six numerals and insert in lieu thereof "268,130", and on page 1, line 4 of amendment number 2777, strike the first six numerals and insert in lieu thereof "252,654"

On page 9, line 18 of the bill, delete "36,775,000" and insert in lieu thereof "41,775,000"

On page 15, line 4 of the bill "65,900,000" and insert in lieu thereof "79,900,000"

On page 50, line 4 of the bill, delete "1,144,894,000" and insert in lieu thereof "1,137,894,000"

On page 53, line 7 of the bill, delete "31,906,000" and insert in lieu thereof "36,906,000"

MATTINGLY AMENDMENT NO. 2830

Mr. MATTINGLY proposed an amendment to the bill (H.R. 5234), supra, as follows:

On page 22 of the bill, strike the period in line 6 and insert the following:

"; *Provided further,* That when in fiscal year 1987 and thereafter any permittee provides data and information to the Secretary pursuant to section 1352(a)(1)(A) of title 43, United States Code and such data information is provided in the form and manner of processing which is utilized by such permittee in the normal conduct of his business, the Secretary shall pay such permittee the reasonable cost of reproducing such data and information for the Secretary and shall pay at the lowest rate available to any purchaser for processing such data and information the costs attributable to such processing."

On page 21, line 16, strike the figure "153,987,000" and insert in lieu thereof the figure "$155,187,000."

HEFLIN AMENDMENT NO. 2831

Mr. McCLURE (for Mr. HEFLIN) proposed an amendment to the bill (H.R. 5234), supra, as follows:

On page 8, between lines 22 and 23, insert the following:

"SOUTHEASTERN FISH CULTURE LABORATORY"

"The Southeastern Fish Culture Laboratory in Marion, Alabama is hereby directed to coordinate some of its research in the conservation, management, investigations, protections and utilization of sport fishery and warm water fish farming with the Alabama Cooperative Fishery Research Unit and the Department of Fisheries and Allied Aquaculture of Auburn University, toward a mission of improving the economics of farm aquaculture in the Southeast".

DANFORTH AMENDMENT NO. 2832

Mr. DANFORTH proposed an amendment to the bill (H.R. 5234), supra, as follows:

At the appropriate place in the bill, add the following:

SEC. —. Notwithstanding any other provision of law, funds received by the National Park Service as reimbursement for the cost of providing security, law enforcement, interpretive, and other services with respect to the operation of facilities at the Jefferson National Expansion Memorial National Historic Site shall be credited to the appropriation bearing the cost of providing such services.

DIXON (AND SIMON) AMENDMENT NO. 2833

Mr. DIXON (for himself and Mr. SIMON) proposed an amendment to the bill (H.R. 5234), supra, as follows:

At the end of title I, insert the following new section:

"The Secretary of the Interior shall designate the visitor center to be associated with the headquarters of the Illinois and Michigan Canal National Heritage Corridor as the "George M. O'Brien Visitor Center" in recognition of the leadership and contributions of Representative George M. O'Brien with respect to the creation and establishment of this national heritage corridor."

EVANS (AND GORTON) AMENDMENT NO. 2834

Mr. EVANS for (himself and Mr. GORTON) proposed an amendment to the bill (H.R. 5234), supra, as follows:

On page 51, line 1, delete ":" and insert in lieu thereof the following:

", of which of which $165,000 is for completion of flood repairs at the Monongahela National Forest, of which $100,000 is for preliminary design and survey work on the Hat Point and Dug Bar Roads in the Hells Canyon National Recreation Area, of which $8,473,000 for roads and parking at Mount St. Helens National Volcanic Monument, and of which $6,731,000 is for trail construction:".

METZENBAUM AMENDMENT NO. 2835

Mr. METZENBAUM proposed an amendment to the bill (H.R. 5234), supra, as follows:

On page 15, line 4, strike "70,900,000" and insert in lieu thereof "71,900,000"

McCLURE (AND OTHERS) AMENDMENT NO. 2836

Mr. McCLURE (for himself, Mr. BAUCUS, Mr. EVANS, and Mr. STAFFORD) proposed an amendment to the bill (H.R. 5234), supra, as follows:

On page 50, strike lines 9 through 18, and insert the following:

The Forest Service is to continue to complete as expeditiously as possible development of land and resource management plans to meet the requirements of the National Forest Management Act of 1976 (NFMA). Notwithstanding the date in section 6(c) of the NFMA (16 U.S.C. 1600), the Forest Service may continue the management of units of the National Forest System under existing land and resource management plans pending the completion of plans developed in accordance with the Act. Nothing shall limit judicial review of activities on management units of the National Forest system, provided, however, such challenges are not intended to invalidate in its entirety any existing land and resource management plan developed under authorities other than section 6(c) of the NFMA.

STEVENS AMENDMENT NO. 2837

Mr. McCLURE (for Mr. STEVENS) proposed an amendment to the bill (H.R. 5234), supra, as follows:

On page 15, line 4, strike out "$71,900,000" and insert in lieu thereof "$73,400,000".

MELCHER AMENDMENT NO. 2838

Mr. MELCHER proposed an amendment, which was subsequently modified, to the bill (H.R. 5234), supra, as follows:

On page 59, strike lines 6 to 11, and insert the following:

No more than $400,000 made available to the Forest Service for obligation in fiscal year 1987 shall be expended to support Washington office staff in the development of the RPA: *Provided*, That this shall not reduce funds available for the development of forest plans pursuant to the National Forest Management Act of 1976.

HART (AND MELCHER) AMENDMENT NO. 2839

Mr. HART (for himself and Mr. MELCHER) proposed an amendment, which was subsequently modified, to the bill (H.R. 5234), supra, as follows:

At the end of Title I, add the following new section,

SEC. 112. Notwithstanding any other provision of law, no funds appropriated by this Act shall be available for the implementation, by the Secretary of Interior or the Attorney General or any other officer acting on behalf of the United States, of the "Agreement to Settle Pending Litigation Between the United States and the Owners of Certain Oil Shale Mining Claims in Colorado," dated August 4, 1986, or for the patenting of any other oil shale placer claims located prior to passage of the 1920 Mineral Leasing Act, for a period of 180 days from the date of enactment of this provision, in order to provide a period for congressional review of this agreement: *Provided*, That the provisions of this amendment affecting the aforesaid settlement agreement shall be effective only of the United States Court of Appeals for the Tenth Circuit and the United States District Court for the District of Colorado approve a stay in the cases affected by such settlement agreement for 180 days and the parties to such agreement agree to continue to be bound by such agreement for the 180-day period: and *Provides further* that the Attorney General of the United States and the Secretary of the Interior are directed to immediately and in good faith seek concurance of all parties to the agreement to continue such agreement for 180 days and to request such courts to issue stays for such period.

BYRD AMENDMENT NO. 2840

Mr. BYRD proposed an amendment to the bill (H.R. 5234), supra, as follows:

At the appropriate place in the bill, insert the following new section:

SEC. —. Section 515(b)(10)(B)(ii) of the Surface Mining Control and Reclamation Act of 1977 is amended by inserting after "qualified registered engineer" the following: "or a qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans".

DISTRICT OF COLUMBIA APPROPRIATION ACT, 1987

TRIBLE AMENDMENT NOS. 2841 AND 2842

Mr. SPECTER (for Mr. TRIBLE) proposed two amendments to the bill (H.R. 5175) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1987, and for other purposes; as follows:

On page 9, line 24, before the period insert the following;

: *Provided further*, That the District of Columbia shall not renovate or construct prison bed space at the Occoquan facilities of Lorton prison beyond the number of prison bed spaces which were damaged or destroyed there during the fire that occurred on July 25, 1986.

On page 29, after line 20, insert the following:

SEC. —. (A) The Congress finds that, more than 2,500 District of Columbia prisoners are now incarcerated in Federal prisons or at prison facilities belonging to Virginia, Maryland, and Delaware;

The continuing shortage of prison space within the District of Columbia has contributed to overcrowding and related problems at the Lorton prison in Fairfax County, Virginia;

The continuing shortage of prison space within the District of Columbia has helped to create a public safety crisis that could endanger the residents of the D.C. metropolitan area;

This public safety crisis is best resolved by the construction of additional prison space within the District of Columbia;

(B) It is the sense of the Congress that, in order to help alleviate the public safety problem facing the District and residents of the surrounding jurisdictions, construction should begin and be completed as soon as possible on the new permanent prison proposed to be built within the District of Columbia.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. McCLURE. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Tuesday, September 16, to conduct a hearing on S. 2565, the Federal Telecommunications Policy Act of 1986.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. McCLURE. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Tuesday, September 16, to mark up S. 2799, Oil Pollution Liability and Compensation Act of 1986; and other pending legislation.

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

SUBCOMMITTEE ON INVESTIGATIONS

Mr. McCLURE. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Tuesday, September 16, to hold a hearing on Emerging Criminal Groups—Nigerian.

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

Mr. McCLURE. Mr. President, I ask unanimous consent that the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Tuesday, September 16, to hold a hearing on S. 2756, Computer Matching and Privacy Protection Act of 1986.

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

SUBCOMMITTEE ON ENERGY REGULATION AND CONSERVATION

Mr. McCLURE. Mr. President, I ask unanimous consent that the Subcommittee on Energy Regulation and Conservation of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, September 16, to hold a hearing on S. 2781, the National Appliance Energy Conservation Act of 1986.

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

ADDITIONAL STATEMENTS

LIFE WITH AN ILLITERATE

● Mr. SIMON. Mr. President, I continue to be very much concerned about the problems of illiteracy.

I am pleased that my colleagues have accepted an amendment that I offered to put $5 million into the Library Services and Construction Act for work on illiteracy.

Our colleague, Senator PAULA HAWKINS, accepted a suggestion of mine for $2 million in the VISTA Program to work on illiteracy.

The whole problem came home to me again the other day when I picked up the Wall Street Journal and read the story about the mother of Jean Y. Leung, a member of the Wall Street Journal editorial page staff.

Her mother is illiterate.

Fortunately, her mother and the sons and daughters of others who are illiterate have been able to break out of the pattern and achieve remarkable success.

I remember when Thomas Todd, a distinguished lawyer in the Chicago area, told me that his father could not read and write.

There are the Jean Leungs and Thomas Todds, but there are not many of them.

If we want the sons and daughters to contribute meaningfully in our society, we should make sure their parents have the basic literary skills needed. The networks have made us more aware of the problem of illiteracy, and I hope we act upon it and that we do not view this as simply some kind of passing fad.

My colleagues who did not read Jean Leung's story should read it, and I ask that it be printed in the RECORD.

LIFE WITH AN ILLITERATE

(By Jean Y. Leung)

Whenever I read or hear about illiteracy, I think about my mother. I wonder whether middle-class Americans realize the consequences of illiteracy both for the individual involved and society in general. Illiteracy is not just a handicap in this high-speed, high-tech world—it is a prison. I know this because my mother is illiterate. Totally illiterate, not just functionally illiterate. She cannot read or write in any language.

When was the last time you wrote out a list of things to do or jotted down a reminder note? Now try to imagine being unable to use a written record to cue yourself. In the grocery store my mother does not zero in on certain items. Instead she wanders through the aisles, relying on the displays to prompt her into remembering what she needs to buy.

Picture organizing your life strictly on memory. My mother has had to break her life into routines. Sunrises are not just beautiful sights to my mother—they are her measurement of time. Every seventh sunrise means her granddaughter will be at church. The next brings another cycle. Since so much of an illiterate's memory is used up by daily living, very little of it is free for conceptual thinking. Creativity becomes impaired. Every change in life takes up more of that precious memory. Illiterates are conservative, wary of any change that will have to be remembered. Moving the bus stop two blocks away may make it accessible to more people, but it is an irritant to my mother. The same with stores opening or closing.

Because ours is a highly literate society, illiterates are dependent upon others for translation. This is a tricky business—translation often becomes interpretation. Is the glass half full or half empty? The illiterate is very vulnerable to the views of a translator. My mother's neighbors believe that the local government is worthless. My mother believes that the local government is worthless. What other evidence does she have? The literate person can broaden his views through varied reading. The illiterate is not likely to find new translators.

In a society where primary education is free and widely available, illiteracy takes on a stigma. The illiterate is viewed as someone who is retarded (and therefore can't learn) or lazy (doesn't want to learn). But many U.S. illiterates are immigrants from cultures where education wasn't available (primarily due to poverty) or was denied (as it was for so many women). So it was for my mother, coming from China. The move to America doesn't necessarily create literacy opportunities. Many illiterates are caught up in the daily grind of survival, lacking either the money or the time to learn how to read. It is enough of a challenge to learn to speak a new language.

Like most immigrants however, illiterates make sure that their children avail themselves of the opportunities America offers, especially schooling. Knowing their own imprisonment, they are the strongest advocates of education as a tool for improvement. Of my mother's four children, three are college graduates.

What effect has my mother's illiteracy had on me? Every night before I go to sleep I read. Newspapers, magazines, books, pamphlets—you name it. I bless the fact that my ability to read has brought so many new worlds to me—worlds that I won't reach in person—and opened up my mind.

Encouraged by my parents, I picked up my older brother's books and began reading before I entered kindergarten. In the third grade a teacher took me aside and told me that I had the highest reading score of anybody in my whole elementary school. In honor of mother, I have tutored immigrant children in New York's Chinatown, hoping to ease the transition into the English language for them.

Is illiteracy a problem? Yes, and it will be as long as we are a nation of immigrants. Do we deal with it only through prevention and ignore adult illiterates? No.

We should remove the stigma of illiteracy. Publicizing the problem in an understanding way through the media with a follow-up in the schools and community organizations would encourage people to step forward. The problem should not be overstated or understated.

Perhaps it should be mandatory for high school or college students to participate in community self-help projects as part of their learning process. Literacy tutoring could be one of these projects. Libraries could encourage home study with borrowed book/audio tape combinations. Perhaps an adult version of "Sesame Street" could be created. Responses to illiteracy need not require massive amounts of government aid or intervention. The private sector, particularly the publishing industry, would benefit tremendously from a more literate public.

Freedom of speech has an ironic meaning to people who have a hard enough time gathering, composing, organizing and communicating their thoughts. And freedom of the press has no meaning to illiterates. Can we depend on people to whom such freedoms have little or no meaning to defend them?●

GATT NEGOTIATIONS IN URUGUAY

● Mr. McCONNELL. Mr. President, with all the rhetoric surrounding the current farm legislation, I believe that a far more important long-term component of farm policy is only now receiving the attention it deserves. Today, negotiations begin in Punta del Este, Uruguay, to overhaul the current General Agreement on Tariffs and Trade and the implications for the prosperity of American agriculture are enormous. The current GATT rules have some of the same problems as U.S. farm legislation: the basic tenets of the treaty are the same today as they were 40 years ago, much like the basis of all farm programs, and we all know how effective farm legislation has been lately.

American farmers have a tremendous stake in these negotiations. If our new thrust in farm policy is to be successful, our farmers must be permitted to compete in a world marketplace without having to compete against foreign governments. I believe that Ambassador Yeutter is right on target to declare that we will walk away from the GATT Conference if the effort to begin meaningful agricultural trade negotiations fails. We'll have no credibility in trade negotiations until our competition is convinced that we mean business. This round of talks is our best opportunity to prove our resolve.

Mr. President, the patience of the American agricultural community is growing thin, and, as Lane Palmer, editor-in-chief of the Farm Journal puts it, "Farmers are tired of paying the costs of world leadership." Mr. Palmer suggests that unless significant progress is made at Punta del Este, farmers may become totally disillusioned with the idea of competing in the world market. Mr. President, I ask that the article written by Mr. Palmer, which appears in the September edition of the Farm Journal, be printed in the RECORD.

COSTS OF WORLD LEADERSHIP

No U.S. Secretary of State has ever been popular with farmers. That's understandable, of course, because it's the Secretary's job to represent the foreign viewpoint in domestic councils, and that puts him on the other side of the table from farmers.

We can't recall a Secretary who has drawn more farmer criticism than George Shultz is receiving right now. At a recent Senate ag subcommittee hearing, Sen. Edward Zorinsky (D., Neb.) was so infuriated by some of Shultz's recent statements he demanded that Shultz come before the committee to explain himself. No chance of that, of course; Shultz does his reporting to the Senate Foreign Relations Committee.

Zorinsky's outburst is just one symptom of farmer frustration over growing imports, lagging exports and low farm prices. For instance:

President Reagan's offer to temporarily slash wheat prices under the Soviet grain agreement didn't satisfy most farm interests. Some, like Sen. Bob Dole (R., Kans.) and Rep. Tom Daschle (D., S.D.), are still pressing for export subsidies on all crops to all U.S. customers. The National Association of Wheat Growers not only wants to beef up export PIK, but is asking USDA to expand PL 480.

The American Farm Bureau has blasted recent World Bank loans to help develop Latin American agriculture. Farm Bureau wonders why U.S. foreign aid should be used to promote Argentina and Brazil's farm exports at the expense of U.S. farmers.

At their recent convention, the National Association of Corn Growers backed the Multi-Fiber Agreement, partly to discourage the State Department from trading off any more ag trade interests.

And finally, a growing number of farmers backing a mandatory farm program appear ready to forget about exports and concentrate on higher loan rates and prices at home.

Shultz has his reasons, of course: He wants to use farm trade policy to exert international leadership. For instance, the U.S. has repeatedly promised the emerging countries that we will help them develop their economies by buying more of their products.

The Administration has promised the nations with big debts that we'll help them earn the income to pay off their debts. So if the Administration seems less than aggressive in selling soybeans against those from Brazil or our corn against Argentine corn, the reason may seem readily apparent.

Another thing that can affect farmers even more than trade is monetary policy. For instance, our money managers in the 1970s must have known that the U.S. could not go on inflating our currency indefinitely. It was one thing for Brazil to countenance 300 percent annual inflation and then index their currency in the pretext they were compensating for it. But the U.S., as clearly the world's dominant economy, could not do likewise. We allowed inflation to approach 13 percent annually before clamping down on the money supply. Farmers suffered.

U.S. farmers have not shirked their role in international leadership. During World War II, they "enlisted" enthusiastically to produce "food to win the war," then stayed aboard to keep the peace with their generous donations through CARE, the Heifer Project and other food programs.

We've left our markets relatively open to Japan's cars, TV sets and office copiers while allowing the Japanese to leave their markets closed to our beef and citrus. We have allowed the European Community (EC) to fence out our farm products one by one. First it was broilers, then came wheat.

"We just said 'Enough is enough,' " Varel Bailey, an Anita, Iowa, farmer and chairman of the Corn Growers, told us when we asked why his organization appeared to be abandoning its free-trade principles.

"We still believe in free trade and the idea of comparative advantage," he said. "But we want our government to be tougher in trade negotiations—when other nations sign trade agreements, they must live up to them."

Emotions are so high that this could prove to be a turning point for U.S. farmers. I sense that most are still very internationally minded. The upcoming GATT negotiations could restore their confidence in free and fair trade or it could complete their disillusionment.

Says Earl Sears, president of the National Cotton Council: "The Administration gives a lot of rhetoric to these negotiations but no action." Adds Varel Bailey, who has seen our opening statement for negotiations at GATT: "It needs a lot of work."●

PROMPT PAYMENT ACT AMENDMENTS OF 1986

● Mr. STEVENS. Mr. President, I ask unanimous consent that I be added as a cosponsor of S. 2479, the Prompt Payment Act Amendments of 1986. As an original cosponsor of the Prompt Payment Act of 1982, I have followed its effect on our partners in the business community. After reviewing its performance, I am convinced that amendments to that act are necessary to maintain the law's intent. The purpose of these amendments is to clarify the ambiguities and loopholes which have impeded the full execution of the Prompt Payment Act. The bottom line on all these measures is to ensure prompt payments to businesses.

The amendments to the Prompt Payment Act contained in S. 2479 will increase the efficiency of Federal Government bill payment practices. Some Government agencies have not followed the payment procedures which were set up under the Prompt Payment Act. Certain Government agencies have avoided interest penalties on late payments, at the expense of the businesses under contract.

The grace period which was granted to the Federal agencies to soften the blow of interest penalties has been abused, and bills are still frequently settled on the last possible day. Interest penalties on late payments are often not paid, or are paid only when requested by the business concerned.

The original Prompt Payment Act did improve Federal Government bill payment practices, but loopholes and omissions have precluded its satisfactory implementation. These amendments will remedy those problems.

Private business contractors should not be made to suffer by Government inefficiency. The Prompt Payment Act will render the law more explicit, more efficient, and more equitable, and will complete our initial effort. I am happy to join Senator TRIBLE and the other consponsors of S. 2479.●

CENTENNIAL ANNIVERSARY OF BIRTH OF DWIGHT DAVID EISENHOWER

● Mr. STEVENS. Mr. President, I ask unanimous consent that I be added as a cosponsor of S. 2135, which will establish a commission to honor the centennial anniversary of the birth of Dwight David Eisenhower. Having served in the Eisenhower administration for 8 years as U.S. attorney for Alaska and as Solicitor of the Interior, it is a distinct honor for me to join in this effort. This legislation would encourage and provide for the commemoration of this anniversary to honor a great American who played such a key role in this country's history.

Dwight David Eisenhower began his military career upon graduating from the U.S. Military Academy at West Point in 1915. He achieved the rank of five-star general and was the principal planner of the successful Allied invasion of Europe during World War II and the subsequent defeat of Nazi Germany.

Although Eisenhower was well remembered for his brilliant military career, we all best remember him for his achievements during his two terms in office as the 34th President of the United States. Few Presidents have enjoyed greater popularity or left office as solidly entrenched in positive public opinion as when they entered

it. I think it would be safe to say that—we all liked Ike.

In addition to a period of national mourning, Ike's death on March 26, 1969, was an occasion for worldwide recognition of his role in the events of his time, So, too, should be this centennial anniversary.

Eisenhower's Presidency is best remembered as a period of relative calm in the United States largely due to the fact that peace was one of his major concerns, despite the fact that he was a military leader. While in office, he negotiated an armistice with the North Koreans to terminate the Korean war, which began in 1950. As well as being a strong supporter of NATO, during the cold war Eisenhower tried to advance American-Soviet understanding by meeting with Soviet premier Khrushchev.

A little known major interest of President Eisenhower was initiation of a better National Highway System. The United States is often referred to as a nation on wheels. President Eisenhower early recognized that fact and the importance of meeting our citizens' need to move with ease and dispatch throughout this Nation. Ours is a nation on the move and that requires a road system that is up to date and well maintained. It was President Eisenhower who sent to Congress the message urging action to improve the U.S. highway system. The Senate in 1955 passed a bill to establish that Interstate Highway System. Although the final legislation did not pass during the Eisenhower administration, it was clear who led the way for the modern highway system we all seem to take for granted.

The Commission this legislation would establish would begin 60 days after the passage of this bill, and continue until the celebration in 1990. Its duties would be to encourage, plan, develop, coordinate, and celebrate the observances and activities commemorating Eisenhower's birthday. Activities would be coordinated with efforts from the National Archives and the Eisenhower Presidential Library in Abilene, KS. Annual reports will be made to the Congress and the President describing the activities planned for the commemoration celebration.

The Commission will be composed of 21 Members, representing both Houses of Congress, including the Speaker of the House and the President pro tempore of the Senate. In addition, six Members will be appointed from each House by the majority and minority, joined by six members appointed by the President and the Archivist of the United States. The term of appointment shall continue until the celebration has concluded, or the member leaves their Federal office. Members of the Commission would not be paid, but may receive per diem allowances dependent on the availability of funds.

Private contributions to the Commission of money, property, or personal services would be welcomed. Property donations made to the Commission will become part of the permanent collection in President Eisenhower's library in Kansas.

President Eisenhower was a man whose life's work was serving his country. He was an honorable man and a patriot, most worthy of our admiration. Let us establish a commission to provide for the commemoration of his 100th birthday and seize the opportunity to honor a great American. I am very happy to join my colleagues, Senator BOB DOLE and Senator NANCY KASSEBAUM of Kansas, in cosponsoring S. 2135.●

SUPERFUND

● Mr. BROYHILL. Mr. President, next Friday, September 26, will be an unfortunate anniversary. That day will mark a full year since the Senate passed S. 51, the much-needed extension and expansion of the Comprehensive Environmental Response, Compensation and Liability Act of 1980—more popularly known as Superfund. More unfortunate still, the next Tuesday, September 30, will be the first anniversary of the expiration of the 5-year program authorized under the original act.

The Senate Superfund bill, passed as an amendment to H.R. 2005, would authorize $7.5 billion for cleaning up abandoned hazardous waste sites and extend and expand this vital program for 5 more years. The Senate passed this bill by the overwhelming margin of 86 to 13.

The House of Representatives passed its version of the Superfund amendments, H.R. 2817, on December 10, 1985. The House also passed this measure by an overwhelming margin of 391 to 33.

I was an original cosponsor of that bill, which greatly expands and strengthens the Superfund Program while reauthorizing it for 5 years at a level of $10 billion, including $850 million for a leaking underground storage tank trust fund.

The conference committee on the Superfund bills, which formally began on February 26, 1986, is still laboring over this important legislation. It is my understanding that tentative agreement has been reached on virtually all of the programmatic differences in the two bills, but that the differences in funding approaches have yet to be reconciled.

As my distinguished colleagues are aware, the original Superfund taxing mechanism expired last September 30. This original Superfund was authorized at roughly $230 million per year. EPA is currently being funded under a $48 million fund that is being borrowed against anticipated future revenues. This emergency fund is expected to be exhausted by the end of this month. The Congress has the opportunity and the responsibility to end the uncertainty facing EPA in its efforts to clean up our Nation's abandoned hazardous waste sites. We therefore have an obligation to the people of this country to pass an improved and expanded Superfund Program before this Congress adjourns. If we are unable to pass the conference report soon, the much needed second stage of hazardous waste site cleanup will again be postponed, for perhaps another year, or even longer.

Prior to my appointment to the Senate this summer, I served on the Superfund Conference Committee as the senior Republican on the Committee on Energy and Commerce of the House of Representatives. I know from my association with the members of the Superfund Conference Committee that there is a consensus for the need for prompt action to strengthen our Nation's program to clean up hazardous waste dump sites. I urge the conference committee to move expeditiously to present their report to the Congress in time to ensure that action can be taken before the Congress adjourns this October.●

PROPOSED ARMS SALES

● Mr. LUGAR. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive formal notification of proposed arms sales under that act in excess of $50 million, or in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is available to the full Senate, I ask to have printed in the RECORD the notifications I have received. The classified annexes referred to in two of the covering letters are available to Senators in the office of the Foreign Relations Committee, SD-423.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC, September 12, 1986.

In reply refer to: I-13920/86ct.

Hon. RICHARD C. LUGAR,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC 20510

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 86-59 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer to Greece for defense arti-

cles and services estimated to cost $43 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

PHILIP C. GAST,
Director.

[TRANSMITTAL NO. 86-59]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

	Millions
Major defense equipment [1]	$34
Other	$9
Total	$43

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of Articles or Services Offered: Thirty-two HARPOON missiles with containers and spare parts.

(iv) Military Department: Navy (ALD).

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Section 28 Report: Case not included in Section 28 report.

(viii) Date Report Delivered to Congress: September 12, 1986.

POLICY JUSTIFICATION

GREECE—HARPOON MISSILES

The Government of Greece has requested the purchase of thirty-two HARPOON missiles with containers and spare parts. The estimated cost is $43 million.

This sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Greece in fulfillment of its NATO obigations; furthering NATO rationalization, standardization, and interoperability; and enhancing the defense of the Western Alliance.

The Hellenic Navy will install these HARPOON missiles on its ships for additional defense against surface targets. These defense articles will be provided in accordance with, and subject to the limitation on use and transfer provided for under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question. Greece will have no difficulty absorbing these missiles into its armed forces.

The prime contractor will be the McDonnell Douglas Astronautics Company of St. Louis, Missiouri.

Implementation of this sale will not require that assignment of any additional U.S. Government or contractor personnel to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

U.S. DEPARTMENT OF STATE, UNDER SECRETARY OF STATE FOR SECURITY ASSISTANCE, SCIENCE AND TECHNOLOGY,
Washington, DC, September 11, 1986.

Pursuant to Section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), and the authority vested in me by Deparmtent of State Delegation of Authority No. 145, I hereby certify that the provision to Greece of 32 Harpoon missiles and spares at an estimated cost of $43 million, is consistent with principles contained in Section 620C(b) of the Act.

This certification will be made part of the certification to the Congress under Section 36(b) of the Arms Export Control Act regarding the proposed sale of the abovenamed articles and is based on the justification accompanying said certification, and of which such justification constitutes a full explanation.

WILLIAM SCHNEIDER, Jr.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC, September 12, 1986.

In reply refer to: I-13919/86ct.

Hon. RICHARD C. LUGAR,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 86-58 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer to the Netherlands for defense articles and services estimated to cost $37 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

PHILIP C. GAST,
Director.

[TRANSMITTAL NO. 86-58]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: The Netherlands

(ii) Total Estimated Value:

	Millions
Major defense equipment [1]	$29
Other	8
Total	37

[1] As defined in Section 47(6) of the Arms Export Control Act.

(iii) Description of Articles or Services Offered: Twenty-five HARPOON missiles with containers, one HARPOON exercise section and spare parts.

(iv) Military Department: Navy (AES).

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Section 28 Report: Case not included in Section 28 report.

(viii) Date Report Delivered to Congress: September 12, 1986.

POLICY JUSTIFICATION

NETHERLANDS—HARPOON MISSILES

The Government of the Netherlands has requested the purchase of twenty-five HARPOON Missiles with containers, one HARPOON exercise section and spare parts. The estimated cost is $37 million.

This sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of the Netherlands; furthering NATO rationalization, standardization, and interoperability; and enhancing the defense of the Western Alliance.

The Government of the Netherlands plans to install the HARPOON missile system on eight new M Class frigates, which will improve the firepower of the Netherlands Navy and enhance its role in NATO. The HARPOON missile is presently in the Netherlands inventory; therefore, it will have no difficulty absorbing these additional missiles.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the McDonnell Douglas Astronautics Company of St. Louis, Missouri.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor personnel to the Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this sale.●

THE IMPORTANCE OF SECOND HOMES TO IDAHO

● Mr. SYMMS. Mr. President, I would like to include in the RECORD a copy of an article from the South Florida Business Journal sent to me by the American Resort and Residential Development Association. The article points out the importance of American vacations as a growth industry for second home markets in areas like Idaho.

Recreation has become a very important part of the American lifestyle. Second homes are no longer for the extremely wealthy. Second homes provide jobs for States like Idaho with vast natural beauty. Individuals seeking relief from city fatigue find Idaho's forests, streams, lakes, and mountains a refuge.

In the north Idaho Panhandle city of Coeur D'Alene, with its picturesque lake and beautiful mountains, a significant number of persons who were previously visitors or second home owners have taken up permanent residence. In an area such as Coeur D'Alene, 1,000 homes mean about 300 new jobs.

A study by Economic Research Associates shows that the income brought into the local economy by these seasonal visitors has a multiplier effect that expands the local economy.

Because they tend to be located in premium locations, second homes account for a significant portion of assessed values in a community. The taxes on these homes make them supporters of schools and other public services. At the same time, because these are vacation homes, recreation opportunities expand for the community.

In Idaho, out of a total of 44 counties, second homes number more than 20 percent of the total homes in 10 counties, between 10 and 20 percent in

7 counties and between 5 and 10 percent in 15 counties.

For example, in Kootenai County, ID—where Coeur D'Alene is located—15 percent of all units are nonprimary houses. For those wondering about whether second homes provide any benefit other than a retreat for the rich, I suggest they read this article.

The article follows:

[From the South Florida Business Journal, June 23-29, 1986]

VACATION OWNERSHIP GROWING IN POPULARITY

(By Kenneth V. Knight)

In the decades since World War II ended, leisure has become a big business. Family vacations are more frequent and people take for granted that they will use vacation time to travel to resort destinations.

And they travel more frequently. Our average member family takes several vacations each year. Some may be a few weeks, others a few days—but all of them involve travel and a choice of destination.

This is a startling contrast to a time not so long ago when vacation was the two weeks of summer when the family rented a bungalow not far from home, took along the electric fan and tried to cool off without air conditioning.

Florida in winter was only for the super rich and ski vacations hadn't been invented.

Two-car families were so rare that few Americans actually knew one and more families had no car at all than the number of families that owned one.

Part of the leisure explosion has been a new form of vacationing: Vacation ownership.

Today, more than 1 million American families own their vacations. They don't have to rent them because they bought them. And they didn't just buy a resort that took their fancy and then found they had to go back to it forever.

They bought into a system that allows them to exchange the vacation they own for vacations in hundreds of other resorts located not only in the U.S.A. but around the world in more resort destinations than anyone will ever visit in a lifetime.

It's called time sharing or interval ownership. It's vacations that are owned outright, vacations that take the form of long-term, right-to-use privileges, vacations offered in the form of club membership.

The forms vary but the results are similar: Vacation cost is locked in by purchase and the exchange privilege is the icing on the cake.

Vacation ownership sales already exceed a cumulative total of $10 billion and are growing every year. In 1986, the sales volume will come close to $2 billion.

Begun as a small endeavor by small resorts, vacation ownership has come of age as corporate giants such as Marriott, Disney, and ITT enter the arena. Its future appears to be unlimited in a nation where the use of leisure time is a subject of consuming interest.

An exchange company such as Interval International has a special vantage point from which to see the vacation ownership industry. With specific interests in no single resort but acute interest in all resorts, we are keenly concerned with two aspects of the industry.

The first, of course, is the strength of the industry itself. Its general health, the picture it presents to the public with which it deals—consumers, financial industry, regulators, exchange companies such as ours. How it appears poised for future growth and expansion. The willingness of experienced developers to take on new projects—and the interest of developers who up to now have not been part of the industry, to take an active role in its growth.

The second is the strength of the product. And by the product I mean more than the four walls and the furnishings and decor the customer is buying.

I mean the total product. That includes the real estate both inside and outside and, equally important, it includes the sales and marketing, the management and the promises held out to every buyer.

How does the industry rate for strength? We think it is very healthy. Healthier, in fact, than was the case one or two years ago.

Why?

Because we see it as a growth industry that is coming to terms with its own growth; an industry that is maturing in its outlook and its approach on the business it is in; an industry which has demonstrated a real willingness to face up to its problems and attempt to solve them; an industry which is attracting a steadily higher and more capable level of professionalism in all its dealings; an industry which sees the needs of long-term planning and achievement as opposed to the short-term, get in and get out philosophy which prevailed not too long ago.

When it comes to product, we see what is literally a quality explosion in design, in facilities and in amenities.

The new product coming on line is highly visible evidence of an industry that sees the need to make product quality a keystone of its future success.

Obviously, this is highly meaningful not only to the vacation owners who will buy that new product, but also to the previous generation of owners who will have these new resorts available to them as exchange destinations.

Beyond the intrinsic quality in the physical product, we see a major upgrading of all the elements that go into the sale of vacation ownership. The entire marketing approach and strategy is reflective of this new level of quality in the industry.

Perhaps most significant of all is the degree of attention being paid to ongoing project management and the increased professionalism of the approach being made to it.

This is the litmus test of owner satisfaction—providing the kind of management that will make the sales promise come true, year after year, vacation after vacation.

It's what makes for owner referrals of new customers, the goal of every vacation ownership marketing operation. And it is what burnishes the public image of what is still a new and evolving industry.

At Interval International, we have a tool we call Consumer Satisfaction Index or CSI. We use it to produce a detailed profile of what our members who exchange resorts see when they get to their destinations, the kinds of vacation experiences they have and what their opinion of their own and the exchange resort is.

These thousands of responses from the people most basically involved in vacation ownership give us both a macro and a micro perspective on the opinions that carry the most weight and we rely on them heavily day in and day out in our own operations.

I think it is accurate to say that we are pleased with the health of the industry.

We recognize it takes more dollars to get into the industry and more effort to make it profitable for the developer—but we see clearly that this is resulting in a better product in all its varied aspects and that is good both for the industry and for the consumers who buy its products.

We believe vacation ownership is only on the threshold of its real growth. Futurists tell us that the years 1990 to 1995 will be the greatest single five-year period in the history of this country for the purchase of homes, based on the existing demographics.

It seems reasonable to conclude that these families will be in the vacation market to the same extent.

Based on the dynamics of that kind of marketplace, vacation ownership should share in this growth and become more widespread and popular than ever before.●

A SALUTE TO THE JOHN W. LITTLE CO.

● Mr. CHAFEE. Mr. President, on September 21, 1886, 25-year-old John W. Little of Pawtucket, RI, founded a company bearing his name to "carry on the printing and publishing business of every description."

If time is any indication, the John W. Little Co. carried on well because this Sunday, September 21, marks the 100th anniversary of its founding. It gives me great pleasure today to recognize and congratulate current company president Stevan Little and his employees, and the entire Little family, on this notable milestone.

It was only appropriate that John W. Little established his company—the first all-electric printing company in the United States—in the city of Pawtucket. After all, the American Industrial Revolution was born in Pawtucket, when Englishman Samuel Slater built our country's first cotton textile mill on the Blackstone River.

By assembling a large assortment of new type and modern, fast power presses in 1886, Little was thus carrying on Pawtucket's and Rhode Island's fine tradition of industrial innovation. This tradition was continued upon incorporation of the company in 1923, when company secretary John W. Little, Jr., received national recognition of his invention of the process of printing on cellophane.

With a steady payroll of 60 employees, Mr. President, the John W. Little Co. obviously provides a boost to Pawtucket's economy. The company, however, was not John Little's only contribution to the city. He was active in civic and community affairs throughout his life, receiving an appointment as Postmaster of the city of Pawtucket from President William Howard Taft and serving for many years as chairman of the Pawtucket School Committee until his sudden death in 1922.

For its many contributions to Pawtucket and Rhode Island, and for its many innovations in the printing industry, I ask my Senate colleagues to

join me in congratulating the John W. Little Co. on its 100th anniversary.●

UNITED STATES MUST STAND BY ITS NONRECOGNITION POLICY

● Mr. REIGLE. Mr. President, today's Washington Post carries a front-page article entitled "U.S.-Soviet Officials Clash Over Daniloff Case at Talks." Reporting on the opening day of a major conference on United States-Soviet relations taking place in Soviet-occupied Latvia, the article quotes senior White House adviser Jack Matlock as telling the 2,200 delegates attending the conference:

The use of force and the absence of freely given consent are the reasons the United States has never recognized and will never recognize the legality of the forcible incorporation of Latvia, Lithuania and Estonia into the Soviet Union.

Last week, I was joined by Senators HATCH, KERRY, GORE, PRYOR, and SIMON in sending a letter to Secretary Shultz, urging that an official statement be issued at the conference, underscoring official United States policy of not recognizing the illegal Soviet occupation of Latvia, Lithuania, and Estonia.

For those of us who are concerned that the United States not abandon its nonrecognition policy with respect to the Baltic States, it is reassuring that the administration, on the first day of the conference, made a point of restating its support for that long-standing United States policy.

Mr. President, I ask that the text of the letter which was sent to Secretary Shultz on September 12 be printed at this point in the record.

The text of the letter follows:

U.S. SENATE,
Washington, DC, September 12, 1986.

Hon. GEORGE P. SHULTZ,
Secretary of State, Washington DC.

DEAR SECRETARY SHULTZ: We are concerned about the possible participation of U.S. government officials in the Chautauqua sponsored conference, which is scheduled to take place from September 15 to September 19 in the capital city of Riga in Soviet-occupied Latvia.

We appreciate that American citizens are interested in promoting the type of dialogue and debate with Soviet citizens which will occur at the conference in Latvia. However, we are concerned that the participation of U.S. government officials in such a conference could compromise the non-recognition policy which our government has maintained since the illegal Soviet occupation of the Baltic states began more than forty-five years ago.

It is our understanding that our current non-recognition policy prohibits most U.S. government officials from going to any of the Baltic states. So that we may be assured of continued U.S. adherence to his policy, we respectfully request that you provide us with an explanation of how the Administration has reconciled the non-recognition policy with the participation of U.S. officials in this conference.

We understand that in light of the Soviet Union's arrest and imprisonment of Nicholas Daniloff, the conference may be postponed. However, we believe that if the conference does take place, an official statement from the Administration underscoring this nation's continued refusal to recognize the illegal Soviet occupation of Estonia, Latvia and Lithuania would be in order.

While we do not wish to stand in the way of exchanges between the U.S. and the Soviet Union, we believe it is critically important that our government continue to abide by our non-recognition policy.

Sincerely,

DONALD W. RIEGLE, Jr.
ORRIN G. HATCH.
ALBERT GORE.
PAUL SIMON.
JOHN F. KERRY.
DAVID PRYOR.●

TELEVISION VIOLENCE

● Mr. SIMON. Mr. President, one of the decisions that we have yet to make in this Congress is how we can deal with the problem of violence on our television sets and still do it within a free system.

At hearings on the question of television violence, Dr. William Dietz, who was both an M.D. and a Ph.D. spoke on behalf of the American Academy of Pediatrics on the problem.

His testimony was so outstanding that I ask that it be printed in the RECORD.

I have introduced a bill cosponsored by Senators THURMOND, METZENBAUM, HEFLIN, DECONCINI, DENTON and SIMPSON. That bill would permit the television networks, the independent stations, the cable industry, and the programmers to get together to establish standards without violating the antitrust laws.

It does not mandate anything.

That step seems to me to be a sensible one.

I have to believe that when the evidence is so overwhelming—from the National Institute of Mental Health, the Surgeon General of the United States, the American Academy of Pediatrics, the American Psychological Association—warning us that we have a problem, a free system of government ought to be able to figure out a sensible way of solving this without censorship.

We cannot remain helpless in addressing a situation about which studies overwhelmingly show there is a significant problem.

I urge my colleagues to read the testimony of Dr. Dietz.

The testimony follows:

TESTIMONY BEFORE THE JUDICIARY COMMITTEE OF THE U.S. SENATE, JUNE 20, 1986

(By William H. Dietz, Jr., M.D., Ph.D.)

My name is William H. Dietz. I am a pediatrician. I currently serve as Chairman of the American Academy of Pediatrics Task Force on Children and Television. It is a great pleasure for me, and an honor to the Academy, to be invited to address you on the subject of television violence.

Two observations indicate that children learn readily from television. First, thousands of school-age American children have learned to spell relief R-O-L-A-I-D-S. Second, next to Santa Claus, Ronald McDonald is the man most widely recognized by children in the United States.

Children also learn about violence from television. Violence is defined as "the overt expression of physical force against others or self, or the compelling of action against one's will on pain of being hurt or killed". Televised episodes that meet this criterion have doubled since 1980, and now occur approximately 13 times per hour during prime time television. Televised violence averages over 20 episodes an hour during cartoons, and in some cases, occurs over 50 times per hour. Because the average child in the United States watches 20-25 hours of television a week, even a conservative estimate suggests that an average American child sees over 12,000 violent acts/year on television. If children can learn about Rolaids and Ronald McDonald from commercials that they see 3 or 4 times a day, they surely can learn from violence that they see 200 times a day. Therefore, it is hardly surprising that three thousand published articles, several Senate hearings, the 1972 Surgeon General's Report, and the 1982 Report of the National Institute of Mental Health have indicated a causal linkage between televised violence and aggressive or violent behavior in children and adolescents.

The effects of such repeated exposure to violence affects the behavior of children in several important ways. First, children and adolescents imitate violence on television. Following a televised version of the New Bedford pool hall rape, a twelve year old boy sexually assaulted a ten year old girl on a pool table. Likewise 16 suicides by Russian roulette occurred after a similar scene in the "Deerhunter" was televised. Second, children identify with televised characters. Because the "good guys" are responsible for at least as much violence as the "bad guys", the use of violence to attain socially approved goals is implicitly endorsed. Third, the violence on television is clean. The protracted hospitalization, suffering, rehabilitation and long term physical and emotional consequences are rarely considered. Televised violence therefore appears to offer an acceptable and rapid means of conflict resolution without negative consequences. Fourth, repeated exposure to violence creates an indifference to its practice.

The Academy of Pediatrics has met with television writers, producers, directors, and executives, many of whom are also parents. Almost without exception, they are concerned about the effects of television on children and adolescents.

However, television is a business. Children and adults are attracted by action and suspense. That which attracts viewers also attracts sponsors. Since the National Radio Act of 1927, the airwaves have been considered a public resource, to be used to serve the public interest. The American Academy of Pediatrics contends that violent television serves sponsors, not the children of this country. Violent television is not in the public interest.

An equal responsibility for what children see on television rests with parents. We believe that parents must monitor the programs their children see, that parents should watch television with their children, and help them interpret what they observe. We believe further that visions of life on television are a poor substitute for direct ex-

perience and that television time should be reduced. Nonetheless, the epidemic of toy based programs, otherwise known as program length commercials, and the widespread violence that occurs in both cartoons and prime time programming offers even the most responsible parent almost no alternative.

The Academy of Pediatrics strongly supports Senator Simon's proposals (S. 2322, S. 2323). We believe that an exclusive focus on self-regulation by the television industry will not resolve the problem of televised violence. For example, the extensive attention to violence in the code of National Association of Broadcasters sanitized violence and used it to show that crime does not pay. Paradoxically, because clean violence is now practiced by television heroes, children learn that violence is effective, acceptable, and without disadvantage. Therefore, the NAB code may have increased rather than reduced the likelihood of violence that the code was designed to prevent.

In conclusion, the American Academy of Pediatrics believes that it is essential to reduce the exposure of American children to televised violence. The solution requires two elements. First, parents must monitor the television programs their children view. Second, broadcasters must offer choices that include nonviolent programming that is of educational and instructional benefit to children and adolescents. Senator Simon's proposed legislation represents the first important step in this direction.●

CONGRATULATING FOUR NORTH CAROLINA PRIMARY SCHOOLS FOR OUTSTANDING ACHIEVEMENT

● Mr. BROYHILL. Mr. President, this past Friday, on September 12, four schools from my State of North Carolina had the destinction of being recognized for outstanding achievement. These schools were recognized by Secretary Bennett as four of 270 of the best grammar schools in the country and invited to participate in the Department of Education's Primary School Recognition Program. The principals representing these schools attended a special address given by President Reagan in the Rose Garden of the White House. The Secretary of Education also addressed the school representatives in an all day conference.

These four schools, Brevard Elementary in Brevard, Ira B. Jones Elementary in Asheville, Park View Elementary in Mooresville, and W.G. Pearson Elementary in Durham—including their staffs, faculty, students, and the communities should be extremely proud. Schools like theirs are outstanding examples of the solid education that the young people in this country are receiving.

The awards were based primarily on how well the schools used resources at their disposal and how well they met the needs of particular students. There was special emphasis on student achievement in reading and mathematics, and on the school's record of overcoming obstacles and sustaining progress. Schools were considered on the basis of the overall school quality in respect to programs, practices, and policies.

These schools being honored by the Department of Education have helped their students develop the fundamentals of learning early on. First rate elementary schools are one of America's most precious resources. They are also the largest component of American education. We must continue striving to provide our grammar students with the best foundation possible so that they will continue to learn and contribute toward this country's future. America's youth are her future.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS

● Mr. RUDMAN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in a programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35, for Mrs. Mary McGuire, a member of the staff of Senator FRANK H. MURKOWSKI, to participate in a program in the Republic of Turkey, sponsored by the Turkish Foreign Policy Institute, from August 30 to September 7, 1986.

The committee has determined that participation by Mrs. McGuire in the program in Turkey, at the expense of the Turkish Foreign Policy Institute, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Ms. Margaret M. Hunt, a member of the staff of Senator JEREMIAH DENTON, to participate in a program in South Korea, sponsored by the Ilhae Institute in Seoul, Korea, from August 24 to September 1, 1986.

The committee has determined that participation by Ms. Hunt in the program in South Korea, at the expense of the Ilhae Institute in Seoul, Korea, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Ms. Carrie McMillan, a member of the staff of Senator MARK O. HATFIELD, to participate in a program in the Republic of Turkey, sponsored by the Turkish Foreign Policy Institute, from August 30 to September 7, 1986.

The committee has determined that participation by Ms. McMillan in the program in Turkey, at the expense of the Turkish Foreign Policy Institute, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Mr. Ed Long, a member of the staff of Senator TOM HARKIN, to participate in a program in South Korea, sponsored by the Ilhae Institute in Seoul, Korea, from August 24 to September 1, 1986.

The committee has determined that participation by Mr. Long in the program in South Korea, at the expense of the Ilhae Institute in Seoul, Korea, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Ms. Heather Wicke, a member of the staff of Committee on Environment and Public Works, to participate in a program in Taipei, Taiwan, sponsored by Soochow University, from August 16 to August 25, 1986.

The committee has determined that participation by Ms. Wicke in the program in Taipei, Taiwan, at the expense of the Soochow University, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Mr. Robert F. Hurley, a member of the staff of Senator JOHN H. CHAFEE, to participate in a program in Taipei, Taiwan, sponsored by Soochow University, from August 16 to August 25, 1986.

The committee has determined that participation by Mr. Hurley in the program in Taipei, Taiwan, at the expense of Soochow University, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Mr. Tim Roemer, a member of the staff of Senator DENNIS DECONCINI, to participate in a program in South Korea, sponsored by the Ilhae Institute in Seoul, Korea, from August 24 to September 2, 1986.

The committee has determined that participation by Mr. Roemer in the program in South Korea, at the expense of the Ilhae Institute in Seoul, Korea, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Mr. Gregg Willhauck, a member of the staff of Senator JAMES A. MCCLURE, to participate in a program in South Africa, sponsored by the South Africa Foundation, from August 22 to September 2, 1986.

The committee has determined that participation by Mr. Willhauck in the program in South Africa, at the expense of the South Africa Foundation, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Mr. Claude Allen, a member of the staff of the Foreign Relations

Committee, to participate in a program in South Africa, sponsored by the South Africa Foundation, from August 22 to September 2, 1986.

The committee has determined that participation by Mr. Allen in the program in South Africa, at the expense of the South Africa Foundation, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Mr. Kent Talbert, a member of the staff of Senator STROM THURMOND, to participate in a program in South Africa, sponsored by the South Africa Foundation, from August 22 to September 2, 1986.

The committee has determined that participation by Mr. Talbert in the program in South Africa, at the expense of the South Africa Foundation, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Mr. Stephen Smith, a member of the staff of Senator PAUL SIMON, to participate in a program in South Korea, sponsored by the Ilhae Institute in Seoul, Korea, from August 24 to September 1, 1986.

The committee has determined that participation by Mr. Smith in the program in South Korea, at the expense of the Ilhae Institute in Seoul, Korea, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Mr. Michael Tongour, a member of the staff of Senator STROM THURMOND, and Ms. Jean Carroll, a member of the staff of Senator FRANK H. MURKOWSKI, to participate in a program in South Korea, sponsored by the Ilhae Institute in Seoul, Korea, from August 24 to September 1, 1986.

The committee has determined that participation by Mr. Tongour and Ms. Carroll in the program in South Korea, at the expense of the Ilhae Institute in Seoul, Korea, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Mr. John Walsh, a member of the staff of the International Finance and Monetary Policy Subcommittee, to participate in a program in South Africa, sponsored by the South Africa Foundation, from August 22 to September 2, 1986.

The committee has determined that participation by Mr. Walsh in the program in South Africa, at the expense of the South Africa Foundation, was in the interest of the Senate and the United States.●

NAUM AND INNA MEIMAN: LIVE AND LET LIVE

● Mr. SIMON. Mr. President, this past week, I received word that two Soviets who are married to Americans will be allowed to join their spouses in the West. I welcome this development and extend my congratulations to Roman Kuperman and Fran Pergericht of Chicago, IL and Tamara Tretyakova and Simon Levin of Deerfield, IL.

Not quite as fortunate is a couple, Naum and Inna Meiman, of Moscow. They have been waiting more than a decade for permission to emigrate to the West.

Inna has been stricken with cancer of the spine. Unfortunately, the Soviets tell her that there is nothing more that they can do. Still, experimental treatment exists in the West, if only the Soviets will allow Inna the chance to obtain it. The Soviets continue to hold the Meimans, offering no effective medical assistance.

I strongly urge the Soviets to allow the Meimans to emigrate to Israel.●

ABORTION AND INFORMED CONSENT: CALIFORNIA

● Mr. HUMPHREY. Mr. President, in a letter from Lauren in California, we observe once again what happens when women are not given sufficient information when faced with an unplanned pregnancy. The letters I receive repeatedly illustrate too many examples of women who are given a view of abortion which underestimates and misrepresents both the abortion procedure and its consequences. It is time that we properly inform women about the nature and risks of abortion.

Like many women who have had an abortion, Lauren has taken years to heal from the trauma. Like millions of American women who have sought abortions, she was inadequately prepared for the abortion because she had not been given enough information to make an intelligent decision. She was not told of the physical risks, much less the emotional ones. No one told her that many women feel an overwhelming sense of loss after an abortion.

Therefore, she justly feels that she was betrayed by her counselors. And she was. She points out that she was subtly directed to opt for abortion in a vulnerable time in her life. She should have been given the full scope of information regarding adoption and parenting, rather than being manipulated into opting for abortion. One wonders why this conspiracy or silence continues amidst pleas for informed consent.

I hope my colleagues will join me in cosponsoring S. 2791. The reason I have proposed this legislation is that it is needed to protect women from unscrupulous counselors who do not keep their best interests in mind.

The letter follows:

DEAR SENATOR: I am writing this letter as an encouragement to you in your fight to give women a real CHOICE by giving them "informed consent" prior to abortion.

I am a woman who experienced firsthand the turmoil of an unplanned pregnancy followed by the emotional and psychological trauma which accompanies abortion. I am able to say to you that after years of working through my abortion experience, I believe that had I been told the "choice" I was making would result in the painful death of my child as well as subsequent emotional and psychological problems that would require attention as a result of my "choice," I never would have had the abortion.

In my so-called counselling session, I was manipulated by carefully worded questions made to imply that I was not capable of mothering a child at that time; that there would be virtually no help from my family or friends; that my husband couldn't get a job and we'd never be able to pay the rising OB-GYN costs, let alone feed and care for an infant . . . etc., etc. NO INFORMATION was given about fetal development, possible physical complications or even the actual abortion procedure. NOTHING.

I am convinced after counselling with many other women in post-abortion trauma that abortion itself is completely alien to the thinking process of the female, and that we can not participate in any way in the death of our own children without suffering psychological problems.

Before a woman can be truly "free" to make her own "choice," she MUST make a decision based on factual information about ALL the aspects of abortion, adoption and parenting as well.

Again, thank you, Senator Humphrey, for standing up for womanhood and our RIGHT to INFORMED CONSENT, which will truly give us the freedom of choice.

For the Children's sake and for mine,

Thank you,

LAUREN PLATZ,
Pinole, CA.●

PROGRAM

Mr. DOLE. Mr. President, it is my hope that in the morning—we are going to come in at 9:30—at 10:30 maybe get on the DOT appropriations bill. If we can do that, then it would be my intention to postpone the cloture vote on the Rehnquist nomination until 3 p.m. We would have 1 hour of debate starting at 2, have the cloture vote at 3, and then as previously discussed with the distinguished minority leader, if cloture is invoked, I would assume there could be an hour or two more of debate but hopefully finish.

We will have final disposition of both the Rehnquist nomination and the Scalia nomination before this window we are going to have tomorrow evening because we indicated to a number of our colleagues that from about 6 to 8 there would be a window because they have other obligations.

Mr. BYRD. Mr. President, I do not think the distinguished majority leader will have any problem in calling up the transportation appropriations bill by unanimous consent tomorrow morning. There is one Senator with whom I would like to clear that. He is

not here this evening. I am confident that he will have no objection. But I think the distinguished majority leader has announced his intention to try to call up that bill. If it is agreed to by unanimous consent that the bill be called up, then we will proceed to delay the cloture vote under rule XXII, which would otherwise occur at around 10:30 to 11 o'clock if the majority leader brings us in around 9:30. That would seem to be a satisfactory resolution of the matter at this time.

I feel that the prospects are reasonably good for a final vote on the Rehnquist nomination tomorrow by 5 p.m., if not before, in the event cloture is invoked, and that a vote in all likelihood would occur then within an hour on the Scalia nomination.

Mr. DOLE. Mr. President, I would indicate that I have cleared this with the distinguished chairman of the Judiciary Committee and the distinguished ranking member, Senator BIDEN, that there would be no waste of time there because we would be on an appropriations bill and perhaps we could conclude action on that by 2 o'clock. If not, we would take it up after the disposition of the Scalia nomination.

We would hope we could complete that measure tomorrow evening.

GOVERNMENT SECURITIES DEALERS ACT

Mr. SIMPSON. Mr. President, after conferring with the Democratic leader, I ask unanimous consent that the Senate now turn to calendar item 876, S. 1416, the Government Securities Dealers Act.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1416) entitled the Government Securities Dealers Act of 1985.

The Senate proceeded to consider the bill which had been reported from the Committee on Banking, Housing, and Urban Affairs, with an amendment to strike out all after the enacting clause and insert the following:

SECTION 1. This Act may be cited as the "Government Securities Act of 1986".

SEC. 2. The Congress finds that—

(1) certain government securities brokers and dealers, which have previously been exempt from Federal regulation, have been engaging in activities inconsistent with the maintenance of fair and orderly markets; and

(2) in order to protect the public interest in the government securities markets, it is necessary to assure that government securities brokers and dealers are subject to adequate registration, financial responsibility, reporting, recordkeeping, and related regulatory requirements.

TITLE I—GOVERNMENT SECURITIES BROKERS AND DEALERS

SEC. 101. The Securities Exchange Act of 1934 is hereby amended by inserting after section 15B (15 U.S.C. 78o-4) the following new section:

"GOVERNMENT SECURITIES BROKERS AND DEALERS

"SEC. 15C. (a)(1)(A) It shall be unlawful for any government securities broker or government securities dealer (other than a registered broker or dealer, a financial institution, or a primary dealer) to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security unless such government securities broker or government securities dealer is registered in accordance with paragraph (2) of this subsection.

"(B) It shall be unlawful for any government securities broker or government securities dealer that is a registered broker or dealer, a financial institution, or a primary dealer to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security unless such government securities broker or government securities dealer has given the appropriate regulatory agency written notice that it is a government securities broker or government securities dealer. When a government securities broker or government securities dealer ceases to act as such it shall file with the appropriate regulatory agency a written notice that it is no longer acting as a government securities broker or government securities dealer. Such notices shall be in such form and contain such information concerning such government securities broker or government securities dealer and any persons associated with such government securities broker or government securities dealer as the appropriate regulatory agency for such government securities broker or government securities dealer may, by rule, prescribe as necessary or appropriate in the public interest or for the protection of investors. Each appropriate regulatory agency (other than the Commission) shall make available to the Commission notices which have been filed with it under this subparagraph, and the Commission shall maintain and make available to the public such notices and notices it receives under this subparagraph.

"(2) A government securities broker or a government securities dealer subject to the registration requirement of paragraph (1)(A) of this subsection may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such government securities broker or government securities dealer and any persons associated with such government securities broker or government securities dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

"(i) by order grant registration, or

"(ii) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred and twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a government securities broker or a government securities dealer if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (c) of this section.

"(3) Any provision of this title (other than section 5 or paragraph (1) of this subsection) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any government securities broker or government securities dealer registered or having filed notice under paragraph (1) of this subsection or any person acting on behalf of such government securities broker or government securities dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

"(4) The Secretary of the Treasury (hereinafter referred to as the 'Secretary'), by rule or order, upon the Secretary's own motion or upon application, may conditionally or unconditionally exempt any government securities broker or government securities dealer, or class of government securities brokers or government securities dealers from any provision of subsections (a), (b), and (d) of this section or the rules thereunder, if the Secretary finds that such exemption is consistent with the public interest, the protection of investors, and the purpose of this title.

"(b)(1) The Secretary shall propose and adopt rules to effect the purposes of this title, including, in particular, prevention of fraud with respect to transactions in government securities effected by government securities brokers and government securities dealers. Such rules shall—

"(A) provide safeguards with respect to the financial responsibility and related practices of government securities brokers and government securities dealers including, but not limited to, capital adequacy standards, the acceptance of custody and use of customers' securities, the carrying and use of customers' deposits or credit balances, and the transfer and control of government securities in repurchase agreements and similar transactions;

"(B) require every government securities broker and government securities dealer to make and transmit reports to and furnish copies of records to the appropriate regulatory agency, and to file annually or more frequently a balance sheet and income statement certified by an independent public accountant, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Secretary specifies, be certified) and information concerning its financial condition with the appropriate regulatory agency; and

"(C) prescribe records to be made and kept by government securities brokers and gov-

ernment securities dealers and the periods for which such records shall be preserved.

"(2) In adopting rules under this section, the Secretary—

"(A) may appropriately classify government securities brokers and government securities dealers (taking into account relevant matters, including types of business done, nature of securities other than government securities purchased or sold, and character of business organization) and persons associated with government securities brokers and government securities dealers; and

"(B) may specify that all or any portion of such rules shall not be applicable to any such class.

"(3) The Secretary shall, prior to adopting rules under this section—

"(A) determine, with respect to government securities brokers and government securities dealers not registered or required to register under subsection (a)(1)(A) of this section, whether any or all of the rules or standards of the appropriate regulatory agency for such government securities broker or government securities dealer adequately meet the purposes of rules promulgated under this subsection and, if the Secretary so determines, the Secretary shall exempt any government securities broker or government securities dealer subject to such rules or standards from any or all of the rules promulgated under this subsection; and

"(B) consult with and consider the views of the Commission and the Board of Governors of the Federal Reserve System, except where the Secretary determines that an emergency exists requiring expeditious or summary action and publishes its reasons for such determination. If the Commission or the Board of Governors of the Federal Reserve System comments in writing on a proposed rule of the Secretary that has been published for comment, the Secretary shall respond in writing to such written comment before approving the proposed rule or proposed rule change.

"(4) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security in contravention of any rule under this section.

"(c)(1) With respect to any government securities broker or government securities dealer registered or required to register under subsection (a)(1)(A) of this section—

"(A) The Commission, by order, shall censure, place limitations on the activities, functions, or operations, suspend for a period not exceeding twelve months, or revoke the registration of such government securities broker or government securities dealer, if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such government securities broker or government securities dealer, or any person associated with such government securities broker or government securities dealer (whether prior or subsequent to becoming so associated), has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

"(B) Pending final determination whether registration of any government securities broker or government securities dealer shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest. Any registered government securities broker or registered government securities dealer may, upon such terms and conditions as the Commission may deem necessary in the public interest, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered government securities broker or registered government securities dealer is no longer in existence or has ceased to do business as a government securities broker or government securities dealer, the Commission, by order, shall cancel the registration of such government securities broker or government securities dealer.

"(C) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, or seeking to become associated, with a government securities broker or government securities dealer registered or required to register under subsection (a)(1)(A) of this section or suspend for a period not exceeding twelve months or bar any such person from being associated with such a government securities broker or government securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

"(2) With respect to any government securities broker or government securities dealer which is not registered or required to register under subsection (a)(1)(A) of this section, the appropriate regulatory agency for such government securities broker or government securities dealer may, in the manner and for the reasons specified in section 15(b)(4) of this title, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or bar from acting as a government securities broker or government securities dealer any such government securities broker or government securities dealer, and may sanction any person associated with such government securities broker or government securities dealer in the manner and for the reasons specified in section 15(b)(6) of this title. In addition, where applicable, such appropriate regulatory agency may, in accordance with section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), or section 407 of the National Housing Act (12 U.S.C. 1730), enforce compliance by such government securities broker or government securities dealer or any person associated with such government securities broker or government securities dealer with the provisions of this section and the rules thereunder. For purposes of the preceding sentence, any violation of any such provision shall constitute adequate basis for the issuance of any order under section 8(b) or 8(c) of the Federal Deposit Insurance Act, section 5(d)(2) or 5(d)(3) of the Home Owners' Loan Act of 1933, or section 407(e) or 407(f) of the National Housing Act, and the customers of any such government securities broker or government securities dealer shall be deemed, respectively, 'depositors' as that term is used in section 8(c) of the Federal Deposit Insurance Act, 'savings account holders' as that term is used in section 5(d)(3) of the Home Owners' Loan Act of 1933, or 'insured members' as that term is used in section 407(f) of the National Housing Act. Nothing in this paragraph shall be construed to affect in any way the powers of such appropriate regulatory agency to proceed against such government securities broker or government securities dealer under any other provision of law. Each appropriate regulatory agency (other than the Commission) shall promptly notify the Commission after it has imposed any sanction under this paragraph on a government securities broker or government securities dealer, or a person associated with a government securities broker or government securities dealer, and the Commission shall maintain, and make available to the public, a record of such sanctions and any sanctions imposed by it under this subsection.

"(3) It shall be unlawful for any person as to whom an order entered pursuant to paragraph (1) or (2) of this subsection suspending or barring him from being associated with a government securities broker or government securities dealer is in effect willfully to become, or to be, associated with a government securities broker or government securities dealer without the consent of the appropriate regulatory agency, and it shall be unlawful for any government securities broker or government securities dealer to permit such a person to become, or remain, a person associated with it without the consent of the appropriate regulatory agency, if such government securities broker or government securities dealer knew, or, in the exercise of reasonable care should have known, of such order.

"(d)(1) All records of government securities brokers and government securities dealers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the appropriate regulatory agency for such government securities broker or government securities dealer as such appropriate regulatory agency deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

"(2) Information received by any appropriate regulatory agency or the Secretary from or with respect to any government securities broker or government securities dealer or with respect to any person associated therewith may be made available by the Secretary or the recipient agency to the Commission, the Secretary, any appropriate regulatory agency, and any self-regulatory organization.

"(e)(1) It shall be unlawful for any government securities broker or government securities dealer registered or required to register with the Commission under subsection (a)(1)(A) to effect any transaction in, or induce or attempt to induce the purchase or sale of, any government security, unless such government securities broker or government securities dealer is a member of a national securities exchange registered under section 6 of this title or a securities

association registered under section 15A of this title.

"(2) The Commission, after consultation with the Secretary, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any government securities broker or government securities dealer or class of government securities brokers or government securities dealers specified in such rule or order.

"(f)(1) Nothing in this section except paragraph (2) shall be construed to impair or limit the authority under any other provision of law of the Commission, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, the Secretary of Housing and Urban Development, and the Government National Mortgage Association.

"(2) Notwithstanding any other provision of this title, the Commission shall not have any authority to make investigations of, require the filing of a statement by, or take any other action under this title against a government securities broker or government securities dealer, or any person associated with a government securities broker or government securities dealer, for any violation or threatened violation of the provisions of this section or the rules or regulations thereunder, unless the Commission is the appropriate regulatory agency for such government securities broker or government securities dealer. Nothing in the preceding sentence shall be construed to limit the authority of the Commission with respect to violations or threatened violations of any provision of this title other than this section, or the rules or regulations under any such other provision.".

TITLE II—CONFORMING AMENDMENTS

PART A—CONFORMING DEFINITIONS

SEC. 201. (a) DEFINITION OF APPROPRIATE REGULATORY AGENCY.—Section 3(a)(34) of the Act is amended—

(1) by inserting after paragraph (F) thereof the following new paragraph:

"(G) When used with respect to a government securities broker or government securities dealer, or person associated with a government securities broker or government securities dealer:

"(i) the Comptroller of the Currency, in the case of a national bank, a bank in the District of Columbia examined by the Comptroller of the Currency, or a Federal branch or Federal agency of a foreign bank (as such terms are defined in the International Banking Act of 1978);

"(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a primary dealer (regardless of whether such primary dealer is a person of a type specified in any other clause of this subparagraph), a foreign bank, a State branch or a State agency of a foreign bank, or a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978);

"(iii) The Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank);

"(iv) the Federal Home Loan Bank Board, in the case of a Federal savings and loan association, Federal savings bank, or District of Columbia savings and loan association;

"(v) the Federal Savings and Loan Insurance Corporation, in the case of an institution insured by the Federal Savings and Loan Insurance Corporation (other than a Federal savings and loan association, Federal savings bank, or District of Columbia savings and loan association);

"(vi) the Commission, in the case of all other Government securities brokers and Government securities dealers."; and

(2) by inserting ", and the term 'District of Columbia savings and loan association' means any association subject to examination and supervision by the Federal Home Loan Bank Board under section 8 of the Home Owners' Loan Act of 1933" before the period ending the last sentence thereof.

(b) DEFINITION OF STATUTORY DISQUALIFICATION.—Section 3(a)(39) of such Act (15 U.S.C. 78c(a)(39)) is amended—

(1) in subparagraph (B)—

(A) by inserting "or other appropriate regulatory agency" after "Commission"; and

(B) by striking out "or municipal securities dealer" and inserting in lieu thereof "municipal securities dealer, government securities broker, or government securities dealer"; and

(2) in subparagraph (C)—

(A) by striking out "or municipal securities dealer" and inserting in lieu thereof "municipal securities dealer, government securities broker, or government securities dealer"; and

(B) by inserting ", an appropriate regulatory agency," after "Commission".

(c) ADDITIONAL DEFINITIONS.—Section 3(a) of such Act (15 U.S.C. 78c(a)) is further amended by adding at the end thereof the following new paragraphs:

"(42) The term 'government securities' means—

"(A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States;

"(B) securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

"(C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission; or

"(D) for purposes of section 15C, any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—

"(i) that is traded on one or more national securities exchanges; or

"(ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association.

"(43) The term 'government securities broker' means any person regularly engaged in the business of effecting transactions in government securities for the account of others, but does not include—

"(A) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or

"(B) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

"(44) The term 'government securities dealer' means any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include—

"(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business;

"(B) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or

"(C) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

"(45) The term 'primary dealer' means a government securities dealer that is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York.

"(46) The term 'person associated with a government securities broker or government securities dealer' means any partner, officer, director, or branch manager of such government securities broker or government securities dealer (or any person occupying a similar status or performing similar functions), and any other employee of such government securities broker or government securities dealer who is engaged in the management, direction, supervision, or performance of any activities relating to government securities, and any person directly or indirectly controlling, controlled by, or under common control with such government securities broker or government securities dealer.

"(47) The term 'financial institution' means (A) a bank (as such term is defined in paragraph (6) of this subsection), (B) a foreign bank, and (C) an insured institution (as such term is defined in section 401 of the National Housing Act).

"(48) The term 'registered broker or dealer' means a broker or dealer registered or required to register pursuant to section 15 or 15B of this title, except that in paragraph (3) of this subsection and sections 6 and 15A the term means such a broker or dealer and a government securities broker or government securities dealer registered or required to register pursuant to section 15C(a)(1)(A) of this title.".

PART B—ADDITIONAL CONFORMING AMENDMENTS

SEC. 202. (a) Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (A), by inserting "or with any other appropriate regulatory agency" after "Commission" the first time it appears therein;

(2) in subparagraph (B), by inserting in clause (ii) thereof "government securities broker, government securities dealer," after "municipal securities dealer,"; and

(3) in subparagraph (C), by striking out "or municipal securities dealer," and inserting in lieu thereof "municipal securities dealer, government securities broker, or government securities dealer,".

(b) Section 15(c)(3) of such Act (15 U.S.C. 78o(c)(3)) is amended—

(1) by inserting "(other than a government securities broker or government securities dealer, except a registered broker or dealer)" after "dealer"; and

(2) by inserting "(except a government security)" after "exempted security".

SEC. 203. (a) Section 15A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(f)) is amended to read as follows:

"(f)(1) Except as provided in paragraph (2) of this subsection, nothing in this section shall be construed to apply with respect to any transaction by a registered broker or dealer in any exempted security.

"(2) A registered securities association may adopt and implement rules applicable to members of such association (A) to enforce compliance by registered brokers and dealers with applicable provisions of this title and the rules and regulations thereunder, (B) to provide that its members and persons associated with its members shall be appropriately disciplined, in accordance with subsections (b)(7), (b)(8), and (h) of this section, for violation of applicable provisions of this title and the rules and regulations thereunder, (C) to provide for reasonable inspection and examination of the books and records of government securities brokers and government securities dealers, (D) to provide for the matters described in paragraphs (b)(3), (b)(4), and (b)(5) of this section, (E) to implement the provisions of subsection (g) of this section, and (F) to prohibit fraudulent, misleading, deceptive, and false advertising.".

(b) Section 15A(g) of such Act (15 U.S.C. 78o-3(g)) is amended—

(1) by inserting after paragraph (3)(C) the following:

"(D) Nothing in subsection (g)(3) shall be construed to permit a registered securities association to deny membership to or condition the membership of, or bar any person from becoming associated with or condition the association of any person with, a broker or dealer that engages exclusively in transactions in exempted securities.";

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following new paragraph:

"(4)(A) A registered securities association may deny membership to, or condition the membership of, a government securities broker or government securities dealer if such government securities broker or government securities dealer (i) does not meet standards of financial responsibility under rules adopted pursuant to section 15C(b)(1)(A) of this title, or (ii) has engaged and there is a reasonable likelihood that it will again engage in any conduct or practice which would subject such government securities broker or government securities dealer to sanctions under section 15C(c) of this title. A registered securities association may establish procedures including examination of the books and records of government securities brokers and government securities dealers to verify compliance with the provisions of this title and the rules thereunder.

"(B) A registered securities association may bar any person from becoming associated with a member or condition the association of a person with a member (i) if such person has engaged in any conduct or practice and there is a reasonable likelihood that such person will again engage in any conduct or practice which would subject such person to sanctions under section 15C(c) of this title, or (ii) if such person does not agree to supply such association with such information with respect to its relationship and dealings with the member as may be specified in the rules of the association and to permit examination of its books and records to verify the accuracy thereof.".

SEC. 204. Section 17(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)) is amended—

(1) in paragraph (1) by inserting "government securities broker, government securities dealer," after "municipal securities dealer,";

(2) in paragraph (1)(A), by inserting "and, in the case of government securities, to the Secretary of the Treasury" after "Commission" the second time it appears;

(3) in paragraph (3)—

(A) by inserting "(A)" after "(3)"; and

(B) by adding the following new subparagraph:

"(B) In order to carry out the authority under paragraph (1) above, the Commission or its designee and the Secretary of the Treasury shall enter into agreement whereby the Commission or its designee will receive, store, and disseminate information in the possession, and which comes into the possession, of the Department of the Treasury in regard to missing, lost, counterfeit, or stolen securities."; and

(4) in paragraph (4)—

(A) by inserting "or primary dealer" after "Federal Reserve System" the first place it appears; and

(B) by inserting in subparagraph (B) "any primary dealer or" after "in regard to".

SEC. 205. Section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)) is amended—

(1) by inserting "and the Secretary" after "Commission" each place it appears in paragraph (2);

(2) by inserting "or the Secretary's" after "Commission's" in paragraph (2);

(3) by inserting "and the Secretary" after "Commission" the first, second, and fourth places it appears in paragraph (3); and

(4) by inserting "or the Secretary" after "Commission" the third place it appears in paragraph (3).

SEC. 206. Section 9 of the Investment Company Act of 1940 (15 U.S.C. 80a-9) is amended—

(1) by striking out paragraphs (1) and (2) of subsection (a) and inserting in lieu thereof the following:

"(1) any person who within ten years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act;

"(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or";

(2) by inserting "or of the Commodity Exchange Act," after "this title," in subsection (b)(2); and

(3) by inserting "or of the Commodity Exchange Act," after "this title," in subsection (b)(3).

SEC. 207. Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) is amended—

(1) by striking out "or fiduciary" in subsection (e)(2)(B) and inserting in lieu thereof "government securities broker, government securities dealer, fiduciary, or entity or person required to be registered under the Commodity Exchange Act";

(2) by striking out paragraph (3) of subsection (e) and inserting in lieu thereof the following:

"(3) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security."; and

(3) by inserting "the Commodity Exchange Act," after "this title," in paragraph (4) of subsection (e).

SEC. 208. Section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)) is amended by inserting after "any insurance or endowment policy" the following: "or any security guaranteed by a policy rated triple A by at least one nationally recognized rating agency".

TITLE III—DEPOSITORY INSTITUTIONS

SEC. 301. (a) Section 3121 of title 31, United States Code, is amended by adding at the end thereof the following:

"(h)(1) The Secretary shall prescribe by regulation standards for the safeguarding and use of obligations issued under this chapter, and obligations otherwise issued or guaranteed as to principal or interest by the United States. Such regulations shall apply to any depository institution that is not a government securities broker or a government securities dealer, which holds such obligations as fiduciary, custodian, or otherwise for the account of a customer and not for its own account, and shall provide for the adequate segregation of obligations so held, including obligations which are purchased or sold subject to resale or repurchase.

"(2) Violation of a regulation prescribed under paragraph (1) shall constitute adequate basis for the issuance of an order

under section 5239(a) or (b) of the Revised Statutes (12 U.S.C. 93(a) or (b)), section 8(b) or 8(c) of the Federal Deposit Insurance Act, section 5(d)(2) or 5(d)(3) of the Home Owners' Loan Act of 1933, section 407(e) or 407(f) of the National Housing Act, or section 206(e) or 206(f) of the Federal Credit Union Act. Such an order may be issued with respect to a depository institution by its appropriate regulatory agency and with respect to a federally insured credit union by the National Credit Union Administration Board.

"(3) Nothing in this subsection shall be construed to affect in any way the powers of such agencies under any other provision of law.

"(4) The Secretary shall, prior to adopting regulations under this subsection, determine with respect to each appropriate regulatory agency, as defined in section 3(a)(34)(G) of the Securities Exchange Act of 1934, and the National Credit Union Administration Board, whether its rules and standards adequately meet the purposes of regulations to be promulgated under this subsection, and if the Secretary so determines, shall exempt any depository institution subject to such rules or standards from the regulations promulgated under this subsection.

"(5) As used in this subsection—

"(A) 'depository institution' has the meaning stated in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act and also includes a foreign bank, an agency or branch of a foreign bank, and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978).

"(B) 'government securities broker' has the meaning prescribed in section 3(a)(43) of the Securities Exchange Act of 1934.

"(C) 'government securities dealer' has the meaning prescribed in section 3(a)(44) of the Securities Exchange Act of 1934.

"(D) 'appropriate regulatory agency' has the meaning prescribed in section 3(a)(34)(G) of the Securities Exchange Act of 1934.".

(b) Chapter 91 of title 31, United States Code, is amended by—

(1) adding at the end thereof the following:

"§ 9110. Standards for depository institutions holding for customers securities of a Government-sponsored corporation

"(a) The Secretary shall prescribe by regulation standards for the safeguarding and use of obligations that are issued or guaranteed by any corporation in which the United States has a direct or indirect interest, and that are designated by the Secretary for exemption under section 3(a)(12) of the Securities Exchange Act of 1934, and obligations issued or guaranteed by any corporation the obligations of which are designated, by statute specifically naming such corporation, as exempt securities within the meaning of the laws administered by the Securities and Exchange Commission. Such regulations shall apply to any depository institution that is not a government securities broker or a government securities dealer, which holds such obligations as fiduciary, custodian, or otherwise for the account of a customer and not for its own account, and shall provide for the adequate segregation of obligations so held, including obligations which are purchased or sold subject to resale or repurchase.

"(b) Violation of a regulation prescribed under subsection (a) shall constitute adequate basis for the issuance of an order under section 5239(a) or (b) of the Revised Statutes (12 U.S.C. 93(a) or (b)), section 8(b) or 8(c) of the Federal Deposit Insurance Act, section 5(d)(2) or 5(d)(3) of the Home Owners' Loan Act of 1933, section 407(e) or 407(f) of the National Housing Act, or section 206(e) or 206(f) of the Federal Credit Union Act. Such an order may be issued with respect to a depository institution by its appropriate regulatory agency and with respect to a federally insured credit union by the National Credit Union Administration.

"(c) Nothing in this section shall be construed to affect in any way the powers of such agencies under any other provision of law.

"(d) The Secretary shall, prior to adopting regulations under this section, determine with respect to each appropriate regulatory agency, as defined in section 3(a)(34)(G) of the Securities Exchange Act of 1934, and the National Credit Union Administration Board, whether its rules and standards adequately meet the purposes of regulations to be promulgated under this section, and if the Secretary so determines, shall exempt any depository institution subject to such rules or standards from the regulations promulgated under this section.

"(e) As used in this subsection—

"(1) 'depository institution' has the meaning stated in clauses (i) through (vi) of subparagraph 19(b)(1)(A) of the Federal Reserve Act and also includes a foreign bank, an agency or branch of a foreign bank, and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978).

"(2) 'government securities broker' has the meaning prescribed in section 3(a)(43) of the Securities Exchange Act of 1934.

"(3) 'government securities dealer' has the meaning prescribed in section 3(a)(44) of the Securities Exchange Act of 1934.

"(4) 'appropriate regulatory agency' has the meaning prescribed in section 3(a)(34)(G) of the Securities Exchange Act of 1934."; and

(2) by adding at the end of the chapter analysis the following:

"9110. Standards for depository institutions holding for customers securities of a Government-sponsored corporation.".

TITLE IV—TRANSITIONAL AND SAVINGS PROVISIONS

SEC. 401. (a) EFFECT ON PENDING ADMINISTRATIVE PROCEEDINGS.—The provisions of this Act shall not affect any proceedings pending on the effective date of this Act.

(b) EFFECT ON PENDING JUDICIAL PROCEEDINGS.—The provisions of this Act shall not affect suits commenced prior to the effective date of this Act, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(c) DISCRETION OF THE FEDERAL RESERVE BANK OF NEW YORK.—Nothing in this Act shall be construed to limit or impair the discretion or authority of the Federal Reserve Bank of New York to require reports or establish terms and conditions in connection with the Bank's relationship with any government securities broker or government securities dealer, including a primary dealer.

(d) JURISDICTION OF THE COMMODITY FUTURES TRADING COMMISSION.—Nothing in this Act affects the jurisdiction of the Commodity Futures Trading Commission as set forth in the Commodity Exchange Act over trading of commodity futures contracts and options on such contracts involving government securities.

TITLE V—REPORT ON TRANSFERS OF GOVERNMENT SECURITIES

SEC. 501. (a) The Securities and Exchange Commission, in consultation with the Secretary of Housing and Urban Development, the Board of Governors of the Federal Reserve System, the Secretary of the Treasury, and such other agencies as the Commission may find appropriate, shall prepare and transmit to Congress a report regarding existing capabilities and potential future improvements for the clearance and settlement of transactions in the securities of government sponsored enterprises and of government agencies other than the Department of the Treasury. Such study shall evaluate existing capabilities and potential future improvements in the securities ownership transfer process and the mechanisms for creating and perfecting security interest in such securities and shall in particular consider alternative means (including elimination of definitive securities) to reduce current costs and failure rates in the clearance, settlement, and transfer process for definitive securities of such entities.

(b) The report required by subsection (a) shall be transmitted to Congress not later than one year after the date of enactment of this Act.

TITLE VI—EFFECTIVE DATES

SEC. 601. Except as provided in section 501 and section 602, this Act and the amendments made by this Act shall take effect 270 days after the date of enactment of this Act.

SEC. 602. Notwithstanding section 601, the Secretary of the Treasury and each appropriate regulatory agency shall, within 120 days after the date of enactment of this Act, publish for notice and public comment such regulations as are initially required to implement this Act, which regulations shall become effective as temporary regulations 180 days after the date of enactment of this Act and as final regulations not later than 270 days after the date of enactment of this Act.

SEC. 603. No person may continue to act as a government securities broker or government securities dealer after 270 days after the date of enactment of this Act unless such person has been registered or has provided notice to the Commission or the appropriate regulatory agency as required by the amendment made by section 101 of this Act.

Amend the title so as to read: "A bill entitled the Government Securities Act of 1986.".

Mr. D'AMATO. Mr. President, I urge my colleagues to support passage of S. 1416, the "Government Securities Act of 1986." I am glad to say that the Treasury Department and the other Federal regulators strongly support the bill.

The maintenance of the integrity in the market for U.S. securities has been my paramount concern in drafting this legislation. The market for U.S. Treasury securities enables the U.S. Treasury to finance the national debt and to meet seasonal shortfalls between its receipts and expenditures. This market also enables the Federal Reserve Board, through the Federal Open Market Committee and the open market desk, to execute domestic monetary policy. Moreover, banks, other financial institutions, insurance companies, pension funds, State and local

governments, corporations and approximately 150 foreign banks and other foreign banking institutions are significant investors in U.S. Treasury securities.

However, the geometric increase in the volume of activity in the Government securities markets since 1982 and recent broker-dealer failures in the Government securities markets have demonstrated a critical need to regulate the practices of Government securities dealers. During the past 7 years, the failures of several Government securities dealers have had tremendous repercussions throughout the financial markets. These failures include: Winters Government securities, 1977; Drysdale Government securities, 1982; Lombard-Wall, 1982; Lion Capital, 1984; and most recently, the highly publicized failure of ESM Securities Inc. and Bevill, Bresler and Shulman Asset Management Corp., 1985.

While each of these incidents had its own distinct traits, these failures exhibit several common features. In a number of failures, the firm in question issued false and misleading financial statements. In several instances, problems in one company were masked by relationships, and at times complex transactions, with affiliated companies. In some instances, the investor did not have a full understanding of which entity was the counterparty to transactions. In others, the dealers in question used working capital generated by matched book operations to engage in trading for their own account and in the process incurred huge losses. Customers of problem dealers also incurred losses because the customers failed both to know their counterparty and to secure control of the securities that collateralized a repurchase transaction with the problem dealer. The failure to know the financial status and management of the counterparty, and the failure to secure control of collateral resulted in the loss to the customer, while providing funds to the problem dealer which thereby permitted the dealer to continue operations in a way that disguised its true financial condition.

S. 1416 is specifically designed to remedy these problems and thereby protect the public interest in the Government securities markets. The legislation indentifies certain weaknesses in the Government securities markets and addresses them in an evenhanded and reasonable manner—not by way of excessive regulation that would impair the efficient operation of the markets or compromise the execution of domestic monetary policy.

S. 1416 adopts a bifurcated system of regulation that divides responsibilities among the Treasury as rulemaker and the Securities and Exchange Commission and banking regulators as enforcement agencies. The Secretary of the Treasury is invested with the limited authority to promulgate rules that are designed to regulate the activities of Government securities brokers and dealers in general and, in particular, to prevent fraud. This includes safeguards relating to capital adequacy standards, the acceptance of custody and use of customers' securities, the carrying and use of customers' deposits or credit balances, and the submission of financial statements by every Government securities broker and Government securities dealer. The Secretary is also empowered to issue and if needed to safeguard the custody of Government securities held by nonbroker/dealer banking institutions holding these securities on behalf of their customers.

In accomplishing these goals, S. 1416 takes great pains to avoid the duplicative regulation of those Government securities dealers already subject to some degree of regulation by a Federal regulator—such as the SEC, the Fed or the banking regulators. Moreover, the legislation assiduously avoids those dealing in the commodities markets who engage in Government securities only incidentally by exempting them from the requirement imposed on Government securities brokers and dealers as provided in the act.

During the consideration of this legislation questions regarding the scope of the Commodity Futures Trading Commission's jurisdiction were raised. I would like to clarify the intent of the committee in drafting section 401(d) of the bill and in preparing the portion of the committee report addressing the jurisdiction of the CFTC. The committee's intent in drafting section 401(d) of the bill was to clarify that the bill has no effect whatsoever on the scope of the CFTC's jurisdiction over off-exchange transactions in futures contracts on Government securities as set forth in the Commodity Exchange Act; and that the committee specifically resisted consideration of that issue during its consideration of S. 1416. Therefore, S. 1416 is intended neither to expand nor contract the CFTC's jurisdiction over such transactions.

The committee report discussing section 401(d) contains the statement that the "committee does not intend to affect the CFTC's exclusive regulation of futures and options on futures in Government securities and did not intend to create any regulatory overlap with activities that are subject to CFTC jurisdiction." This statement was not intended to express any view as to how the provision of the Commodity Exchange Act commonly known as the "Treasury amendment" affects the CFTC's jurisdiction over the regulation of such futures contracts; and that the committee intended to be absolutely neutral as to how the CFTC's jurisdiction over such transactions should be construed under the Treasury amendment.

S. 1416 is needed because as Chairman Volcker stated:

> Contrary to our earlier expectations, market and regulatory responses after previous problems materialized do not prove fully adequate.

Dick Kelly, chairman of the Public Securities Association's primary dealer committee echoed Chairman Volcker's concerns stating:

> These dealer failures and other recent related events have revealed significant gaps in the current regulatory framework. We believe that new legislation is necessary to deal with identifiable weaknesses in the Government securities market.

To preserve the integrity, efficiency, and liquidity of the ever-growing market in Federal securities, I believe some form of minimal Federal regulation is mandated so that the Federal Government has some idea of and control over those dealing in the instruments that the U.S. Government employs to finance the national debt. Therefore, I urge my colleagues to support passage of S. 1416.

Mr. METZENBAUM. Mr. President, I am pleased that the Senate is finally acting to regulate the Government securities market.

As my colleagues know, the savings and loan crisis in Ohio is largely responsible for the 2 year congressional effort to enact this type of legislation. That crisis was precipitated by the failure of ESM Government Securities, which had engaged in free-wheeling fraudulent practices for years before its collapse.

But unlike other securities dealers, ESM and other firms that only deal in Government securities are not regulated by Federal agencies. Accordingly, they have been able to operate in the shadows of our financial markets, beyond the reach of Federal supervision and out of the light of public scrutiny.

This is a serious gap in our financial regulatory regime, especially since the Government securities market is the largest securities market in the world. This bill is a start toward long overdue Government regulation and supervision of this industry.

Frankly, I am not sure the bill is tough enough. I have considered offering amendments to tighten certain sections. But I will not do so. It is indisputable that this bill is far better than the situation we have today. And it is clear that time is short and swift action is urgently needed if we are to enact legislation bringing Government securities dealers into a regulatory framework. No amendments I would offer are more important than the goal of moving the process forward.

But the record should reflect my concern over the bill's designation of the Treasury Department as the

agency responsible for adopting rules regulating Government securities traders. First, notwithstanding the assurances contained in the committee report, I am concerned over the potential conflict of Treasury's role as issuer of the debt and as regulatory of the dealers.

More fundamentally, though, I do not believe Treasury is the agency that should have the lead in policing this market. Quite frankly, despite the department's apparent support for S. 1416, I am skeptical whether the administration has a genuine commitment to the fundamental policy underlying this bill: that is, to bring this market under closer and better Government regulation. The record is clear that the administration is not an enthusiastic partner in this legislative enterprise. In sum, I question Treasury's interest in promulgating tough rules and its commitment to their aggressive enforcement. On balance, I believe the House approach, which creates a new self-regulatory board composed of industry, investors and public members and operating under the oversight of the Federal Reserve Board, is likely to lead to better protection of investors and dealers in Government securities.

Mr. SIMPSON. Mr. President, I move adoption of the committee substitute.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute was agreed to.

The committee amendment in the nature of a substitute was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 2032, the House companion bill, and that the Senate proceed to its immediate consideration.

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

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2032) to amend the Securities and Exchange Act of 1934 to provide improved protection for investors in the Government securities market, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. SIMPSON. Mr. President, I move to strike all after the enacting clause of H.R. 2032 and to substitute the text of S. 1416 as reported and as amended.

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

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 2032), as amended, was passed.

The title was amended so as to read "A bill entitled the Government Securities Act of 1986."

Mr. SIMPSON. Mr. President, I move to reconsider the vote.

Mr. BYRD. Mr. President, I move to lay the motion to reconsider on the table.

The motion to lay on the table was agreed to.

BILL INDEFINITELY POSTPONED—S. 1416

Mr. SIMPSON. Mr. President, I ask unanimous consent that S. 1416 be indefinitely postponed.

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

STAR PRINT OF REPORT NO. 99-426

Mr. SIMPSON. I ask unanimous consent that report No. 99-426 be star printed to reflect the changes which I send to the desk.

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

MAINE CENTRAL RAILROAD DISPUTE SETTLEMENT

Mr. BYRD. Mr. President, on behalf of Mr. MITCHELL, Mr. COHEN, Mr. DODD, Mr. METZENBAUM, Mr. KERRY, Mr. SIMON, Mr. SPECTER, Mr. HEINZ, and Mr. D'AMATO, I introduce a joint resolution, Senate Joint Resolution 415. I ask that it be read twice and held at the desk pending further disposition.

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

The joint resolution to provide for a settlement to the Maine Central Railroad Co. and Portland Terminal Co. labor-management dispute will be considered as having been read the first time by title and the second time at length and will be held at the desk pending further consideration.

MAINE CENTRAL RAILROAD DISPUTE

● Mr. MITCHELL. Mr. President, I am today introducing legislation to bring about a settlement of the Maine Central Railroad labor dispute. Joining me in this action are Senators COHEN, DODD, METZENBAUM, KERRY, SIMON, SPECTER, HEINZ, and D'AMATO. The legislation also will be introduced in the House of Representatives by House Commerce and Transportation Subcommittee Chairman JAMES FLORIO of New Jersey, and Representatives MCKERNAN and SNOWE of Maine. Significantly, the Maine congressional delegation is unanimous in proposing this action as the best alternative for putting to rest a labor dispute which has stricken Maine for over 6 months, and at various times has threatened to spread into a national railroad strike.

The Maine Central Railroad strike began on March 3, 1986 and quickly encompassed the Boston & Maine and Delaware & Hudson Railroads, which also are owned by Guilford Transportation Industries [GTI]. On May 16, as soon as the strike spread to the Conrail system, President Reagan imposed a 60-day cooling-off period, and empaneled an emergency board to investigate the sources of the dispute.

On June 20, the Presidential Emergency Board [EB 209] issued recommendations for settlement of the dispute. The recommendations reflected Guilford's last pre-strike offer to the union. The terms of the settlement would include severance pay of $26,000 for currently-employed maintenance of way workers who might be laid-off in the future; negotiation of work rule changes; negotiation of a comprehensive system production maintenance crew agreement; and agreement to be bound by the outcome of national negotiations involving rates of pay and health and welfare programs.

The union has repeatedly offered to accept the emergency board recommendations. Guilford has refused to do so, on the grounds that its financial position has changed since the strike began, and that it no longer can afford them.

On July 21, the President's cooling-off period expired. With no settlement yet in sight, the Maine congressional delegation at that time introduced legislation to extend the cooling-off period by another 60 days, so as to preserve the collective bargaining process and allow negotiations to continue. It also mandated a second independent panel, a three-person congressional advisory board appointed by the National Mediation Board, to investigate the dispute, especially regarding Guilford's financial circumstances since March 3. On August 21, President Reagan signed this legislation, House Joint Resolution 683, into law.

On September 8, the congressional advisory board issued its report to Congress. The board found Guilford's continued rejection of the emergency board recommendations for financial reasons to be unconvincing, and declared that "Indeed the entire record warrants the conclusion that Guilford's refusal to accept the EB 209 report rests largely on nonfinancial considerations." The board states that "It is clear that the [Maine Central] is a profitable railroad" and that the emergency board recommendations are "reasonable and well-balanced."

The congressional advisory board also stated that "In the absence of agreement between the parties disposing of this dispute no later than September 13, 1986, the Congress should enact legislation directing the parties to accept and apply the recommendations of EB 209. Should the parties be unable to agree as to all necessary details in applying the recommendations * * * any unsettled issues should be submitted to final and binding arbitration before an arbitrator designated by the NMB."

The second cooling-off period expires on September 18. Negotiations between the parties have broken down and are at an impasse. They are no closer to a resolution of this dispute than they were 6 months ago.

Once the cooling-off period expires on September 18, both parties will become entitled to resort to self-help. Guilford has made clear its intention to unilaterally impose a 20 percent wage cut and work rule changes. The union has made clear its determination to resist implementation of such terms by striking. The inevitable result would be a national railroad strike, with a disastrous impact on the economy of not just Maine, but all of New England and other regions of the country.

I introduce this legislation with some reluctance. In any labor dispute, it is preferable to allow the parties to work out their differences themselves through the collective bargaining process. In this case, however, congressional inaction means a national railroad strike, and under these circumstances, the public interest in averting a tragic disruption of interstate commerce overides the narrow interests of either party.

Congressional intervention thus far in the Maine Central Railroad dispute has been cautious, marginal, and incremental. In extending the cooling-off period last month, we took great pains to allow the parties additional room to reach agreement on their own. The result has been nil.

The congressional advisory board reviewed the Presidential Emergency Board's recommendations and found them to be reasonable and well-balanced. The board also found that they are within the Maine Central Railroad's financial capacity. The emergency board recommendations have been twice endorsed as providing a reasonable settlement to the dispute. They have been accepted by the union, and they indeed reflect the railroad's own last pre-strike offer.

Congress has no choice. We have an obligation to protect the flow of interstate commerce, and cannot allow a national railroad strike to occur. This legislation enacts the emergency board recommendations, and provides a reasonable resolution to a tragic dispute that has lingered too long.●

PIPELINE SAFETY

Mr. SIMPSON. Mr. President, I ask unanimous consent that when the Senate receives from the House H.R. 2092, the pipeline safety bill, it be held at the desk pending further disposition.

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

ORDERS FOR WEDNESDAY

RECESS UNTIL 9:30 A.M.

Mr. SIMPSON. Mr. President, after conferring with the Democratic leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. on Wednesday, September 17, 1986.

RECOGNITION OF CERTAIN SENATORS

Following the recognition of the two leaders under the standing order, I ask unanimous consent that the following Senators be recognized for special orders for not to exceed 5 minutes each: Senators HAWKINS, PROXMIRE, MURKOWSKI, SASSER, TRIBLE, BROYHILL, CHAFEE, and LEVIN.

ROUTINE MORNING BUSINESS

Mr. SIMPSON. Following the special orders just identified, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond 10:30 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

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

PROGRAM

Mr. SIMPSON, Mr. President, at 10:30 a.m., it is the majority leader's intention to turn to H.R. 5205, the Department of Transportation Appropriations bill; with the hope that the cloture vote on the Rehnquist nomination be postponed until later in the day of Wednesday.

It is the majority leader's intention to complete action on the Rehnquist nomination tomorrow. Following disposition of the Rehnquist nomination, it will then be the intention of the majority leader to consider the nomination of Antonin Scalia to be an Associate Justice of the U.S. Supreme Court.

Therefore, votes can be expected throughout the day on Wednesday, and a late night session is anticipated.

Mr. President, I ask the distinguished minority leader if he has any further business to transact.

Mr. BYRD. Mr. President, I thank the distinguished assistant Republican leader. I do not have any further business.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. SIMPSON. Mr. President, therefore, in accordance with the order previously entered, I move that the Senate stand in recess until 9:30 a.m., on Wednesday, September 17, 1986.

The motion was agreed to; and at 10:28 p.m., the Senate recessed, to reconvene on Wednesday, September 17, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 16, 1986:

DEPARTMENT OF STATE

Everett E. Bierman, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Papua New Guinea, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Solomon Islands.

ENVIRONMENTAL PROTECTION AGENCY

Vaun A. Newill, of New Jersey, to be an Assistant Administrator of the Environmental Protection Agency, vice Bernard D. Goldstein, resigned.

SELECTIVE SERVICE SYSTEM

William A. Clinkscales, of Virginia, to be Director of Selective Service, vice Thomas K. Turnage.

IN THE AIR FORCE

The following-named officer, under provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. James R. Brown, [redacted] FR, U.S. Air Force.

The following-named officer, under provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Robert C. Oaks, [redacted] FR, U.S. Air Force.

IN THE NAVY

The following-named rear admirals (lower half) of the U.S. Navy for promotion to the permanent grade of rear admiral, pursuant to title 10, United States Code, section 624, subject to qualifications therefor as provided by law:

MEDICAL CORPS

To be rear admiral

Robert Paul Caudill, Jr.
Henry James Tipp Sears.
James K. Summitt.

IN THE AIR FORCE

The following officer for appointment in the Regular Air Force under the provisions of section 531, title 10, United States Code, with grade and date of rank to be determined by the Secretary of the Air Force provided that in no case shall the officer be appointed in a grade higher than that indicated.

LINE OF THE AIR FORCE

To be lieutenant colonel

Lawrence L. Vandiford, [redacted]

IN THE AIR FORCE

The following-named officers for permanent promotion in the U.S. Air Force, under the provisions of section 628, title 10, United States Code, as amended, with dates of rank to be determined by the Secretary of the Air Force.

LINE OF THE AIR FORCE

To be lieutenant colonel

Barry W. Christen, [redacted]
Arthur D. Eiff, [redacted]
Norman E. James, [redacted]
John R. Logan, [redacted]
Jerry M. Raper, [redacted]
Dennis F. Reagan, [redacted]
David M. Sneary, [redacted]
Norman L. Tree, [redacted]
Lawrence L. Vandiford, [redacted]

To be major

Stephan D. Hatfield, [redacted]
John E. Schutt, [redacted]
Ray B. Shepherd, [redacted]
Benjamin B. Treadwell III, [redacted]
Richard G. Viray, [redacted]
Erwin R. Zundel, [redacted]

IN THE AIR FORCE

The following Air National Guard of the United States officers for promotion in the Reserve of the Air Force under the provisions of sections 593 and 8379, title 10 of the United States Code. Promotions made under section 8379 and confirmed by the Senate under section 593 shall bear an effective date established in accordance with section 8374, title 10 of the United States Code (effective dates in parentheses).

LINE OF THE AIR FORCE

To be lieutenant colonel

Maj. Russell V. Gatlin, [redacted] (7/12/86).
Maj. James F. Graczyk, [redacted] (7/13/86).
Maj. Stephen A. Gural, [redacted] (5/28/86).
Maj. Gary D. Hitzemann, [redacted] (6/21/86).
Maj. Kenneth H. Isaak, [redacted] (5/22/86).
Maj. Robert B. Miller III, [redacted] (6/13/86).
Maj. Girard F. Nardone II, [redacted] (6/7/86).
Maj. Dennis D. Nielsen, [redacted] (6/25/86).
Maj. Gary J. Parker, [redacted] (7/8/86).
Maj. Donald J. Quenneville, [redacted] (7/3/86).
Maj. Ben F. Robinson, Jr., [redacted] (6/7/86).
Maj. Kenneth Stengel, [redacted] (6/6/86).
Maj. Ray W. Wiblin, Jr., [redacted] (6/7/86).
Maj. Larry A. Wilde, [redacted] (5/28/86).

LEGAL

To be lieutenant colonel

Maj. David A. Faber, [redacted] (7/12/86).
Maj. Gary L. Jewel, [redacted] (6/20/86).

MEDICAL CORPS

To be lieutenant colonel

Maj. Suryakant Z. Patel, [redacted] (6/8/86).

DENTAL CORPS

To be lieutenant colonel

Maj. Gene T. Bushey, [redacted] (7/12/86).

IN THE ARMY

The following-named officers for permanent promotion in the U.S. Army in accordance with the appropriate provisions of title 10, United States Code, sections 624 and 628:

ARMY

To be major

Arthur J. Bland, [redacted]
Marilyn R. Friedrich, [redacted]
Douglas A. Gendron, [redacted]
Roger D. Wiedeman, [redacted]

MEDICAL CORPS

To be major

James E. Chapman, [redacted]
Bernard M. Feldman, [redacted]
Swarnalatha Prasanna, [redacted]