SENATE—*Friday, October 17, 1986*

(Legislative day of Tuesday, October 14, 1986)

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

PRAYER

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

Let us pray.

Wise and righteous Lord, I do not understand enough about this situation to pray intelligently, but You know in microscopic detail in each heart. Patient Father, whatever is making the Senators hostage to this place by Your power and grace, let it be removed that the needs of families, election campaigns, and personal health can be cared for. In Your name and for Your glory. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE, of Kansas, is now recognized.

Mr. DOLE. Mr. President, I thank the distinguished Presiding Officer, the President pro tempore, Senator THURMOND, of South Carolina.

SCHEDULE

Mr. DOLE. Mr. President, I hope the short prayer is an indication it will be a short day. But in any event it has been a short night and I apologize to my colleagues. I assume some got home about 3 a.m. or later,

There is no reason we should not finish at a reasonable hour today but, of course, reasonable hours here are sometimes defined differently by different people.

I am going to reserve the time of the distinguished minority leader.

After the leader's time there will be routine morning business, not to extend beyond the hour of 10:30 a.m. with Senators permitted to speak for not more than 5 minutes each and then we will go back to House Joint Resolution 738. By unanimous consent at 1 p.m. a cloture vote will occur on the motion to invoke cloture on the immigration bill.

But we are really about done. I do not want to discourage Members because the reconciliation as I understand has been worked out. We had a number of meetings yesterday and I think fairly well the debt limit will be a part of reconciliation. So we will not have two matters to take up, just one unless that does not finalize, but I think it will.

There will be other conference reports. I think there is a water bill of some kind that we will be able to take up and legislative objective items and the matter before us. And I assume there will be some House action on the continuing resolution. But I would hope that there can be a resolution before too late today.

HOUSE SPEAKER THOMAS P. "TIP" O'NEILL

Mr. DOLE. Mr. President, I have learned a lot of lessons since becoming majority leader. One of them is that the job is not nearly as easy as it may look.

Trying to accommodate the wishes of 100 Senators is difficult enough. But to do so for 435 men and women, people of strongly held and disparate views, would seem an impossible task.

And yet, for the past 10 years one man, Speaker THOMAS P. O'NEILL, JR., has succeeded in guiding the House successfully through scores of complex and controversial issues. He has listened to his Members, modified his own views when necessary, stuck by them when he believed it was the true and right course.

Speaker THOMAS P. O'NEILL, JR., and I have been political adversaries on many occasions. He enjoys a good, partisan fight as much as I do. But TIP also believes that after the battle is over—whether you have won, or lost—it is time to shake hands, and go on to the next contest: No hard feelings, no grudges, it is all part of the process.

In fact, when I was elected majority leader, TIP called me and said that he hoped I would understand that there might be times when he would have to go out and "bash" me in public, but not to take it to heart—he would always be a friend.

During his tenure as Speaker, Congress has changed in a number of ways—not all of them designed to make life for the leadership any easier. Members often chart a personal course, one that does not necessarily respond to calls for party allegiance. Congress has become more attuned to the media and subject to external pressures from special interests—public or private. And the issues we face today—whether it is arms control, or budget control, are far more complex and intractable than a decade ago.

TIP has not only kept pace with the times, he has redefined the position and heightened the importance of Speaker. Although in his "heart of hearts" TIP may believe that all politics is local, he is keenly aware, and responsive to, the national role he plays as the key spokesman for the Democratic Party.

While keeping pace with these changes, TIP has never forgotten his own roots, or the roots of his commitment to public service. The needs and dreams of every American, whether the machine operator from North Cambridge, or the professor from Harvard Square, the farmer from Goodland, KS, or the longshoreman from Seattle—their concerns have been TIP's concerns.

But his sense of humanity goes beyond our own shores. And it is in the area of human rights that TIP and I have been able to work together, to speak together for Congress. We share the belief that no matter what a person's religion, place of birth, color or creed, he or she should be guaranteed certain fundamental rights. We have petitioned the President, and foreign heads of state to keep human rights concerns at the forefront. And happily, we jointly welcomed Anatoly Shcharansky to the Captiol—to show our appreciation of Shcharansky's courage, his indomitable spirit, and the hope his release gives to the thousands of Soviet citizens who struggle day-by-day for their existence.

Mr. President, I am not being facetious when I say TIP leaves big shoes to fill. I have found it a pleasure and a privilege to work with him; from the days we were colleagues in the House, to the past 2 years as leaders of our respective bodies. TIP has always been honest, straightforward, and understanding. You can't ask for much more than that in our business.

I wish TIP, and his wife Millie, health and happiness in their retirement. Boston's gain is Washington's loss. And since the Kansas City Royals are not in the World Series this year, I might even root for the Red Sox in TIP's honor.

Mr. PROXMIRE. Mr. President, will the majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. PROXMIRE. That was a marvelous tribute to TIP O'NEILL and it is an indication of the fine character that the majority leader has, and I am so proud of him.

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

After all, we all know that Senator DOLE and Congressman O'NEILL disagree, disagree sharply on many issues, but this is the kind of civility, the kind of courtesy, the kind of genuine admiration that I think makes Congress distinctive.

So I want to thank my good friend from Kansas for his superlative statement this morning.

Mr. DOLE. I thank my colleague.

I reserve the remainder of my time and I reserve the time of the minority leader.

OCTOBER GOLDEN FLEECE AWARD GOES TO DEPARTMENT OF EDUCATION

Mr. PROXMIRE. Mr. President, I am awarding my Golden Fleece of the Month Award for October to the Department of Education for permitting education officals in Louisiana to misuse $912,678 earmarked to serve the educational needs of handicapped children.

No group deserves a "fair deal" more than handicapped children. Instead these special needs young people were given the worst type of "raw deal" by the people assigned to protect their interest. According to the audit report prepared by the Inspector General of the Department of Education:

> Our review of 13 projects funded between fiscal years 1982 and 1985 disclosed that, overall, the handicapped children received little, if any, benefit from the projects, some expenditures were for unallowable activities, and some purchased services were not provided.

In spite of the fact Federal law requires that the funds under this program be spent exclusively to serve the unique needs of handicapped children, the auditors found that $385,200 was spent on two highly suspicious computer projects for the general student population. After examining the project files, the Federal auditors could not find any information to support either the choice of the contractor or his estimated cost. After reviewing the major subcontract the report of the Inspector General stated:

> In our opinion, the amounts paid for the two of the major items were unreasonable. The first item was software development for which the subcontractor received $43,715. We requested a copy of the software to determine how it was designed to meet the unique needs of handicapped children. Our request was denied for the stated reason that the software had been marketed for general use in the classroom for some time and was proprietary. If no new software was developed to meet the special needs of handicapped children, the subcontractor should not be paid for research and design. The second item, for which the subcontractor was paid $89,700, was consultant services. According to the teachers interviewed, the subcontractor provided only minimal guidance on the basic use of the computers and software. It is the general practice in the computer sales field to provide such services free of charge when a number of computers are purchased. Moreover, costs of $89,700 for such minimal guidance appears to us to be unreasonable.

The audit report goes on to describe many other instances of misuse of Federal fundings including the hiring of inexperienced and noncertified personnel for unapproved projects and the paying of an individual for 9 months when in fact he performed only minimal work for 6 weeks before falling ill.

It is my understanding that officials from the Department of Education are now attempting to reach an agreement with Louisiana State education officials on refunding at least a portion of the misspent Federal money. However for permitting a gigantic, 3-year long, rip off of funds for the education of handicapped children to take place, the U.S. Department of Education richly deserves to receive this month's Golden Fleece Award.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. GOLDWATER). We will now proceed for a period of morning business with statements not to exceed 5 minutes.

I recognize the Senator from Wisconsin, Senator PROXMIRE, for 5 minutes.

Mr. PROXMIRE. Thank you very much, Mr. President.

HOW DO WE PAY FOR SDI?

Mr. PROXMIRE. Mr. President, yesterday I spoke on the floor of the Senate of how a decision by the Congress to go along with the President's star wars or SDI Program would very likely mean that most or all of the estimated $150 billion annual cost of the program would have to come out of other military expenditures. I argued that this would seriously weaken this country's military capability. Some star wars advocates have acknowledged that the annual cost would be $150 billion but they have argued that the Congress would not reduce our military strength to fund it. They contend the Congress would either raise taxes by $150 billion per year or cut nonmilitary programs by $150 billion or do both.

Let us consider each of these alternatives. What prospect is there that the Congress will raise taxes by $150 billion? What reason is there to believe Congress will impose such a punishing burden on the American people not to reduce the deficit but to fund this new military program? If the view of SDI's great advocate, President Reagan, are respected we would not raise taxes at all. The President has made only one priority superior to an all-out go-ahead for star wars, and that is his absolutely adamant opposition to any increase in taxes. The President has assumed a Clint Eastwood at the OK corral showdown on any tax increase. He has defied Congress to increase taxes with a "make my day" challenge. As anybody who has been or expects to be elected to office knows, this is a very popular position taken by this very popular President. It is one reason why the President is as popular as he is.

So what prospect is there that with another President 10 or 15 years from now when the star wars appropriation begins to reach $150 billion in 1986 dollars that the Congress will continue to fund the rest of Army, Navy, and Air Force needs at present levels and will turn to higher taxes to raise the funds necessary to pay for star wars? Let us consider what that would mean to the typical taxpayer. Our 1986 revenue from the Federal income tax was $349 billion. The corporation income tax brought in about $62 billion. The tax reform bill which the Congress passed earlier this year is in the long run revenue neutral. That means it will bring in about the same proportion of the national income that the current revenue law brings in. The other major source of Federal revenue is the payroll or social security tax. Would anyone argue that the Congress should tap the social security tax to pay for star wars? The rest of the Federal revenue—about $77 billion—comes from a variety of use taxes dedicated to such purposes as highway construction and airport development. So if the $150 billion a year for star wars does not come out of the rest of the military budget and if instead we increase taxes to provide it, how hard would this hit the American taxpayer? The answer, Mr. President, is that it would be a staggering body blow. It would mean a roughly one-third increase in Federal personal income and corporate income taxes. That means if you paid $3,000 in Federal income taxes without star wars, you would—with the same income—pay $4,000 with star wars. This would be the most massive tax increase in peacetime this country has ever imposed on its taxpayers. This Senator doubts if any President would call for such a huge tax increase no matter how strong his support for star wars.

Now Mr. President if we do not increase taxes to pay for star wars, couldn't we pay for it out of a $150 billion reduction on other nonmilitary programs. I wish we could. But consider what we have left if we take out military spending and the full social security program. We cannot cut the third biggest cost of Government—interest on the national debt. So we have to exempt that Federal expenditure from any cut. Mr. President, the overwhelming majority of Americans agree that we should not cut programs for the truly needy—Medicaid, unemployment compensation, assistance to

the handicapped and similar programs. If we take the programs exempted from Gramm-Rudman sequenstration precisely because they benefit the needy, that would leave after exempting the military Social Security, interest on the national debt about $200 billion that we would cut. So suppose we take the annual $150 billion for star wars out of this $200 billion. That would mean a 75-percent or three-quarters reduction in these programs: Federal highway construction, the Congress, the State Department, the FBI, the Customs Service, the national parks, the Justice Department, Federal aid to education, the farm programs administered by the Department of Agriculture, the Energy Department, the environment agency (that is EPA) and the space agency (or NASA). Now many Americans would like the Government to savage all these programs. But the fact is that we are not going to cut them significantly, certainly not by three-quarters or one-half or one-quarter.

All this brings us back, Mr. President to only two alternatives. We either take this star wars $150 billion each and every year out of other military programs and seriously weaken our national defense in the process or we borrow it and add another $150 billion a year to our national debt on top of the $200 billion we are already incurring.

Now, Mr. President, there is one other escape hatch for those who dream of a star wars that will not shoot Federal taxes through the roof or sharply reduce our military strength. That is the magic elixir—that the economy will grow so much in the next 10 or 20 years that we can pay for this out of the marvelous future growth of the American economy. This Senator wonders how anyone can fall for this one. After all isn't this illusion precisely what enchanted the President and the Congress into our present dilemma with back-to-back $200 billion deficits? This is still the biggest con game in town. The Congress and the administration are telling us we are going to meet those Gramm-Rudman goals—not by cutting spending as we should, not by raising taxes as we have to, but by a dreamy fantasy about exuberant economic growth. We will grab our bootstraps firmly in hand and lift ourselves to the land of balanced budgets. Mr. President we have not done it. We are not going to do it. The grim fact is that if we proceed with star wars we will either have to impose the most punishing peacetime tax in history on the American people to pay for it, or we will take it out of our military strength. There is no other honest alternative.

MYTH OF THE DAY: THE RECLAMATION ACT WORKS

Mr. PROXMIRE. Mr. President, the myth of the day is the commonly held assumption that the reforms built into the Reclamation Reform Act of 1982 are effective. In practice they are not. This is not the fault of the act itself but of those with the responsibility of enforcing the act.

Proponents praised the act in 1982 as a major reform which would save hundreds of millions of dollars yet the Department of Interior has failed to recover the subsidies to Western water users.

The Department's Bureau of Reclamation ducks the toughest issues raised by the act and fails to promulgate necessary regulations. What's worse, the bill's full implementation is just 6 months away, yet so far the Bureau has made no serious attempt to carry out the program.

When the Bureau of Reclamation proposed regulations in 1983 under the so-called Hammer Clause, Western water users objected and the agency dropped the regulations. The Hammer Clause forms the heart of the act, enforcing provisions to make a sweetheart deal with Westlands, the largest and most notorious violator of subsidy-size limitations. Under the deal Westlands could violate the law for an additional 20 years.

Recently the Department of the Interior confirmed a new agreement with Westlands exempting them from the Reclamation Reform Act and creating a new loophole around the act. This loophole could cost the taxpayers hundreds of millions in additional subsidies.

Finally, almost 1 year ago, the Bureau of Reclamation promised new regulations under the act. After further protests by Western water users once again they decided not to issue regulations.

Mr. President, the Department should move immediately to correct their past sins and produce effective regulations. The taxpayers deserve no less.

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.

□ 0950

Mr. NUNN. 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. NUNN. Mr. President, are we now in morning business, if I could inquire of the Chair?

The PRESIDING OFFICER. We are in morning business and Senators can speak for 5 minutes.

Mr. NUNN. I thank the Chair. I may not complete my remarks in 5 minutes. But I will do my best and perhaps, if no one else is on the floor, I will have a little more time.

THE REYKJAVIK SUMMIT: WHAT DID WE REALLY AGREE TO?

Mr. NUNN. Mr. President, we have now had 5 days to reflect upon the extraordinary events at the Reykjavik summit. The President and the Secretary of State have conducted lengthy briefings for Members of Congress, and administration officials have gone to great lengths to provide the media with detailed accounts of the discussions between the two leaders and the all-night work of the experts group. For their part, the Soviets have also gone public with extensive accounts of what transpired in these talks.

Given the remarkable degree of disclosure on both sides, one would not expect there to be any lingering questions concerning the details of the various potential agreements that were reached on Sunday. One would think that the administration would know perfectly well what President Reagan and General Secretary Gorbachev agreed to in the course of these critical negotiations. And one would hope and indeed trust that what the administration is telling the American people and the whole world about these agreements is accurate.

Mr. President, I may be wrong—and indeed I hope I am wrong—but based on my discussions this week with President Reagan, Secretary Shultz and other senior administration officials, there would appear to be a genuine question as to whether on Sunday, October 12, 1986, the President of the United States of America reached a verbal agreement with the General Secretary of the Communist Party of the Union of Soviet Socialist Republics to eliminate all, I repeat, all strategic offensive nuclear arms by 1996.

The first indication that I had that such an agreement might have been struck came when I listened to Secretary Shultz's press conference immediately after the breakup of the summit. Secretary Shultz said, and I quote, "as the agreement that might have been said, during this 10-year period in effect all offensive strategic arms and ballistic missiles would be eliminated." That same evening, Donald Regan, the White House Chief of Staff, underscored the comprehensive nature of the nuclear arms reductions that we were prepared to accept over the next 10 years. Mr. Regan said: "We said to the Soviets, we will do away with all nuclear weapons—nuclear bombs, nuclear shells for artillery. Everything was on the table."

Mr. President, I understand, and I think all of our colleagues understand, what fatigue can do to precision. We are going through that ordeal here in the closing days of the Senate.

Believing that these statements had been imprecise, I listened very carefully to President Reagan and Secretary Shultz in their presentation to the congressional leadership at the White House on Tuesday morning. Although I do not normally quote the President or the Secretary after such sessions,

the White House stressed that the administration was intentionally putting all the details of the summit on the record to make sure the public received an accurate version of these events. Under these unusual circumstances—and because of the critical importance of this overall area to our Nation and indeed to the world—I believe that the remarks of the President and Secretary of State to the congressional leadership should be known by the American public.

In his introductory remarks, the President said that we put on the table a proposal to eliminate within 10 years all nuclear ballistic missiles and everything else, including bombs. Administration officials have in recent days vigorously indicated that while the proposal the United States put on the table would have involved the total elimination by 1996 of all ballistic missiles, other types of strategic offensive nuclear arms, including bombers and cruise missiles, would have only been reduced by 50 percent over this 10-year period. To say the least, this suggests that there is considerable confusion within the administration on this absolutely critical matter. This is not a small detail. This is a critical distinction.

Later in the briefing, Secretary Shultz revealed that General Secretary Gorbachev made a counteroffer to the U.S. proposal. The General Secretary—according to our Secretary of State—proposed that during the second half of the 10-year period, all remaining strategic offensive nuclear arms—and not just ballistic missiles—would be eliminated. Secretary Shultz then informed the Members present at the briefing that during the discussions that followed between the two leaders, we compromised and agreed that the language of this agreement would refer to strategic nuclear arms and ballistic missiles.

During the question period, I told the President that I understood that he had agreed with General Secretary Gorbachev to eliminate all strategic offensive nuclear arms by 1996. I paused and the President nodded affirmatively. I then went on to question what we would do, under these conditions, to correct the conventional balance which now favors the Soviet Union so dramatically. I suppose it should be termed the conventional imbalance.

Although the President did not answer my question directly, Secretary Shultz intervened and defended the concept of eliminating all strategic offensive arms by 1996. The Secretary conceded that this would be a new world, but he insisted that NATO could find the will to provide a conventional balance with the Warsaw Pact.

Over the past 2 days, I have had a number of private conversations with top administration officials and high-ranking U.S. military leaders. I will not recite the details of these talks, but I will say that there are two key points which I conclude. First, although these officials insist that the United States offer was to eliminate ballistic missiles, I have found no one to authoritatively rebut the considerable evidence that the leaders agreed to eliminate both ballistic missiles and all strategic offensive nuclear arms. Second, prior to the Reykjavik summit, the Joint Chiefs of Staff were not consulted or asked to study the implications for our national security and defense policy of the President's proposal for a total elimination within 10 years of all ballistic missiles, let alone to consider the elimination of all strategic nuclear arms.

Mr. President, it has been 5 days since President Reagan and Mr. Gorbachev left Iceland. But I still find myself with far more questions than I have answers—questions that raise fundamental concerns about our strategic relationship with the Soviet Union.

As I consider the fact that the President has formally proposed the total elimination of all ballistic missiles by 1996 and may actually have agreed to eliminate all strategic offensive arms by that date, I cannot but ask: What is the thinking and the analysis on which these sweeping proposals are based?

Let us leave aside for the moment the question of whether the President is prepared to agree to the elimination of all strategic offensive arms and just look at the ramifications of destroying all ballistic missiles. Let us ask what would have happened if the Soviets had accepted the President's proposal—if the SDI disagreement had not gotten in the way and General Secretary Gorbachev had said "OK, Mr. President, you've got a deal." There are some deadly serious questions.

□ 1000

First, what is the resulting strategic balance under such an accord? Would we be leaving the United States/Soviet strategic balance resting precariously on the shoulders of our respective bomber and air defense forces?

In considering these questions it is important to emphasize that the United States has virtually no air defense network while the Soviet Union has made a massive investment in this area. It has hundreds of air defense radars, thousands of dedicated air defense interceptors and tens of thousands of surface-to-air missiles.

Mr. President, this is not a blueprint or a research project the Soviets have. These are deployed systems. Moreover, under the arms control agreement proposed by the President on Sunday, Soviet air defenses would remain unconstrained while our bomber force would be restricted to 350 aircraft.

In other words, they would have unconstrained defenses that would have no bounds and we would have constrained bomber forces.

One might also ask how the Soviets would spend their time over the next 10 years if they knew our bomber force would, by treaty, be so constrained. Might they not make a sustained effort to beef up their already formidable air defenses to the point that our bombers could not credibly be relied upon to get through? To what extent would the problem of penetrating Soviet air defenses be magnified if we no longer had the option of using ballistic missile precursor attacks to blast corridors in Soviet air defenses through which our bombers might conduct their attacks? This may sound somwhat esoteric, but this is crucial in terms of planning, in terms of the overall strategic plan that we have had for many years.

Second, whether the resulting balance was one of outright Soviet superiority or, if we made massive new investments in air defense, a strategic standoff, what would be the implications for conventional nonnuclear defense? We know that the Soviets and Warsaw Pact currently enjoy an overwhelming advantage in conventional forces—so overwhelming that the Supreme Allied Commander of NATO, Gen. Bernard Rogers, has repeatedly testified that, if the Warsaw Pact were to launch a purely conventional attack against NATO, not using nuclear weapons, he would have to request authorization to escalate to the use of nuclear weapons in, and I quote, "days, not weeks or months."

For many years, I have urged NATO to take long overdue measures to improve its conventional force capabilities, thereby raising the nuclear threshold.

There is no doubt that we need to improve our conventional defenses. There is no doubt that we need to rely less on the early use of nuclear weapons. We must move in that direction. But is it realistic to suggest that within a decade NATO could be ready for a new strategic situation in which ballistic missiles no longer provided the ultimate form of deterrence against Soviet aggression. Do we have some bold, new, innovative conventional arms control proposals in mind that will provide for parity in the NATO/Warsaw Pact conventional force balance? If so, where are these proposals?

We need these proposals. We need to emphasize the conventional picture more. We seem to be so obsessed with nuclear weapons in general and strategic nuclear weapons, ICBM's in particular, that we do not consider that even if all of those weapons were eliminated today, if we eliminate every

one of them, in my view war would become more likely, not less likely. That is very easy to understand when you look at the conventional balance.

So the question is, if we have those kinds of conventional arms control proposals in mind, they should be an essential and integral part of this overall deliberation. We should not be isolating ballistic missiles. We should not be isolating strategic offensive arms and saying that we can deal with the subject without doing something about the conventional balance.

Third, if there are no ballistic missiles—strategic or intermediate range—and our bombers are ineffective against substantially augmented Soviet air defenses, all that remains are short-range nuclear artillery shells and some aircraft-delivered tactical nuclear bombs. The former have such short range that most of them will have to be used on NATO's own territory—in other words, they do not have enough range to get to the enemy territory—while the latter serve primarily to punish the Soviet Union's East European allies, not Soviet homelands. For years, these systems have existed principally to provide linkage to U.S. strategic nuclear forces.

They are among our most destabilizing systems because in the early stages of a nonnuclear war, a commander in the field would have to decide very quickly whether to pull those weapons back very rapidly, thereby taking them out of the battle or taking a chance on losing them, or, the third alternative, and God forbid that we will ever be faced with this alternative, to use those weapons quickly in the early stages of a conventional war so we would not have them overrun and captured. How credible would this deterrent be if we did not have a linkage to U.S. strategic nuclear forces? How credible would this deterrent be in our own eyes, in the eyes of our own military, let alone the eyes of the Soviet Union?

Finally, Mr. President, what about the other nuclear powers? Where was the discussion on them in Iceland? Would we have elevated Britain, France, and China to superpower status since no mention was made in Iceland about their nuclear arsenals?

We should recall that 25 years ago we proposed to France that it forgo nuclear weapons. We said we would have a thousand missile warheads and our French allies could get along with no nuclear warheads. As we all know, President Charles DeGaulle said "non." He said in very unequivocal terms he was not interested in that proposition.

Now the President of the United States has actually proposed that by 1996 we would have no ballistic missile warheads and France would have a thousand. I cannot help but think that DeGaulle must be looking down from somewhere laughing and having a very good chuckle.

There is also the question of China and its strategic nuclear arsenal. Granted, we are on a friendly track with the People's Republic of China, but we are far from allies. Do we really want to make our friends in China not only the country with the largest conventional army in the world, but also a country that has many more strategic missiles than we do?

Mr. President, I do not raise these matters with any sense of pleasure. I think it is obvious that these proposals have not been thought through. I think it is obvious they have not been really studied adequately in terms of where they are leading us.

Perhaps many of these problems are manageable. Certainly, we need to improve our conventional defense. Certainly, we need to have conventional arms control proposals that are bold and sweeping to do something about the Soviet advantages in this area. Certainly, the MBFR talks are going on now, but even if they succeeded completely, if every proposal we put on the table in the talks prevailed, they still would not make a difference in the conventional balance of power.

I must say in closing that I, for one, am relieved that the superpowers did not reach an agreement along the lines proposed by the President. My sense of relief has nothing whatsoever to do with SDI. It seems to me that SDI has become such a focal point of these whole discussions that the main and original goal of doing something about nuclear weapons in a sensible way to improve the strategic balance has been lost.

I do not know where that goal went, but it seems to me our effort now is to protect our SDI no matter what else we do.

It may very well be that we need to sit down and refocus our own thinking in terms of arms control.

I am concerned that the President has emphasized that all of those proposals made in Reykjavik and all of the potential agreements that were reached there remain on the table. President Reagan has said that.

It gives me profound concern about the potential agreements that we may very well have reached there in the area we have discussed this morning.

I believe that the President must act immediately to pull our zero ballistic missile proposal off the table before the Soviets accept it. I also believe that the President and his administration must clarify exactly what kind of agreement was reached at Reykjavik.

□ 1010

I think they need to go back to the drawing boards in terms of what our real goals are in arms control. I believe the goal of total elimination of nuclear weapons is a laudable objective. I, too, can dream of a day in which the world is free from the nuclear menace. However, there are significant conditions precedent to reaching that day. There are a number of things that have to be done, fundamental matters, perhaps very expensive, before we contemplate going to zero strategic nuclear weapons.

Mr. President, a fundamental review of the administration's position on these matters is absolutely essential.

I see Chairman GOLDWATER in the chair today. No one has followed these issues closer than he has over the years. I know that he will be giving this matter a great deal of thought. We will be going home in the next 2 or 3 days and people will be scattering, but I hope that at the earliest opportunity our Senate Armed Services Committee will have a hearing and we will hear from our military leaders.

I do believe that even though we have, no doubt, civilian decisionmaking in this area, which is absolutely proper, the Joint Chiefs should at least be heard in these matters. I think they should be heard before summit conferences. I think they should be represented during summit conferences—not that their decision is final, not that their advice is always the best, but at least we need military advice and apparently we did not get it in Iceland.

I thank the Chair.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1020

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

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

FAREWELL TO SENATOR BARRY GOLDWATER

Mr. DECONCINI. It is with great sadness that I rise today to bid farewell to my senior colleague from Arizona, Senator BARRY GOLDWATER. In the 10 years I have served this body, I have never had to look beyond the borders of my home State to find a friend and colleague whose thoughtful guidance and candor made my job far more pleasant and rewarding.

BARRY GOLDWATER is more than 1 of 100 men and women called upon to help map the course of our Nation's history in this body. BARRY GOLDWATER is a man who represents the ideals Americans have held deep within their hearts since our Nation's humble beginnings. He has served his country faithfully during wartime and

peacetime. He has steadfastly supported issues he felt were important to Arizona and the Nation—regardless of whether such stances were popular or mainstream. What you see is what you get with BARRY GOLDWATER—and what you see is a man of great integrity, charisma, foresight, and decency.

It is particularly important to me that BARRY is presiding over the Senate now. He has been in the Senate for 30 years and has served our State of Arizona in an exemplary manner. For the 10 years that I have had the privilege of being in this body, Senator GOLDWATER has been here the entire time and has been an inspiration to me and this body. Though he and I have differences on occasions, we have enjoyed, I believe, a relationship which has benefited our State.

More than that, Senator GOLDWATER has set an example not only for this Senator but for every Senator. He is an example of what this body should be; that is, to get the work done and, to use his words, get on with our business and get the hell out of here.

We spend a lot of time here, in the Senate and in the House, debating issues that do not need to be debated nearly as much as we think they do. Senator GOLDWATER has always been one who got to the point, whether it was on military matters or the necessity for water projects or human projects to improve the quality of life.

BARRY GOLDWATER now is concluding 30 years here. He has served his State as well as or better than anyone who has been in the Senate. I am proud to come from Arizona where we have a great tradition of outstanding Senators—

Carl Hayden, with whom Senator GOLDWATER had the privilege of serving for a number of years; Paul Fannin; certainly Ernest McFarland, whom Senator GOLDWATER replaced in this body.

Because of your tutelage, Mr. President, because of your leadership, the Central Arizona project will be completed and will be completed in the next few years. I have only had the privilege of working on that project in this body for 10 years. I realized when I came here the difficulty of getting it authorized, and getting OMB and the White House to support it year after year. Senator GOLDWATER, along with House Members, had led that charge year after year.

Doing that has not always been easy. It is necessary to sell the need for any particular water project or any project in one's State to our colleauges, to impress upon them that this is an investment in our country, not just a parochial benefit to the State of Arizona or any other State.

BARRY's top priorities have been the best interests of this country, and the best interests of the State of Arizona. We have seen our State grow. We have seen Senator GOLDWATER lead the charge to preserve the environment of beautiful Arizona without suppressing a vibrant and expanding economy.

There is so much to be said about BARRY GOLDWATER that it almost would take a filibuster of many days to come close to explaining the feelings that some Senators, including this one, have toward my senior colleague. He is down to earth, he has a sense of humor, he speaks frankly. You know where he stands. He does not play games with you. If he tells you how it is and you do not like it, you can go and sit down and think about it.

The only way to get around him is to convince him that your position has real merits.

There is so much to be said about BARRY GOLDWATER and yet, after all these years, so little time. Business will conclude shortly in the 99th Congress and BARRY will return to the sunshine and beautiful landscapes of Arizona. Knowing my colleague, though, it is doubtful he will slow down. BARRY has flown more planes than most of us have driven cars. He's also told more jokes and created more laughter than 100 men. I have never served in this body without BARRY being present. When the next Congress convenes in January, I will look over at BARRY's desk and remember 10 years of wit, intelligent discussion, down-to-earth wisdom and, yes, heated debate. I will cherish those memories. On behalf of my colleagues in the U.S. Senate, fellow Americans and fellow Arizonans whom he has served so well, I wish him the best that life has to offer. If he approaches his retirement with the same zest and good humor with which he has approached his career in the Senate, BARRY will not fade away from the public arena. Hopefully, he will still be there guiding use along paths that we may fear to follow.

BARRY, we shall miss your leadership here and, quite frankly, I will miss the example you have set for this Senator from Arizona. We will always have your cherished legacy for the State of Arizona. Fortunately, you will be in Paradise Valley and be available to the students and the citizens of the great State of Arizona. I will miss your voice in this Chamber, but I will seek your counsel and guidance in the years ahead. I am losing a cherished colleague, but I hope I never lose your cherished friendship.

Mr. MELCHER. Mr. President, will my friend yield?

Mr. DECONCINI. I shall be glad to yield.

Mr. MELCHER. Mr. President, I thank my friend for yielding. I would like to concur in, endorse, and echo all of the statements just made by my friend from Arizona about the senior Senator from Arizona [Mr. GOLDWATER]. We will truly miss the magnificent contributions that Senator GOLDWATER has made to the Senate and to the country. I do not think those contributions will cease as far as the country is concerned after Senator GOLDWATER retires to that beautiful spot on the Camelback.

□ 1030

I would like to tell my friend, the junior Senator from Arizona, the conversation I had with the senior Senator from Arizona, Senator GOLDWATER, the first year we were in the Senate. Senator GOLDWATER said of DENNIS DECONCINI:

> I have known him since he was a baby. I have held him in my arms when he was a baby. He comes from a great family. He comes from a family that has contributed, as so many families have, to the betterment of Arizona.

I might add to my distinguished friend, Senator DECONCINI, that all of the Senators from Arizona—the very few who have served Arizona in the Senate—have left their marks. Indeed, I know of no State that believes more in keeping a good man in the Senate once you get him here. I say to my friend, Senator DECONCINI, that that means something to me and to the rest of this body, that the junior Senator from Arizona will continue his stay in the Senate.

I am well aware of the view or philosophy that Senator DECONCINI held—I hope he no longer holds it—of serving only two terms in this body, 12 years, which will come to an end in 1988. I believe I speak for the entire Senate when I say that we hope he changes his mind.

As to Senator GOLDWATER, it is a privilege for me to have known him and to have worked with him. It is a privilege I prize very highly.

Mr. DECONCINI. I thank the Senator from Montana.

The PRESIDING OFFICER (Mr. GOLDWATER). The Chair thanks both his friends.

Mr. DECONCINI. Mr. President, are we still in morning business?

The PRESIDING OFFICER. Morning business has ended.

Mr. DECONCINI. I ask unanimous consent that I may have 2 additional minutes in morning business.

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

FAREWELL TO SENATOR THOMAS EAGLETON

Mr. DECONCINI. Mr. President, when the 99th Congress draws to a close, we must bid farewell to one of the strongest and most dedicated individuals ever to serve in the U.S. Senate. My esteemed colleague from Missouri, Senator THOMAS EAGLETON, will load the family back into the station wagon the way he did in 1968 upon winning his seat, and head back

to his beloved State to share his keen knowledge of the law and journalism with his fellow Missourians. TOM's love of politics began during the Depression and the beginning of World War II when his father served on the St. Louis school board. He learned politics at his father's side and it has become a lifelong obsession. TOM will be leaving us to return to St. Louis to teach government at Washington University. I would love to be one of his students. He has much to give and I am sure he will give his all. Missouri is regaining a statesman and a scholar. I will be losing the company and cherished guidance of a dear friend.

Since he became the youngest man to win the office of circuit attorney of the city of St. Louis at age 27, TOM EAGLETON has built a reputation as a tireless advocate of fairness in government. His senatorial career, which began back in 1968, is marked by a down-to-earth approach to issues that won the support of his constituents and the admiration of his colleagues. Senator EAGLETON became one of the first freshman Senators in history to serve as a committee chairman when he was chosen to head the Senate District of Columbia Committee. He played a major role in the enactment of the Clean Air and Clean Water Acts. As chairman of the Senate Subcommittee on Aging during his second term, TOM EAGLETON presided over the reauthorization of the Older Americans Act—the law authorizing most of the Federal social service programs for the elderly. He also served as chairman of the Senate Appropriations Subcommittee on Agriculture and the Subcommittee on Governmental Efficiency, where he sponsored a bill creating the office of inspector general in 12 major Federal department and agencies. Because of TOM's love of government, he was determined to change the image of rampant Government corruption, and the inspector generals have certainly helped to reverse Government's tarnished image.

Perhaps his crowning legislative accomplishment was an amendment he had tacked on to a 1973 appropriations bill that effectively eliminated funding for the bombing of Cambodia. Regardless of one's position on the issue, that amendment changed the course of history.

The list of TOM EAGLETON's contributions to his home State of Missouri and his country is virtually endless. On every committee on which he has served, TOM has left a positive imprint. He has given everyone who has known him a faith in government—a faith that good people serving their country can bring about effective, positive change. TOM is a liberal Democrat in the tradition of Presidents Roosevelt, Truman, and Kennedy. He has not changed his politics with changing winds. His political ideology has remained firmly fixed. That is a noble quality in a world of political opportunism.

I join my colleagues in wishing TOM and his wife, Barbara, the very best as he leaves the U.S. Senate. TOM, you will now have more time to enjoy your native Missouri and, hopefully, to spend some relaxing afternoons at the ball park. Another all-Missouri World Series like the one in 1985 has to be on the mind of a South St. Louis boy who is an insufferable fan of America's pastime. I have heard that TOM almost missed his flight to Missouri Tuesday night because he wouldn't miss the end of the extra inning Astros-Mets game. TOM, enjoy every pitch of the World Series. I'm sure you'll make solid contact on whatever pitch life throws to you. Remember your colleagues in the Senate who will miss you more with each passing day. We are your insufferable fans. No more honest and decent man has ever served in this body.

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.

□ 1040

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

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

SENATOR BARRY GOLDWATER

Mr. MOYNIHAN. Mr. President, as we enter the final day, presumably, and final hours, of the 99th Congress—we are likely to stay in session for pro forma purposes next week, but this is likely to be our final full meeting of the Senate—I find an auspicious occasion arises in which the treasured and beloved senior Senator from Arizona who is in the chair and by the ancient and revered practice of this body, unable to address the Senate, unable to respond to anything said to him or about him, saving to make formal rulings that are given previous accord by the Parliamentarian.

This is auspicious in more than one respect because it gives me the opportunity to say what I really think about him in the certain knowledge that although he is taken of late to going about the Senate Chamber armed and is quite capable of thrashing any of the younger or not so young Members who say anything that would give rise to his well-known capacity for indignation and whereas he is especially indignant when people start being too nice about him, I find myself in a situation of relative immunity, and I mean to take advantage of it regardless of any subsequent retaliation that might come my way.

I have known BARRY GOLDWATER since I was a young Assistant Secretary of Labor in the administration of John F. Kennedy. It would be very characteristic on the 50th anniversary of the founding of the Department of Labor, the Senator from Arizona, a name one could use to frighten children in the effete and liberal East in those days, nonetheless gallantly and happily attended our dinner and I found myself with the great honor of sitting next to him.

The Senator may recall that in those days we had a simple wooden dais we were sitting on and a screen curtain behind and the audience in front. President Kennedy was there for the occasion. In rapt attention I turned and shifted my chair to the point where one of the legs was off the edge of the platform and shifting my weight I suddenly went tumbling into the arms of a Secret Service man who was presiding behind the curtain, and the young President was heard to mention to the Secretary of Labor that perhaps he had more assistant secretaries than was necessary.

I recovered my composure as best I could, but then inexperience and other matters led me to get myself right back in that same position where I was about to tumble over the second time and that would undoubtedly have been the end of my days in Washington, when BARRY GOLDWATER, arch conservative, defender of the right, scourge of the liberal and the Easterner, tapped me on the shoulder and said, "Son, if you don't want to go back over heels the second time, you better get your chair back on this platform." And for that I am indebted to him to this day.

I am indebted to him as an American. I am indebted to him as indeed all Americans are.

And for what? For two things? The first may be one that would surprise him.

He has asserted the importance of ideas in politics at a time when only interests sometimes visible and indeed when increasingly interests are thought to be perhaps the only legitimate coinage of politics, he said otherwise in his book "The Conscience of a Conservative," he described it. He does not think of himself as an intellectual, and I would not want the word to get back to Arizona that there are those of us who do, but he is. He has brought ideas to this body, to this body politic, and he has seen them first scorned as is the experience of persons who live in the world of ideas and then seen them come increasingly to be accepted, embraced with great enthusiasm by some Members in some parts of the political spectrum and respected in all or all respectable parts, if I might make that distinction.

Beyond the realm of ideas is the realm of character. He was meant to be a Senator. He was conceived in the mold of dignity and courage, of the special serenity that comes to those who know they are serving their Nation and their ideals and are prepared to accept any amount of turbulence, setback, and serious disappointment in doing so, knowing that the role they play is larger than any individual success they might achieve or any failure they might endure.

Last, of course, to all of those in this body who have known him, he has been a friend. I had the particular privilege of serving with him for 8 years as a member of the Select Committee on Intelligence and for 4 years he was chairman I was vice chairman in that very special arrangement whereby the presiding officer of the committee is either the one or the other, it being a bipartisan committee. In the absence of the majority leader chairman the minority vice chairman presides. It is a particular practice of the Senate Select Committee on Intelligence, well known, that there are some matters that as a matter of compartmentalizing as the matter of the narrowest possible distribution the Executive chooses to inform only the chairman and vice chairman, leaving to them the discretion whether the full committee needs to know.

He and I went through 4 years of this experience without ever a word of discord between us.

He molded a committee which had its potential to be partisan and fractious and to fail in its essential function, which was to establish a base in the Senate where the intelligence community could look to for understanding, criticism, and support as needed in those days, whatever the situation. We did that.

In 4 years, I do not know that we had four votes in the Committee on Intelligence. We had disagreements among us as we sorted out issues, but in the end a consensus emerged.

On the rarest occasion was it required that anybody take the yeas and nays, and when it was the outcome was always heavily on one side of the issue, and it was always inevitably, it was invariably BARRY GOLDWATER'S side.

There came an occasion, a painful one to many of us and not understood perhaps to this day by persons in this Chamber and outside, when the issue arose of a particular episode in Central America and the requirement that the question of whether the committee had been given advance notification with respect to a significant anticipated activity, that being the statutory language of which is required that the committee be informed.

The executive asserted that we had been informed. We had not. And the chairman, BARRY GOLDWATER, wrote a public and indignant letter to the official executive branch, saying we had not been. That concluded, that done, and the Senate having adjourned for the Easter period, the chairman went off to the Far East which on occasions he is able to do to look into military matters of which he is primarily responsible in this body as chairman of the Armed Services. The Senator from New York was about to leave on something similar when a discouraging event took place.

A senior official of the executive, a member of the White House staff, spoke to the Naval Academy and directly said that the committee had been informed. I learned of this and I can read it in only one sense. The proposition in effect was being asserted from the executive branch that BARRY GOLDWATER had said something that was not so regarding the national security of the United States and its laws.

It seemed to this Senator as his vice chairman and his friend that that was not a charge ever to be dismissed, shrugged off, ignored, and on this spot I announced that unless that matter was retracted, I would resign as vice chairman and not serve in a situation where it might be considered that I concurred in what had been said.

Within 3 weeks the principal involved apologized to our committee because what was said was not so and the individual who made the speech at the Naval Academy said to me, and I want it to be on record, that what he had been told was either disingenuous or outright wrong.

Did we end there with an exchange of charges and withdrawal? No, we did not. It was not BARRY GOLDWATER'S style.

We said here was an event where our statute did not work. It had broken down and charges of good faith had arisen.

How do we get past this with some improvement, how do we learn from this experience?

And we did. In the course of about a 1-month negotiation, we worked out a written agreement with the Executive in which we established what the term "significant anticipated activity" would at minimum mean.

□ 1050

And it was not difficult once we really thought about it. We said any activity of which the President must be informed is almost sure to be significant, given the program, activities, the pressures on time and the considerations that animate the executive branch. That was a signed agreement with the executive and the committee and to my knowledge it has worked invariably to this day. It put into routine a statutory requirement which had not been defined.

We said:

You do not have to think about every occasion that comes along that says: "Is this significant? Must the committee be told?" You have a simple criteria. If you had to get the President to approve, you know it is significant enough to inform the committee.

And it is in that constructive way, on countless issues and occasions that the Senator from Arizona has earned the respect of this body and the great indebtedness of his Nation.

I hesitate to go further because, while a man of greatest respect for the traditions of this Chamber, he is even so at this point capable of rising from the rostrum where he presides and charging forward with his formidable stick and putting an end to all of this encomium. I hope he will not do so and I will make certain that I am not the subject of his wrath by bringing to an end these brief remarks which, even so, I would like to think have given him some sense of the extent to which I have found him and a revered and treasured colleague.

I will miss him. I will be conscious, however, that the time has come when he would like to go home, for although he has learned the ways of Washington, he has always, in some measure, been a man of the frontier. It does not look like a frontier anymore, since the central Arizona project got everybody in Phoenix a swimming pool. But, even so, it is his home and we are delighted to know that he will be there. We hope he will invite us to visit him on occasion and we cannot but think that he might, on rare occasions, visit us.

Mr. President, I am honored to have made these remarks and with great respect, sir, I yield the floor and bid not farewell but adios.

The PRESIDING OFFICER. The Chair is grateful.

SENATOR BARRY GOLDWATER

Mr. BAUCUS. Mr. President, I would like to follow on the remarks of the senior Senator from New York. I will add another dimension in paying my respects and stating why I so honor and revere the senior Senator from Arizona.

When I was thinking about why I have such a high regard for him, I began to ask myself: Well, what are the reasons? What is it that, at the heart and root, explains why this Senator from Montana has such respect for the Senator from Arizona?

As I reflected upon it more, I realized that the Senator from Arizona is very, very much like my father. They both are over 6 feet tall. They are thin. They are very agile. They are quite conservative. They are both Republicans. And they both, in some ways, are taciturn, quiet and men of a few words. They are Westerners.

My father is a rancher. He was born and raised and lives in the open spaces

of the West. He does not see a lot of people much of the time and pretty much likes it that way.

The Senator from Arizona, I think, has some of the same serene qualities that one learns to appreciate because of the open space in the West. When one sees the sunrises, clear skies and sunsets, one also appreciates people very much. One has time to think and reflect and time to better understand what life is really all about when all the wheat and chaff are separated and the dust settles.

It is those qualities, the same qualities that the Senator from Arizona has, that are very similar to those of my own father, and I suppose that is the main reason why this Senator personally has such deep respect and admiration for the Senator from Arizona.

There is another quality, too, and that is they have a wry, sort of Western Will Rogers sense of humor—that is, they call it as they see it. It is straight talk, but not in a venal way, not in a vindictive way, not in a way that puts somebody else down. Rather, in a way that is a comment on a situation, the lighter side of the situation that pokes holes in stuffy balloons, in a way to appeal to the more instructive side and better side of human nature.

I was quite young when the Senator from Arizona ran for the Presidency and when he wrote his book, Conscience of a Conservative. But it was during those years, upon reflection, that I was beginning to form my political beliefs. And I must say that the views of the Senator from Arizona, as the views of my father, have had a very direct bearing on my inclination to run for public office; that is, to serve our fellow Americans, to do the best we can realizing that there are immense imperfections in the world, but still sticking to our principles because that is what really counts.

I have not served with the Senator from Arizona on any committee. I wish I had. But in the years that I have known him, I admired him; indeed, I do revere him.

I do not know who will replace the Senator from Arizona, but I know this: that Senator will have to work very, very hard, and go a very, very long way to fill the shoes of a giant. The Senator from Arizona will be deeply missed in this body. Fellow Arizonans would like to have him back home, but we are sad to see him leave us here.

Mr. President, I yield the floor.

BACK HERE ON EARTH

Mr. BYRD. Mr. President, I am a supporter of SDI. The strategic defense initiative. I believe it should be funded. I have supported its funding. I have voted for the President's initiative. I believe research should go forward so that we can investigate vigorously the true potential of space defenses for the future. In the last few days, the American people have learned a great deal about space weapons. Indeed, the American people have taken a crash course on laser defense technology.

But it is time now to bring the public debate back to terra firma, back to solid earth—down here, rather than up there. It is time to talk about our national interests in real terms before the President's public relations men place SDI in a permanent political orbit.

□ 1100

All this Buck Rogers, "Beam me up, Scotty," talk of space beams and lasers is about a future possibility that has little to do with the here and now reality that our economy is not working as it should be working. So let us begin the reentry phase, and get the public debate back down on Earth again.

Mr. LONG. Mr. President, will the Senator yield for a moment?

Mr. BYRD. Yes. I will be happy to yield to my friend.

Mr. LONG. May I say to my good friend that if we are worried about something that is going to be achieved with SDI, strategic defense initiative, during the next several years, based on what everybody can tell us what we have to be worried about is not what we can achieve during the next few years although it is possible if we spend an enormous amount of money this space wars contemplates we might find something else that might give us a problem. But if you look at what it would take to make the Star Wars project a success, for a purely defensive proposal, that is not something that can scare anybody at the moment because that is 15 years away, with the assumptions.

Mr. BYRD. It is.

Mr. LONG. But as the Senator so well knows if you spend a trillion dollars over a relatively short period of time you might find something even more effective and offensive rather than defensive weapons that scares the daylights out of the opposition.

Mr. BYRD. Yes.

Mr. LONG. So what they would have to be worried about here might not necessarily be what you can do to shoot down some missile or some balloon out there in outer space, but instead what could be done with the same research that could do the very damage to them right there on the ground inside the Soviet Union. I am sure the Senator has thought about the fact that those missiles, those lasers, and futuristic weapons which shoot a beam out there that can destroy an atomic missile could do a lot of damage if you just aimed it right at the Earth.

Mr. BYRD. Yes. The distinguished Senator from Louisiana is absolutely correct. I can understand how the Soviets are scared out of their wits because they know, they feel as I feel, that American technology can do just about anything that we want to do. De Tocqueville, the great Frenchman who visited this country 150 years ago, said that the incredible American, the incredible American, believes that if something has not yet been accomplished it is because he, that incredible American, has not yet attempted it.

So the Senator is correct. The Soviets have every reason to be concerned not only that SDI might achieve what the President has led us all to believe that in his fondest dreams it can achieve, but also whether it does that or not, that the spinoff in terms of other military capabilities are awesome—awesome. And I think I come with very good credibility to this debate because I am a supporter of SDI. I have made no bones about it. I am a supporter of it. I happen to believe in it. I do not quarrel with those who do not. I do not quarrel with those who differ with me. I just happen to feel the way I feel about it. I think American technology can do anything that Americans want to do with it.

Mr. LONG. Mr. President, may I say to the Senator, I agree with the Senator. I am also a supporter of it. Many of us here on this side of the aisle support the concept that you must be first in space, that you must be first in defensive capability. For that matter, just in case somebody attacks you, you can also be the first in offensive potential.

Mr. BYRD. Absolutely. Well, I thank the distinguished Senator from Louisiana.

But the thing I am trying to point out here now as we go down the road in the next few days and weeks, let us get this public debate back down here on Earth because people's pocketbooks are impacted, their jobs are involved, and the farmers' farms and homes are involved. The bank that lend money to the farmers are involved. The steelworkers who are out of work want to know what is going to happen to them. Those who are still working are wondering when they are going to get their pink slips and the coal miners who are out of work are more interested in hearing what we are going to do about this economy. What are we going to do about jobs? What are we going to do about this terrible trade imbalance? These are the things that we ought to be debating as we go into the elections.

(Mr. ROTH assumed the Chair.)

So let us begin, as I say, the reentry phase and get the public debate back on course. Back here on Earth, there are economic troubles, real troubles in

the heartland of America, down in Louisiana, in West Virginia, in the farm States, in the oil producing States, and in the steel producing States. Back here on Earth, the trade deficit continues to grow. We are now $170 billion in the red this year in the trade deficit. It could become $180 billion.

So back here on Earth, let us keep both feet on the ground now. Back here on Earth the national deficit continues to loom larger and larger. It is a veritable "black hole", if we are using space terminology. I read about the black hole that the scientists and the astronomers discovered a while back. I read something about it in the newspaper. Well, it is too black and too deep and too esoteric for me to understand. But there is a veritable black hole if we are using space terminology that we all know to be the immediate real threat to our national well being.

But here on Earth wages are stagnating. American workers are fighting to hold their own, and our standard of living continues to weaken. Our economy does not sit very well with us.

So it seems to this Senator that it is important for the public debate to take a midcourse change in direction. We must attend to the business at hand, making our economy competitive again, saving the family farm, and reducing the national deficit must hold our attention.

Our growing economic troubles will not be solved by laser beams from outer space. That is not going to put the unemployed people in Louisiana, Mississippi, and West Virginia back to work. The reality is that SDI represents possibilities for some future time. As SDI research moves on we will debate its merits in the next Congress, and in the next Congress, and probably in the next Congress after that. In time the American people in their wisdom will come to a consensus about the merits of the program.

It is a debate that is too serious to be rushed, and in the here and now with our economy beginning to tumble out of control, we need to focus on the immediate. The public debate needs to come back to Earth. The real truth of our situation, and we all know it to be true, is that America is living on the installment plan—stalling for time—even as we borrow our way deeper and deeper into debt.

America has borrowed its way into its current economic prosperity and the price is going to be paid by future generations.

The President spoke yesterday to a group of Moscow-bound young Americans. I will read from the news wire:

President Reagan told Moscow-bound schoolchildren Thursday he refused to trade his Star Wars missile defense program for a sweeping arms agreement at the Iceland summit because, "I couldn't give up your future."

Well, he told those young people he couldn't give up their future by trading star wars. But, Mr. President, their future is already spoken for. They will be paying our bills, our debts, our deficits. They will be paying for a very long time unless we get the national debate back to Earth.

Finally, Mr. President, I would like to make one last comment about the recent SDI debate. As I say, I think I can say it and look the most avid advocate of SDI straight in the eye because I have supported it all the way. I supported the President in it. Last week before the President went to the summit I stood right here on this floor, and I spoke to wish the President well when he went to the summit.

□ 1110

I said, "Mr. President, when you go to the summit you can feel, you can know, that it is as it were 100 Senators, Democrats and Republicans, sitting right behind you at the summit, as you look across the table into the eyes of Mr. Gorbachev. You can feel that there are 100 Senators, Democrats and Repubicans, holding up your hand. Do not forget, we are there with you in spirit. We are supporting our President. When it comes to a national security emphasis, there is no dividing aisle between the Democrats and the Republicans."

That is the kind of support I spoke of to the President as to what he could expect when he went to the summit.

As a supporter of SDI, I think, as I say, I come well qualified. I am a charter member, a blue ribbon supporter, of SDI.

I hope that in the days ahead, the national discussion about arms reduction will remain on a high level, a serious level, a level of debate that is above partisanship. The President wanted bipartisan support when he went to the summit. He got it. He got it. I meant every word I said when I said, "There are 100 Senators backing you up. Do not forget that. Keep that in your mind's eye as you look at Mr. Gorbachev's eyes. And the American people are backing you."

So he got that bipartisan support.

I believe that the President only demeans all that he strived for in Iceland if he simply reduces it now to a partisan political debate.

The election will soon be behind us, but the need for thinking of our Nation's future will always be ahead of us.

So I say in closing, let us keep our eyes on the problems here on Earth, let us keep our eyes on the fact that our people are losing their jobs, our manufacturing base is eroding, farmers are losing their farms, and our young people are being, in many cases, deprived of the opportunities for a better education by virtue of our unwisdom in our governmental policies.

Let us keep that debate on a high level with respect to SDI. Let us not use it in partisan, political debate.

"We gave you, Mr. President, our support. It was bipartisan. It was not just Republican. It was Democratic and Republican support. So now, let us keep partisanship out of the campaigns with respect to discussions of SDI."

Let us be as bipartisan, as nonpartisan, when we discuss SDI in political campaigns as we were when we supported the President on his way to the summit.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. 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. FORD. Mr. President, I ask unanimous consent that I might be able to speak out of order for 60 seconds.

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

OUR SIX RETIRING MEMBERS

Mr. FORD. Mr. President, it becomes very difficult, having listened to my learned colleagues, to find the words that would adequately express my respect and, I would say, love for my colleagues who are departing the Senate. I have tried in my own way to say how I feel about all six of them. I am somewhat dismayed by the political articles that make them facts and figures rather than human beings as it relates to their contribution and service to this body.

Mr. President, when the 100th Congress convenes next year, this will be a different Senate. During this election season our six retiring Senators are spoken of only as factors determining control of the Senate. But as individuals, they have influenced the history of this institution, and of our Nation. They will be missed as colleagues, and as friends.

Knowing these men and working with them has been my privilege for the past 12 years. Senators HART and LAXALT came to the Senate at the same time as I, and we learned both the formal and informal rules of this body together. It seems they may have similar goals these days, and I wish them both well.

I have come to know GARY HART as one of the Senate's true intellectuals. He keeps an eye on the future and how it will be affected by policies put in place today. He has been a key player in development of our important environmental legislation, particularly in shaping the Clean Air Act.

Senator HART has also pushed our Nation to reevaluate its defense policies with an emphasis on keeping our defense both strong and sensible. He is an innovative thinker, dedicated to moving our Nation forward. He has challenged the Democratic Party to look ahead, as he does, and I believe the entire Nation will benefit from his ideas.

PAUL LAXALT and I became friends in the 1970's as Governors. That friendship has grown as we worked together within this institution. Despite our strong loyalties to different political parties, we have been able to help each other personally, as well as within the Senate when bipartisan issues called for a tested alliance. Senator LAXALT is a man of his word. I have never been disappointed in him as a friend.

As a freshman Senator, I found Senators LONG, GOLDWATER, MATHIAS, and EAGLETON to be valued examples of leadership in the Senate. Each has his own unique style which could never be duplicated.

RUSSELL LONG is known as a brilliant legislative strategist. He is living proof that the seniority system works. He worked his way up from an observer, to a junior Senator, to being one of the most influential Members of this decade.

Clearly, RUSSELL is the most knowledgeable man on the most complicated subject the Senate has had before it. I have always respected both his wisdom and the cautious manner with which he approaches sensitive matters. Coupled with this insight and caution is an engaging sense of humor which makes him a joy to work with.

It is difficult for anyone to say enough about the contributions of BARRY GOLDWATER to this Nation. While we have often differed ideologically, I have always admired the steadfast way he has held to his beliefs. His love for America has resulted in a shaping of our Nation's defense policy which will be noted for decades to come.

It has been my privilege to serve with Senator GOLDWATER on the Commerce Committee. He has done a masterful job as chairman of the Subcommittee on Communications. Well known as a ham radio enthusiast, Senator GOLDWATER'S expertise in this field has been extremely valuable to the committee in many related policy areas.

I have also enjoyed my friendship with Senator EAGLETON. It was my privilege to campaign in Missouri for him. The "Show Me" State has a great affection for this man, and he has represented them well in Washington. It is a pleasure to work with someone who can agree to disagree in the way that Senator EAGLETON can. Even when we were on opposite sides in heated legislative battles, we have remained friends.

For the past several years, I have had a close working relationship with Senator MATHIAS on the Rules Committee, an association which I will miss enormously. We have been charged with overseeing internal operations of the Senate during a period of change. Senator MATHIAS has handled matters such as the introduction of television in the Chamber with well-advised caution, and with class.

When it came to the Senate's first impeachment trial in 50 years, CHARLES MATHIAS was given the awesome responsibility of seeing that the proceedings were fair and impartial, protecting the rights of both the public and the respondent. I see the Senate's loss of MAC MATHIAS as the loss of a great statesman. He is a fair man who has always voted his conscience, even when it meant breaking with his own party.

It is important to me that each of these men know that we appreciate the work they have done while in the U.S. Senate. They have all worked hard and shown a great love for our Nation, as well as a dedication to their own ideals. The Senate is truly a better place because of their labors.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

THE MARYLAND BEATEN BISCUIT

Mr. MATHIAS. Mr. President, one of the great cultural contributions of Maryland to the culinary arts is the beaten biscuit, one of the great favorites of the present occupant of the Chair. Today we are fortunate to be able to enjoy beaten biscuits baked by Ruth Orrell, one of the Maryland's preeminent culinary artists for over 50 years.

I have traveled to the Eastern Shore more times when I can count to obtain these unique biscuits—so distinctive with their crunchy exterior and soft, doughy interior. And I have served them to guests both from inside of Maryland and outside, to Americans and people who visit us from abroad. They all agree that Mrs. Orrell's beaten biscuits are like no others, any place in the world.

I have a suggestion to make to Senators who will serve in the Senate in the 100th Congress. I strongly recommend that they add Maryland beaten biscuits to the menu in the Senate dining room. Beaten biscuits would be an appropriate indigenous, as well as a delicious, addition to the qustatory opportunities available to those who dine under the Capitol dome.

In order to fully acquaint Senators who may not have feasted on Maryland beaten biscuits about their qualities, I ask unanimous consent that an article in the October 8, 1986, Baltimore Evening Sun be included in the RECORD.

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

MARYLAND BEATEN BISCUITS—STILL BAKING THEM, STILL SELLING THEM AFTER ALL THESE YEARS

(By Mary Maushard)

Ruth Orrell is a lot like the biscuits she's been making for 50 years: Crusty on the outside, but sweet and soft on the in.

She'd stop producing Maryland Beaten Biscuits "tomorrow," says the 84-year-old woman, but her son, her sense of history and her customers keep her turning out more than 1,000 dozen in an average week. "The only real satisfaction I get is people coming in and talking about it," says Orrell as she shows off the six-person "production line" that continues to make the small biscuits that date at least to the early 18th century.

Orrell will be showing off her biscuits, if not the production line, at Country Fair Weekend, a benefit for The Baltimore Museum of Art and The Maryland Historical Society, Thursday through Sunday at Festival Hall.

You can tell she's told her story a thousand times, but she still does it with zest; you know she's made a million biscuits, but, still, she looks carefully over each one as it is fashioned in the supple hands of the women who work for her. She tells you that she beat her first Maryland biscuit more than 60 years ago, as a young bride, but she seems to remember it as if it were yesterday: "The first batch I made and baked, they were so hard you couldn't sink your teeth into them.

"I seldom make them anymore," Orrell says of the small, slightly browned biscuits that are doughy beneath a crunchy exterior. But she is never far from the mixing, making and baking in the added-on back room and kitchen of her home, almost in the shade of the Wye Oak in tiny Wye Mills on the Eastern Shore.

Beaten biscuits are unique to Maryland. They are the happy solution to the early settlers' problem of having no leavening agent for their bread. So, with a hardwood mallet or a blacksmith's hammer, these early cooks quite literally beat the dough, probably on a tree stump, until it had enough air in it to rise.

Orrell's recipe, adapted from her mother's, calls for 1 teaspoon of baking powder for every 25 pounds of flour, not enough to make them rise. "If you put in enough baking powder to get them to rise, it would give you teacakes," Orrell says.

The biscuits are no longer beaten by hand and have not been for at least 25 years, but the hammer Orrell used as a young bride is still on a shelf in her work room. She shows it off proudly. The dough, made of flour, sugar, salt, lard, water and the little bit of baking powder is "beaten" in a machine with a stainless steel roller that moves the dough about.

When a batch of dough is ready, it is turned over to the women who work for Orrell. Each one breaks off about a one-pound glob and then proceeds to fashion it into dozens of tiny knobs that bake into biscuits.

The mostly elderly women sit around a Formica-topped table chatting as their hands move rhythmically, each to her own drummer. Grabbing a piece of dough with her right hand, each woman works it through her fingers and then turns it into a ball, breaking off any extra dough and returning it to the pile.

The balls of dough are put in rows of five on well-used cookie sheets, which go through a little window and onto a conveyor belt that carries them up a ramp to the kitchen, where they are baked for 20 to 25 minutes in one of six ovens.

Reared in nearby Oxford, Orrell says she was raised on beaten biscuits, though she never wielded a heavy hammer over dough until she married Herman Orrell in 1925 and moved to Wye Mills. After her first inedible batch, she gave up the idea for a while. Then, in about 1935, she told her husband, "everybody else is trying to sell them, let's us try."

In the early years, Orrell, who also taught elementary school for 30 years in Talbot County, did all the baking in her own kitchen, at one time even moving some of it into the dining room of her home.

Then she and her husband, who now lives in a nursing home, converted a small shed into what is now the work room. Before that was even finished, Orrell had a walkway built connecting it to her house; that walkway is the ramp up which the conveyor belt of biscuits travel.

Although almost no one else is making beaten biscuits, Orrell, with the help of her son Herman, is still at it, much to the delight of her customers.

"I had a man stop here about a month ago from New York. He said, 'I've found a gold mine.' He bought four dozen and when he got home, he ordered four dozen more."

Unlike most others, beaten biscuits are not traditionally eaten warm. "I never ate a hot one until I started to make them," Orrell says. "At home, they were baked on Saturday and put in a stone crock. We were not allowed to have any, they were saved for Sunday dinner."

Beaten biscuits can be kept up to two weeks in a crock, glass canister or the plastic bag they're sold in. They can be frozen indefinitely, and are even compatible with a microwave; five seconds is all it takes to thaw and warm one biscuit, Orrell says.

Traditionally eaten with ham, chicken salad or butter and jam, beaten biscuits are also good with almost any sandwich filling and as a crunchy counterpoint to soup.

"I like to eat them any way," says Orrell. "Hot or cold, as long as I can cut them open."

Orrell's Maryland Beaten Biscuits are available in retail stores and farmers' markets on both Eastern and Western shores. Ruth Orrell also sells them out of her kitchen in Wye Mills and by mail for $1.60 a dozen, plus postage. Write: Orrells Maryland Beaten Biscuits, Box 7, Wye Mills, Md. 21679.

Mr. SIMPSON. Mr. President, it is just a curious set of circumstances as I came in to hear the Senator from Maryland speaking about the Maryland beaten biscuits because I, when I was practicing law in Cody, WY, used to read the CONGRESSIONAL RECORD and I saw this remarkable tribute to these peculiar—I mean this particular food item, and I have tried them since then. Senator MATHIAS has shared these with me, and they are like eating agates. They are very, very hard and difficult, but they are very good. I say to the Senator as he leaves this body, not only has he shared with me the mysteries of beaten biscuits, he has taught me about deciduous trees and shared with me a great deal of his extraordinary warmth and humanity and this Senator will miss him greatly.

CONCLUSION OF MORNING BUSINESS

Mr. DOLE. Mr. President, has morning business expired?

The PRESIDING OFFICER. Morning business is closed.

CONTINUING APPROPRIATIONS, 1987—CONFERENCE REPORT

The Senate resumed consideration of the conference report.

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

The bill clerk read as follows:

Motion to concur in the House amendment to the Senate amendment No. 59 with an amendment to H.J. Res. 738 making continuing appropriations for fiscal year 1987, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona is recognized.

Mr. DECONCINI. Mr. President, last night, following our quality of life discussion, I wanted to thank the majority leader for making the arrangement that we could go home some time after 2:30.

Also, I yielded the floor to the Senator from Oregon and the Senator from Kansas in order to make the motion, I believe, that we go out and put this over and that it be the pending business.

All day yesterday I had continuously protected myself by indicating that in a continuation of my remarks, it would still be considered my first speech. Apparently, the record did not show that.

I ask unanimous consent that my remarks now be considered a continuation of my first speech.

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

Mr. DOLE. Will the Senator from Arizona yield?

Mr. DECONCINI. I will be glad to yield without losing my right to the floor.

Mr. DOLE. Mr. President, let me indicate we have been trying to come together with some language that might satisfy the concerns of those who have an interest in the T-46. I am not certain we can do that. Maybe we have reached the point that we ought to be permitted to vote up or down on the Goldwater amendment. In exactly 40 minutes, if there will not be any CR over here by then, we will have, in many cases, nonessential Federal employees who will be told to go home.

I do not think that is what anybody would like to have happen. I have been visiting with the chairman of the committee. He is willing to make some modification.

It would seem to me that we have reached the point where we have to make a determination if the majority of this body is going to be able to work its will, a clear majority, a substantial majority, 75 to 80 percent who want to go on and finish the CR. I know the chairman, Senator HATFIELD, does, and also the distinguished ranking Member, Senator STENNIS.

□ 1120

I hope we can bring that to a close shortly after the cloture vote. We have reconciliation, we have a clean water bill that is important to a lot of people in this body. All of that can be done in a matter of hours—2 or 3 or 4 hours—if we can somehow get beyond the logjam right here.

There are no other amendments in order to this CR. We can dispose of this whole thing in 20 minutes if they would just let us vote on the Goldwater amendment.

Would the Senator from Arizona allow me to yield to the senior Senator from Arizona?

Mr. DECONCINI. I am happy to do that.

Mr. DOLE. Mr. President, I yield to the senior Senator from Arizona.

Mr. GOLDWATER. Mr. President, I might say to the majority leader that we have continued to try to work out some kind of agreement with the opposition. We are rather bound by what we can offer. The Senator was in the room last night when the Chief of Staff of the Air Force and all of their top Secretaries stated unequivocally that they would not take that airplane—for the simple reason that we do not have the money.

I think the Senator will recall that the Chief of Staff said that we are going to lose three fighter wings in the next 4 years; we are going to lose a search-and-rescue squadron and a weather squadron. That indicates only one thing: They are running out of money and we are starting to lose troops.

We cannot make any agreement with the proponents of the T-46 that involves money. I do not want to be

forced into explaining why we cannot do it, but if we keep pushing it, I am going to have to explain it and it is not going to be good for Fairchild.

I hope we can work something out. We have been on this thing years, it seems; it seems every year, we have this fight. The simple answer is the Air Force does not want a trainer plane. It should not be the prerogative of the Senate or the House to tell the armed services what weapons they have to use.

Mr. DOLE. If the Senator will yield just a moment more, I thank the distinguished chairman of the committee.

I read with some interest that this is a battle between Wichita, KS, and somewhere in New York. There is not any money to buy anything anywhere. We are not going to buy any planes in Wichita, KS. They have about 4 or 5 years before they can spend any money. I just want to dispel that rumor that somehow, this is a battle between Republicans and Republicans and Republicans and Democrats on where they are going to build the airplane.

If I heard the Chief of Staff and the Secretary of the Air Force correctly, they do not have any money. They do not have any money to spend anywhere. So this is not a fight between the T-37 and the T-46A. I have been and will continue to be as silent as I can on this issue, but I want to resolve it and get on to something else. I have friends on both sides and I want to stay with my friends. That is pretty hard to do.

Mr. DECONCINI. Mr. President, I appreciate the indication of my distinguished colleague from Arizona that there is no money and also that of the majority leader. I met with Senator GOLDWATER, Senator WARNER, Senator D'AMATO, the Secretary of the Air Force, and others. They certainly indicated that because of the $30 billion cuts that have come, they are indeed crunched and squeezed. But last night, when we were in those discussions, I believe it was the Senator from New Hampshire who did offer a compromise.

Some may say that involved money and others may say, well, it involves money, but it involves money that is already appropriated. Indeed, that compromise was satisfactory to this Senator and I do not dare speak for my other colleagues on the subject, but there is $171 million that is already appropriated for the T-46 for 1986. That is the fiscal year we are in now.

So, as I understand the suggestion of the Senator from New Hampshire, it is that that money be released—it has a "fence" around it—and that there be no money in the 1987 continuing resolution for the T-46. That being the case, it seems to me that the conditions that the Senator from Kansas and the senior Senator from Arizona point out—that there is no money—is substantiated, that there will be no money in 1987 for the T-46. If things change, so be it. If they do not change, so be it.

That, to me, seems a valid and a concrete offer of settlement. I cannot, here, speak for my two colleagues from New York that they are prepared to take that settlement, but it seems to me that there has been at least something put on the table here that makes sense.

Everybody wants to find a resolution here in "compromise," yet there does not seem to be much give. As far as this Senator is concerned, I am interested in winding this up. I think, for a lot of reasons, that this trainer is necessary, but I am satisfied that the Air Force is under great budget constraints and crunch and for 1987, this Senator would be prepared to use the settlement that was suggested by the Senator from New Hampshire.

Mr. President, I want to go back to some of the points I was discussing late last night, or perhaps even earlier this morning.

First, the Air Force needs something other than the T-37.

In 1979, during the Carter administration, the Deputy Secretary of Defense approved an Air Force mission element needs statement for a T-37 replacement. The replacement was accorded—and I quote—a "priority no less than equal to producing the prime weapons systems."

The T-37 shortcomings cited in this and subsequent Air Force statements remain valid today. Among the deficiencies:

Approaching end of service life with pilot shortfalls after 1988.

Excessive fuel consumption and related high costs.

Excessive maintenance and related high costs.

Engine noise double that allowed by Federal aviation regulations.

Limited to range/endurance.

Limited to altitudes below 25,000 feet.

Limited weather capability.

Outdated instruments.

I would submit to my colleagues that one could hardly make a more comprehensive case for replacing the T-37.

Second. The T-46 won the original competition for the replacement and is still the answer to the Air Force's training problem.

This statement requires no further elaboration, for as the following remarks illustrate, the T-46 test-fly program is proving that the next generation trainer aircraft can meet or exceed the ambitious programmatic and financial costs set forth. To quote the Congressional Research Service:

Both the Fairchild T-46 and Cessna T-37 are twin-engine, two-seat aircraft with the side-by-side seating of instructor and trainee that the Air Force prefers (in contrast to the Navy's preference for front-to-back tandem seating). The T-46 has better performance capabilities than the T-37 in many respects, with a range of 1,200 vs. 500 nautical miles (nmi), a speed of 430 vs. 370 knots (nmi/h), and an altitude of 47,000 vs. 25,000 ft.

In contrast, there is a pressurized cockpit in the T-46. There are substantially improved electronics and ejection seats and other avionic needs, and more fuel efficiency, all at the same time with a new engine, the F-109 turbofan engine.

□ 1130

Third. Manufacturer has overcome early difficulties. The Senator from New York was quite candid about the problems with Fairchild, the manufacturer of this plane. He has not hid anything about it. My senior colleague from Arizona indicates there are some things that might have to be said. In my opinion, everything should surface. Nobody is here to hide anything about Fairchild's economic problems or this industry's problem. Nobody is here to bail anybody out as far as this Senator is concerned. What is important is that we get the best bang for the buck.

The commander of the Air Force Contract Management Division, Major General Weiss, recently noted the remarkable turnaround of Fairchild. That is the manufacturer. This resulted from substantial corrective actions, actions initiated and paid for by that company.

Let me just point out some of the things they did. They appointed a new company president. We know that shakes up any organization. Indeed, it did this one. It was brought to the board of directors and the executive committee that they needed new management and new leadership. The company stepped up to the buzzsaw and the difficulties of that move and went through with that difficult change, which is in place today. They promoted a number of capable employees from within, bringing in those midmanagement people who had been with the company for a long period of time.

Fairchild sold $200 million of corporate assets to provide the needed funds to proceed with the T-46. Now, anybody would have to take note of $200 million of investment capital into a company so that it could meet the requirements set in the contract that had been awarded to it.

They invested over $110 million of stockholder funds in the T-46A program. I think it is significant to note that when a board of directors solicated stockholder investment—and investments are made from the public and existing stockholders—they must be acting in a prudent way. They are not there throwing the dice. They are

not there to take a gamble on a risk. They are making a management decision.

Now, it does not mean they might not make a mistake, but they are making a management decision that they can perform and deliver the aircraft as the Air Force needs require.

Next, they devoted additional personnel to this program. A number of people were shifted, moved to ensure the capability of Fairchild to meet their responsibility under the contract. They ordered new major equipment, and they have installed much of that equipment and some of it is still coming on line. They improved communications from the top to the middle management.

Mr. President, further, they have increased the skills of supervisory personnel; they increased the emphasis on quality and safety and schedules rather than just cost alone. They strengthened the quality analysis function within their company.

Now, this effort resulted in a very highly favorable GAO report on the T-46 programs. These are not things that were made up. These indeed were concrete changes that this company made.

Defense News boldly stated, and I would like to quote: "A clean bill of health," referring to Fairchild, manufacturer of the T-46.

A Defense Daily—another publication—headline, "GAO Issues Favorable Report on the Fairchild T-46."

The New York Times reported, "Canceled Jet Apparently Met Air Force Needs."

I think it most important that those types of publications' analyses indicated that, yes, there was a deep problem within that company, and I do not stand here and say, because I do not know, that everything is solved. But indeed there was a good faith effort, a good faith investment by stockholders as well as additional capital resulting in $200 million invested in this company. The results have proven by public recognition that this company now is prepared to go forward and can meet its responsibilities.

This airplane does meet the needs of the Air Force, as I see it. In the words of the former commander of the Air Training Command:

> The T-46 is a good airplane which meets our needs. The T-37 is running out of time and has many operational deficiencies. Modification of the T-37 is not a long-term solution—it doesn't solve the operational problems, and a replacement will be more expensive 5 to 10 years from now. To date, we have spent half a billion dollars on this program if 1986 funds are included.

The American public, through our Government, has made a substantial investment in the T-46 already. It appears to this Senator that it would be prudent and wise to at least move forward with, as I mentioned earlier, a proposed compromise to release the 1986 funds. As my senior colleague from Arizona has pointed out, if the Air Force does not have the money, we cannot do it in 1987, and that is part of that compromise—not to fund 1987. And if, as some predict, Fairchild cannot make it, cannot produce, will not be here, so be it. That is our free enterprise system. I am not interested in bailing them out if they cannot cut it. But I think that they ought to have the moneys for 1986 at a bare minimum because of the commander of the Air Training Command quote that I just read into the RECORD as well as many other reasons.

Fourth, economics favor the T-46.

Something that many of those opposed to the T-46 seem to ignore is the fact that the T-46 program will save the taxpayer a substantial amount of money. A March 1986 CBO study of trainer alternatives concluded that the the 20-year costs of the T-46 would be between $100 and $400 million less than the 20-year costs associated with the T-37 modifications being considered by the Air Force.

Several elements unique to the T-46 program make savings of this magnitude not just a possibility but a probability. Most important are the remarkable increases in fuel efficiency and maintenance designed into the T-46. The T-46 Flight Test Program is demonstrating better fuel efficiency than was anticipated. Fuel savings alone are now projected to total some $50 million per year.

An element of the T-46 program that is often forgotten but is sure to generate even further savings is its attraction to foreign buyers. There are more than 600 T-37's in overseas inventories that are going to have to be replaced in the near future. The worldwide trainer market holds the potential for $3.4 billion in export sales. The T-46 is the only American-made aircraft that can compete for these dollars and improve our national trade deficit. I am not here to argue that that alone is a reason for the T-46. I am pointing out that that is one of the fallouts of a prudent judgment to proceed with this trainer. That is what we are going to see in the future.

□ 1140

Fifth, the flight test program.

I cannot help but include in my remarks some of the comments received from the person responsible for the test effort Air Force Systems Command Assistant Deputy Chief of Staff for Test and Evaluation. There are a number of outstanding observations and comments regarding this.

First, the flying quality. It is a solid ride, they say; very stable and trimmed fit; excellent control response; very crisp, but smooth response to input; no slip in controls.

I am not a pilot, although some years ago I did a little of that. But this is not coming from the junior Senator from Arizona. This is coming from the Air Force Systems Command Assistant Deputy Chief of Staff for Test and Evaluation. His office, his job, is to analyze and give an impartial observation and report as to the system they are in the process of procuring. This is what they say.

The office went further and said: "Excellent speed stability; almost no trim required. No trim required for gear/flaps. Overall, great handling aircraft. Stable in close form."

What better recommendation could you have for a trainer that is going to be used by American servicemen in the Air Force to become prepared to fly the most sophisticated aircraft known to mankind, than to have a trainer that gets these commendations?

In this Senator's judgment, this plane is not a flop at all. It is a very good plane. Given the economic constraints that the Air Force is under, I realize that you cannot have all the money all the time. Those days may be gone for few years until, if ever, we get this deficit down.

Mr. President, I would like to make quick reference to the comments made by some in this body that the company could not afford to do this. As I indicated, I am not an economic analyst of manufacturers, and I do not know all the economic problems that Fairchild has had over the years. But it seems to me that if these problems are secret, they ought not be secret. If they are so severe, they should be brought out and debated.

I do not think the Senator from New York—and certainly not the junior Senator from Arizona—has any desire at all to see us get involved in bailout. But we are in a free enterprise system here, and so be it. When a company contracts with the Federal Government, it has always been my feeling that we should not bail them out. Let them go down and let them pay the price. If that means essentially a loss of jobs, I am sorry for those people who lose their jobs. I am sorry for the investors who would lose their investment money. I am sorry for the for the management, for their disappointment in not being able to make that company work.

There is a lot at stake here. There is a lot of incentive to make it work.

It seems to me that when we are here in the waning hours of the 99th Congress, we should proceed with this trainer—at least, as I said, with the 1986 money that has been appropriated and is there. We are not talking about adding money to the deficit by releasing the 1986 money, I truly hope we can resolve this in some manner.

Mr. President, I want to proceed with a few other articles and GAO reports in support of this subject matter.

One article is from the New York Times, dated June 8, 1986, not too many months ago, by John H. Cushman, Jr., which I would like to read into the RECORD. The article is dated June 7.

Recent tests have shown that a new training jet that the military decided not to buy last year would meet the Air Force's needs for a modern trainer for fighter pilots, a government agency reported.

The aircraft, the T-46A, is being built by the Fairchild Republic Company of Farmingdale, L-I. The future of the company's factory there hinges on whether Congress overrules the Air Force's decision to cancel the program.

A report by the General Accounting Office, an investigative arm of Congress, said that an official of the Air Force Air Training Command reported "that based on actual flights by their personnel, the T-46A's performance was excellent, met the command's need for a modern trainer, and would save millions of dollars in yearly maintenance cost."

The article goes on about modifying existing jets.

The GAO report was written last month at the request of the Senate Majority leader, Bob, Dole, a Kansas Republican who supports the Air Force's plan to cancel the Fairchild project. The new plane would replace a model produced in Mr. Dole's home state.

The plane, the Cessna T-87B, would need new engines and other modifications to meet the Air Force's performance goals, officials have suggested.

The Air Force decided last year to cancel the T-46A, trainer program because of production inefficiencies and rising costs at the Long Island plant.

While some members of Congress have sought to restore money for the T-46A, the Senate voted in May to rescind the unspent portion of this year's budget for the aircraft. That could effectively kill the program immediately if the House of Representatives agrees to cut off this year's funds.

A company official said Fairchild hoped the GAO report would help the company's allies in keeping the program alive. Originally, the Air Force wanted to buy as many as 650 new trainers worth more than $3 billion.

According to the report, "Air Force and Fairchild officials said flight test results have been very successful to date."

The plan is expected to "meet or exceed" most of the Air Force's original performance requirements, the report said.

Then the article talks about the decision to cancel the jet:

"However, it is not expected to meet some of the more stringent contract performance requirements," the report added. "These more stringent requirements were proposed by Fairchild when competing for the T-46A contract and were subsequently included in the contract."

An Air Force review of Fairchild's manufacturing facilities last summer turned up numerous examples of production and quality-control problems at the plant. As a result, the Air Force sharply curtailed payments to the company, and later decided not to exercise options to buy more planes.

By the end of March, the plane had been flown 74 times for a total fo 110 hours, by both Air Force and contractor test pilots.

Pilots from the Air Force and the company agreed, according to the the GAO, "that the T-46A's performance tests have been successful. They also said that technical tests have been outstanding and reliability and maintainability significantly better than predicted. They believe the T-46A's air worthiness is excellent."

The plane did show problems in several areas, which the accounting office said were being addressed. These include high wind resistance, which could affect performance and fuel consumption.

□ 1150

Now, Mr. President, I would like to put in the RECORD a very interesting article from the Defense News dated June 2. The headlines of this article indicate "GAO Report Gives Troubled T-46 a Clean Bill of Health." "Air Force says problems can be fixed without major modifications."

WASHINGTON.—A General Accounting Office study has given the troubled T-46 trainer aircraft a clean bill of health despite critics' objections that the plane is not meeting required performance specifications in recent test flights.

The May 20 study, "Development and Production Issues Concerning the T-46A Aircraft," says flight tests of the trainer have been "very successful." The report has provided additional ammunition to Fairchild Industries, which has launched a last-ditch effort to convince Congress to revive its troubled trainer program, deleted from the Air Force's 1987 budget request.

The GAO report, which has yet to be released officially, was requested by Sen. Robert Dole (R-Kan.), a critic of the T-46A who has championed the alternative of extending the life of the Air Force's current inventory of T-37 trainers built by Cessna of Wichita, Kan.

According to the GAO study, Air Force Systems Program Office and Flight Test Center officials at Edwards Air Force Base, Calif., agree that the technical tests of the T-46A have been "outstanding and reliability and maintainability significantly better than expected. They believe the T-46A's air worthiness is excellent."

The GAO study contradicts the view expressed by Sen. Barry Goldwater (R-Ariz.) during a Senate speech on May 15 in which the chairman of the Armed Services Committee blasted the plane's performance in recent test flights. On that day, the Senate voted to prohibit the Air Force from expending the $193.9 million authorized in the 1986 budget for the aircraft.

A pilot himself with 57 years of flying experience, Goldwater says that talks with test pilots at Edwards have convinced him that the aircraft has a number of key technical problems.

The test aircraft being flown at Edwards had an improperly manufactured wing incident angle, says Goldwater, which has caused an imbalanced flight. While the ailerons were rerigged to trim the aircraft, Goldwater warns that "if you have anything wrong with the main spar that requires any work at all you have an airplane that is in trouble."

Goldwater also says the engine air inlet, or flying speed brake, may have to be redesigned to meet specifications. "The aircraft has no stall warning system," he says, "and will need a stall warning system integrated into the aircraft prior to production." Fairchild also miscalculated the drag and weight of the aircraft, which has led to a significant reduction in its range, says the senator.

In addition, severe structural vibrations and wing flutter in the aircraft caused it to be grounded on May 5, says Goldwater. "When you get a flutter of 8 hertz or 8 cycles per second," he said, "anything can happen."

A spokesman for the Air Force's Flight Test Center at Edwards tells Defense News that the flutter problem has been corrected and that the aircraft will be back in the air this week. He says the problem, caused by a new set of specially balanced ailerons, was "not serious, they just had to rebalance the ailerons." The long downtime was due to the fact that the Air Force wanted to go through the aircraft with a "fine-tooth comb" to make sure the flutter did not create any other problems with the aircraft, he says.

Mr. President, there are numerous articles here. One in Defense Daily dated June 3 talks about the GAO issues favorable report again on the Fairchild T-46A and I would like to read that at this time.

In a special report requested by Sen. Robert Dole (R-Kan.), Senate majority leader, the General Accounting Office has given good marks to the quality of production and aircraft performance of the Fairchild Republic T-46A trainer which the Air Force has stricken from its budget rolls.

In the report to Dole, who represents the home state of Cessna T-37B trainer, which the Air Force will rely on in lieu of the T-46A, the GAO did not downplay Fairchild's contract difficulties with the T-46A, pointing out that "Fairchild was the first contractor to be rated unsatisfactory in all eight management areas reviewed."

However, the GAO quickly noted that the Air Force had found that Fairchild made "substantial progress" in correcting its deficiencies and that the reviews made by the Air Force of production quality have "concluded that Fairchild was capable of manufacturing the T-46A" and that the program office recommended that the production program be continued.

Now, Mr. President, I want to go off the article for a moment to comment on that particular statement. Here we have the GAO, which is an arm of Congress, nonpartisan, that is directed by Congress, sometimes Members or committees, to do impartial studies, and indeed I have found them to be excellent in the 10 years that I have been here. I have not always agreed with them but I found that they do not shade it for political purposes or for those Senators or Members of Congress who may be in a particular area of concern that the GAO may or may not know.

This report which has been gone through extensively by the junior Senator from New York, is a good report, and we ought to pay attention carefully to these reports, and this report says that they noted that Fairchild made substantial progress and that the Fairchild Co. was capable of manufacturing the T-47A and that the program office recommended that the production program be continued.

I do not know what much more we need as to the verifiability that the company, Fairchild, with all its problems that it may have had is prepared and ready to proceed.

That is not the junior Senator from Arizona saying they are ready to proceed. That is the GAO telling Congress or recommending to Congress that yes, there are problems, we have followed what you have suggested and done a study and now we are coming to a conclusion that you asked us to do, and we are making recommendations to you and we are telling you what we believe to be the truth and the facts regarding this company and the particular weapons system which is the T-46A, and we are telling you that Fairchild is capable of manufacturing that particular aircraft.

Going back to the article, Mr. President.

On March 28, 1986, the Secretary of the Air Force announced that he would not exercise the option for the second production lot of T-46As and that the Air Force will extend the life of the T-37B about five years beyond its original life expectancy to make up for the loss of the T-46A.

GAO also said that, meanwhile, the Air Force and Fairchild report a very successful flight test of the first T-46A aircraft and that the T-46A "is expected to meet or exceed most of the Air Force Air Training Command's original performance requirements," although it is not expected to meet some of the "more stringent requirements" proposed by Fairchild when competing for the contract.

Let me repeat that for the record.

. . . "is expected to meet or exceed most of the Air Force Air Training Command's original performance requirements," although it is not expected to meet some of the "more stringent requirements" proposed by Fairchild when competing for the contract.

□ 1200

To divert from the article, we are making an argument here on behalf of the T-46A. No one wants to leave that impression. But certainly experts conclude that it exceeds most of the Air Force Air Training Command's requirements.

The flight testings has identified problems in aircraft drag, lack of adequate stall warning, primary flight controls, and speed brake buffeting. However, again, the Air Force said "these types of problems are not unusual at this stage of development and they can be solved without major aircraft modifications and within the scope of the development contract."

The GAO quoted an Air Force Air Training Command official who said that "based on actual flights by (command) personnel the T-46A's performance was excellent, met the Command's needs for a modern trainer, and would save millions of dollars in yearly maintenance cost."

Now, let me divert again from this article to underscore this paragraph. The GAO quoted an Air Force Training Command official. This is what the GAO study has in it, a quote of an Air Force Training Command official. He said:

Based on actual flights by (command) personnel, the T-46A's performance was excellent—

Not fair, not pretty good, excellent—

met the Command's needs for a modern trainer, and would save millions of dollars in yearly maintenance cost.

That, to me, is significant out of this report. There is a lot of interesting information in this report, including the criticism of the Fairchild Co., but this is really significant to this Senator, that the Training Command officials say that this is excellent, that it meets the Command's needs for a modern trainer and, on top of it all, they believe the Air Force would save millions of dollars annually.

Now, going back to the article:

In summarizing the status of corrective actions that have been taken by Fairchild GAO said "corrective action has been completed and submitted to the Air Force for approval on 83 percent of the deficiencies. The Air Force has approved 61 percent of those actions as of March 31, 1986."

That is a number of months ago. So that Fairchild, according to GAO, is well on its way toward correcting the problems that rightfully were brought to their attention. And, indeed, they did not try to disguise them. They came forward and they corrected them at substantial cost to the company, by the way.

Going back to the article, Mr. President:

The Secretary of the Air Force cited the production difficulties, contract deficiencies, and budget constraints when he decided not to continue the T-46A acquisition program withholding the FY 1986 Lot 2 production funding for 33 aircraft and not requesting funding for FY 1987.

In addition to noting that the Air Force will extend the life of the T-37B five-years beyond its expected lifetime and that there is a shortage of the T-37B in the inventory, the GAO said that among the options the Air Force will explore during the next several months are the options to "resume or recompete" the T-46A production.

Senator D'AMATO, the junior Senator from New York, yesterday went over at great length this particular GAO study, so I am not going to belabor that because the RECORD is already there.

The GAO had another report, dated November 8, 1983, which addresses the problem of contract awards to Fairchild. I think it is important, because that has been raised here, to this company's financial problems and its ability to perform, and what have you.

Mr. President, I want to read into the RECORD some or all of the GAO's report, dated November 8, 1983, Code No. B206430, addressed to the Honorable NANCY KASSEBAUM, U.S. Senate; the Honorable ROBERT DOLE, U.S. Senate; and the Honorable DAN GLICKMAN, House of Representatives. The subject of this is "Evaluation of Contract Award for the Air Force's Next Generation Aircraft."

In response to your July 1982 requests and subsequent discussions with your staffs, we evaluated the Air Force's award of the Next Generation Trainer (NGT) Aircraft to the Fairchild Republic Company. Specifically, we considered whether the Air Force had followed established Department of Defense (DOD) and Air Force instructions in evaluating the proposals for full-scale development of the NGT and whether existing procedures precluded the Air Force from considering potential alternative NGT systems during the source selection process. We have already discussed our findings and conclusions with your offices. In summary, we found:

NGT source evaluation and selection was done according to DOD and Air Force instructions and the evaluation criteria in the request for proposals (RFP).

Consideration of alternative NGT systems during the source selection process was not precluded.

BACKGROUND

In July 1982 the Fairchild Republic Company was chosen to develop the NGT after the Air Force completed an evaluation of competitive proposals received from the Cessna Aircraft Company, Fairchild Republic Company, and Rockwell International Corporation. Two other companies—Ensign and Gulfstream—had been eliminated earlier from this phase of the competition.

Fairchild was awarded a contract for $104 million for the design, development, testing, and delivery of two NGT aircraft with data and support equipment for full-scale development. The award included options for up to 65 more NGT aircraft. The Air Force could order as many as 650 NGTs over the next several years, and total acquisition cost could run as high as $3 billion over the life of the program. The new trainer will replace the Cessna-produced T-37 jet aircraft which the Air Force is using as its primary flight trainer.

The Air Force used conventional source evaluation and selection procedures in awarding the NGT contract. It developed a source selection plan approved by the Secretary of the Air Force, the source selection authority for this program, and issued an RFP which requested technical and cost proposals. Both the source selection plan and RFP indicated that the following factors would be evaluated in descending order of importance: (1) operational utility, (2) readiness and support, (3) life-cycle cost, (4) design approach, and (5) manufacturing/program management.

An NGT Source Selection Evaluation Board (henceforth referred to as the "Evaluation Board") evaluated the proposals received against criteria, standards, and guidance in the source selection plan and RFP. Deficiencies in the proposals were identified and the offerors were permitted to submit revised proposals which were again evaluated by the Evaluation Board.

Definitive contracts were then negotiated with all offerors within the competitive range before contractor selection. A Source Selection Advisory Council (henceforth referred to as the "Advisory Council") monitored the overall evaluation and selection process and reported to the Secretary of the Air Force.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine whether the Air Force evaluated the proposals prop-

erly and considered alternative NGT systems.

We reviewed DOD and Air Force regulations on the source evaluation and selection process and procedures used in the NGT source evaluation and selection process. In particular, we reviewed 8 item evaluation reports randomly selected from the 36 NGT item evaluation reports prepared by the Evaluation Board.

The item evaluation reports contained a narrative assessment of the offerors' compliance with the RFP. They described the Evaluation Board's assessment of the proposals against important operational, logistical, cost, technical, and manufacturing/management criteria established before the proposals were received. Strengths, weaknesses, and risks of each item were identified and a color coding system was used to indicate overall acceptability. Relevant information in these reports was incorporated into summary documents cited in the source selection decision paper which announced the NGT contractor selection.

We reviewed the selected item evaluation reports to determine whether item strengths, weaknesses, risks, and their overall acceptability were assessed in terms of the evaluation criteria, standards, and guidance in the source selection plan approved for the NGT program. We did not evaluate the appropriateness of the items the Air Force deemed important for the evaluation.

In addition to the item evaluation reports, we examined other source selection records such as the source selection evaluation plan, factor evaluation write-ups, and various briefing documents. We interviewed officials of the NGT program office concerning general information about the program and the source selection process. We also interviewed members of the Evaluation Board who evaluated, contractor proposals. In interviews with the evaluators we discussed their credentials, qualifications, and the adequacy of NGT proposal evaluation procedures for ensuring impartial evaluations.

We did our review at the Aeronautical Systems Division, Air Force Systems Command, Wright-Patterson Air Force Base, from November 9, 1982, through February 25, 1983. Our review was performed in accordance with generally accepted government auditing standards.

SOURCE SELECTION PROCEDURES WERE FOLLOWED

On the basis of information we compiled, we believe that NGT source evaluation and selection were done in accordance with DOD and Air Force instructions and RFP evaluation criteria.

Mr. GOLDWATER. Will the Senator yield for a question?

Mr. DECONCINI. I will be glad to, without losing my right to the floor.

Mr. GOLDWATER. I wonder if he would indicate how much longer he is going to be.

Mr. DECONCINI. Yes. I would be glad to advise the Senator. I am going to suggest the absence of a quorum in about 1 minute or 2.

In July 1982, the Secretary of the Air Force chose Fairchild to develop the NGT, stating that the selection was based on:

Evaluation criteria established in the RFP,

The Secretary's integrated assessment of the Fairchild proposal;

The terms and conditions agreed on in negotiations;

The Evaluation Board's "Summary Evaluation Report."

The Advisory Council's "Proposal Analysis Report," and

The capability of Fairchild to fulfill requirements.

Mr. President, later today I intend to proceed with this 1983 GAO report because I think it has a great bearing on what we are talking about today.

Mr. President, for the time being, I want to reiterate that I truly hope as we have proceeded through this effort here that we will indeed find a way to compromise in this area. It is very important that this 99th Congress conclude its work, and that we find ourselves a way to resolve this particular issue. Nothing is going to be served if we continue to just hassle and talk.

What we need to do is, in my opinion, find a way, and I always believe having been in this body and seen many compromises that when you talk about compromise it means that both sides give. Nobody gets all they want, certainly, but, indeed, there is benefit.

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

Mr. GOLDWATER addressed the Chair.

The PRESIDING OFFICER. Will the Senator withhold the quorum call?

Mr. DECONCINI. Yes.

The PRESIDING OFFICER. The senior Senator from Arizona, Mr. GOLDWATER.

Mr. GOLDWATER. Mr. President, last night when we started this discussion relative to the T-46, I said that this is not a debate about an airplane or two or three airplanes. It is a debate based on the simple fact that the Air Force says unequivocally they will not take this airplane. Here we are. We have spent almost 12 hours talking about the T-46 and the T-37 when we should be talking about is it sensible to try to buy aircraft that the Air Force in effect says they will not take? But I do think it is time that I make a few corrections, very few, on some of the statements that have been made.

Mr. President, we have heard a lot about the GAO. The GAO does not have a night session. They have no way to evaluate an airplane unless they go out to Edwards Air Force Base or Patuxent or any other test base and ask the test pilots. I do not know if they have done that or not. But let me talk about the T-37.

The average time on a T-37 is about 15 hours or a little less. We have 1 aircraft of the T-37 that has had over 20,000 hours. Now the modifications that are being planned for the T-37 are line modifications. In other words, modifications that can be accomplished at the base where the aircraft is located. About 5 years from now, maybe 6 years, there will be some serious modifications on the T-37 like a new engine. We are not talking about the money involved in the T-37 at this time. That is 5 or 6 years away.

Mr. President, I heard mention of the T-46 price. Well, we do not know what the price is or what it is going to be. But we do know that they cannot produce this airplane and make a profit.

I did not want to get into this, but I think I have to. Let me go back into the history of this.

When the Fairchild design of the T-46——

Mr. STENNIS. Mr. President, may we have quiet so we can hear what the chairman is saying?

Mr. GOLDWATER. When the T-46 was developed Fairchild was a corporation entirely different than the corporation we have today. It was mostly in Maryland with branches in New York and other places. But the first thing that happened to the Fairchild Corp., Ed Uhl who was the president of the corporation and was responsible for some of the finest aircraft we have ever had made, was let out. With Mr. Uhl went their engineers, most of their good draftsmen, and most of the experts they had.

So what they wound up with after leaving Maryland, their home, well, they wound up with a corporation that could not make an airplane. Oh, they made one. The first T-46 arrived at Edwards Air Force Base, and it did not have much wrong with it. The main spar was crumpled, broken. The main spar is what makes the wings stay together. That took a long time for them to correct. I recite the history of the corporation because they are responsible for the record of the airplane that we have seen.

They still have not corrected the drag influence on the air intake of the engines. That is not a serious thing. There is a problem of control that is not serious but they have not corrected it. They have only built two airplanes. The original contract No. 1 was for 10 aircraft. If they build those 10 aircraft, Mr. President, the corporation will be bankrupt.

□ 1220

I hope we can get that across. I do not like to talk about things like that. I am sorry that they are in that fix. But what we are being asked to do is bail out a corporation that has gotten itself into a lot of trouble because of their own mistakes.

I am getting a little tired of bailing out Chrysler, bailing out New York City, bailing out everything in the country. If they cannot hack it, they have to pay for it.

So on the price of the T-46 if they want to make a profit—and they have to make a profit to stay in business—we do not know what it is going to be, but we know it is going to be a lot more than it is now. If they build the T-46's that are in the contract now the company will be bankrupt.

Mr. President, these are things that I did not want to discuss about this whole matter, but we have heard nothing on this floor but a recital of GAO, and they do not know which end of the airplane goes down the runway first. I have had that battle with GAO for so long I cannot remember when it started. I remember one day I asked one of the members testifying before the committee, "Who did your test work?"

"We do not have a test pilot. We got it out of a manual."

Well, that is about the way they go along with things.

Mr. President, I hope we get down to the meat of this thing. It is based on the fact that the Air Force does not want the airplane. I am not going to talk any more about airplanes. I have been living with them almost all my life. I like to hear people talk about airplanes that know something about them, but so far I have not.

Mr. President, I yield the floor.

Mr. STENNIS. 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.

□ 1240

Mr. STENNIS. Mr. President, I ask unanimous consent that further proceedings under this quorum call be suspended.

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

Mr. STENNIS. Mr. President, I ask recognition.

Let me say a word. I am not intervening in this matter about the planes, but we are all here and we have the facts pretty well captured, and other matters. This bill is dependent to a degree on making a move now that will cause us to start moving along. I am not seeking any advantage for anyone, disadvantage for another, but we have to do something about this. We have a rollcall on invoking cloture, 15 minutes from now I believe. If we pass that and go on to that, it displaces the matter we have pending before us and we do not know when we will get back to it.

Now, I understand that some of our counterparts over in the House are planning to go if they do not get some action by 3 o'clock. So let us see if we cannot get this thing together and settle it ourselves, if possible. If we cannot, why, we will just resort to it.

I yield the floor, Mr. President.

Mr. GOLDWATER. Mr. President, I agree with the Senator from Mississippi. I am happy to say that we are approaching a solution to this. I think it looks all right, just as long as it does not have money in it.

Mr. STENNIS. Well, I am encouraged by the fact that the Senator is encouraged. I believe that Senators are acting in good faith and I believe we can come out with something that has a practical angle to it that will let us move along.

Mr. GOLDWATER. I am with the Senator.

Mr. STENNIS. I yield the floor, Mr. President.

I suggest the absence again of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1250

Mr. DOLE. Mr. President, I ask uanimous consent that the order for the quorum call be rescinded.

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

Mr. DOLE. Mr. President, I am advised that we are near some—I will not say solution—but some agreement on the T-46A. I doubt that we can quite get it done by 1 o'clock. I hope it will be at about that time.

There is still one other amendment to dispose of, and then final passage, then the immigration bill, then reconciliation, and whatever else may be hanging around.

So I ask unanimous consent that the cloture vote scheduled for 1 p.m. be postponed until 2 p.m.

Mr. SIMPSON. Mr. President, reserving the right to object—and I will not object—let me say that I will accommodate the majority leader in any way, and always have, and always will, and I will on this occasion. But I think it should be apparent that it is necessary to go to this cloture proceeding if we are going to have an immigration reform bill.

If there is a filibuster, we will quickly find out. I think we have already seen that there are indications of the beginning of that. Therefore, I hope my colleagues will insist on terminating debate, and we ought to get on with the issue and proceed with it; because, under cloture, if it is invoked—and I sincerly hope it is invoked—we will go forward and vote on this conference report.

There are considerations here that others have, and I think it is time to realize that this is a two-way street. If we want an accommodation on one side, you give accommodation on another. It is not simply a matter of taking and no giving.

That is what my position is on this particular item.

Mr. GRAMM. Mr. President, reserving the right to object——

Mr. DOLE. Mr. President, I withdraw my request.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOLE. Mr. President, I want to renew the request to postpone the cloture vote from 1 p.m. to 2 p.m.

Mr. GRAMM. Mr. President, reserving the right to object—and I will not object—I simply want to remind my colleagues that despite the fact that this bill has been worked on for 6 years, the immigration conference report before us—which is substantially different from the bill that was adopted by the Senate—has been debated in opposition for only 40 minutes. There have been only 40 minutes of debate in opposition, and I wanted to make that point clear.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. SIMPSON. Mr. President, I inquire of the Senator from Texas as to how much time he will require in his effort here if cloture is invoked. It would be interesting to us, as we try to work the flow of legislation yet to be done.

Mr. GRAMM. If our colleagues decide to end the debate, which from the point of view of opposition has lasted for only 40 minutes, then under the rules I could speak an hour and a person could yield me an hour, and that would end my ability to speak.

I understand that there are others who would speak as well. But if cloture is invoked, we are under a very strict set of rules, and in terms of the general debate, that general debate is open.

Mr. SIMPSON. I thank the Senator.

Mr. STENNIS. 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.

□ 1320

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

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

Mr. LAUTENBERG. Mr. President, today the President has signed the Superfund bill. In the past week, we have marshaled our forces to convince the White House to sign this bill. We sent the letter to the President with 81 cosignors from the Senate, urging him to sign the bill. I was joined by 56 of my colleagues in a letter to Senator DOLE expressing our will to stay in session as long as it took to ensure a veto override, should one have been necessary.

All these efforts, combined with clear public support for this bill, made the difference. And I believe a new era

of environmental protection has begun.

In this bill, we have an historic piece of legislation.

The Superfund Program has been on the books for 6 years. We have spent $1.6 billion. We have barely touched the surface. We want that changed. We think this bill will do the job.

New Jersey stands to gain a minimum of $500 million under this bill, and maybe much more.

This bill will ensure that the job is done right. It includes tough, new cleanup standards. At Lipari landfill in Pitman, NJ, the most hazardous site in the country, the EPA has proposed a cleanup plan that fails the test. The Lipari cleanup should be done right, and the 98 other sites in New Jersey should be done right. The cleanup standards in this bill serve that goal.

Mr. President, this bill gives citizens the right to know about the chemicals present in their communities, and the right to know about the toxics being released into their air and water. New Jersey experiences constant chemical spills and releases, and the air is despoiled by toxic emissions.

Mr. President, after the incident in Bhopal, India, I introduced legislation to insist that in America we inventory our chemicals and alert emergency response personnel to potential dangers in their communities. And, that we plan for the worst but insist on the best prevention. That legislation survived the conference. It's an enormous achievement, and important for New Jersey.

This bill contains my radon legislation, to set up a comprehensive program for radon detection and mitigation at EPA. In New Jersey, unfortunately we discovered radon. Now it is important that we lead the effort to abate it. This bill assures that these efforts will continue. A significant portion of these funds will go to New Jersey.

This bill also includes an important underground storage tank cleanup program, critical to protecting the drinking water supplies in New Jersey, and guarantees citizens the right to sue if EPA is not doing the job.

If the President had vetoed this bill, work would have stopped at over 100 sites across the Nation and at 16 sites in New Jersey. It never would have started at the remaining 83 New Jersey sites. That was unacceptable. We are prepared to stay in session as long as need to be to force final congressional action on this bill. I am gratified that the President signed this bill.

Mr. President, the enactment of this bill breathes new life into this program; $1.5 billion of funding will become available almost immediately for Superfund, which has been starved for more than 1 year. In the Appropriation Committee, I fought hard for the highest funding level. New Jersey has gotten $1 of every $5 of Superfund money. Every dollar added to the program helps our State.

A bold new program is in place. Resources are dedicated to do the job. The challenge is immense. Now we can get on with the job.

Mr. President, with the signing of Superfund today, this Nation embarks on a bold new program of environmental protection. In addition to its many new provisions, the bill contains a new community right-to-know program that greatly enhances the health and safety of this Nation. As the author of the Senate provisions, I would like to take this opportunity to clarify some features of the right-to-know program.

In doing so, I would like to commend the chairman of the Environment and Public Works Committee for his determination, patience, and commitment to protecting the environment. Without the labors of the distinguished senior Senator from Vermont we would not have had a reauthorized Superfund. His devotion to the bill as a whole, and to the right-to-know program, was an inspiration to all of the conferees, and I thank him.

Mr. President, given Senator STAFFORD's leadership role on this bill and contribution to right to know, I would welcome his views on the clarifications I am about to discuss.

Mr. President, I would like to begin by noting that the overriding goal of the title is to provide long absent information on the management of toxic chemicals to the public—as well as to firefighters, State and local officials, health professionals, and others. To that end, the information must be usable. Units of measurement must be consistent, descriptions of and identities must be uniform among the various reporting forms so that data can be cross-checked and tracked adequately.

Where volumes are to be reported in ranges, those ranges must be established so the information is valuable and not so broad that it is impossible to determine anything of relevance. In addition, it is extremely important to ensure that specific chemicals names are present on all forms since that information is needed to use many reference sources. This is a requirement which means EPA should be extremely vigilant in implementing and enforcing its trade secret obligation to ensure that the public is granted this meaningful data.

Mr. President, the public should be able to gain easy access to the information collected under this title. Information coordinators at the State and local level, as well as at EPA, must provide data to the public and it is expected that the public will be able to view reporting forms at specified locations and gain access through the mails—with costs reimbursed if appropriate. Moreover, while public access to tier II information is mandated if a hazardous chemical is stored in an amount in excess of 10,000 pounds or if the information has already been requested of the facility, it is the intention that the public should also have access to information regarding chemicals of lesser volumes. In short, information requests should be denied only if there are compelling reasons to do so.

Mr. President, requests for information must be met in a timely fashion. Under this title, facilities are allowed to provide lists of chemicals for which material safety data sheets are available, but then they must provide the actual MSDS' upon request. Additionally, in section 312, tier II information must also be made available upon request. It is the firm intention of this title that, when such requests are made, they shall be complied with as quickly as possible. Similarly, all information requests should be met in a timely fashion.

Mr. STAFFORD. Mr. President, I would associate myself with the remarks the junior Senator from New Jersey has made about the goal of public availability of the right-to-know title. It is essential that information collected be usable, easily accessible, and made available in a timely fashion.

Mr. LAUTENBERG. Mr. President, I would also like to comment on the issue of State and local authority. The community right-to-know and emergency planning provisions in the bill represent a milestone: The first Federal program addressing those essential needs. At the same time, however, it is recognized that States and localities have been active in this arena previously and will continue to act to serve their citizens. States and localities retain their authority to enact and implement community right-to-know programs, which are not preempted by these Federal provisions.

Mr. STAFFORD. Mr. President, again I concur with Senator LAUTENBERG. I worked with the junior Senator from New Jersey to ensure that State right-to-know programs would not be preempted by the provisions in this title. The ability of States to go forward with their own programs is vital, and that ability has been clearly preserved in this legislation.

Mr. LAUTENBERG. Mr. President, I would also like to touch briefly on the trade secret provisions in the title. The title does give facility owners and operators the ability to withhold only the specific chemical name or identity if various requirements and procedures are met. Those requirements and procedures are intended to set a high standard for trade secret claims and review, with the presumption that

this information should be made available to the public except in very narrow circumstances. In particular, chemical identities which are readily discoverable through reverse engineering cannot be claimed as trade secrets under this title.

Mr. President, I would make a final point about the discretion of the EPA. The title does provide the Agency with discretion in terms of setting thresholds, adding chemicals to the list of those who must report. In implementing this title, the EPA must remember and abide by the overriding purpose of this program and act to ensure that as much meaningful and usable information as possible be made available. This is essential not just so that the public will have access to this data but so that EPA itself will be better informed on the toxic picture in this country.

Mr. STAFFORD. Mr. President, again I concur with Senator LAUTENBERG's statements about the title's trade secret provisions, and the intent of Congress to guide EPA in implementing this right-to-know program. The right-to-know program is an important step forward in protecting the environment and public health, and I look forward to its implementation.

Mr. LAUTENBERG. Mr. President, I thank the distinguished chairman for his observations on the right-to-know program. Again, I wish to express my gratitude to Chairman STAFFORD for his support and leadership in crafting the right-to-know provisions and the Superfund reauthorization package.

SUPERFUND

Mr. DOLE. Mr. President, let me indicate that the President signed the Superfund legislation on Air Force One this morning on the way to North Dakota. So we are making progress.

Let me add, Mr. President, I understand he is signing the Superfund primarily on the strength of a letter he received late last evening signed by 50 Senators.

So I want to thank my colleagues who were willing to sign that letter which indicated to the President very properly in my view that if there is an effort next year to expand the program and raise the taxes that we would stand by the President if he were required to veto any such efforts.

So I think the President was pleased to have the letter. I thank my colleagues for their assistance. I think he did the right thing in signing the Superfund.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1330

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

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

Mr. STENNIS. Mr. President, may we have order? This is important.

The PRESIDING OFFICER. The point is well taken. The Senate will be in order.

CONTINUING APPROPRIATIONS, 1987—CONFERENCE REPORT

Mr. DOLE. Mr. President, there has been a lot of good discussion, good-faith discussion, by Members on both sides of the aisle who have an interest in the particular issue before us now, the T-46. An hour and a half ago we were very close to some language that would have satisfied some, but on further study, it became apparent it was not acceptable to the distinguished chairman, the Air Force, and others. So we have to make a decision now, either to spend another 2 or 3 hours trying to reach some agreement or to vote on the Goldwater amendment.

It may be that if it goes back to the House, they will send it right back as it is now. But I would hope that those Senators who have fought in good faith would now let us vote up or down on the Goldwater amendment.

I am still optimistic enough to believe we can complete our work today.

Let me indicate to my colleagues the House is preparing to send us over another continuing resolution which will go until Tuesday midnight.

We do not have that much work to do. We can stay here today and stay here part of tomorrow and we can be out of here easily if we can just resolve this issue.

□ 1340

It has now been 21 hours and 40 minutes that we have been on this issue, one issue. We did have some intervening votes, but for the most part, we have been on this issue.

I know it is important. I am not trying to cut off anyone's rights, but it seems to me we have reached a point where we ought to vote on the Goldwater amendment. The chairman will be up here in just a moment. I think that is a course he would like to adopt. Obviously, if someone wants to discuss it more, we are not going to have a chance to vote on the Goldwater amendment.

The chairman has now arrived and he will make the judgment.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, at this time, I would like to call for the yeas and nays on the Goldwater amendment.

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

The yeas and nays were ordered.

Mr. HATFIELD. Mr. President, I would like to echo what the leader has indicated, the great disappointment that we have gotten so close and yet so far away at this moment to optimize agreement on the Goldwater amendment. I know there are some people who have wanted to vote for some many hours now, 5 or 6 hours. It constantly eludes the participants, reaching that final sign-off position.

We have had, of course, a rather extensive discussion on the Goldwater amendment. There are those who are deeply concerned about the underlying amendment, the Abdnor amendment. That does not lend itself to an easy conclusion, either.

I urge the parties to this to let us move to a conclusion. I urged that last night and, at that time, sought to bring it down to a firm decision, which was obviously not the will of the body, by tabling the underlying amendment.

I must say that in light of the circumstances, I would like to put the body on notice that I shall place that motion again or make that motion again at some point if we have not been able to resolve this in the efforts that are going on and, hopefully, continuing.

Second, I put on notice the parties to this dispute; namely, the Senators from New York State and the Senator from Arizona and others, and the protagonists on the other side—that we have to reach a point where we have had our day in court and then move on with or without one side or both sides being satisfied at all.

I remember Senator Russell, when I first came to the Senate, who had fought the battles on the civil rights issues time after time. He fought them up to the point of cloture. Then, Senator Russell, who had fought diligently for his convictions and for his beliefs, would comment that there comes a time in every Senator's life when his agenda has to be set aside for the will of the Senate, for the institution of the Senate to prevail. And he had utilized all the rights that he had under the rules of the Senate; he had exercised them right up to that point.

I think we are reaching that point now, where the will of the Senate has to prevail, the institution, over and above the individual agendas, as important as they are, and I do not in any way demean the individual agendas.

So I merely urge either a resolution of this through the informal meetings, or I shall at some point again bring the motion to the body for reconsideration of what we voted last night, hoping that we can then get a tabling motion to prevail, to bring down the

whole area of dispute in order to get the Government back on track.

As you know, there have already been actions taken to dismiss Federal employees. So I merely take this time to make this plea on behalf of the institution of Government and the institution of the Senate.

Mr. SIMON. Mr. President, will the Senator from Oregon yield?

Mr. HATFIELD. I am happy to yield to the Senator from Illinois.

Mr. SIMON. I wish to mention on the underlying amendment that Senator DIXON and I have been meeting with Senator ABDNOR. I think we are not too far from getting something worked out on the underlying amendment. So I hope that will not be an obstacle.

Mr. MOYNIHAN. Will the Senator yield?

Mr. HATFIELD. I am happy to yield.

Mr. MOYNIHAN. Just in the same spirit to say, sir, I have here an 8-line agreement which we had reached an hour ago with respect to the amendment in the second degree and which suddenly fell apart in some room off to the side here, which need not have been done.

Mr. HATFIELD. I know the Senator has worked hard, and all participants.

Mr. President, let me raise another possible alternative here. With the information that has just been stated by the Senator from Illinois, it would seem to me that we might look at the point down the line of separating these two issues. There has been a hotline, I believe, on both sides of the aisle suggesting that already. But let me remind the body that if the Senator from South Dakota [Mr. ABDNOR] and others interested in the underlying amendment should reach some kind of accommodation, the Senator from South Dakota is precluded at this time from even modifying his own amendment, according to the Parliamentarian, unless we have unanimous consent or unless we have consent to accept the two issues. It might just be a possibility at some point to accept the Goldwater amendment in the second degree as a freestanding issue, say, from the underlying amendment by the Senator from South Dakota.

□ 1350

Let me remind the body we have two issues really to settle. Settling the Goldwater amendment does not automatically settle the other amendment—well, it does if we vote the Goldwater amendment but there are many who are concerned about the underlying amendment. So we might reach that kind of a solution, too, of separating the two.

Mr. GOLDWATER. Will the Senator yield for a question?

Mr. HATFIELD. Yes, I will be happy to yield.

Mr. GOLDWATER. I just wanted to ask the question of whether or not my amendment being separated from the base amendment would have any effect? I understand that I have to have my amendment on that amendment in order to get it before the body.

Mr. HATFIELD. I say to the Senator the Parliamentarian has informed me that unanimous consent could be entered into that would make the Goldwater amendment an amendment to the House amendment and thereby put the Goldwater amendment in a freestanding position. That would require unanimous consent.

Mr. GOLDWATER. I do not think you will get that.

Mr. HATFIELD. No. I have had fairly good response already. That is why I am not propounding it at this time. But there may be a propitious time sometime down the road to do that.

Mr. GOLDWATER. I do not want my amendment lost or killed because of a technicality.

Mr. HATFIELD. I understand.

Mr. GOLDWATER. I only have been able to attach it to this amendment; it was the only place I could put it.

Mr. HATFIELD. I understand, and I would say that there would be no effort at all to try to short circuit the Senator from Arizona or to deny him any status for his amendment that he now enjoys. It would be a matter merely of a technicality of placing it as an independent amendment on the House amendment, separating it from the Abdnor amendment.

Mr. GOLDWATER. That would take unanimous-consent.

Mr. HATFIELD. It would take unanimous consent. So the Senator is well protected even if it were a fair maneuver.

Mr. STEVENS. Will the Senator yield for a parliamentary inquiry?

Mr. HATFIELD. I will be very happy to yield the floor.

Mr. STEVENS. Mr. President, is this Senator's understanding correct that last evening there was a unanimous-consent agreement entered into that no further amendments would be in order to any amendments of the CR?

The PRESIDING OFFICER. The Senator is correct.

Mr. STEVENS. I would object to any unanimous-consent request today.

Mr. HATFIELD. Would a unanimous consent to place something in the RECORD by an individual Senator be also in that category?

Mr. STEVENS. No. I mean pertaining to this bill.

If the Senator will yield, I have discovered in the authorization bill is a very punitive amendment that was aimed at my State and at this Senator, but it damages one of the most sensitive programs of the Department of Defense, and unless it is amended I shall join with the Senator from New York in full scale on the delay of this bill.

Mr. HATFIELD. That tends to indicate we are moving in the wrong direction, expanding the filibuster rather than narrowing the filibuster.

I think I will yield the floor before any information comes.

The PRESIDING OFFICER. The Chair would note the absense of a quorum. The clerk will call the roll.

Mr. HATFIELD. Mr. President, if there is no further discussion, I would call for a vote on the pending question.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. Is there further debate?

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Might I make a parliamentary inquiry of what the pending business is, what the motion is?

The PRESIDING OFFICER. The question before the Senate is the Goldwater amendment.

Mr. D'AMATO. Mr. President, I move that consideration of the Goldwater amendment to the Abdnor amendment to the amendment in disagreement be postponed until December 29.

Mr. President, the fact is that we have come so close, so very, very close—the Senator from Arizona and all those interested, my distinguished colleague from New York, the entire House of Representatives in terms of those who are interested in this. I believe that we can come to an accord. It is going to take a little giving on both sides, and let me say I do not intend to imply by that that Senator GOLDWATER has not been attempting to meet some of our very real concerns.

The PRESIDING OFFICER. The Senator will suspend. Conversation taking place on the Senate floor is obliterating the voice of the Senator from New York.

The Senator from New York.

Mr. D'AMATO. I thank the Chair.

Mr. President, what Senator MOYNIHAN indicated before happens to be factual. There is an agreement within our grasp. Let me suggest what takes place if we take a vote now. I have no doubt that the position of my distinguished colleague from Arizona will be sustained, overwhelmingly. We have had key votes, test votes on this. This matter will then go back to the House. I have spoken to Representative STRATTON of the Defense Authorization Committee. I have spoken to Representative CHAPPELL, who is the chairman of the Defense Subcommittee on Appropriations, and other of my colleagues in the House. The amendment that the Senator from Arizona puts forth will be rejected by the House of

Representatives, will be sent back to this body and will be started de novo, all over again.

Now, it seems to me, given the fact that we have spent quite a bit of time—everyone knows what their various positions are, what their legitimate concerns are, and they are legitimate concerns expressed by the Air Force, by Senator GOLDWATER, as we talk about the base of Fairchild, can they produce this airplane at a cost level which would be justified in the future. We have attempted to deal with that concern by providing language which would afford a fly-off, a competition which will enable the company to continue in such a way that it would be productive in order to achieve the best possible trainer in the future.

Mr. President, this Senator does not wish to unduly prolong these proceedings. I would suggest that it is simplistic to say that because of the opposition of my colleagues, Senator MOYNIHAN, myself and Senator DECONCINI, and other Members, absent that opposition here on this floor, what has taken place today would not have taken place in any event. What we have is that the House would reject it and we become more intransigent. We were able to convince Chairman CHAPPELL, Representative STRATTON, and others who have expressed strong concern and who are responsible for the legislative language that was passed in the House to accept the accord that we thought we had achieved among ourselves. They have agreed. They have signed off. We are within a matter of degrees, a very few degrees of achieving what I believe would be a salutary situation for this problem.

Mr. President, I am wondering if I might ask in terms of time, what is the status as it related to 2 o'clock being the time for a cloture vote? Is that true? Do I have 30 seconds before that?

The PRESIDING OFFICER. The Chair advises the Senator a cloture vote will occur at 2 p.m.

Mr. D'AMATO. Mr. President, therefore I will be forced of necessity then to relinquish the floor at the cloture vote. Would I then be recognized for the purposes of pursing this motion after the cloture vote?

The PRESIDING OFFICER. The Senator would have no automatic right of recognition following the cloture vote.

Mr. D'AMATO. Let me say up until the Chair advises that the hour of 2 has arrived, Mr. President, we worked very hard and very long in tremendous good faith, and I want to particularly thank the distinguished chairman of the Armed Services Committee, Senator GOLDWATER, for his personal activities in attempting to facilitate an agreement. I am deeply appreciative. I know that this has taken its toll on all the Members. It is not an easy matter for those of us who are considered a minority position in this body to take this action.

Therefore, I am doubly appreciate of the efforts with regard to this matter by the majority leader; the chairman of the Appropriations Committee, Senator HATFIELD; and particularly Senator WARNER and Senator RUDMAN, who have labored to bring together the various forces.

□ 1400

The PRESIDING OFFICER. The Senator will suspend.

CLOTURE MOTION

The PRESIDING OFFICER. The hour of 2 o'clock has arrived. Under the previous order, the hour of 2 p.m. having arrived, the clerk will report the motion to invoke cloture.

Mr. DOLE. Mr. President, I ask unanimous consent that following the cloture motion on the immigration bill, S. 1200, the Senate resume the consideration of amendments in disagreement to House Joint Resolution 738.

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

The clerk will report the cloture motion.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring a close the debate upon the conference report to accompany the bill S. 1200, to amend the Immigration and Nationality Act to effectively control unauthorized immigration to the United States, and for other purposes.

Alan K. Simpson, Robert Dole, Lloyd Bentsen, Jim Sasser, Robert T. Stafford, Bob Packwood, Thad Cochran, Nancy L. Kassebaum, Jake Garn, Slade Gorton, J.R. Biden, Robert C. Byrd, John R. Chafee, Claiborne Pell, J.C. Danforth, and Chuck Grassley.

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

The question is, "Is it the sense of the Senate that debate on the conference report to accompany the bill, S. 1200, to amend the Immigration and Nationality Act to effectively control unauthorized immigration to the United States, shall be brought to a close?"

The yeas and nays are automatic under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Dakota [Mr. ANDREWS], the Senator from North Carolina [Mr. BROYHILL], the Senator from Washington [Mr. EVANS], the Senator from Washington [Mr. GORTON], the Senator from Nevada [Mr. LAXALT], the Senator from Idaho [Mr. SYMMS], and the Senator from Virginia [Mr. TRIBLE] are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina [Mr. BROYHILL], and the Senator from Idaho [Mr. SYMMS] would each vote "nay."

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Ohio [Mr. GLENN], and the Senator from Vermont [Mr. LEAHY] are necessarily absent.

I further announce that, if present and voting, the Senator from Ohio [Mr. GLENN] would vote "yea."

The PRESIDING OFFICER (Mr. DANFORTH). Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 69, nays 21, as follows:

[Rollcall Vote No. 355 Leg.]

YEAS—69

Baucus	Gore	Moynihan
Bentsen	Grassley	Murkowski
Biden	Harkin	Nunn
Bingaman	Hart	Packwood
Boschwitz	Hatfield	Pell
Bradley	Hawkins	Proxmire
Bumpers	Heflin	Pryor
Burdick	Heinz	Riegle
Byrd	Hollings	Rockefeller
Chafee	Johnston	Roth
Chiles	Kassebaum	Sarbanes
D'Amato	Kasten	Sasser
Danforth	Kerry	Simon
DeConcini	Lautenberg	Simpson
Dixon	Levin	Specter
Dodd	Long	Stafford
Dole	Lugar	Stennis
Domenici	Mathias	Stevens
Durenberger	Matsunaga	Thurmond
Eagleton	Mattingly	Wallop
Exon	McConnell	Warner
Ford	Melcher	Weicker
Garn	Metzenbaum	Wilson

NAYS—21

Abdnor	Gramm	McClure
Armstrong	Hatch	Mitchell
Cochran	Hecht	Nickles
Cohen	Helms	Pressler
Cranston	Humphrey	Quayle
Denton	Inouye	Rudman
Goldwater	Kennedy	Zorinsky

NOT VOTING—10

Andrews	Glenn	Symms
Boren	Gorton	Trible
Broyhill	Laxalt	
Evans	Leahy	

□ 1420

The PRESIDING OFFICER. On this vote, the yeas are 69, nays are 21, three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. DOLE. Mr. President, I would hope with that rather decisive vote on cloture we could now get some time agreement on how much debate there will be. But I know the distinguished Senator from Wyoming, Senator SIMPSON, is working on that. We are now back on the amendments in disagreement to House Joint Resolution 738.

Again, I plead with my colleagues, let us vote on something. The drug bill is winging its way over from the House

and reconciliation will be here before long. If we can complete the continuing resolution within the hour and send that back to the House, we still have an opportunity to leave here this evening.

CONTINUING APPROPRIATIONS, 1987—CONFERENCE REPORT

The Senate resumed consideration of the conference report.

The PRESIDING OFFICER. The question recurs on the motion of the Senator from New York [Mr. D'AMATO] to postpone consideration of amendment No. 3477 until December 29, 1986.

Mr. D'AMATO. Mr. President, it would be my hope that we could move on to other business that this body must consider before adjournment and in so doing allow the staffs and those of us who have come so very close to working out a compromise to do just that, to continue that work, to come out with a compromise that will give the opportunity for our Air Force to have the very best possible trainer and to do it in such a manner that the taxpayers' interests are protected.

And that is why, Mr. President, I moved to postpone the consideration to the date of December 29. Some have suggested that maybe we should postpone it to New Year's Eve.

I would hope that we could resolve this matter within a rather short period of time.

I would say this: If given the opportunity to attempt to resolve this, I am not looking to press this amendment or this motion to a vote or have a recorded vote on it. The chairman has indicated quite graciously to me that he would move to table this motion. I am simply going to ask that we move on to some other areas, give us an opportunity to seek to work this situation out. Otherwise, I will be forced to continue this pattern of extensive discourse, as will other of my colleagues.

So I would hope that, Mr. President, we could see a way to allow those of us who are vitally interested, our staff—maybe it is best because I am out here and the staffs are working in the Cloakroom. The interested parties are attempting to come up with a settlement and a resolve of this matter. I hope we can resolve it in such a way that when we take a vote on the issue and finally dispose of it, it is not one that is vain, it is not one that will create a situation with the House which then rejects our actions and sends it back and we find ourselves in the same stalemate.

Mr. GOLDWATER addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. GOLDWATER. Mr. President, I want to say to the Senator from New York once again, we are not debating an airplane. The Air Force does not want it. I wish you could get that through your head.

I am not talking about airplanes. I am talking about the Air Force, and they do not want it. And I am not going to agree to that kind of a motion. I want a vote on my amendment.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I move to table the motion of the Senator from New York and I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oregon [Mr. HATFIELD] to table the motion of the Senator from New York [Mr. D'AMATO].

The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Dakota [Mr. ANDREWS], the Senator from North Carolina [Mr. BROYHILL], the Senator from Washington [Mr. EVANS], the Senator from Washington [Mr. GORTON], the Senator from Nevada [Mr. LAXALT], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

I futher announce that, if present and voting, the Senator from North Carolina [Mr. BROYHILL] and the Senator from Idaho [Mr. SYMMS] would each vote "yea."

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Ohio [Mr. GLENN], and the Senator from Vermont [Mr. LEAHY] are necessarily absent.

I further announce that, if present and voting, the Senator from Ohio [Mr. GLENN] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 81, nays 9, as follows:

[Rollcall Vote No. 356 Leg.]

YEAS—81

Abdnor	Dixon	Heflin
Armstrong	Dodd	Heinz
Baucus	Dole	Helms
Bentsen	Domenici	Hollings
Biden	Durenberger	Humphrey
Bingaman	Eagleton	Inouye
Boschwitz	Exon	Johnston
Bradley	Ford	Kassebaum
Bumpers	Garn	Kasten
Burdick	Goldwater	Kennedy
Byrd	Gramm	Kerry
Chafee	Grassley	Levin
Chiles	Harkin	Long
Cochran	Hart	Lugar
Cohen	Hatch	Matsunaga
Cranston	Hatfield	Mattingly
Danforth	Hawkins	McClure
Denton	Hecht	McConnell
Melcher	Proxmire	Stafford
Metzenbaum	Pryor	Stennis
Mitchell	Quayle	Thurmond
Murkowski	Riegle	Trible
Nickles	Rockefeller	Wallop
Nunn	Roth	Warner
Packwood	Rudman	Weicker
Pell	Simon	Wilson
Pressler	Simpson	Zorinsky

NAYS—9

D'Amato	Lautenberg	Sarbanes
DeConcini	Mathias	Sasser
Gore	Moynihan	Stevens

NOT VOTING—10

Andrews	Glenn	Specter
Boren	Gorton	Symms
Broyhill	Laxalt	
Evans	Leahy	

So the motion to lay on the table the motion of the Senator from New York [Mr. D'AMATO] was agreed to.

□ 1440

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The pending question is the Goldwater amendment No. 3477.

Mr. HATFIELD. Have the yeas and nays been ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. HATFIELD. Mr. President, I believe we are ready to vote.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I would like to continue for a little bit on the GAO report, in which I was involved 2 or 3 hours ago.

The PRESIDING OFFICER. The Senator will withhold until the Senate is in order.

The Senator from Arizona.

Mr. DECONCINI. I thank the Chair.

Mr. President, this report is dated November 8, 1983. The subject of the report is "Evaluation of Contract Award for the Air Force's Next Generation Trainer Aircraft." It is addressed to the Honorable NANCY KASSEBAUM, the Honorable ROBERT DOLE, and the Honorable GLICKMAN, of the House of Representatives.

I went through part of it, Mr. President, setting forth the background and setting forth the objective, scope, and methodology used in this report. I was in the area of "Source Selection Procedures Were Followed."

The PRESIDING OFFICER. If the Senator will suspend, the Senate is not in order.

The Senator from Arizona.

Mr. DECONCINI. I thank the Chair.

Mr. President, I will continue in that particular area.

In the decision paper the Secretary also said that the five evaluation criteria against which the potential sources were measured, in order of importance, were (1) operational utility, (2) readiness and support, (3) life-

cycle cost, (4) design approach, and (5) manufacturing/program management. The Secretary further stated that although the most probable total life-cycle cost of the Fairchild NGT was not the lowest, it was only 1.5 percent higher than the lowest and the difference was more than offset by the superior characteristics of the Fairchild NGT.

The Advisory Council reported to the Secretary that the three competitive contractors—

Satisfied the NGT RFP requirements;

Had comparable 20 year life-cycle costs;

Had negotiated acceptable full-scale development contracts; and

Had the resources necessary to conduct and complete the NGT program.

Cessna, Fairchild, and Rockwell had acceptable proposals, but those of Ensign and Gulfstream were found to be beyond the competitive range and therefore unacceptable.

All five contractor proposals were evaluated by the Evaluation Board. The three within the competitive range received an Evaluation Board evaluation of cost and of all 36 operational, logistical, technical, and manufacturing/management items that were established for evaluation before proposals were received. An overall acceptability rating was given to each of the 36 items for each proposal. The Fairchild proposal received more exceptional ratings than those of Cessna or Rockwell.

The government prepared an estimate of the most probable total life-cycle cost of the program as proposed by each of the three contractors. The Fairchild proposal had the second lowest most probable life-cycle cost and was within 1.5 percent of the lowest. The Evaluation Board presented its evaluations of orginal and revised proposals to the Advisory Council in a briefing format.

Now I want to go, Mr. President, to "Procedure Used by the Evaluation Board to Evaluate the Proposals" in this GAO report.

Special evaluation criteria were established for each of the major evaluation areas. Life-cycle costs were evaluated for reasonableness, realism, and completeness. The remaining 4 areas were subdivided into 36 items which were then subdivided into 156 factors for evaluation.

Factor evaluators, item captains, and area chiefs were designated as members of the Evaluation Board. Factor evaluators prepared narrative factor evaluations for each proposal within the competitive range. Item captains summarized the factor evaluations and prepared item evaluation reports presented to the Advisory Council and incorporated into summary documents prepared for the source selection authority. Area chiefs supervised the item captains to ensure timely and complete evaluation of their respective items. An item evaluation report was prepared for each of the 36 items for each proposal to assess strengths, weaknesses, and risks. Each item was assigned a color coded overall acceptability indicator. Our review of 8 item evaluation reports, selected at random from the 36 item evaluation reports prepared by the Evaluation Board, showed that item strengths, weaknesses, risks, and overall acceptability were evaluated in terms of the criteria, standards, and guidance included in the NGT source selection plan.

ALTERNATIVE SYSTEMS WERE NOT EXCLUDED

Alternative NGT systems were considered during NGT proposal solicitation and evaluation.

Initially, the Air Force intended that only those contractors who successfully completed the NGT concept exploration phase would be solicited during the full-scale development phase. Five contractors, Cessna, Fairchild, General Dynamics, Rockwell, and Vought, successfully performed concept exploration. The Air Force later decided that the NGT RFP would be sent to any offeror who requested a copy in writing. Fourteen NGT full-scale development initial production RFPs were issued. Cessna, Ensign, Fairchild, Gulfsteam, and Rockwell responded. The plan stipulated that all five proposals would be evaluated by the Evaluation Board and all were evaluated.

CONCLUSIONS AND AGENCY COMMENTS

NGT source evaluation and selection were done according to DOD and Air Force instructions and the evaluation criteria in the RFP.

During NGT proposal solicitation and evaluation, consideration of alternative NGT systems was not precluded. The Air Force initially intended to limit participants in the NGT full-scale development competition, but plans were later changed. Competition was expanded by allowing requesting contractors to submit proposals. Five contractors submitted proposals, all of which were evaluated by the Evaluation Board.

The Office of the Secretary of Defense and the Air Force officials who reviewed the report agreed with our findings and conclusions and had no additional comments.

We are sending a copy of this report to the Secretary of the Air Force and to other interested parties.

Mr. President, just like the original report of GAO which the Senator from New York at some length reviewed and which of course is dated May 1986, which goes into an updated and far better explanation of where this whole process is now, this 1983 report is significant in this Senator's opinion because it lays out the background of how the process was put together. To me, it is very important because it was competitive, highly competitive. The November 8, 1983, GAO report substantiates that competitiveness and indicates that procedures were probably followed. So I do not think anybody can question why Fairchild has this contract and any economic problems that may have occurred, I think, have been substantially corrected, as was pointed out in the May 1986 GAO report which the junior Senator from New York went into at great length.

I have now read from two GAO reports. This office has truly recognized the neutral objective. They work for us, Congress. Their recommendations have been very supportive and thoroughly detailed as to support and recommendation for the procurement and continuation of the T-46. I shall also read from another equally fair and nonpartisan office, the Congressional Budget Office.

This particular report is a staff working paper dated March 1986. It is entitled "Alternative For an Air Force Trainer: T-46 or Modified T-37: The Congress of the United States; Congressional Budget Office."

There are the pro forma disclaimers at the beginning and a preface which I think would be interesting, writen by Director Penner. It says:

Should the Congress add funding for the Air Force's new primary trainer, the T-46? Or would modifications to the current trainer, the T-37, suffice? How would such a decision affect the cost and capabilities of the trainer fleet? These will be important questions as the Congress continues debate over the Department of Defense budget for 1987. This analysis by the Congressional Budget Office (CBO) assesses the costs and effects of alternative procurement or modification profiles that could result from these decisions. The study was done at the request of the House Committee on Armed Services. In keeping with CBO's mandate to provide objective analysis, the study contains no recommendations.

Then it states the people involved in the report. The first real page of the report is entitled "Summary," which I would like to share with this eagerly anticipating group of my colleagues here. I shall read to them a bit of this summary, which is quite a few pages, so I am sure there will be a great deal of interest.

Each year the U.S. Air Force trains about 1,200 new pilots. The early days of that training currently take place in a T-37 aircraft.

Each year the U.S. Air Force trains about 2,100 new pilots. Early phases of that training take place in a T-37 aircraft. But the T-37 is old and lacks features the Air Force believes are important. So in 1982 the Air Force contracted with Fairchild Republic Company to produce a new trainer aircraft, the T-46. Fairchild, however, has suffered major losses due to cost overruns and management problems in developing the T-46. The Air Force has also had to hold down its planned spending. For these and possibly other reasons, the Air Force has not put any money into its 1987 budget for further purchases of the T-46 and is considering alternatives.

This paper analyzes the costs and effects of several alternative approaches that meet Air Force trainer needs, including:

Continued procurement of T-46 aircraft;

Major modification of existing T-37 aircraft coupled with purchases of some additional trainer aircraft other than the T-46; and

Minor modifications of the T-37 coupled with purchases of other aircraft.

THE T-46 APPROACH

The T-46 would meet Air Force needs for a new trainer with a new, more capable aircraft. It would have a better engine than the existing T-37, a pressurized cockpit allowing flight at higher altitudes less congested with civilian aircraft, better bad-weather capability, improved ejection seats for safety, and other advantages like improvements in reliability and maintainability. These improvements, the Air Force argues, would allow the T-46 to provide better training for more hours per month than the existing T-37 but at less operating cost per hour.

□ 1500

Costs to design and buy 650 T-46s would total about $2.6 billion, more than the costs to modify-the T-37s. Costs to operate the T-46 would however, be lower than the T-37. Thus 20-year costs for the T-46 would total about $6.1 billion (see the Summary Table and Alternative I in the text). These costs include investment and costs to operate the fleet for 20 years (1987-2006), discounted at an annual real rate of 4 percent. (Alternative discount rates of 3 and 5 percent do not alter the relative rankings of the options considered in most cases.)

There is considerable risk of growth in T-46 investment costs, however. These investment costs reflect the funding that was included in the 1986 budget submission. Fairchild's cost difficulties in lot 1 of production suggest that actual investment costs could be higher than those assumed here, though it is difficult to assess the amount of the increase.

MAJOR MODIFICATION OF THE T-37

An alternative approach would buy no more T-46s instead make major modifications of the T-37 to give it many of the same capabilities as the T-46. These would include altering it to extend its service life into the next century, providing a new engine, pressurizing its cockpit, and improving its ejection seat and up-grading its avionics. In addition, this approach entails buying 100 of a new trainer to offset the limited size of the T-37 fleet. For specificity in costing, the new trainer is assumed to be additional purchases of the TTB trainer aircraft that the Air Force already plans to buy for other missions.

This option would eventually meet all Air Force requirements for training capacity with a modified T-37 designed to be nearly as capable as the T-46. It is not, however, identical in capability to the T-46 approach. Most importantly, this approach would not meet all needs until the mid or late 1990s because of the time needed to design and implement modifications and to buy the new TTB aircraft. The T-46—if it stays on the schedule assumed in last year's budget—would avoid most near-term shortfalls.

Given Air Force assumptions about the "utilization" hours that modified T-37s would be flown each month, total costs of this approach would be similar to those for the T-46, though investment costs would be less. This approach would cost much less in investment over the next five years than continuing to buy the T-46 because it would take more time to accomplish the modifications and buy TTB aircraft than to buy new T-46s that are already designed and under construction.

(Mr. COCHRAN assumed the chair.)

Mr. DECONCINI. I want to thank the Senator from Kentucky for giving me a very important message about my quality of life and I am not going to put that in the RECORD, but the Senator is correct.

I thank the Senator.

Let me continue because I know the Senator from Kentucky wants this information and I would not want him to be without it.

Total investment costs for this option would also be less than for the T-46 by 23 percent. Twenty-year costs, however, would be 2 percent higher because investment savings are offset by higher operating costs (see Summary Table and Alternative IV A in the text).

On the other hand, if the Air Force obtained improvements in utilization similar to those it expects for the T-46, this option would be substantially cheaper in terms of total investment (46 percent) and in terms of 20-year costs (16 percent). (See Summary Table and Alternative IV B in the text.) Currently, the Air Force believes that the T-46 can be operated 60 hours per month, but that the T-37—even though extensively improved—could not get above its current level of 45 hours per month. Since many of the factors that lead to assumed improvements in utilization of the T-46 are also part of this major modification, it would seem reasonable to expect some improvement in the utilization of the modified T-37, though it might be difficult to achieve 60 hours of monthly utilization. Absent a good assessment of potential utilization, this analysis shows both cases. In both cases, there should be less uncertainty about T-37 operating costs than about the T-46 because the Air Force has had extensive experience with the plane.

MINOR MODIFICATIONS OF THE T-37

If funds are stringent over the next few years, Air Force needs could be met at least partially through less extensive modifications of the T-37, such as modifications necessary to extend the life of the aircraft or those plus new engines. While these alternatives would be 35 to 69 percent cheaper in terms of total investment than continuing with the T-46 or making major modifications of the T-37, they would only be 3 percent to 12 percent cheaper in terms of 20-year costs as lower investment costs are offset by higher operating costs (see Summary Table and Alternatives I and II in the text). Moreover, in the long run, past the 20 years of this analysis, the advantages of lower investment costs would be outweighed by higher operating costs for these alternatives. Also, these more limited modifications would not provide the improvements in safety and utilization that the Air Force believes are important.

Mr. President, I ask unanimous consent that a summary table entitled "Comparison of Alternatives" be printed in the RECORD.

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

SUMMARY TABLE.—COMPARISON OF ALTERNATIVES

Alternative	Alternative number in paper	Investment costs		20-yr costs [1]
		Next 5 yrs [3]	Total [2]	
Continue buying the T-46.....	I	2.7	2.6	6.1
Major modifications of the T-37 plus some new aircraft:				
Assuming current T-37 utilization.	IVA	.4	2.0	6.2
Assuming higher utilization.	IVB	.4	1.4	5.1
Minor modifications of the T-37 plus some new aircraft:				
Extending service life only.	II	.1	0.8	5.4
Extending service life and reengening.	III	.3	1.7	5.9

[1] In billions of 1986 dollars discounted at 4 percent.
[2] In billions of 1986 dollars.
[3] In billions of current dollars.

Mr. DECONCINI. Now, Mr. President, I think that clearly points out the great advantages that having the T-46 move ahead would bring to our national security and, of course, to the defense of this country.

It is important, Mr. President, to realize that the Air Force has money constraint problems, and we all understand that, and the Air Force has decided—only for this fiscal year, I might point out, because they have requested funds for this all the other years—not to request funds for this aircraft and yet to continue to advance and expand the F-15 and the F-16.

Now, that is an interesting decision they have made because those are the most sophisticated flying machines in the world and they require a great deal of training. Of course, where do we train these pilots? We train them in the T-37. We have just indicated through this report that there are certain misgivings about continuation of that, certainly without major modifications which would take some period of time, a commitment for a lot of money to continue to use the T-37.

So going to the T-46 would satisfy this and, quite frankly, ensure the safety of our pilots. What can be more important than taking a new pilot or a new officer in the Air Force and thrusting them into this very technical field, with high proficiency needed and have them launch into a trainer that is 25 years old, that has inadequate avionics, cannot go above 25,000 feet, even in the area of Arizona where they are trained, in some of the busiest airways now because of the tremendous commercial traffic in that area. We are asking them to continue to use a very antiquated trainer. So there is ample need already to proceed at least as we have talked before in the area of compromise as to the 1986 funds.

□ 1510

Now I want to read section 1 of this Congressional Budget Office report, called the introduction:

SECTION I. INTRODUCTION

In 1982, the Air Force contracted with Fairchild Republic Company to begin producing a new trainer aircraft, the T-46. Fairchild, however, has faced problems developing the aircraft. Fairchild's costs for the first lot of 10 T-46 aircraft will exceed the amount budgeted by about 80 percent (an excess that Fairchild absorbed), and last year Fairchild had many discrepancies on a contractor review. For this reason, because of the fiscally constrained budget environment, and possibly for other reasons, the Air Force has not put any money into its 1987 budget for further purchases of the T-46. Instead, the service is considering alternatives to continued production of the T-46.

Some in the Congress have expressed strong preferences in regard to this program. In 1985, for example, the conference report of the House and Senate Appropriations Committees on the 1986 appropriation for the Department of Defense stated, "The conferees expect the Air Force to budget for and procure T-46 Aircraft in fiscal year 1987, where firm fixed price contract op-

tions are available, and in subsequent years to meet this critical and well justified requirement."

This paper analyzes the costs and effects of further production of the T-46 and other alternatives. After a background discussion about the uses of trainer aircraft, the paper analyzes requirements for trainer aircraft, for other aircraft that would be candidates for acceptance, and the costs and benefits of alternative approaches.

SECTION II. USES OF TRAINER AIRCRAFT

The Air Force has several programs that use trainer aircraft; the largest trains new U.S. pilots to replace departing pilots and to support increases in force structure. This training is called undergraduate pilot training (UPT) and is carried out by the Air Training Command (ATC). ATC also uses aircraft to train navigators and instructor pilots, provides additional training to copilots, and trains some NATO pilots.

Undergraduate Pilot Training

Before entering UPT, pilot candidates learn to fly a simple, propeller-driven T-41 aircraft during screening programs. Those who pass the screening go on to the "primary" stage of UPT and fly the T-37 aircraft at one of five Air Force training bases. The current training syllabus requires 76 flight hours on the T-37, during which a student pilot learns to fly the T-37, acquires some simple navigational skills, and engages in some formation flying. Students also spend about 33 hours using flight simulators.

About 86 percent of student pilots complete the primary phase and proceed to the "basic" phase of UPT, flying an average of 104 hours in the T-38—a more complicated and faster airplane—and an additional 34 hours on flight simulators. Training on the T-38 is similar to that on the T-37 though it includes more instrument and formation flying.

Graduates of the basic phase—about 94 percent of those entering it—receive their "wings" and proceed to their assigned operational commands. There they receive on-the-job training in operational aircraft.

In 1985, the total cost of putting a person through UPT was $340,000. In that year, about 1,800 active Air Force officers graduated from UPT. Two to three hundred others also graduate annually from UPT, including Guard and Reserve pesonnel and foreign students who do not fall under the NATO program mentioned above.

Other Uses

In addition to the UPT program, ATC provides T-37 aircraft to train Strategic Air Command copilots, who receive only limited flight hours as copilots of bombers and tankers. The Air Force believes that differences in operating costs make this a useful program. For example, B-52H costs per flying hour were about $15,000 in 1985 in comparison with 1986 costs of about $1,100 for the T-37. ATC also has an undergraduate navigator training program, that uses T-37 trainer aircraft. A Joint US-NATO pilot training program also increases aircraft requirements, though the Europeans provide some aircraft. Instructor pilots for each of these programs must be trained as well.

SECTION III. TRAINER REQUIREMENTS

Quantification of the requirements for trainer aircraft depends basically on the number of hours of training required per pilot and the hours per month that a trainer aircraft can be flown. Estimates below reflect the following key assumptions made by the Air Force:

Undergraduate pilot training will be provided to about 1,700 active pilots per year over the next five years, slightly down from an average of about 1,740 for the period 1981 through 1985;

Training hours per pilot for undergraduate pilot training will increase to about 200 from the current 180 hours, reflecting the revised syllabus discussed below;

Requirements are expressed in terms of T-37 aircraft, and so assume 45 hours of operation per aircraft per month.

Mr. President, I ask unanimous consent to have a table printed in the RECORD.

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

TABLE 1.—AIRCRAFT REQUIREMENTS, 1987–95

Program	1987	1988	1989	1990	1991	1992	1993	1994	1995
Undergraduate pilot training (UPT)	409	423	425	436	448	464	464	464	464
Instructor pilot training	49	49	49	49	49	49	49	49	49
NATO program	86	96	84	83	83	83	83	83	83
Undergraduate navigator training (UNT)	31	29	28	28	28	28	28	28	28
Accelerated copilot enrichment (ACE) (for Strategic Air Command)	62	62	62	62	62	62	62	62	62
Total requirement	637	659	648	658	670	686	686	686	686

Source: Congressional Budget Office estimates based on Air Force flying hour program

Assumptions: 8 percent additional aircraft are added for the maintenance pipeline, aircraft are operated 11.7 mo per year for all programs except ACE, for which 12 mo of operation are assumed, aircraft utilization rate is 45 hours per month.

Mr. DECONCINI. Mr. President, I continue reading:

THE TRAINER SHORTFALL

Figure 1 compares requirements for trainer aircraft with the projected inventory. (Table 1 breaks out the total requirements into the various programs that generate them.) As can be seen, the service had a shortfall equivalent to about 10 T-37 aircraft at the end of 1985. That shortfall increases gradually in the late 1980's as the Air Force increases its planned flying hours and the projected inventory of T-37's falls slightly because of peacetime accidents.[1] The shortfall increases very rapidly by the early 1990's when large numbers of T-37's reach the end of the 18,000-hour, 36-year life and are scheduled to be retired.

IMPORTANCE OF THE SHORTFALL

If the Air Force does nothing to add to its inventory of aircraft, one or more of several actions will have to be taken: some training programs described above will have to be terminated; the flying hours in the current syllabus will have to be reduced, rather than increased as is currently planned; or pilot production will have to go down. Any such changes, the Air Force argues, will reduce operational effectiveness.

The Air Force indicates, for example, that history shows reductions in flying hours per pilot would greatly harm training. The current syllabus is about 10 hours above the Air Force's historical minimum of 170 hours per pilot in 1977. Air Training Command states that commands receiving graduates at that time found some of them unable to pilot operational aircraft without additional training. Particular deficiencies were found in instrument flying, which had been removed from the flying syllabus. These deficiencies had to be made up with additional training in operational aircraft at substantially higher costs per flight hour. The Air Force also believes that additional simulator flying would not take the place of actual flying hours, on the basis of experience in 1977.

Rather than decreasing flying hours per pilot, the Air Force argues that they should be increased from their current 180 hours to about 200. The desired increase is associated with a revision in the training syllabus. Currently, those who complete the primary phase of undergraduate pilot training go on to basic training in the higher-performance T-38. Under the revised syllabus, those who will eventually fly high-performance aircraft—including fighter, attack, and reconnaissance aircraft—will continue to train on the T-38 for the basic phase. But those who will eventually fly tanker, transport, or bomber aircraft will not receive basic training on the T-38 but rather on a new aircraft—yet to be purchased—that is designated the tanker-transport-bomber aircraft or TTB. The net result of this revision of the syllabus will be an increase in flying hours per pilot.

Nor can other programs using T-37 aircraft be cancelled to reduce requirements, the Air Force argues. For example, should the Strategic Air Command be forced to cancel its program that uses T-37s to provide training to bomber and tanker copilots, then either the copilots would be less able or they would have to train an operational aircraft at substantially higher costs per flight hour.

Finally, pilot production probably cannot be further reduced to overcome a trainer shortfall. Direct production rates of undergraduate active Air Force pilots are assumed to be slightly lower over the next five years than they have been over the past five years, averaging about 1,700 pilots per year compared to an average of about 1,740 for 1981 through 1985. Further reduction might therefore affect capability, especially if a recent trend toward lower pilot retention continues.

As this discussion suggests, the Air Force appears to have reasonable arguments for all of the T-37 requirements displayed in Figure 1. On the other hand, there may be some flexibility. For instance, Figure 1 shows that the Air Force is currently about 10 planes or 2 percent of the T-37 aircraft that it requires. Yet training is being conducted, apparently successfully, though probably with more strain on trainers and trainees than if more aircraft were available. It may also be possible to delay or avoid planned increases in flying hours, thus minimizing the shortfall. This paper uses the requirements in Figure 1 as a basis for assessing alternatives but recognizes the possibility of some flexibility.

[1] The rapid decline in T-37 inventory from 1986 to 1987 resulted from a transfer of 29 T-37's to Tactical Air Command [TAC] to perform TAC's forward air control mission.

SECTION IV. AIRCRAFT THAT COULD MEET TRAINING REQUIREMENTS

Numerous types of aircraft could meet Air Force needs. This section briefly describes the aircraft analyzed in this paper. Other might also meet these needs but are not analyzed here for reasons noted at the close of the paper.

The T-37

The current primary jet trainer, the T-37 is a twin-engine, turbojet, two-seat airplane. The T-37's two seats are located side by side, a configuration the Air Force wants because of the advantages of learning by watching. It has a top speed of 370 knots and a maximum altitude of 25,000 feet. (Table 2 provides a description of the characteristics of current and planned trainer aircraft.) The altitude limitation is due at least in part to the fact that the plane is not pressurized.

T-37s have been in the Air Force inventory since 1956, when the service began buying a total of about 950. Of this number, about 610 remain in the U.S. inventory; 35 German T-37s are also used by the command in the NATO training program.

The T-46

In the late 1970s the Air Force became concerned that the T-37 inventory would be insufficient to meet its requirements. In addition to a shortage in numbers of aircraft, the service was concerned about operational deficiencies with the aircraft itself and that the plane would soon reach the end of its service life.

History.—The Air Force conducts its Undergraduate Pilot Training at five training bases. The airspace around them, according to the service, is becoming increasingly congested with civilian traffic, causing missions to be aborted because of aerial traffic jams. Other aborts occur because of weather conditions. If the primary trainer was pressurized, the service reasons, training could take place at higher altitudes, where fewer civilian aircraft fly. And if its range was increased, pilots could plan to divert to bases with better weather conditions, increasing the number of flights that could be made in inclement weather.

In addition to these factors there were other problems, associated in part with the age of the T-37. Among them:

Limited ejection seat capabilities—the T-37's ejection seat is not designed to work at certain low speeds and altitudes;

Lack of commonality with current instrumentation—the T-37 does not, for example, have the digital instrumentation common in today's aircraft;

Excessive fuel requirements and the number of hours needed to maintain the arcraft; and

Excessive noise.

In 1979 the Air Force issued a "statement of need" for a new trainer. The plane envisioned would continue to have the side-by-side seating and twin jet engines of the T-37, but the deficiencies noted above would be met. After a hiatus of three years during which the service answered Congressional concerns that this Air Force requirement could be met by buying a Navy trainer, Fairchild Republic Company received the contract to build the "next generation trainer," eventually designated the T-46.

Description.—The T-46 is a twin turbofan-engine plane with side-by-side seating (see Table 2). It has a range of about 1,200 nautical miles and a pressurized cockpit. It also has improved ejection seats and instrumentation to meet the Air Force statement of need. In addition, the T-46 is designed to use less fuel per mile than the T-37 and to be easier to maintain and to refuel. For these reasons, the T-46 is expected to have lower operting costs than the T-37.

Mr. President, I ask unanimous consent to have a table printed in the RECORD.

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

TABLE 2.—AIR FORCE TRAINER AIRCRAFT PROFILES

	T-37 current primary trainer	T-46 primary trainer replacement	TTB basic trainer for multiengine pilots
Inventory at end of procurement	610 [1]	650[2]	200.[3]
First entrance to fleet	Late 1950's	Late 1980's	Early 1990's after off-the-shelf commercial procurement.
Operational characteristics:			
Range	500 nautical miles [4]	1,210 nautical miles	To be determined.
Speed	370 knots	430 knots	Do.
Engines:			
Number	2	2	Multiple.
Type	J-69 turbojet	F-109 Turbofan	Turbofan.
Maximum altitude	25,000 deet	47,000 feet	To be determined.
Accommodation	2	2	3.
Seating	Side by side	Side by side	2 side by side; 1 centerline.

[1] Total remaining in the U.S. inventory in 1985.
[2] Procurement total in fiscal year 1986 budget submission. Budget for 1987 contains no further procurement.
[3] Total procurement.
[4] Source: Cessna Aircraft Co.

Sources: Jane's All the World's Aircraft, 1974–75 and 1985–86 editions, and U.S. Air Force.

Mr. DECONCINI. I continue reading:

In 1985, 10 T-46s were purchased at a total program cost of $200 million, and these are currently being produced.[3] Another $260 million in total program costs to buy 33 more T-46s was authorized and appropriated by the Congress in 1986.

Despite these investments, the 1987 budget contains no request for funding for this aircraft, and the Air Force is undecided as to whether it will use the $260 milion provided last year by the Congress for continued T-46 development and procurement for that purpose.[4] While the Air Force had originally intended to buy 650 T-46s through 1990, cost growth, schedule slippage, and management problems at Fairchild Republic have made the survival of the program uncertain, though the Air Force maintains that its major concern is the current constrained budget environment. Lot 1, the 10 aircraft funded in 1985, will cost Fairchild about 80 percent more to produce than the company budgeted. Production is currently eight months behind schedule. Fairchild maintains that many of its problems have been solved, though it acknowledges that the schedule and costs associated with last year's budget are optimistic.

A Modified T-37 Aircraft

Another approach to meeting trainer requirements would involve modifying the T-37 aircraft. These modifications would extend its life for another 10,000 to 15,000 flight hours, enough to allow it to remain in the inventory into the next century at current rates of utilization. The modifications would be done by the winner of a future competition.

In addition to extending its life, modifying the T-37 could add capabilities desired by the Air Force. Three approaches have been proposed:

Service life extension, including such items as strengthening the airframe and tail;

Service life extension plus reengining; and

Service life extension, reengining, and upgrading of capabilities to more closely meet the Air Force statement of need.

The Tanker-Transport-Bomber Trainer (TTB)

The TTB is another aircraft that could meet some of the needs now met by the T-37; indeed, the Air Force expects to buy 200 of them, though they are intended for the basic phase of undergradute pilot training. As was noted above, the Air Force intends to modify the syllabus for its basic phase of undergraduate pilot training. Those pilots who will eventually fly tankers, transport aircraft, or bombers will no longer train on the higher-performance T-38 during the basic phase of undergraduate training; instead they will train on a new aircraft, the TTB. But additional TTBs would meet other needs relevant to this paper, such as the Strategic Air Command's need to train its copilots.

The exact specifications for the TTB, which the Air Force does not intend to begin purchasing until 1989, are not yet firm. Currently, however, it is intended to be an off-the-shelf aircraft similar to those used for corporate transportation. The TTB will, at a minimum, contain multi-engines and three seats.

[3] Total program costs include procurement and research and development funding and long-lead funding for the following year. Procurement costs in each of these years were $125 million and $212 million respectively (also including long-lead funding).

[4] Indeed, the Procurement Programs annex to the 1987 budget contains no funds in fiscal 1986 for the plane.

SECTION V. ALTERNATIVES THAT WOULD MEET TRAINING NEEDS

Several packages of aircraft could meet Air Force needs. Alternatives considered in this analysis include buying the T-46 aircraft, as the Air Force originally planned, or modifying the existing T-37 fleet of trainers coupled with the purchase of some new aircraft.

All the alternatives discussed in this section would eventually meet Air Force training needs, though some of them would leave the Air Force short of trainers for the next few years at least. All the options would also add to the proposed Administration budget, which included no funds for primary trainer aircraft. Costs and other data are generally based on Air Force rather than contractor data.

Mr. President, I ask unanimous consent to have tables printed in the RECORD.

There being no objection, the tables were ordered to be printed in the RECORD, as follow:

TABLE 3.—DESCRIPTION OF ALTERNATIVES

	Alternatives	Aircraft	Total procurement quantity		Monthly hours of utilization	Squadrons/ PAA per year [1]
			Next 5 years	Total		
I.	Continue T-46 procurement	T-46	607	650	60	7/68
II.	Modify T-37 to extend service life	T-37	280	645	45	8/68
		TTB	0	100		1/87
III.	Modify, and reengine T-37	T-37	136	645	45	8/68
		TTB	0	100		1/87
IVA.	Modify, reengine, and upgrade T-37	T-37	136	645	45	8/68
		TTB	0	100		1/87
IVB.	With higher utilization	T-37	136	645	60	7/68

[1] Because of the differing utilization rates for planes, CBO assumed that differing force sizes would need to be operated in order to fly the same number of hours. Primary Aircraft Authorization [PAA] is the number of aircraft per squadron.

TABLE 4.—INVESTMENT COSTS OF ALTERNATIVES I–IV [1]

[All costs are in billions]

	Alternatives		Investment costs 1987–91 (in current dollars)						Total investment costs	
			1987	1988	1989	1990	1991	1987–91	In current dollars	In 1986 dollars
I.	Continue T-46 procurement	Quantity	99	144	144	144	76	607	650	650
		Cost	0.6	0.7	0.6	0.6	0.3	2.7	[2] 2.9	[2] 2.6
II.	Modify T-37 to extend service life	Quantity	0	0	24	112	144	280	[3] 745	[3] 745
		Cost	0	[4]	[4]	[4]	[4]	0.1	[3] 1.1	[3] 0.8
III.	Modify and reegine T-37	Quantity	0	0	0	24	112	136	[3] 745	[3] 745
		Cost	0	[4]	[4]	0.1	0.2	0.3	[3] [5] 2.2	[3] [5] 1.7
IVA.	Modify, reengine, and upgrade T-37	Quantity	0	0	0	24	112	136	[3] 745	[3] 745
		Cost	0	[4]	[4]	0.1	0.3	0.4	[3] [5] 2.6	[3] [5] 2.0
IVB.	With higher utilization	Quantity	0	0	0	24	112	136	645	645
		Cost	0	[4]	[4]	0.1	0.3	0.4	[5] 1.7	[5] 1.4

[1] Numbers may not add to totals because of rounding.
[2] Estimate includes $0.3 billion provided by the Congress in 1986 for procurement of 33 aircraft, but excludes funding for 1985 and prior years as sunk costs.
[3] Cost and quantity includes funding for 645 T-37 modifications and 100 TTB aircraft. TTB costs total $0.6 billion in constant 1986 dollars and $0.9 billion in current dollars. As CBO assumed that TTB procurement would be added to the end of the current profile, five-year costs contain no TTB funding.
[4] Less than 100 million.
[5] Includes about $0.6 million in 1986 to begin engineering estimates.

Source: Congressional Budget Office estimates from fiscal year 1986 budget submission and Air Force data.

Mr. DECONCINI. I read further:

ALTERNATIVE I: CONTINUE BUYING T-46 AIRCRAFT

The Congress could continue buying T-46 aircraft to meet Air Training Command requirements for additional aircraft, and to solve the problem of T-37 deficiencies. This alternative assumes that 607 T-46 aircraft are bought over the next five years. Thus it returns to last year's Administration program (see Table 3). Informal discussions have suggested that the Air Force is considering delaying the program and buying substantially fewer T-46s over the next few years, but detailed data needed to analyze this option were not available.

The major advantage of this alternative is that it would meet ATC's aircraft needs with new, more capable planes. The T-46, according to ATC, would have a higher utilization rate—60 hours per month in comparison to the T-37's 45 hours—because it is easier to maintain and avoids limits on utilization such as those caused by airspace congestion or weather. Thus fewer aircraft would be needed to meet requirements. The plane is also projected to have substantially lower operating costs than the current aircraft because of lower costs for fuel and maintenance.

The pressurization of the new T-46 trainer would moderate potential problems associated with airspace congestion and make flying a less taxing physiological experience for students and pilots. The T-46 should also be safer because its ejection seats would function in almost all of the flight envelope.

The major disadvantage is that the alternative would be expensive in the near term. Research and procurement would require at least $0.6 billion in additional funding in 1987, and $2.7 billion over the next five years (see Table 4). These costs are based on last year's Administration budget. Actual procurement costs for the T-46 could be higher. As was noted above, Fairchild's costs for Lot 1 of the T-46 will exceed the contractor's budget by about 80 percent; recurring costs for Lot 1—which might most affect future procurement—will exceed the budget by about 30 percent. Since Fairchild's costs account for about half the total aircraft cost (the rest pays for the engines and other equipment), the experience with Lot 1 might suggest that costs could increase above those shown by 15 to more than 30 percent. Costs could also increase further if the Air Force decides to buy T-46s more slowly.

While near-term costs of investment are important, the longer-run costs of decisions are also important. Table 5 shows twenty-year costs for the T-46 option, defined as costs over the next 20-years (1987-2006) to buy T-46 aircraft and to operate the T-46s plus T-37s until they are replaced. An Air Force model, using Air Force and CBO inputs, suggests that each T-46 will cost about $0.5 million a year to operate once fully in service.[5] This implies that the cost to buy 650 T-46s and to operate ATC's primary trainer fleet for 20 years amounts to about $6.1 billion.

While these 20-year costs are a reasonable guide to long-term costs, the long time over which they are estimated causes them to be somewhat uncertain. One source of uncertainty is the discount rate that is used to reflect the preference for money now rather than later. The costs shown above are discounted in real terms (1986 dollars) at a rate of 4 percent a year.[6] The absolute values for the costs are very sensitive to this rate. A 1 percent change in the rate yields a $300 mil-

[5] The Air Force provided inputs that enabled CBO to arrive at a cost for each flying hour. Assumptions about the number of hours flown and the number of squadrons operated were calculated by CBO based on various assumptions about utilization rates.

[6] Discounting is a way to calculate, in today's dollars, the value of a future expenditure or future stream of annual expenditures—in this case, investment and operating costs. The result is called present value. A future expenditure is discounted to its present value using the following formula: Present Value=Future Value/$(1+i)^n$, Where n=the number of years between the present year and the year in which the expenditure is made, and i=the discount rate. The discount rate used in this analysis is 4 percent in real terms.

lion change in the total cost for this alternative. Thus, at a lower discount rate of 3 percent, the alternative costs would total $6.4 billion; at 5 percent, costs would be $5.8 billion.[7] Tables 1 and 2 in Appendix B show twenty-year costs of all the alternatives at 3 and 5 percent discount rates.) Relative rankings of options are less affected.

Nor are the discount rates the only source of uncertainty. Should T-46 investment costs increase as earlier discussed, 20-year costs would be substantially higher. Operating costs could also charge. The Air Force has never operated a T-46 in an operational setting and so has no actual cost data. The operating costs in Table 5 are estimates made during development; such estimates are frequently optimistic. Fairchild argues, however, that a more detailed modeling of operating costs for T-46 than was originally done at source selection would substantiate, even reduce, these estimates. Additionally, operating costs are affected by factors like the price of fuel for which estimates are speculative, though the results of this analysis are relatively insensitive to small changes in fuel prices.

ALTERNATIVE II: EXTEND THE SERVICE LIFE OF THE T-37

Because of the expense of Alternmative I, and possibly concern over Fairchild's operating problems, the Congress might consider other options to meet Air Force trainer needs. It might, for example, choose to forego procurement of the T-46 trainer aircraft and instead continue to rely mostly on the T-37, supplemented by some new aircraft to meet current and expected shortages. Specifically, DoD would purchase no more T-46s, canceling Lot 2 of the 1986 buy and all further purchases. Instead, it would undertake six basic modifications would include strengthening the tail section and the wings of the plane plus other alteration (see Appendix A for a detailed description). These modifications would, according to the Air Force, extend the service life of the T-37 by 10,000 to 15,000 hours, allowing it to fly—at current rates of utilization—for another 20 years.

As was noted above, however, the existing fleet of T-37 aircraft does not meet all current Air Force needs, and shortages would grow. To meet these shortages, this option calls for the purchase of about 100 new aircraft which, for specificity in costing, are assumed to be the TTB aircraft planned by the Air Force.[8] These 100 TTBs would be needed in addition to those purchased for other Air Force missions. Under this option, the 100 TTBs would be purchased in the 1990s, after other TTB needs were met. The TTB aircraft could be used, for example, by the Strategic Air Command for its copilot training, thus freeing the T-37s now used in that ACE mission to meet training shortfalls.

The TTB would not be the only aircraft that could be purchased, and its costs might be higher than other alternatives. For example, Cessna argues that the costs of buying new T-37s (the so-called new technology T-37 that contains the additions in capability discussed in Alternative IV) would be lower than those assumed here, and that operating costs of new T-37s could be substantially lower than those of the T-39, which was used as a proxy for the TTB. CBO is unable to estimate the effects of these alternative assumptions because of time constraints and the absence of Air Force funding estimates.

The major advantage of this alternative is that it would be relatively inexpensive in the near term, costing approximately $100 million over the next five years. Little or no funding would be required in 1987 because this modification is relatively simple and could be designed and implemented before T-37s begin to reach the end of their service lives, even if funding did not begin until 1988.[9] Near-term costs would be low because this alternative's modifications would be relatively cheap and because the additional 100 TTB aircraft would not be purchased until the 1990s. Total investment cost would be about $0.8 billion excluding inflation, still much less than under Alternative I. Modification costs for this option are based on estimates provided by the San Antonio Air Logistics Center.

While near-term costs would be substantially lower than those for Alternative I, total discounted 20-year costs of this alternative would be about $5.4 billion, lower by only 11 percent than under Alternative I. This is because the T-37's lower investment costs offset the higher operating costs of the plane and because the costs of buying and operating the additional 100 TTB aircraft as well as the additional squadron of T-37 aircraft occur in the mid-to-late 1990s.[10] Over the very long run—past the 20 years of this analysis—the option's higher operating costs should offset investment costs and yield a higher life cycle cost. As with Alternative I, estimated operating costs are based on an Air Force model and use Air Force and CBO input factors. (Air Force input factors assume a constant price per gallon of gasoline. If these prices were to fall, the T-37s more fuel-inefficient engine would be at less of a disadvantage—though the impact on the overall ranking of options is slight.)

Though this alternative costs less in the 20-year period of the analysis, it does not meet the performance requirements of the T-46. Specifically, T-37s would still be noisy, unpressurized, and unable to fly in bad weather; their ejection seats would still be unusable in certain parts of the flight envelope. Should ATC's concerns about increasing civilian traffic materialize, training usage also could fall because these modified T-37s would not be able to fly at altitudes that are less crowded but require pressurization. In addition, T-37s under this alternative might continue to be slightly underpowered. This would make it difficult for a T-37 that had lost the use of one engine to gain altitude on a hot day, which poses a potential safety problem, especially when combined with the ejection-seat limitation.[11]

In addition, the estimated modification costs of this alternative may be too low. The costs given were based on estimates from Kelly Air Force Base, but other estimates from the Air Training Command, which included upgrades to the J-69 engine, were about 50 percent higher than Kelly's. Though inclusion of ATC's estimates would not be likely to change the ranking of the alternatives, they suggest some uncertainty in these costs as well.

Moreover, this alternative would continue to rely on an old aircraft. The T-37s would be expected to remain in the inventory until many were 40 to 50 years old. It is difficult to appraise the reliability of such old aircraft, since the Air Force has had little experience operating airframes of that vintage.

Finally, this option would not solve the near-term shortage of trainer acircraft. That shortfall would remain until the mid-1990s, when new TTB aircraft enter the inventory.[12] Indeed, the near-term shortfall could be exacerbated by removal of T-37s for modification.

In sum, this option's main advantage is that it would cost little in the near term. While this might be important in a period of intense fiscal restraint, the approach would fail to solve many of the problems that led the Air Force to buy a new trainer.

ALTERNATIVE III: REENGINE AND EXTEND THE SERVICE LIFE OF THE T-37

To address some of these problems, Alternative III would perform the modifications described in Alternative II plus reengining each T-37 with the Garrett F109 turbofan engine, the same engine planned for the T-46. As in Alternative II, 100 new TTB aircraft would be purchased.

This alternative addresses some of the performance concerns of the ATC. Modifications to extend service life would allow the aircraft to operate an additional 10,000 to 15,000 hours, as in Alternative II. In addition, reengining should allow the aircraft to meet ATC's safety concerns relating to single-engine performance during hot weather while also reducing fuel usage and noise levels. Operating costs for a reengined T-37 should also be lower, although not as low for a new T-46

Investment for this option would be more expensive than in Alternative II but less than in Alternative I. Investment costs would be $0.3 billion over the next five years. Little or no funding would be required in 1987, because of the lead time necessary to design the modifications, but an additional $0.6 million might have to reprogrammed in 1986 to allow engineering ef-

[7] Some uncertainty exists concerning the appropriate values for this rate. For a discussion of discount rates, see Congressional Budget Office, "Pricing Options for the Space Shuttle," (March 1985), p. 15. As the rates relate to the assumed real interest rate which is currently projected by CBO to fall, the analysis also provides a calculation at 3 percent. See Congressional Budget Office, "The Economic and Budget Outlook: Fiscal Years 1987-1991," pp. 1-4.

[8] CBO assumed that the marginal cost to the government for each of these aircraft would average $6.4 million in constant 1986 dollars.

[9] The costs of all T-37 modification options reflect informal estimates from the Air Force. The numbers were provided by the San Antonio Air Logistics Center at Kelly Air Force Base. Air Training Command also provided estimates discussed later. One relatively minor disagreement between the Commands concerns the timing of the funding required. ATC felt that funding on the order of $10 million to $11 million would be required in 1987 for all modification options, while Kelly felt that no funds would be needed or could be spent in this first year of the program. Both Commands agree that about half a million dollars would have to be reprogrammed in fiscal year 1986 to begin engineering studies for Alternatives III and IV. These numbers are not budget-quality numbers and should be taken as preliminary estimates.

[10] It would be possible to form an additional squadron of T-37 aircraft—eight T-37 squadrons rather than seven of T-46—from the same total number of planes because the attrition rates are higher for the T-46 than for the T-37, according to Air Force projections.,

[11] Teledyne CAE says that this difficulty, associated with its J-69 turbojet engine, can be remedied at modest cost. The option contains funding for an engine overhaul, but no funding for improvements in engine capability, though this additional funding is discussed later.

[12] The length of this shortfall will depend upon when TTB aircraft become available for the ACE program, rather than being limited to the basic phase of the UPT program.

forts for the reengining to begin. Near-term investment costs would be low and total procurement costs for this option would be about $1.7 billion—still less than Alternative I by 35 percent—though higher than those of Alternative II.

Moreover, 20-year costs for this option would be higher than under the previous option. Costs would total about $5.9 billion. The 20-year costs would be higher than under Alternative II, which makes minimal modifications of the T-37, because the added costs of reengining would more than offset the lowering of operating costs that would result. Twenty-year costs of this option would be slightly lower than those of Alternative I, which buys the T-46, despite the T-37's higher operating costs and the costs of operating the additional 100 TTB aircraft, because some of the costs would occur in the mid-to-late 1990s, as with Alternative II. As with the previous alternatives, procurement costs are based on Air Force estimates while operating costs were estimated using an Air Force model with Air Force and CBO inputs.

Though this alternative would cost slightly less in the long run, it would continue to rely on an old T-37. Many of the new aircraft performance requirements desired by ATC would not be met. Altitude limitations would remain, since the plane would not be pressurized. Nor would there be any change in the useful envelope of the ejection seats, though the increase in power should enable a student to gain altitude or speed even with one engine out, thus reducing the likelihood of having to eject at a point where the current seat does this work.

Near-term aircraft shortfalls could also be substantial under this option, perhaps greater than under Alternative II. This modification is more extensive and would take longer to complete than Alternative II, thus leaving fewer aircraft available for pilot training.

For this option, the discount rate chosen is important to its ranking. With a lower rate—say 3 percent—the option would be slightly more expensive than Alternative I in the long run, with 20-year costs of $6.5 billion. (See Table B-1 in Appendix B.)

In sum, this option provides a middle ground between Alternative I, with its high up-front cost but substantial improvement in capability, and Alternative II with its low up-front costs but minimal improvement in capability. Nonetheless, this approach still does not meet the Air Force's stated needs for improvements in a trainer.

ALTERNATIVE IV: EXTEND THE SERVICE LIFE OF THE T-37 AND UPGRADE IT

Modifications proposed under this alternative would significantly upgrade existing T-37s to meet Air Force needs and purchase an additional 100 TTB aircraft to meet aircraft shortfalls. In addition to reengining and the improvements necessary to extend the T-37 service life, modifications would include cockpit pressurization, a new ejection seat, new controls and avionics, and some improvements in the plane's environmental control systems (primarily improving air conditioning). (See Appendix A.)

These modifications should meet most of the requirements listed by the Air Force in its statement of needs. The new engine would cut operating costs and improve safety. The pressurized cockpit and better performance in bad weather should improve utilization. The new ejection seat would be safer, though it would not have quite the capability of the T-46 ejection seat. And the instrumentation would make this modified T-37 more like modern aircraft.

Nonetheless, this option is not equal in capability to Alternative I. Near-term shortfalls of aircraft would continue until the mid-1990s. This option would also continue to rely on old T-37s, albeit extensively modified and updated. And it would not buy a new aircraft. Thus it could require the purchase of a new aircraft earlier than would Alternative I. But the Air Force does believe that the need to replace T-37s modified under this option would not occur until well into the next century.

In sum, while not equal in capability, this approach is much closer to the first one in capability than either of the other two. Thus its costs provide a better comparison with the T-46 option.

Costs results depend upon assumptions about utilization—the hours per month that the aircraft can be flown. Utilization reflects how much the Air Force needs to fly but also, given that demand is likely to be heavy, ease of maintenance, speed of ground turn-around refueling time, ability to fly in poor weather, and other factors.

Under Air Force assumptions about utilization of the modified T-37, the total costs of this option would be similar to the T-46, though investment costs would be less. Five-year costs for this alternative modification of the T-37 would be $0.4 billion, substantially less than for the T-46. As with Alternative III, no funds would be required in 1987 because the year would be spent designing modifications.

Total investment costs for Alternative IV would be about $2.0 billion, including the costs of 100 TTB aircraft. These costs are about 23 percent less than those of the T-46 alternative. But, the total discounted twenty year costs of this approach, at $6.2 billion, are slightly higher than those of the T-46. Thus in the long run the reduced operating costs that the T-46 is expected to experience would offset its higher investment cost. This would occur despite the fact that the phasing of the alternative means that CBO's 20-year analysis cannot capture the total costs as with Alternatives II and III.

The choice of different discount rates alters these results modestly. A lower discount rate of 3 percent would produce a 20-year cost of $6.8 billion, about $0.4 billion higher than the costs of Alternative I. A higher discount rate of 5 percent would make the alternative less expensive at $5.7 billion.

The investment and 20-year costs of the T-37 would, however, be highly dependent upon the utilization rate assumed for the aircraft. Air Training Command argues that, despite substantial modifications, the utilization of the T-37 would remain at 45 hours per month, the same as for the unmodified T-37. Yet the T-46 is expected to have a 60-hour utilization rate. Thus this option must buy 100 additional TTB aircraft to meet Air Force needs. If the modified and reengined version of the T-37 could achieve the same utilization rate as the T-46, then its 20-year costs discounted at 4 percent would fall to $5.1 billion, about 16 percent less than those of the T-46. This occurs because assumptions about utilization affect both procurement costs and operating costs. With higher utilization this option would not need to buy any TTB aircraft, nor would it need to operate them or the additional T-37 squadron.

Which utilization assumption is correct? There is reason to expect at least some improvement in the utilization of a modified and reengined T-37 though CBO cannot determine how much. The expected improvements in utilization of the T-46 occur at least in part because of the factors that this alternative would remedy—like pressurization and better bad-weather performance. Nor has the Air Force always assumed a 45-hour rate for the T-37. An Air Force study done by Air Training Command in May 1981 assumed a 50-hour utilization rate for an unmodified T-37. More important, a study done by the Analytic Services Corporation for the Air Force in October 1981 assumed a 56-hour utilization rate for a reengined and modified T-37 similar to the one in this option.[13] On the other hand, it might be difficult to achieve a 60-hour utilization rate for the modified T-37, which does not have all the new features of the T-46. Given the absence of a good assessment of potential utilization for the modified T-37, this analysis showed the effect of both the 45-hour and 60-hour assumptions.

The T-37 would also have the advantage of less uncertainty about operating costs, since it is an aircraft that the Air Force has operated extensively. Investment costs are, however, somewhat uncertain under this alternative. CBO received total modification costs from Air Training Command for this more extensive modification that are about 13 percent higher than those used in this analysis. Should these costs prove accurate, both investment and 20-year costs could go up.

ALTERNATIVES NOT ADDRESSED

Other alternatives exist that have not been considered in this study. In particular, the Air Force has received an unsolicited proposal from a Brazilian firm, Embraer, for a trainer called the Tucano. The press has also discussed several other foreign aircraft, as well as the Navy T-34 trainer.[14]

In the past the Air Force has argued strongly for side-by-side seating and two jet engines in its primary trainer aircraft. This requirement would rule out the T-34 and Tucano. Indeed, in 1982 the Congress wanted the Air Force to consider buying the Navy T-34s. Several Air Force studies at the time indicated that—because of single-engine performance, differences between propeller and jet performance, and reductions in learning because of lack of side-by-side seating—the overall costs of a training syllabus flown in part on the T-34 would be higher than costs using the T-37 or T-46.[15] The Tucano, which is a single-engine turboprop plane without side-by-side seating, would appear likely to generate the same Air Force concerns. Should the service change these requirements, then the Tucano or similar aircraft could be considered.

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[13] Air Training Command, U.S. Air Force, "An Evaluation of the T-34C as a Next Generation Trainer Alternative," (May 1981) and George E. Thompson, "Operational and Economical Analysis of Options for Air Force Primary Training Aircraft," Analytic Services, Inc. (October 1981). The Answer study also assumed a 65 hour utilization rate for the next generation trainer as the T-46 was then called.

[14] See for example "Grumman Corporation Ends Negotiations to Purchase Fairchild Republic," Aviation Week and Space Technology, December 23, 1985, p. 16. The Air Training Command has apparently received a presentation from Pilatus Aircraft Ltd., of Switzerland on the PC-9, a single-engine, tandem seating, turboprop plane that might be a contender if the Air Force were to relax its twin jet engine, side-by-side seating requirements.

[15] See footnote 13.

Additionally, the Air Force has received a letter offer from the Cessna Corporation for the new reengined and upgraded T-37 aircraft, discussed earlier. Should the Air Force stop buying T-46s and reopen bidding for a trainer, this plane could clearly be a contender.

Mr. President, I ask unanimous consent to have additional material printed in the RECORD.

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

APPENDIX A—MODIFICATION DESCRIPTIONS (OPTIONS II-IV)

T-37 SERVICE LIFE EXTENSION MODIFICATIONS (SIX-PACK)

Option II.—Forward Carry-through Structure; Cockpit Rail; Wing Station-45.1 Rib and Forward Wing Spar; Aft Wing Spar; Forward and Aft Banjo Fitting; and Horizontal Stabilizer.

MODERNIZATION ALTERNATIVES

Option III.—Option II plus: Engine Replacement.

Option IV—Option III plus: Cockpit Pressurization; Ejection Seats; Instrument Panel; Avionics, Oxygen System; and Environmental Control System.

APPENDIX B—COST ESTIMATES USING ALTERNATIVE DISCOUNT RATES

TABLE B-1.—TWENTY-YEAR COSTS OF ALTERNATIVES [1]—(ASSUMING 3 PERCENT DISCOUNT RATE)

Alternative	Investment [2]	Operating and support [3]	Total
I. Continue T-46 procurement	[4] 2.4	4.0	6.4
II. Modify T-37 to extend service life	0.7	5.3	6.0
III. Modify and reengine T-37	1.4	5.1	6.5
IV-A. Modify, reengine, and upgrade T-37	1.7	5.1	6.8
IV-B. (With higher utilization)	1.2	4.4	5.6

[1] In billions of 1986 dollars.
[2] Total investment funding for all planes bought.
[3] Estimated by CBO from Air Force input factors using the cost-oriented resources estimating model AFR-173-13, assuming a 20-year time period starting in 1987 and going through 2006. CBO assumes that the planes procured under the various alternatives would be phased in as they were delivered. CBO also assumed the varying force sizes and annual operating hours per year shown in Table 3. The TTB estimates used T-39, a twin-engine executive jet now in Air Force inventory, as a proxy for the TTB.
[4] Excludes $0.4 billion in 1985 (current dollars) and earlier funding associated with developing the T-46 and buying the first production lot of 10 planes because these funds are already on contract, but includes $0.3 billion appropriated in 1986 (current dollars) for continued development and procurement of 33 planes.
Source: CBO estimates from Air Force data.

TABLE B-2.—TWENTY-YEAR COSTS OF ALTERNATIVES [1]—(ASSUMING 5-PERCENT DISCOUNT RATE)

Alternative	Investment [2]	Operating and support [3]	Total
I. Continue T-46 procurement	[4] 2.4	3.4	5.8
II. Modify T-37 to extend service life	0.5	4.5	5.0
III. Modify and reengine T-37	1.2	4.3	5.5
IV-A. Modify, reengine, and upgrade T-37	1.4	4.3	5.7
IV-B. (With higher utilization)	1.0	3.8	4.8

[1] In billions of 1986 dollars.
[2] Total investment funding for all planes bought.
[3] Estimated by CBO from Air Force input factors using the cost-oriented resources estimating model AFR-173-13, assuming a 20-year time period starting in 1987 and going through 2006. CBO assumed that the planes procured under the various alternatives would be phased in as they were delivered. CBO also assumed the varying force sizes and annual operating hours per year shown in Table 3. The TTB estimates used T-39, a twin-engine executive jet now in Air Force inventory, as a proxy for the TTB.
[4] Excludes $0.4 billion in 1985 (current dollars) and earlier funding associated with developing the T-46 and buying the first production lot of 10 planes because these funds are already on contract, but includes $0.3 billion appropriated in 1986 (current dollars) for continued development and procurement of 33 planes.
Source: CBO estimates from Air Force data.

Unless otherwise noted, all years referred to in this paper are fiscal years.

Details in the text, tables, and figures of this report may not add to the totals because of rounding.

All costs expressed in current dollars use the Administration's February 1986 economic assumptions.

Mr. MOYNIHAN. Mr. President, will the Senator from Arizona yield for a question?

Mr. DECONCINI. I yield, without losing my right to the floor.

Mr. MOYNIHAN. Without the Senator losing his right to the floor.

First, I would like to express, on behalf of those of us who have been concerned with this matter, the appreciation we feel for the energy and the information and the commitment which the Senator from Arizona has brought to this subject—which both Senators from Arizona have brought to this subject—and to say that it appears that a measure of resolution has been reached.

I see that the distinguished senior Senator and the majority leader are on the floor. I think it possible that the junior Senator from Arizona will find the resolution, which has been drafted, acceptable to his concerns, which he has ably set forth, and I think the Senate might be in a position to proceed with this matter.

□ 1520

I wonder if the Senator from Arizona felt that way.

Mr. DECONCINI. I thank my friend from New York and advise him that what I have been told of the proposed compromise certainly satisfies this Senator to the extent of where we are today at this time and this moment.

I would like to see far more extensive development of that trainer, but I think the reality is that the two Senators from New York and my esteemed senior colleague from Arizona have exhausted all the avenues of settlement and indeed we may be on the verge of putting it together. It sounds to me like it is a good solution to get beyond where we are here.

I do understand, if the Senator would correct me if I am wrong, that this will require another conference with the House because of its difference, and so there is still an area to negotiate with the House, if indeed we pass this particular settlement with R&D money and this sort of thing.

Mr. MOYNIHAN. If the Senator will be good enough I say that appears to be the case.

There are at least two other matters that we differ from the House on with regard to the continuing resolution. So that conference appears to be necessary.

Mr. DECONCINI. Let me say, Mr. President, I am prepared to yield the floor for those who want to propose this settlement.

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. WILSON. 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. WILSON. Mr. President, I thought while we are waiting here I might share with my colleagues the seriousness of the situation that is imposed by our inability to finally come to cloture on the continuing resolution. It does have at least some lighter side to it.

I just received a call from a former employee of mine, Mr. Richard Mallory, who has just had an interesting experience. He has now left my employment in order to assume a new post as the State director in California for the Farmers Home Administration.

That new responsibility was supposed to bring with it a larger staff than he supervised when he was working for me.

His first day on the job, Mr. President, has consisted of his taking as his first act that of sending home all of his employees.

So he is there in his office in Sacramento answering his own phone. Since he had some time on his hands, he thought it only proper that he call and express his gratitude to me and to the other Members for what we have done by way of providing this assistance to him.

Mr. STEVENS. Did he call collect?

Mr. WILSON. He did call collect.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1530

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, I ask unanimous consent that it be in order for the Senator from Arizona, Mr. GOLDWATER, to modify his amendment with the following text, which he sends to the desk.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. And I further ask unanimous consent that the modified amendment be considered an amendment to the House amendment.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, let us hear the text of the language.

The PRESIDING OFFICER. The clerk will read the text.

The legislative clerk read as follows:

The Senator from Arizona [Mr. GOLDWATER] modifies his amendment No. 3477 as follows:

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. BYRD. Mr. President, I thank the Chair and I thank the clerk. I have no objection.

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

The amendment is so modified.

The amendment (No. 3477), as modified, reads as follows:

At the end of the amendment:

Notwithstanding any other provisions of this Act, no funds shall be appropriated for the procurement of T-46 aircraft in Fiscal Year 1987. Funds appropriated in FY-86 for the procurement of T-46 aircraft shall be available to conduct the competitive fly-off set forth in sec. 145 of the FY-87 Defense Authorization Act: *provided* that such funds shall not be available for the modification or development of any candidate aircraft for the purposes of that competition. Such competition shall be completed by January 1, 1988. The Air Force shall proceed immediately to prepare for the required competition mandated by Section 145: *provided further*, that section 2304 of said Act (S. 2638) shall not be interpreted to apply to any funds provided for operation and maintenance, design funds, or military construction funds for other than major military construction projects at any military installation or facility.

□ 1540

The PRESIDING OFFICER. The amendment is so modified.

Is there further debate on this amendment?

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I will not take much time. We spent an awful lot of time unnecessarily on this amendment. I want to assure the Senate and my colleagues that what we have worked out here is a far cry from what was originally in the bill that was called to the attention of the Senate by my distinguished colleague from Arizona.

Essentially the compromise we have worked out here comes down to this basic premise: that basic premise is we will have a competitive flyoff directed by the Secretary of the Air Force, no procurement funds for any additional T-46 aircraft will be expended.

The Secretary of the Air Force has personally assured me that he will resist and turn down any pressure that might be coming from any manufacturer connected with the fund and operation during the test period, that the most this is going to cost the taxpayers of the United States is no more than $20 million. That is an awful lot of money, but that is a far cry from what I think we would have been exposed to as taxpayers had we not written the restraints into the compromise that has been reached. Therefore, I am in support of it.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Have the yeas and nays been vitiated? I beg your pardon.

The PRESIDING OFFICER. The Chair is advised by the Parliamentarian that the yeas and nays have been ordered.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The Chair has been advised by the Parliamentarian that the yeas and nays have been ordered.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the yeas and nays be vitiated.

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

Is there further debate on the amendment?

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I do not intend to have protracted debate. I will ask this of the Senator from Arizona, and the Senator from Virginia. It is my understanding that the statement of the managers accompanying the continuing resolution includes language that directs the Secretary of the Air Force to reform the lot II production contract for the T-46. It is also my understanding that that direction to the Secretary of the Air Force is no longer appropriate since we have now mandated a competition that will be completed after the expiration of the lot II production option.

Therefore, if the T-46 is the winner of the proposed competition, any further procurement beyond lot I will require new contracts. Is that the understanding?

Mr. GOLDWATER. Yes. I say to my friend from the New York that is my understanding.

Mr. D'AMATO. Mr. President, let me say that though I am not enthusiastic in terms of the resolve that we have accomplished, it certainly at least gives us an opportunity to compete in a flyoff that I believe ultimately will demonstrate that the T-46 is no answer for our trainer. There is still uncertainty in terms of what this agreement will mean. Certainly if we were to have voted upon the amendment of my distinguished colleague from Arizona, there was no doubt that we would be lucky to get 8, 9, or 10 votes in opposition. So I believe at least it gives an opportunity for Fairchild to be in a competitive position in the future.

There will be some bargaining. We do not know if the House will accept or reject. They have indicated a very strong feeling and sentiment on their part in opposition to language and to a position that might deter production of the T-46. However, at some point in time we have to do the business of the people. And, I believe at the very least, we will give them an opportunity to demonstrate the merits of this plane which I am still very much convinced is really the answer to our training needs.

I thank those who have helped—Senator RUDMAN in particular, Senator WARNER for attempting to find a common ground upon which the legitimate interests and needs of both parties or both sides of this could result in this compromise. Senator STEVENS certainly and his committee have done yeoman's work.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I will just speak briefly to supplement the remarks of my distinguished colleague, Mr. D'AMATO on the agreement we have reached under the duress of not having the votes to achieve another agreement, but we have done one thing. We are assured there will be competition in which the T-46 will fly as a candidate for the trainer for the next generation of Air Force pilots. We will be forgiven perhaps in our judgment that in that competition it will prevail.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. DOLE. Mr. President, I want to take 1 minute to thank all who have been very helpful. This has been going on now for almost 24 hours. I think there was a few hours between 3 a.m. and 9 a.m. when people were sleeping. But beyond that, it has been almost continuous. There are a number of people who have been very helpful.

I want to thank the distinguished chairman of the committee, Senator GOLDWATER for his youthful patience, the distinguished Senator from Virginia, the Senator from Nebraska, both Senators from New York, all others, and in particularly the chairman of the Appropriations Committee. My view is it is a satisfactory resolution. I hope the House will accept it.

While I am on that topic, let me indicate I have just come from visiting with the Speaker. The House Mem-

bers would like to know whether they can go home this weekend or not. It is a question of whether or not the Senate can finish its work tonight.

I indicated I thought we could, that this was the last stumbling block. I think Senator BYRD and I plan to confer with them again at 5:15 to give them a final answer. So I would say to my Senate colleagues if we want to go home sine die this weekend, we would really appreciate your help.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment of the Senator from Arizona.

The amendment (No. 3477), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, I echo the leader's comments in expressing appreciation to the parties on this particular dispute. Let me indicate to the Senate.

The PRESIDING OFFICER. Will the Senate please be in order?

Mr. HATFIELD. Mr. President, let me indicate to the Senate we have one remaining issue. We, by the previous unanimous-consent request, agreed to separate the Goldwater amendment, and have disposed of it.

Now we have the underlying amendment by the Senator from South Dakota [Mr. ABDNOR] relating to Federal buildings. There has been an attempt to work out a modification of the Abdnor amendment that would take care of a number of objections. That is not quite ready.

In the meantime, I understand the Senator from Minnesota, Senator DURENBERGER, chairman of the Senate Intelligence Committee, would like to enter into a colloquy. So I would only say that we are diverting the action of the Senate momentarily for that colloquy, hoping that by the end of that colloquy the Senator from South Dakota will have arrived at a common agreement.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I would have risen at this point with an amendment.

The PRESIDING OFFICER. The Senate is not in order. Will the Senators who are engaged in conversations on the floor please retire to the Cloakrooms? The Senate should be in order.

The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, as I indicated, I would have risen at this point with an amendment to the Abdnor amendment. But given the state of affairs that we try to keep the Government alive, I have made the decision not to propose an amendment at this time but the Senator from Maine [Mr. COHEN] and I both feel very strongly about this issue, and felt it was appropriate to bring the matter to the attention of our colleagues and to indicate that when the 100th Congress convenes we intend to do something about this.

Mr. President, only yesterday evening was I informed of the existence in the conference report on the continuing resolution received from the House of Representatives of the following section:

SEC. 9126. Notwithstanding the provisions of subsection 502(A) of the National Security Act of 1947, funds appropriated by this Act may be obligated and expended for particular intelligence activities contained in this act: *Provided*, That the funds appropriated or made available by this Act may be obligated and expended for the particular activities contained in this Act should the enactment of a National Defense Authorization Act for fiscal year 1987 fail to occur and this Act shall then be considered to provide the authorization and appropriation authority necessary to obligate and expend the funds provided herein.

□ 1550

This provision is ill advised and represents an unwarranted intrusion on the authorization process for intelligence programs. It also encourages further intrusions on intelligence authorization on behalf of interests of members of the Appropriations Committees, especially the defense subcommittees, both in the Senate and the House.

This provision was included in the continuing resolution without—as far as I am aware—any consultation with the members of the intelligence committee of either House. This is especially serious in the Senate.

When the Select Committee on Intelligence was created in 1976 and its authorization authority established, it was deliberately insured that there would be an overlapping membership between the appropriations committees and the intelligence committees of at least two Members. In fact, today, Mr. President, there are three crossover Members, including the ranking member of the Intelligence Committee.

Mr. President, when the Select Committee on Intelligence was established in 1976, its founding resolution—Senate Resolution No. 400 of that year—specified that funds could not be appropriated for the activities of intelligence agencies except if there were an authorization for these activities by the Senate. The only exception was in the case of continuing resolutions, since these might be required to permit such activities to proceed in the event no authorization had been passed.

Just last year, section 502 of the National Security Act was enacted to further clarify the relationship between the authorization and appropriations processes for intelligence programs. Section 502 clarified the ways in which appropriated funds could be made available for intelligence activities. Subsection 502(a)(1) specifies that appropriated funds made available for an intelligence activity may be obligated or expended only if the funds were specifically authorized by Congress for such use.

After 14 hours on the T-46 trainer there is no question, Mr. President, that there has been considerable tug and pull between the authorization and the appropriations committees of this body for several years.

The executive branch has occasionally been tempted to exploit these tensions. Subsection 502(a)(1) of the National Security Act was adopted in recognition of the inadvisability extending this state of affairs into the intelligence world.

The intelligence committees of the House and Senate take very seriously their annual review of the budgets for intelligence programs. Numerous hearings are held by the committees with senior intelligence officials and untold hours are dedicated by the staff to the review of the voluminous budget submissions of the intelligence agencies. Last year, the Director of Central Intelligence also agreed to submit each year to the intelligence committees a National Intelligence Strategy document to help further rationalize the setting of budgetary priorities and the allocation of available resources in relation to the multiple objectives of the national intelligence program.

Mr. President, let me be frank. There are significant discrepancies today in the funding levels established in the Intelligence Authorization Act, which was adopted by this Congress 2 weeks ago and those contained in the conference report on the continuing resolution before us today. I cannot describe the nature of the discrepancies because they involve highly classified matters.

The funding levels for certain programs are substantially different, in a way that undermines the results of the hard work and dedicated effort put into establishing these levels by the authorization committees and the intelligence community.

It is obvious to me that this situation is well understood by the interested members of the Appropriations Committee, particularly the Defense Subcommittee, and their staffs. Nevertheless, this important matter was never brought to my attention, nor—

as far as I am aware—to the attention of any of the Intelligence Committee members on the Appropriations Committee prior to completion of the conference report.

Mr. President, it is an unacceptable state of affairs when as a result of the appropriations process the hard work of the authorizing committees and the intelligence community itself, in establishing correct budgetary priorities is significantly unraveled. This situation is not only undesirable in itself but a portent for the future. Decisions on the funding of key intelligence programs have thus far been kept largely immune from this sort of legislative maneuvering.

This provision in the continuing resolution cannot be undone now, since to seek its deletion at this time could further delay the conclusion of business by the Senate for this session. But this provision cannot be allowed to stand either, and I will introduce legislation during the next session to repeal it.

Finally, Mr. President, I wish to comment on an inaccurate implication contained in section 9126 of this resoltution which, in my opinion, is not very well drafted.

The proviso clause tends to imply that the Defense Authorization Act is the source of legislative authorizations for intelligence programs. This is incorrect. The defense bill contains only the budgetary figures for classified intelligence programs all of which are aggregated in certain ways for publication in the unclassified defense budget. Actually, the specific authorizations for intelligence programs are adopted by the Intelligence Committees and they are contained only in the Intelligence Authorization Act, which I indicated to my colleagues was passed by the Congress 2 weeks ago.

At this point, Mr. President, I would be pleased to yield to my colleague from Maine who probably played as important a role as any in the budgetary process this year with his crossmembership between the Intelligence Committee and the Armed Services Committee, the other authorizing body with regard to these matters.

Mr. COHEN. I thank the Senator for yielding.

Mr. President, I will not take a good deal of time in speaking in the Chamber this afternoon.

Let me say that I join with what my colleague from Minnesota has said about the corruption of the process.

I would like to direct my comments to another item which also cannot be discussed, unfortunately, on this floor.

We have just gone through 2 days of debate on the whole issue of the infection of trichinosis in our appropriations process. That is not a new phenomenon to this body or to the other. I do not wish to accuse anyone of having less than noble intentions. But when it starts spreading into the intelligence field, then I fear for our country. What we have is an item that has been included in the continuing resolution which the intelligence community did not request, which it did not want, and which today it remains strongly opposed to. It is almost a parallel to what we have just gone through on the T-46, only it has far greater implications for our country, for the security of the country, and certainly for the economics of the country.

As a result of pure political pork barreling to satisfy one member of the appropriations conference, funding has been provided which is a small down payment on a future system which is unneeded, unwanted, and which is going to be outrageously expensive, at a time when we are facing declining budgets for defense and intelligence matters.

Mr. President, for the committee to yield to this sort of pork barreling to satisfy an individual constituency, seems to me to undermine the security of this country. I again regret that I and other Members cannot be at liberty to discuss the individual items, but I can assure my colleagues that as soon as we reconvene the next session, I intend to work very hard to see to it that that particular program is terminated.

On that note, Mr. President, I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I regret that I am the person who has to respond to these comments. It is very difficult to do because, as both Senators have mentioned, we are talking about highly classified programs that are classified in the national interest, and I think all concerned understand that.

I have deplored on this floor many times the separation of the powers in the defense and intelligence fields between the authorization committees on the one hand and the appropriations committees on the other. They are made up of separate Members of each body who have different approaches to both defense and to intelligence.

My good friend, the Senator from Arizona, has just left the floor. He has considerable feeling right now concerning the relationships of the authorization committee to the appropriations committee. The two Senators from the Intelligence Committee have just remarked about activities that took place in the conference concerning intelligence issues.

Let me comment on several of them.

When this bill came out of committee, because we did not have an authorization bill, we, in fact, did include the provision that the Senator from Minnesota read concerning authorization of intelligence matters.

Let me assure the Senator from Minnesota, however, that the defense bill itself does, in fact, have a serious impact on intelligence activities in this country, and we must deal with both of them in the appropriations processes in our subcommittee.

In terms of dealing with the items that the Senator from Maine has mentioned, there was a clear, not request, but demand for one function in terms of a classified area.

□ 1600

In order to achieve that goal, it was necessary to deal with the absolute command of the House and not just one member, but every member of the conference, in dealing with another subject in the classified area. That is, unfortunately, the process of compromise in a conference between the House and the Senate when the House has a demand which, unless it is met, will give us a situation where we would not have a resolution.

We have funded fully the area that had the absolute demand. In order to do so, we had to resolve a request of the House. As I said, it was a united request, turning on the continuation of activities in another classified area which the authorization committee had mandated be ceased.

Now, we understand that. I think the Senator understands that. There was no attempt to deceive anybody about it. It is stated in the classified index, it is available and provided to the committee that the two Senators represent.

Mr. COHEN. Will the Senator yield?

Mr. STEVENS. I just want to make sure that the two Senators are not somehow or other alleging some bad faith as far as those of us who sit on the Appropriations Committee and handle these matters. We have provided the funds for the essential items the Senators have mentioned. We went further and provided the funds the House demanded because of the necessity that they would not yield on matters that we considered highly essential unless they did. That is the simple answer.

I am happy to yield.

Mr. COHEN. Mr. President, I certainly had no intention to cast any aspersion on the remarks of the Senator. I am aware of the kind of pressure he is under when dealing with the House. By the same token, I did not intend to imply, nor do I now, that he is in any way trying to mislead anybody in the Senate. By virtue of the fact that the information is classified, most of the membership is simply unaware of what is contained in that annex. The Senator from Minnesota and I, by virtue of being on the committee, are

aware of what is contained in the classified portion and have access as such.

My criticism is not directed toward the Senator from Alaska but toward the other body. My criticism is that we now have to step into this minefield of ambiguity to talk about a specific system that was not requested by the Intelligence Committee. It is not needed, and it is going to be expensive and rob us of the ability to fund in the future other systems that are far more valuable.

What I am suggesting is that it was in fact pork-barrel legislating and appropriating, not by the Senator from Alaska but by the other body. What I am also saying is that as soon as we reconvene, I intend to do everything I can to see that we terminate that particular item.

Mr. STEVENS. Mr. President, we face that every year. We spent 5 months resolving the opposition of the legislating committees to the absolutes of the appropriations process. I remind my colleagues that in the old days, when we considered appropriations bills for intelligence and defense, we had those bills in June. We had them, we worked them over, we had time to confer with our colleagues. I do not remember that kind of dispute before about 1982 and 1983, when the budget process really started absorbing our time. I am not faulting the budget process, it is just a matter of time.

The impact is what the Senator has mentioned, what has happened. In defense of our compromise, though, we are highly constrained as to what we can talk about, but I am sure the Senator from Maine realizes that there is a hiatus in the systems, that in the interim the moneys will be expended, albeit the manner that they are expended will probably lead to further production in areas that the Intelligence Committee does not want. I understand that. But there is no question that there is a hiatus and that hiatus will be partially solved by the utilization of moneys we made available.

We cannot go into that total matter, Mr. President, and I cannot pique anybody's curiosity to try to look into this because it is highly sensitive and highly necessary.

The problem we have, again I say, is if we are going to find a way around this concept that plagues us annually so that my friend from Texas is not criticizing us and my friend from Arizona, I say to the Senate that it is time we had the authorization process merged with the appropriations process to the point that the people who have become expert in defense matters or intelligence matters are in fact the people who meet with the House in both matters. They have four and a half times the people we do, yet we do exactly the same functions they do. They have the luxury of spending full time on one authorization committee or full time on an appropriations committee. They have full time in the Budget Committee.

We spend our time—I do not know about the rest of my colleagues. I assume they are on the same number of committees I am, five or six committees. We have to finally end up in this situation where we are trying to solve issues in the appropriations process.

Mr. President, there are 13 appropriations bills in front of us in one bill. In days gone by, those were passed before September 30 as separate bills following the enactment of separate authorization bills that had been passed and signed by the President before we brought these bills to the floor.

Yet, year after year, the gentleman from the authorization committee complained and we had to take it a little personally, because the people on the Appropriations Committee find themselves in the position of having to resolve these issues in the last minute in all-night sessions. We were in 2 all-night sessions out of 10, Mr. President.

I do not know how we can do anything different than finally resolve them. In order to resolve them, we have to yield on some issues to the House. That is the legislative process. I do not know how anybody can complain.

The interesting thing is, no one has complained about what has been left out. Yet we have cut over $30 billion from the bills that first came out of both these committees.

Imagine that. Even the administration says this is a wonderful bill. Our staffs—Senator STENNIS' staff and mine—and the two of us, with the assistance of the people who serve on our committees. Basically, those who serve on our committees are chairmen and ranking members of others so they do not put a lot of time in on this bill—we do. We have cut about $30 billion out of this bill. It is totally in compliance with the budget. It is consistent in terms of the outlays, it is consistent in terms of budget authority. It saves money. It rescinds $5.3 billion of prior moneys and makes that money available for other projects this year to save money for the taxpayers. Yet we get the problem of people saying, "Wait a minute, you went too far. Even having done that, you have included too many things in here with this money."

The T-46, for instance. Everybody told us about the question of affordability. We could not afford it. It was in this bill, within the budget, within the outlays. And some way, we are going to get a next-generation trainer.

Again, I say to my good friends, we have done our level best. The problems they complain about, I say be my guest if you want to repeal something that is in here. But if you repeal it, I guarantee the House will take out the provisions you want. You will harm the intelligence program in the long run if you take out the rabbit in order that the team of horses cannot run.

Mr. COHEN. Will the Senator yield on that point?

Mr. STEVENS. Yes, Mr. President.

Mr. COHEN. First, I want to commend the Senator from Alaska for the enormous job he has done in bringing us 13 bills in 1 appropriations bill.

□ 1610

I do not think anyone has anything but commendation for the efforts of the Senator. What we are talking about is an institutional problem, and I would be the first to agree that we ought to merge the authorization and appropriation process. I am fully prepared to give up whatever position I hold on any committee to achieve that goal, because what we have now is paralysis. What we have now is a system that does not work and it does bring us to the edge of every single session with late night sessions, having one or two Members hold up the entire Congress and the country to protect their own special interests.

The system is in a state of gridlock. It ought to be changed. So I would be willing to give up my position on the Armed Services Committee, the Intelligence Committee, the Governmental Affairs Committee, or the Aging Committee, any of them, in order to achieve that. So the Senator has my support if that is what he would like to do.

My problem is this: neither the House Intelligence Committee nor the Senate Intelligence Committee ever authorized the particular system that I have to refer to so obliquely, and that particular system is going to cost us amounts of money that will make this T-46 look like a mere bagatelle. All I am suggesting to the Senator from Alaska is that when we start pork barreling intelligence, it is not his fault. It came from the other body; it originated in the House Appropriations Committee this time. I understand the pressures he is under, but I think that is setting a precedent we will regret. I am only putting the Senate on notice that I will renew next year my effort to take that out.

Mr. STEVENS. Mr. President, I just close by saying pork is not made only in the House of Representatives.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, we are 14 days past our planned adjournment. The Government is technically shut down. A lot of us are wondering what we are doing debating these projects, but I would like to make a

couple of points that I think are relevant to that debate.

I think one can criticize the process, criticize the timetable, but we are here today basically because of two types of pork barrel. One type of pork barrel is an attempt at the 11th hour to build buildings that have not been authorized and that the General Services Administration does not want. The second type of pork barrel is the type that comes from building a plane that the Air Force says it does not want.

Now, we can kick the institution around all we want to about being here. But here we are on what we hope is the last day of a session in which Federal spending has grown less than any year since 1955. This is a year in which we have cut defense. This is a year in which real entitlements have declined and a year in which real nondefense-nonentitlements have declined. If on the last day of this session we gave in to a handful of special interests who simply want to build buildings and airplanes that nobody in Government wants, I think it would be a great tragedy.

So I am sorry we are here. I am sorry we are in the position where technically the Government is shut down, but this would not have happened last year. It would not have happened in the last decade. It would not have happened because the special interests would have gotten their way. We would have built the buildings, and we would have bought the airplanes. The fact that we are here fighting on this tells me that something has changed. What has changed is we do not have the old pork barrel buddy system we used to have, and I rejoice in it.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I would now like to propose a unanimous-consent request.

Mr. LAUTENBERG. Reserving the right to object——

Mr. DOLE. He has not made it yet.

Mr. HATFIELD. I have not made it yet.

Mr. LAUTENBERG. I know.

ABDNOR AMENDMENT NO. 3476

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Senator from South Dakota [Mr. ABDNOR] be permitted to modify his amendment with the following text, which I send to the desk.

The PRESIDING OFFICER. Is there objection to the Senator's request?

Mr. LAUTENBERG. Reserving the right to object, what is the modification?

The PRESIDING OFFICER. The clerk will report the modification.

Mr. LAUTENBERG. I object.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. Objection is heard. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I would like to have the attention of the Chamber on the situation in which we find ourselves. I do not think it is of anyone's making. It certainly is not as a result of any design or any deliberate action, but we happen to be in an unusual parliamentary situation. The way that the Abdnor amendment is worded and even under the modification that he is proposing and that even being accepted, we would find that the adoption of the Abdnor amendment would bring down both the Goldwater amendment, which has already been acted upon, and as well the House pending amendment No. 59 relating to public buildings.

Because of the difficulty we had in resolving the Goldwater amendment, because of the late hour, and because there is opposition and lack of unanimity even on the modified language that the Senator from South Dakota expected to present, I will at the appropriate moment make a tabling motion to the Abdnor amendment, which would in effect preserve the Goldwater amendment that has been acted upon. At the same time it would return to the House language upon which we had disagreement and as currently embodied in House amendment in disagreement No. 59.

As I say, this is not by design. This is an unfortunate situation in one way, perhaps it is a fortunate one in another way, depending upon your perspective, but I would like to have the Senator from South Dakota recognized on the basis of at least giving a statement concerning this issue. Then at the end of that statement by the South Dakota Senator I would seek the floor to make a tabling motion, to clear this bill, this continuing resolution, and move it on its way back to the House.

The PRESIDING OFFICER. Who seeks recognition?

Mr. ABDNOR addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. ABDNOR. I thank the chairman for giving me this opportunity. I hope everyone will listen closely. To go back to my original amendment, the underlying amendment, without modification, I proposed that only the projects that have been authorized by both the authorizing committees from the House and from the Senate be accepted. It seems only fair that that takes place. There are some buildings in controversy that were authorized in the House. I would just like to point out that I happen to be a member of the Public Works Committee as well as chairman of the subcommittee that funds these projects once they are authorized.

□ 1620

When GSA was before our committee and we held hearings back in May, the General Services Administration provided no testimony on these projects because they are not part of the 1987 budget request for the public buildings service. So they were not considered or authorized.

Since then, there has been some revision, and the Public Works Committee is willing to accept two of the buildings that were not authorized. They are, however, needed and are feasible. The chairman of the Public Works Committee said he would accept them.

The Federal Buildings Fund has its limitations. You can only take money out of the fund to the extent the money is available. For a long time, GSA has been trying to carry on a proper program to take care of the needs of this country, so far as Federal buildings are concerned and so far as providing a work place to house Federal employees.

On October 7, I received a letter from GSA. It said:

> This letter encloses the information you requested concerning GSA's capital projects.
>
> The integrity and financial stability of the Federal Buildings Fund is the central challenge facing the Congress as it considers the GSA budget.
>
> Rents are escalating, taking out an increasing share of Federal Buildings Fund, and at the same time the Government's own inventory—
>
> The Federal buildings we have constructed over the years and taken over—
>
> average over 39 years in age and require repair and modernization. Hence, our priority decisions are increasingly crucial.
>
> Regarding the capital budget, our major priority is to address the health and safety concerns which pose an immediate threat to building occupants.

Mr. President, we are dealing with people's lives here, people all over the United States. We can go home and ignore it. We can take money out of the fund and show off a new building that we got completed in our district or our State, whether we needed it or not. It is something to boast about.

I want to talk about buildings that are not in the budget. Those we did not authorize on this side. I wish everyone had a copy of the priority list that GSA utilizes. You would find the buildings I am speaking of—which were left out, which were not authorized. They are almost all at the bottom of the totem pole as far as priorities are concerned.

The Miami building was originally needed because of the increase in judges needed to handle the drug problem. A deal for a lease provision

over 30 years they can adequately take care of space problems will be worked out. The Chicago building is to be done the same way. We found out that by changing the prospectus, we can make a smaller building and can release two buildings which are presently being rented.

There are two other buildings—one in Paterson, NJ, and one in Jasper, AL. Let me read what GSA says about the building in Paterson, NJ:

Agencies are housed predominantly in leased space with some space in U.S. Postal Service and Social Security Administration Trust Fund Buildings. Some of these are site specified and cannot be relocated.

There are 10 Federal agency assignments at 9 locations that are eligible for consolidation in Paterson. They occupy a total of 46,750 square feet and employ 396 people. The total annual rental is $489,788 per year, averaging $10.48 per square foot. The average utilization rate is less than 135 square feet per person.

As a result of GSA's investigation of Federal agencies needs in Paterson, it was determined that the space requirements of the agencies are being adequately satisfied in leased space and at the U.S. Postal Service facility in Paterson. There is no economic benefit or potential for increased efficiency to warrant consolidation of the agencies at this time. There are no outstanding agency requests for space which would affect the recommendation of this report.

Jasper is smaller but similar. Let me read this:

There is only about 17,500 square feet of Federal agency space in Jasper (excluding postal facilities). Over half of this space is location specific and the agencies would probably prefer to stay where they are (e.g.: The SSA in the shopping mall). Therefore, a new Federal building would be very expensive to construct since no economy of scale would be realized.

In addition, leasing costs are extremely reasonable in the Jasper area and space can be leased or lease-constructed for $10-15 per square foot.

The only point I want to make, before anyone votes to table my original amendment to go along only with the facilities and buildings that have been recommended by both Houses through authorization, is this: It is up to this body to make the determination if it wants to go on funding these new projects, to help the other guy have something in his State. Or should we take the limited dollars we have and do the best job we can to repair buildings and relieve the dangers that now exist because of asbestos, fire hazards, and PCB's?

If you believe that the best way to go is fund these new projects and get out of here; to keep everybody happy with buildings that were not requested, then that is the decision you have to make when you vote on the motion to table which the chairman will submit.

Frankly, it is a grave mistake. I am close to it on both committees, and I know what needs to be done for the good of the people and for the good of the country. We should make the repairs and do the construction we can to make it pay off.

The idea of doing this, I think, is to submit that we are really going to get our house in order. Sometimes I wonder how we are ever going to balance anything in this country and make our budget fiscally responsible. If this is the way we are going, that is up to each of you. Make that determination. But I want you to know that the way you should go is to do what is recommended by the GSA. What is right is to repair of our older buildings, to get them in shape and do only construction work where it is absolutely needed.

Mr. LAUTENBERG. Mr. President, I rise in opposition to the amendment offered by the Senator from South Dakota.

Mr. President, it is quite common in the Senate to hear that a provision, although not included in a bill before the Senate, is in the House companion measure and will be considered in conference. There is a certain solace in that situation, because almost never does a bill escape a conference without being modified on both sides. The Senate wins on some points; the House on others. This amendment in effect says that unless a project was included by the Senate, it cannot be included in the conference report.

I strongly support one project which was included in the House bill, but not in the Senate bill. The project is a Federal building for Paterson, NJ. The House bill included $1.5 million for planning and design work on the proposed facility.

Construction of a Federal building in Paterson is needed to serve the people of Passaic, Bergen, and Morris Counties in New Jersey. At the present time, the Federal Government leases space throughout the area. Residents are faced with traveling to Clifton, Lodi, Paramus, and Fairlawn for access to offices not in Paterson. A Federal building in Paterson will provide convenient access to the Internal Revenue Service, the Labor Department, and the Social Security Administration, which are currently located in leased space in Paterson. In addition, the building will consolidate space for the Defense Logistics Agency, the Occupational Safety and Health Administration, the Small Business Administration, the Defense Contract Audit Agency, and the FBI. Such a Federal building could serve as a focal point for the Federal activities in the area.

In addition, construction of a Federal building will provide much-needed stimulus to revitalize downtown Paterson. Paterson, NJ, is the poorest city of its size in the United States. Consolidation of Federal offices will provide a critical mass of workers in the downtown area which will stimulate further construction and revitalization.

Construction of a Federal building is also cost-effective in the long run. The current leasing plan will cost the Federal Government $15 million over the next 30 years. Building a new Federal building is estimated to cost $7.6 million. In the long run, it will save the taxpayers money if the Federal Government owns its building instead of continuing to rent space.

Mr. President, it has been the policy of the Senate, as outlined in public buildings authorization bills passed by this body, to move away from the expensive leasing of space and toward housing Federal agencies in federally owned buildings. The House provision to construct a new Federal building in Paterson, NJ, is consistent with that policy.

The Senator from South Dakota objects to any building unless it is authorized by both the House and the Senate. It is very difficult to get authorization here in the Senate for any structure unless it is approved by the administration. Are we simply saying that the Congress is abdicating any role in public buildings and leaving it up to GSA to decide what gets leased and what gets built?

The principle being employed in this case is an unusual one. We are saying that we will only agree to fund public buildings agreed to by the Senate. The usual give and take, which is the essence of the conference committee process, is not being respected in this case.

Mr. President, I strongly support inclusion of the Paterson Federal Building in the conference report. I oppose the Abdnor amendment and I urge its defeat.

Mr. HATFIELD. Mr. President, first, I commend the Senator from South Dakota. He has waged a valiant battle on a very good principle. I hope the Senator is back next year to continue to work on this particular issue.

I would have to respectfully disagree with the Senator from South Dakota in saying that this is a simple question that we are going to vote on, in relation to the tabling motion on the subject of the Senator's amendment. Let me repeat again that, unfortunately, we are in a situation where, if the Abdnor amendment should prevail, it would strike all previous actions on amendment No. 59, which is the compromise that was so delicately worked out and in such a delicate situation that it would strike the Goldwater amendment and would strike the House language in No. 59 on public buildings.

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So really we are dealing in one way unfortunately with two issues not one, and so on the basis of preserving the

Goldwater compromise and on the basis of expediting the handling of this matter in total form, I now make a motion to table the Abdnor amendment to the amendment No. 59 that is pending to the House amendment.

The PRESIDING OFFICER. The question is on the motion to table.

Mr. ABDNOR. Mr. President, I ask for the yeas and nays.

Mr. BRADLEY. 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. ABDNOR. 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. ABDNOR. Mr. President, I ask unanimous consent that the rollcall be vitiated.

The PRESIDING OFFICER. The yeas and nays have not yet been ordered. The Senator did indicate he wished to have them. The Senator from New Jersey requested a call of the quorum.

The question is on agreeing to the motion of the Senator from Wyoming to lay on the table the amendment of the Senator from South Dakota.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

HOUSE AMENDMENT TO SENATE AMENDMENT NO. 59

The PRESIDING OFFICER. The question recurs on the motion to concur in the House amendment No. 59.

The motion was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I inquire of the Chair at this point. The business on the continuing resolution is at this point completed, is that correct?

The PRESIDING OFFICER. The Senate has just considered the total consideration of the continuing resolution, the Senator is correct.

Mr. HATFIELD. I thank the Chair.

AVIATION SAFETY COMMISSION

Mr. BYRD. Mr. President, I have spoken many times on the Senate floor over the past several months of my concern over the safety of our air traffic system. The incidence of midair collisions continues to rise. Last year, 526 individuals lost their lives aboard U.S. carriers. It was one of the worst years in terms of lives lost, and was the worst year for air accidents since Congress deregulated the domestic airline industry in 1978.

As a member of the Senate Appropriations Subcommittee on Transportation, I have reviewed the requests of the Federal Aviation Administration [FAA] and have closely questioned FAA officials that appeared before our subcommittee. The bottom line in FAA testimony before our subcommittee has been that we have the safest system in the world.

Yet, over and again, we read in the newspapers or hear on the news of another airplane crash that has taken lives.

Because of growing concern over the safety of our air traffic system, I introduced legislation (S. 2417) to establish a seven-member Aviation Safety Commission to make a complete study of the organization and functions of the Federal Aviation Administration [FAA]. Although this measure was passed by the Senate on September 11, because of the shortness of time remaining in the 99th Congress, it became clear that the House of Representatives would not be able to act on the bill prior to adjournment. Therefore, I offered an amendment to the continuing resolution to establish that Commission, and I am pleased that those provisions were agreed to by the joint House-Senate conference committee.

This Commission will undertake a comprehensive, independent study of the FAA and its responsibilities. Because of the tremendous increase in the volume of air traffic, it is imperative that we have an independent, in depth study of the organization and functions of the FAA to determine whether or not the dual functions of promoting and regulating the aviation industry are in conflict.

In view of the increasing number of air tragedies and the growing concern over FAA's ability to meet the challenges brought about by the dramatic growth of the airline industry, it is vital that this Commission be established as expeditiously as possible. The report of the Commission will be completed within 9 months of the enactment of this legislation, and will prove invaluable to the Congress in its efforts to restore the margin of aviation safety.

THE DEPARTMENT OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES APPROPRIATIONS

Mr. HEFLIN. Mr. President, I rise to emphasize a provision in the conference committee report on the Department of Labor, Health and Human Services, and education and related agencies appropriations bill as the measure relates to funding the Lister Hill Center for health policy.

When the labor, HHS and education appropriations bill was adopted by the Senate on September 10, 1986, by a vote of 83 yeas to 12 nays, it provided $5,000,000 for a Federal contribution to endow the Lister Hill Center for Health Policy at the University of Alabama at Birmingham.

The committee report which accompanies the bill contains the following wording which fully explained the statutory language embodied in the labor, HHS and education and related agencies appropriations bill:

The establishment of the Lister Hill Center for Health Policy honors in his own State the memory of a great Senator whose legislative achievements in public health, biomedical research, and hospital care earned him the title of the Nation's "statesman for health". The Center would be dedicated, as was Senator Hill, to improving the quality of our health care system. It would function as a national center for the advancement of disease prevention and health promotion, and would work specifically to refocus national health policy upon such goals as the development of a proactive health care system, the integration of treatment and prevention strategies and the reduction of societally imposed threats to health. The Hill Center would support research and scholarship on prevention topics, and its activities would include the establishment of a program of Lister Hill Health Fellows, who would receive support to serve as congressional staff knowledgeable in the area of prevention.

Mr. President, similar provisions relating to the Lister Hill Center for Health Policy, unfortunately, were not included in the Labor, Health and Human Services appropriations bill passed by the House of Representatives. When the House and Senate conferees convened to work out the differences in the two respective Chamber's versions of the Labor, HHS and education appropriations bill, the House conferees agreed that the Lister Hill Center should be fully funded. Adequate funds were included in the bill to enable the Secretary of Health and Human Services to make this grant for the Lister Hill Center.

The conference committee report accompanying the bill contains language that clearly states that the conference agreement includes the $5 million to endow the Lister Hill Center. It is clear that the conference committee report intends that the Lister Hill Center be funded in the full amount of $5 million.

Mr. President, it is important to note that in as much as the conferees agree to appropriate sufficient funds for the Lister Hill Center, it is crystal clear that it was the intent of Congress in passing the fiscal year 1987 Labor, HHS and education appropriations bill to endow the Lister Hill Center.

Certainly, there is ample precedence for earmarking funds in appropriations bills to honor outstanding individuals and for other purposes. For ex-

ample, the fiscal year 1983 Labor, HHS appropriations bill provided $3 million to the University of Oklahoma to establish the Carl Albert Congressional Research and Study Center. The fiscal year 1985 continuing resolution provided an appropriation to Northwestern University to establish a basic industry research institute, and the fiscal year 1986 Labor, HHS appropriations bill earmarked funds for the Mary B. Randolph Cancer Research Center in West Virginia. These important memorials were not included in authorizing bills; they were established solely by appropriations measures.

Similarly, the establishment of the Lister Hill Center for Health Policy will honor the memory of a great Senator whose legislative achievements in public health, biomedical research and hospital care are unmatched.

There is already adequate authorization for a grant to be made for the Lister Hill Center. This money will be appropriated by the Congress to the Office of Disease, Prevention and Promotion within the Department of Health and Human Services. The Office of Disease, Prevention and Promotion is charged with creating projects for the advancement of disease prevention activities. And again, the money provided for in the fiscal year 1987 appropriations bill will be made available to the Office of Disease, Prevention and Promotion under the Assistant Secretary of Health so that the Lister Hill Center at the University of Alabama in Birmingham will be funded.

Mr. President, what the Congress was seeking to do when it included the statutory language in the appropriations bill, was to provide money for an Office which is already in existence within the Department of Health and Human Services, so that HHS would have adequate funds to make a grant to the Lister Hill Center for Health Policy. The stated purpose of the Hill Center is to work on projects and conduct studies to advance health promotion and disease prevention within the United States of America. Certainly, this is consistent with the mission of the Office of Disease, Prevention and Promotion in the Department of Health and Human Services.

Mr. President, there is no question that establishing the Lister Hill Center for Health Policy is an appropriate method of honoring one of America's greatest humanitarians just as the projects I have previously recited honor other great Americans.

Here in the Senate, Lister Hill stood tall—a giant among giants. His record of accomplishments is awesome. They are massive in number and impressive in scope and substance.

Senator Hill's particular charge was his work in the field of health and medical research. He devoted his entire service in the Congress to helping fashion the tools and lay the foundations for the medical research, hospitals, and training and educational facilities which have led to the great strides that science, medicine, and public health have taken.

Of the many outstanding health programs which bear Lister Hill's name, perhaps the one with the most importance is the Hospital and Health Center Construction Act, popularly known as the Hill-Burton Act. More than 10,000 general hospitals, tuberculosis sanitariums, crippled children's clinics, diagnostic and training centers, and other medical facilities have been built throughout our Nation under the program.

Mr. President, it would be difficult, if not impossible to find anyone in our history who has done so much for the health of his fellowman as Lister Hill. Millions of Americans live better and longer because of Lister Hill, because of his total commitment to their well being. The betterment of his fellowman was his platform, his creed, and his record. The Lister Hill Center will allow his mission to remain alive. The great potential of the Lister Hill Center is his legacy to America.

I congratulate and extend my sincere appreciation to the Members of the Congress for their foresight in recognizing that the Lister Hill Center will function as a national center for the advancement of disease prevention and health promotion, and will work specifically to refocus national health policy upon such goals as the development of a proactive health care system, the integration of treatment and prevention strategies, and the reduction of societally imposed threats to health.

BASIC ENERGY SCIENCE

Mr. MATTINGLY. Mr. President, I am delighted that the conferees on House Joint Resolution 738, the continuing resolution, have concurred with the Senate regarding the need for increased complex carbohydrate research within the Department of Energy. I would ask the chairman whether or not it is his understanding that a portion of the funds included for DOE biological energy research as intended by the conferees to be utilized for funding an enhanced program of complex carbohydrate research?

Mr. HATFIELD. The conferees agreed with the Senate report language relating to research of complex carbohydrates. The Senate language was aimed at providing a cost estimate and schedule for research facilities at the University of Georgia. In our later colloquy in the Senate, I indicated that it was my view that funds for initial work for research facilities at the University were provided in the Senate report.

Mr. MATTINGLY. Mr. President, in a colloguy with the distinguished Chairman of the Senate Appropriations Committee during our floor debate on House Joint Resolution 738, I outlined the outstanding work being conducted at the University of Georgia in the area of plant complex carbohydrate research. Our earlier colloquy makes clear that it was the intent of the Senate Appropriations Committee that DOE provide adequate funding to initiate the establishment and operation of a plant complex carbohydrate center at the University, and noted that the fiscal year 1987 costs for such a project would approximate $3.0 million.

When the committee reported H.R. 5162, the 1987 Energy and Water Development Appropriations bill, we included language which contemplated the initiation of this research center by directing DOE to negotiate for space in an existing Department of Agriculture research building, and to submit for approval an estimate of the costs required to refurbish and equip the space for a plant complex carbohydrate laboratory. We had estimated in committee that such a program would cost $2.5 million to $3.0 million.

Since that time, the University of Georgia has made a commitment to construct an entirely new building to house the complex carbohydrate center, thus making the 1987 funds which we had earlier intended for refurbishment available instead for funding the startup of this ongoing research center.

Mr. HATFIELD. As the Senator knows, the conferees reduced the Senate allocation for operating expenses for biological energy research by about $3,000,000. The total amount provided by the conferees was $16,500,000 which is approximately $2,000,000 over the House level and the budget request. In view of the conference allowance and language, it is clear that there will be a smaller amount available for this program and other activities as compared to the Senate proposal. Based on the conference language, however, I believe it is the intent of the conferees to provide funds within the amount available to support this enhanced research effort at the University of Georgia.

BIOFUELS

Mr. MATTINGLY. Mr. President, I would like to ask our distinguished Chairman of the Senate Committee on Appropriations a brief question to simply clarify one of the provisions of the Energy and Water Development section of the continuing resolution. In the Department of Energy Biofuels Energy Systems portion of the Senate bill we instructed the Department to expend $450,000 for continuation of the entrained oil pyrolysis project. Now, as far as I am aware, the only lo-

cation where research is being conducted on that precise topic is at the Georgia Institute of Technology, and since we did not identify the institution by name in our report I would only ask whether or not the Chairman agrees that it was our express intent that the $450,000 be expended by DOE for the entrained oil pyrolysis project at the Georgia Institute of Technology?

Mr. HATFIELD. Mr. President, the Senator from Georgia is correct in stating that the Senate Committee had the Georgia Tech entrained oil pyrolysis activities in mind as qualifying for this funding. Although the conference agreement does not provide as much of an allocation for biofuels energy systems, we expect the Department to provide funds for this project.

Mr. BRADLEY. Mr. President. I would like to take this moment to express my strong support for the provisions of the Energy and Water Development Appropriations contained in the Continuing Appropriations Conference Report [H.J. Res. 738]. These projects are extremely important to the State of New Jersey.

Mr. President, I believe that the Federal Government has an obligation to help develop a basic infrastructure system and there is no more important part of that system than the water resource infrastructure. Some critics of these appropriations characterize them as "pork barrel" politics. However, there is significant evidence of the need for this legislation throughout the country. These appropriations provide water to our cities and farms, protect our people and their homes from floods, improve ports for commercial shipping, and provide safe recreation areas to all Americans. New Jersey is dependent on these funds to preserve and maintain its extensive intercoastal waterway, beautiful coastline, large northern and southern ports, and our western border—the Delaware River. Testimony given earlier this year to the Subcommittee on Energy and Water Development by the State of New Jersey's Maritime Advisory Council, the Port Authority of New York and New Jersey, the PenJerDel Council, and the South Jersey Port Corp., document the need for these appropriations. The impact that this funding has on commercial and recreational boating safety, and the overall impact on New Jersey's economy cannot be underestimated. In addition to the important commercial and recreational fishing industries, New Jersey's contiguous waterways provide a billion dollars of customs revenues annually and the State's seashore communities support a $10 billion recreation industry.

Therefore, Mr. President, I am especially pleased that the members of the Energy and Water Appropriations Committee and the conferees have made every effort to give careful consideration to the merits of funding the projects located in my State.

Two projects that I have been particularly concerned about for many years will receive funding when this bill becomes law. The $6 million appropriation for the new south jetty at the Barnegat Inlet will deepen the channel and correct the dangerous conditions which have plagued commercial and recreational boaters for over 30 years. This project will save the American taxpayer money and help prevent the further loss of life. In 1984, Barnegat Inlet's dangerous waters contributed to the deaths of eight people. Each and every year more lives are lost. These construction funds, as well as the moneys appropriated for operation and maintenance of the Inlet, will help to ensure that these waters remain safe for commercial and recreational users for years to come.

The flood control project at Liberty State Park will permit a further, needed extension to the New York Harbor cleanup and maintenance efforts undertaken by the U.S. Army Corps of Engineers. The Seawall project will help maintain the continued safe operation of one of our Nation's greatest commercial shipping areas. Moreover, it will protect Liberty State Park from flooding and erosion, and it will provide the millions of people who visit the Liberty State Park with an unparalleled view of the Statue of Liberty and Ellis Island.

The energy and water appropriations contained in this bill also provide funding for a project that is crucial to one of our Nation's greatest commercial shipping areas—the Kill Van Kull and Newark Bay Channels. Marine traffic to and from New Jersey pass through these waterways to Port Newark and other important New Jersey harbors. After more than a decade of study by the Army Corps of Engineers, this project was authorized in the fiscal year 1985 Supplemental Appropriations Act (Public Law 99-88). Although this $12 million appropriation will provide the initial funds for a $291 million deepening project which will bring the channel to a depth of 44 feet, there is an urgent need for additional funds during the next 2 fiscal years. Earlier this year, a large containership ran aground at the junction of Newark Bay and the Kill Van Kull. Recognizing the difficult decisions that the committee faced during its preparation of this bill, I hope that additional funds needed to expedite this project can be appropriated in fiscal year 1988. Authorization for this additional funding is contained in the conference report to the Omnibus Water Resources Development Act (H.R. 6) which should receive final passage in the very near future.

I am also extremely pleased that the committee acknowledged the need to fund dredging a 37-foot deep approach channel to the South Jersey Port Corp.'s Beckett Street Terminal in Camden, NJ. The Port's marine terminal facilities are of tremendous economic importance to the city of Camden. Inadequate channel depth has caused the Port to lose business it might otherwise have obtained. In addition to generating jobs in the Camden area, this long awaited deepening project is expected to increase activity in the Port by approximately 25 percent.

I applaud the committee for taking the steps necessary to continue protecting New Jersey's precious shoreline and waterways. The $2.3 million appropriated for the Barnegat Inlet Beach Erosion Control project will be used by the Army Corps of Engineers to continue preliminary work on the restoration of large sections of the northern New Jersey shore that were severely damaged by storms in 1984. The committee has also included $500,000 for the design and engineering work needed for the Cape May Inlet to Lower Township project. H.R. 6 authorizes a comprehensive erosion control and storm protection project for this area. This initial funding will permit construction to alleviate erosion that has already destroyed the helicopter landing pad at the Coast Guard facility. The committee's responsible action will help to preserve and protect the Federal Government's and the surrounding municipalities' property. I also would like to thank the committee for providing funding for the operation and maintenance of New Jersey's many waterways, especially the Intercoastal Waterway, the Delaware River, and the New York-New Jersey Channels.

Finally, the committee's willingness to continue funding projects geared toward flood damage protection and flood control in selected areas of the Passaic, Raritan, and Rahway River basins, is greatly appreciated. Residents living in the vicinity of these rivers have suffered through tremendous floods during the past decade and a half. The last major flood in the Passaic River basin occurred in April, 1984. Thousands of people living in the Basin were displaced from their homes, and property damage was estimated at over $300 million. Similar flooding problems have occurred in the towns surrounding the Green Brook subbasin of the Raritan River basin. In August, 1973, flooding in the Green Brook lower basin resulted in the deaths of six people. The $1.37 million appropriated for the Corps of Engineers continued planning and engineering study of the basin will help to

remedy a very serious flooding problem.

Mr. President, I would like to commend the Committee on Appropriations for its efforts to preserve and protect some of New Jersey's most precious and vital resources. I urge my colleagues to support passage of this bill.

VETERANS' ADMINISTRATION PROGRAMS

Mr. CRANSTON. Mr. President, as the ranking minority member of the Committee on Veterans' Affairs, I want to express my great appreciation to my colleagues in both Houses who worked so diligently in the conference on the fiscal year 1987 appropriations for Veterans' Administration benefits and services as provided for in the conference report on H.R. 5313, the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1987 (H. Rept. No. 99-977), as now set forth in section 101(g) of House Joint Resolution 738, the fiscal year 1987 continuing appropriations resolution. The conferees have done a fine job of providing fair and adequate levels of funding for veterans' programs.

Mr. President, I am particularly grateful to the Senate HUD-Independent Agencies Appropriations Subcommittee acting chairman [Mr. LAXALT], the ranking minority member [Mr. LEAHY], the Senator from New Mexico [Mr. DOMENICI], who served as acting chairman of the Senate conferees during the October 7 meeting of the conference committee, and the other Senate conferees, and the House subcommittee chairman [Mr. BOLAND], the ranking minority member [Mr. GREEN], and the other House conferees for their cooperation and their commitment to veterans in developing the conference agreement. I also express my appreciation to my distinguished colleague from Arizona [Mr. DECONCINI] who, as a member of both the Committee on Veterans' Affairs and the Appropriations Committee, has done so much to make sure that the VA is provided with sufficient resources to maintain the level and quality of services provided to our Nation's veterans.

Mr. President, the overall conference agreement on VA funding is generally very good in meeting the needs of our Nation's veterans as well as in recognizing and responding to the continuing developments and changes in the VA.

I would especially like to highlight two aspects of the agreement.

MEDICAL CARE ACCOUNT

First, I congratulate the conferees on their decision to provide $9.412 billion for the VA's medical care account in fiscal year 1987. This appropriation level, according to the conferees, will enable the VA to maintain fiscal year 1987 medical-care staffing of an estimated 194,140 full-time employee equivalents—FTEE. The conferees indicate that this level of funding is intended to maintain in fiscal year 1987 the 193,941 FTEE staffing level that has been appropriated for the VA in each of the last 2 fiscal years, as well as to provide for a total of 199 FTEE—the 99 FTEE requested by the administration plus 100 FTEE that the conferees added—for the purposes of implementing the income-eligibility and third-party-reimbursement provisions enacted on April 7, 1986, in title XIX of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272).

Mr. President, the administration's fiscal year 1987 budget proposed to reduce VA medical-care staffing levels by nearly 9,000 FTEE in fiscal year 1987. I viewed that unfair proposal with great alarm and have been working very hard over the past 9 months in the budget and appropriations processes to protect the VA's medical care account from cuts that would reduce VA medical-care staffing. For example, on March 4, 1986, joined by the other Democratic members of the Veterans' Affairs Committee, I submitted to the Budget Committee our strong recommendation that the administration's cutbacks in the VA's medical-care account be rejected. As we urged at that time, Mr. President, maintaining reliable, consistent support for the VA medical program is essential if the agency is to continue to fulfill its mission of providing quality care to our Nation's veterans. Fortunately, the Congress agreed, and in the fiscal year 1987 congressional budget—Senate Concurrent Resolution 120—adequate provision was made for the funding level provided in this appropriations measure.

Mr. President, with further reference to this issue of VA medical-care staffing levels, on October 2, 1986, three of my colleagues on the Appropriations Committee, Senators DECONCINI, LEAHY, and LAXALT, and I engaged in a colloquy which begins on page S 14777 of the October 2 RECORD. In that colloquy, Senator DECONCINI and I expressed our concerns regarding a proposed reduction in fiscal year 1987 in the VA medical-care staffing level as reported by the Appropriations Committee on September 25 (S. Rept. No. 99-487). We urged the Senate conferees to reconsider this important matter and to work with the House conferees in providing resources in the VA medical care account adequate to maintain the VA medical-care staffing levels. In response, Senator LAXALT and LEAHY both stated that they appreciated our concerns and pledged to do their best in conference to accommodate our concerns in determining the level of staffing and funding under the VA medical-care account. In view of these assurances, other discussions with the Appropriations Subcommittee, and certain actions agreed to be taken that were taken during full committee markup of the bill, Senator DECONCINI and I agreed not to offer amendments on VA medical care either during full Appropriations Committee markup or on the Senate floor.

Clearly, the Appropriations Subcommittee conferees have carried out their part of the bargain in full measure.

PARKING GARAGE REVOLVING FUND

Mr. President, the second provision in the conference agreement that I would like to highlight concerns an appropriation of $26 million to establish a parking garage revolving fund for the future construction and acquisition of VA parking facilities. This revolving fund has been authorized by law since 1979 but has not yet been activated.

Mr. President, I note that H.R. 5299, the proposed "Veterans' Benefits Improvement and Health-Care Authorization Act of 1986," which has now been passed by both Houses and thus cleared for the President's signature, includes a provision, section 223, which sets forth a mechanism for the collection of parking fees and the use of the revolving fund. The new legislation would require the Administrator to deposit in the revolving funds the fees that would be required to be collected at medical centers with new parking garages built or acquired with revolving fund money—plus any parking fees collected at other VA medical facilities, where the Administrator would continue to have the discretion to charge fees. These provisions, together with this initial appropriation, would finally break the 3-year deadlock over parking garage construction.

The $26 million appropriation for the revolving fund included in the conference report, together with the provision, also included in the conference agreement, transferring into the revolving fund from the VA's major construction account the $4 million previously appropriated for fiscal year 1984 for the construction of a parking structure in San Francisco, would give the VA a $30 million fund from which to draw to begin constructing parking garages needed to ease intolerable parking situations at various medical centers. The Appropriations Committees generally intend that the $30 million be spent for the garages at San Francisco, Syracuse, Durham, and Baltimore, and I concur with that.

Finally, I am pleased to note that the conference report includes an administrative provision, which was in the original Senate version of H.R. 5313 and which I had urged the Senate committee to adopt, authorizing the Administrator to increase the revolving-fund appropriation by up to 10 percent by means of transfer from

the VA's major or minor construction accounts.

Again, Mr. President, I would like to express my deep gratitude to the conferees on the VA appropriations in the continuing resolution fiscal year 1987 for their hard work and thoughtful decisions to help maintain and improve the quality and efficiency of the benefits and services provided to our Nation's veterans through the Veterans' Administration.

Mr. PACKWOOD. Mr. President, I rise today to set the record straight regarding an amendment on the subject of abortion agreed to by my colleagues who were members of the conference between the House and the Senate on the continuing resolution. When the Senate Appropriations Committee considered the Commerce, Justice, and State appropriations bill, H.R. 5161, the Senate Appropriations Committee struck the House-passed amendment that would preclude a Federal prison inmate from obtaining an abortion even with her own or non-Federal resources. When the full Senate considered the Commerce, Justice, and State appropriations bill in the continuing resolution, no amendment was offered on this subject. So when the House and Senate went to conference on the continuing resolution, the House version contained this amendment but the Senate version did not.

Now, when the conference committee met on the continuing resolution, the members of the conference agreed to a so-called compromise between the House and Senate versions on the question of the payment for an abortion for inmates in Federal prisons. This compromise will ban the use of Federal funds to pay for an abortion except in cases where the woman's life is at risk if the fetus is carried to term and in cases of rape. It is my understanding that given the exigencies of the circumstances and the view of the House conferees, the Senate conferees saw no alternative.

The language of this amendment is very similar to language that the Senate voted unconstitutional last year. On November 1, 1985, in this Congress, the Senate voted that an amendment to the Commerce, Justice, and State appropriations bill for fiscal year 1986 which denied Federal funding to pay for abortions for Federal prison inmates except where the life of the mother would be endangered, was unconstitutional. That is why I believe the members of the conference committee included the second part of this amendment which is, in effect, a severability clause. If the abortion provision contained in the continuing resolution is ruled unconstitutional by a court of law, the amendment will fall but the entire legislation will remain intact.

In my legal research, I have found substantial court precedent under the eighth amendment and the constitutionally protected right to privacy found in the abortion case law to support a ruling of unconstitutional by the court.

Regardless of whether or not the court rules on the constitutionality of this amendment, this is just a 1-year appropriation and the Senate will no doubt revisit this question in 1987. While I understand that my Senate colleagues in the conference committee needed to accept this amendment this year, it is my intention to oppose any effort to offer a similar amendment to the fiscal year 1988 Commerce, Justice, and State appropriations bill.

Mr. METZENBAUM. I want to follow up on the comments made by the distinguished Senator from Oregon [Mr. PACKWOOD]. There is no question in my mind that these abortion provisions are unconstitutional.

The key issue presented is whether the Government may confine an individual and deny the means to exercise a constitutional right. The previous precedents on Federal funding of abortion do not resolve this issue. The results in these cases turned in part on the absence of any governmental interference with the opportunity to obtain an abortion and on the premise that the Government had not imposed on women the poverty which made it difficult for them to pay for an abortion. Obviously, governmentally imposed imprisonment presents a very different situation—a situation of total governmental control over a woman's life and livelihood. In this situation, the Government has an obligation to support the right to an abortion. This is my view.

Moreover, I must also add that there are serious constitutional problems posed by this provision because it does not provide for abortions where the health of the woman would be harmed if she carries a pregnancy to term. I have reviewed Supreme Court cases which say that deliberate indifference to the medical needs of an inmate is unconstitutional under the eighth amendment. In these cases, the courts remind us that the Government undertakes certain obligations when it imprisons individual, and one obligation is to provide medical care. When an inmate needs an abortion for health reasons, prison officials have a constitutional duty to make that abortion available. So, there are serious constitutional problems with this legislation.

Ordinarily we would expect the Senate to give this kind of legislation full consideration, but the time element has made that impossible this year. The House included abortion language which was stricken by our own appropriations committee. No one brought this issue to the floor. And that is not surprising since several Senators would have no doubt offered serious opposition. And last year when we considered this issue, a point of order made by Senator RUDMAN based on the unconstitutionality of these restrictions was sustained.

The House should not expect agreement on this language in the future, whether the language is included at the beginning, middle, or end of the legislative session. If the House chooses to include restrictions on Federal inmate abortions in subsequent legislations, appropriations, or otherwise, I will do everything to defeat the restrictions. I am reassured by the statements of Senators KERRY and PACKWOOD on this issue. I welcome the opportunity to work with them to protect these important constitutional rights from legislative infringement. Thank you Mr. President.

Mr. KERRY. Mr. President, let me first state that I fully concur with the remarks made by my distinguished colleagues from Ohio and Oregon and I commend them on their tireless efforts on this very critical issue. In addition, I would like to reiterate their sentiments that it is likely that we will revisit this issue in the future. They can both be assured that I will be working with them to defeat such dangerous provisions.

Mr. President, I rise in opposition to a provision added to the continuing budget resolution during the conference committee between the House and the Senate. This provision which was not in the Senate passed Commerce, Justice, and State appropriations bill in the continuing resolution, will inhibit the right of women in Federal prisons to have abortions. Although I have no intentions on holding up the continuing budget resolution at this late stage in the session, I want to make it absolutely clear that my opposition to this specific provision is based on two factors. First, this provision is unconstitutional, and second, this action represents legislating on an appropriations bill.

Federal prisoners do not lose their constitutional rights when they are incarcerated. Last year the Senate was quite clear on this issue when they voted a similar measure unconstitutional. Furthermore, this has been upheld in numerous instances. For example in the case of *Wolff* v. *McDonnell*, 418 U.S. 539, 555–556 (1974), Justice White stated, "There is no iron curtain drawn between the Constitution and the prisons of this country."

In *Roe* v. *Wade*, 410 U.S. 113 (1973), the Supreme Court stated that up to the point of viability "the abortion decision is inherently, and primarily a medical decision * * *" and found that the Government cannot deny a patient the right to obtain an abortion. Moreover an incarcerated woman's right to appropriate medical care is

unquestionalby protected under the Constitution. This could not be more clearly portrayed than in the U.S. Supreme Court decision *Estelle* v. *Gamble,* 429 U.S. 97 (1976), where the court ruled that the eighth amendment's ban on cruel and unusual punishment requires prisons to provide medical services for inmates; particularly in situations where the denial of elective medical treatment would cause an "irreparable" condition. Preventing a woman from being able to choose to have an abortion in a timely and safe manner is undoubtedly "irreparable". This was most recently upheld in a New Jersey court case *Monmouth County Correctional Institution Inmates* v. *Lanzaro,* Civil No. 82-1924 (D.N.J. May 29, 1986). In this case, the court was determining whether it is appropriate for prisons to offer abortions as a medical service. They concluded in their ruling that inmates not only have the constitutional right to an abortion for medical reasons, but that abortions must be paid for by the Government. In sum this ruling clearly points out the fact that by denying Federal dollars for women in Federal prisons who choose to have abortions we are blatantly denying essential medical services.

I have clearly demonstrated that this provision is unconstitutional. Let us turn our thoughts for a moment to some actual facts about the living conditions in prisons and ask ourselves, should women really be forced to carry a pregnancy to term in a Federal prison if they choose not to? Fact—66 percent of the women in prison were unemployed prior to imprisonment; fact—58 percent of women in prisons lived on less than $3,000 a year prior to imprisonment and 92 percent had less than $10,000 yearly income; fact—the majority of women in prison are single parent mothers; fact—gynecological and prenatal care is inadequate in most prisons; fact—in prisons there is little to no medical care provided for newborn children; fact—50 percent of all children do not see their mother after incarceration; fact—prisons have limited support programs for child-inmate relations. Circumstances as grim as this must certainly be studied in depth to assess its impact on the health and welfare of a pregnant woman and her unborn child.

Mr. President, in conclusion let me say, that the constitutionality of a woman's right to abortion was determined in the case Roe versus Wade. Furthermore, the issues of abortion, and access to health care for women in prisons should be carefully examined by the appropriate authorizing committees. Issues of such far reaching consequences should be fully addressed and not cavalierly placed on a spending bill in the closing moments of this Congress.

AIR FORCE TRAINERS

Mr. DOLE. Mr. President, we've been preoccupied with this amendment for nearly a full day now. For a long time last evening, I was not certain this matter could be resolved. But we did reach a fair agreement, and I am apprecative of the efforts of many Senators: D'AMATO, MOYNIHAN, STEVENS, EXON, DECONCINI, WARNER, RUDMAN, and especially the distinguished chairman of the Armed Services Committee, who was the guiding force in this, the last major legislative effort of his illustrious career.

I am not certain anybody can declare victory here, and, as has often been said, that is often the best indication that a fair compromise has been reached. This is a complicated matter involving a Government contract which was originally awarded in 1982. Budget conditions changed and performance on the contract was not what had been anticipated. Senators have developed strong opinions on the question of whether the contract should be continued, fully or partially funded, or terminated. Many have viewed this effort as a show down, and that we would on this bill finally decide once and for all the fate of the T-46.

Well, we haven't done so. We have reached an agreement that preserves the integrity of the contract originally reached between the Government and Fairchild Industries. In my view, that was essential. The agreement which was reached recognizes the practical performance and budget difficulties which have arisen in regard to this contract without bailing out the contractor, as some had feared.

It does not cancel the contract with Fairchild. Instead, it references and clarifies the competitive fly-off which is embodied in the 1987 Defense authorization bill, which is nearing final passage. It provides that the Air Force shall prepare immediately for the fly-off, and that the fly-off shall be completed by January 1, 1988. Further, it makes certain procurement funds previously appropriated for fiscal year 1986 available for purposes of the fly-off but clarifies that candidates—to Fairchild—in the fly-off cannot utilize those fiscal year 1986 funds for modification or procurement of aircraft.

In my view, a fly-off is the only way we could have resolved this matter. Other Senators are fully aware of my interest in Cessna Aircraft Manufacturing Co. in Wichita, KS. Cessna has provided trainers for the Air Force since the mid-1950's. Their track record is excellent and I am confident they will fare quite well in the competitive fly-off. Let me make clear that this agreement means that the Air Force cannot utilize 1986 procurement funds to modify or develop T-37's for purposes of the competitive fly-off. The Air Force will, of course, have to make available T-37's to Cessna for modification and development purposes, but Cessna, not the Government, will have to incur the modification and development expenses.

So, Mr. President, we will have a fly-off and we now know the terms. We will know in 1988 the winner of the next generation trainer competition, revisited. But we can't ignore the fact that the Air Force announced its intention to terminate the T-46 program because they could not affort it. And unless conditions change dramatically, they will presumably not be able to afford the winner of the fly-off, either. The next Congress will have to make that decision based on budget circumstances at the time.

Until we make further decisions on which planes will be used to train our pilots in the decades to come, the T-37's will suffice quite well. Air Force Secretary Aldridge has made clear several times in the past few months, and again late last evening in my office, that the T-37 fleet is in good condition and has a useful life of several thousand more hours. But we all agree that the planes will not last forever and that we will address the trainer question in the near future. Until then, let's see what the competitive fly-off brings us.

DEBT COLLECTION ACT

Mr. DECONCINI. Mr. President, the continuing resolution contains a provision which prohibits the use of funds by the Farmers Home Administration to contract with private collection agencies to collect delinquent payments from FmHA borrowers. This provision was added to the continuing resolution due to the distressed conditions which now exist in many agricultural communities. As a cochairman of the Senate Grace caucus, as a sponsor of the Debt Collection Act of 1982, and S. 2620, the Federal Credit Management and Debt Collection Improvements Act of 1986, I rise to ensure that the prohibition on the use of private collection agencies by the Farmers Home Administration during fiscal year 1987 is not misinterpreted as a weakening of the resolve of Congress for the Federal debt collection effort.

The Debt Collection Act of 1982 was enacted to encourage and improve debt collection activities governmentwide. This act directed the Office of Management and Budget and the Treasury Department to undertake a number of initiatives to collect the rapidly growing debt owed the U.S. Government. The Debt Collection Act of 1982 was followed by the issuance of a number of executive branch directives, including OMB Circular A-129. While the executive branch has had some success in collecting delinquent student loans, a General Accounting Office report prepared for me in May indicates that nontax delinquencies

grew by 55 percent over the past 4 years to more than $24 billion. This dramatic increase in debt owed the Federal Government, combined with our serious budget deficit problems, led me to introduce S. 2620, the Federal Credit Management and Debt Collection Improvement Act of 1986.

This bill provides for the establishment of specific nontax debt collection targets for the Federal Government as a whole and a mechanism for setting debt collection targets for the individual agencies and departments with debt collection balances. New incentives would be provided for agencies to pursue nontax delinquencies and agencies with large debt collection balances would be directed to use private sector collection agencies, credit bureaus, and salary offset to collect delinquent loans.

In light of the serious depression in the farm sector economy, and the enormous human tragedies which have resulted, perhaps it was unwise and insensitive to let a contract for a private company to collect Farmers Home Administration past due accounts. Nevertheless, Mr. President, I do not believe we should allow the passage of this prohibition on the use of private collection by the Farmers Home Administration in this bill to send the wrong signal to the executive branch and to private collection firms. I believe it should be made clear that Congress remains committed to the goals of the Debt Collection Act of 1982. Mr. President, I believe that the Office of Management and Budget and the General Services Administration should work to ensure that those private collection firms denied Farmers Home Administration loan accounts are made whole for any losses or costs incurred. In addition, OMB and GSA should immediately locate and refer to the firms under contract with GSA who either have received or would have received accounts for collection from FmHA, alternative Federal loans or equal volume, value, and profitability potential to those denied by the continuing resolution. OMB and GSA should also explore and implement other actions, including an extension of the existing 2-year contract between the affected firms and GSA for debt collection, to ensure that the commitments made by GSA in the contracts with vendors are fulfilled.

Mr. President, I would like to inquire about the views of the chairman of the Senate Governmental Affairs Committee who has been a leader in the Federal debt collection effort. Does the chairman agree that it should be made clear that Congress remains fully committed to the collection of Federal debt and the use of private collection agencies to achieve that objective? And does the chairman concur with positions I have outlined on these important matters?

Mr. ROTH. Yes, I agree with my distinguished friend from Arizona. I share his view that the executive branch should strengthen its efforts in the debt collection field generally and should contract out for private assistance with debt collection where it is appropriate to do so. For that reason I have joined the Senator from Arizona in sponsorship of S. 2620, the Federal Credit Management and Debt Collection Improvement Act of 1986. I believe it is also this shared view that encouraged the Senator from Arizona to join me in sponsorship of S. 2230, the Federal Management Improvement and Cost Control Act of 1986, which was unanimously reported by the Committee on Governmental Affairs last July.

One of the critical objectives in both these legislative efforts, in S. 2620 and S. 2230, is to ensure the improved effectiveness of Federal debt collection efforts through the increased use of private debt collection agencies. To some extent the executive branch has already anticipated that goal, and contracts with private debt collectors have already been concluded. Where that has been done, and where specific delinquent loans are now under contract for private collection efforts, I agree with the Senator from Arizona and with the distinguished chairman of the Committee on Appropriations, that private contractors in these arrangements should be insulated from the effects of section 632, consistent with the terms of their contracts with GSA. One way to do this may be to provide sufficient replacements of delinquent loans from other portfolios to those firms under contract with GSA. In that way the goals established under those contracts might still be met.

I also want to assure my distinguished colleague from Arizona that a renewed effort to secure the adoption of effective debt collection legislation, such as the efforts we have made together in S. 2620 and S. 2230, will be a high priority for the Senator from Delaware in the 100th Congress.

IN SUPPORT OF DISASTER PAYMENT PROGRAM

Mr. RIEGLE. Mr. President, this continuing resolution means a great deal to farmers in the State of Michigan, and throughout the Nation in areas which have been devastated by flooding, hail, or drought. The bill contains a $400 million disaster payment program for most crops that have been afflicted by natural disasters in the past year.

Less than 20 days ago the Michigan congressional delegation was approached by a group of farmers representing a number of major farm and commodity groups in the State who had been severely damaged by heavy rains and floods. Due to an extraordinary bipartisan effort both in the Senate and in the House, we were able to craft a program that will meet in a significant way the needs of those producers throughout the country who are currently facing the loss of more than 50 percent of an entire crop.

Mr. President, this program is unique in many ways since prior to its enactment there was no disaster payment program for program corps, such as corn and soybeans. But the truly unique aspect of the program is its application to nonprogram crops such as potatoes, dry edible beans, fresh vegetables, fruits, and many other crops that are not covered by any Federal price support programs.

Michigan ranks in the top 10 producers of more than 20 different crops ranging from corn and soybeans to carrots and grapes. The total value of our farm production is almost $3 billion dollars. Agriculture is our second largest industry and even in the worst of times for Michigan, the farm sector has managed to keep the State's economy afloat.

There is no way to understate the amount of damage that has been done in Michigan since September 9 due to the unprecedented rains which have occurred. We have received over 85 percent of our normal annual rainfall in less than 1 month. Farmers, who were just beginning harvesting activities—after nurturing crops during the year—saw their labors turned into mud and the hopes of economic survival disappearing. Entire crops of potatoes, dry beans, sugar beets, and soforth were destroyed with little or no hope of salvage. Without the program that we are approving today, thousands of farmers would be forced out of business through no fault or mismanagement on their part. For example, it is estimated that 60 to 70 percent of Michigan's 5,500 dry bean farmers will be eligible for assistance under this program, that is the extent of the damage, and how critical the need for disaster assistance. Existing disaster loan programs are simply unavailable to farmers in this situation, there is no way to meet the repayment requirements with one's crop under water or completely destroyed.

This program would provide disaster payments to farmers who have suffered more than a 50-percent loss on each crop they produce. Payments would be limited to $100,000, and it would be available for both program and nonprogram crops that have been damaged by flood, drought and hail. Payments would be in the form of generic PIK certificates, and farmers can receive up to 50 percent of their total losses in payments. In addition, major changes were made by the House conferees in the existing farm loan programs, and by providing more funds for conservation and restoration projects.

Mr. President, I would like to note that this legislation would not have been possible without the active assistance and cooperation of Senator MATTINGLY. He is facing drought damages in proportions equal to the damages we face in Michigan due to flooding. This legislation is an example that we can work together in times of common need to craft a program which meets the needs of the people of this country while remaining within budgetary limits.

Mr. President, this program is not perfect by any means, it will help those farmers who have suffered the greatest loss due to natural disasters. It will permit farmers to receive disaster payments as one part of a total recovery package. Most importantly, it will help to ensure that farmers who have worked so hard to remain in business, during the most difficult times imaginable, will have another chance to farm in 1987.

Mr. MATTINGLY. Mr. President, I am deeply disappointed that the Senate conferees on the continuing resolution receded to the House on the issue of reimbursement for geophysical permittees who provide data and information to the Interior Department under 43 U.S.C. 1352. Not only is this decision likely to reduce the quality and quantity of information available to the Department in making important decisions concerning our Nation's offshore energy reserves; it also takes a heavy toll on the independent geophysical companies which are struggling to survive in the current depressed condition of the oil and gas industry. While this is unfortunate, it would help somewhat if the Department would change its current regulations and keep this data and information confidential and not release to the general public data and information supplied by the permittees while it remains commercially valuable to the permittee. The public release of such data and information obviously destroys its commercial value to the contractor.

The Interior Department's regulations which appear at 30 CFR 251.14-1(d) allow the release of most of this information. The regulations which are promulgated pursuant to 43 U.S.C. 1352(c) are unclear about the confidentially of proprietary information, but there remains the opportunity to change them. Thus, the regulations establish a 10-year timeframe for data release and ignore that data and information may continue to have proprietary value even though the 10-year period has run.

I would therefore inquire of the distinguished Senator from Idaho, who chairs both the Senate Interior Appropriations Subcommittee and the Energy and Natural Resources Committee, regarding the proper interpretation of 43 U.S.C. 1352(c). Is it the chairman's understanding that the statute requires the Secretary of the Interior to maintain the confidentiality of geophysical data and information for however long it remains of commercial or proprietary value to the permittees who invested effort and money in its collection?

Mr. McCLURE. The drafters of the Outer Continental Shelf Lands Act desired to make geophysical data and information collected under permit available to the Federal Government and, under certain conditions, to the States in order that they be better able to make informed decisions on the development of the OCS oil and gas reserves. However, it left the specific timeframe for the release of this data and information up to the Department. Clearly, the Department has the authority to change the regulations and to hold the data and information for so long as it remains commercially valuable to the permittee. I share the concerns of the Senator from Georgia that the current regulations should be reviewed to see if this change makes sense. I interpret the statute to require the Secretary to refrain from public release of such data and information so long as the permittee can show that it remains commercially valuable to him. I would suggest that some data may remain commercially valuable longer than the 10-year timeframe provided in the current regulations and that the Department should rethink their regulations.

Mr. LEVIN. Mr. President, the continuing resolution has good news for some of Michigan's farmers who were devastated by the recent recordbreaking flooding. For perhaps 5,000 of the hardest hit farmers, some greatly needed assistance will soon be on the way. I have urged Agriculture Secretary Lyng today to gear up the program * * * on a crash basis to get the disaster payments into the hands of the devastated farmers.

For the first time, we were able to provide some disaster payment relief for producers of beans, potatoes, and other vegetables that are not part of existing Government commodity programs, as well as for the crops that are part of those existing programs such as sugar beets, dairy products, corn, and other feed grains.

While it is difficult to know how many farmers in Michigan will benefit, I would guesstimate the number may end up being about 5,000. The farmers hit the hardest will benefit the most since the program, as it came out of conference, will assist only those farmers who lost at least 50 percent of their crops. The payment will roughly equal the value of the lost crop above the 50 percent threshold up to $100,000. For instance, the dry edible bean farmers who were hit so hard will be primary beneficiaries, since up to 70 percent of the 5,500 dry edible beangrowers in Michigan will probably qualify for some direct payment, that being the percentage who lost at least 50 percent of their crops. Since fewer sugar beet and potato farmers lost 50 percent of their crops, it seems likely a smaller percentage will qualify.

This was a tremendous bipartisan effort involving a full court press by the Michigan delegation in both Houses and Governor Blanchard. Congress has shown by this act that it can respond with the same generosity of spirit that Michiganite and others showed in the great voluntary outpouring of assistance to the drought-stricken farmers of the Southeast last summer.

The total program for the whole country is $400 million. Because there were so many other disaster areas with farmers who qualified for assistance under this legislation, Michigan's farmers will not get all they need. But we broke new ground and farmers who were hit the hardest will be getting at least some assistance. Farmers in counties which have been declared disaster areas and farmers in designated adjacent counties will be eligible.

Disaster payments will be made in the form of commodity certificates which can be redeemed for a federally owned surplus commodity or offered for sale. Payments will be limited to $100,000 per producer.

So in summary, some relief at least will soon be forthcoming for farmers in Michigan, where estimates indicate that without some assistance almost 25 percent will not be able to farm again next year.

AUTHORIZATION OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS

Mr. ROTH. Mr. President, I want to comment on the incorporation of the Paperwork Reduction Reauthorization Act of 1986 in the continuing resolution. This amendment makes a number of significant improvements in information management. But the key issue addressed in this legislation is the authorization of appropriations for the Office of Information and Regulatory Affairs—the President's right arm in the drive for regulatory reform and the elimination of unnecessary paperwork.

In August 1984, my Committee on Governmental Affairs reported a bill reauthorizing OIRA by unanimous vote. On July 31 of this year, the Governmental Affairs Committee again reported unanimously this bill as a separate title in the Federal Management Reorganization and Cost Control Act, S. 2230. It is time that this reauthorization of truly vital functions under the Federal Paperwork Reduction Act be passed.

Since passage of the Paperwork Reduction Act in 1980, the Office of Information and Regulatory Affairs has

reduced the Federal paperwork burden by nearly a third. The General Accounting Office agrees that OMB has exceeded the act's targets for the reduction of the total paperwork burden during its first years of operation. But at the same time, Mr. President, OMB has stated that the paperwork burden has proven much greater than was thought to be the case when the act was passed in 1980.

Earlier this year, OMB established reduced targets for paperwork reduction, stating that such lower targets are the direct result of the burgeoning increase in highly prescriptive paperwork requirements in recent tax measures and other legislation. Congress must assume greater responsibility for reducing this burden, but it is clear the job is unfinished and the President—through the Office of Information and Regulatory Affairs—must also provide leadership.

The Reauthorization Act sets targets for additional reductions in the paperwork burden over the next several years. Congress must provide this guidance to counteract the ever-present tendencies to expand the paperwork burden on the private sector.

Over the past 5 years, we have also seen significant gains in reducing Federal regulation. Two Executive orders issued by the President have established a highly effective regulatory review process and a more coherent regulatory program for major portions of the U.S. Government. Mr. President, I have often questioned the vigor and effectiveness of the management side of OMB. The Office of Information and Regulatory Affairs is perhaps the singular exception.

Shortly after I came to the Congress 20 years ago, my staff put together what became known as the Roth catalog. This imposing document counted some 1,571 Federal categorical grants under the Great Society. This burgeoning grant structure was accompanied by an astronomical number of regulations. In fact, between 1960 and 1980, the number of staff involved in creating regulations soared from 9,000 to 66,000. The dramatic increase in Federal mandates choked the life of State and local governments as well as private industries that struggled to comply with what were in some areas costly and counterproductive measures.

It was Americans crying out against unemployment, and looking for jobs, that persuaded Washington to rethink its affair with regulations. Overregulation was stifling American productivity and international competitiveness. It placed an unnecessarily large burden on American corporations, and the effects were felt at all levels of business—including competition, growth, and employment. In short, it was not working.

Efforts to curb regulation began at the Presidential level in the early 1970's. President Carter broadened the deregulation movement with the airlines. Since then it has quickly spread to other industries. In the late seventies, the number of regulations flowing from Washington averaged about 8,000 a year. With the Reagan administration's effort to control this flood of Federal constraints, not only were old regulations revisited to minimize their impact, but the number of new regulations immediately dropped by 25 percent, and it continues to decline each year.

As my distinguished colleagues are well aware, the President's efforts toward regulatory reform have generated some controversy. The Office has also been criticized on some of the methods by which it has carried out these efforts. Recently, OIRA instituted some additional administrative safeguards to ensure a fair and open regulatory process. The Reauthorization Act provides still further safeguards regarding the information collection functions.

The Reauthorization Act incorporated in the continuing resolution contains language requiring a separate appropriation account to fund OIRA's activities under the Paperwork Reduction Act. Funds to carry out these functions must come from this account. Other activities carried out by OIRA must be funded out of appropriations otherwise available to the Office of Management and Budget.

I want to make two points on this funding matter. First, the review of proposed regulations to assess the information collection burden they would impose is an integral requirement of the Paperwork Reduction Act and therefore is eligible for funding out of this new account. Second, OIRA will still be able to carry out its functions under Executive Orders 12241 and 12498 under funding otherwise available to OMB. To an extent, such functions are indistinguishable from the Paperwork Reduction Act functions I've just described.

I believe the successes in paperwork reduction and regulatory reform would not have been achieved without a strong arm such as OIRA in the Executive Office of the President. The need for this reform has not diminished. OIRA also has major responsibilities in information policy. This is the less visible but no less vital role this Office was assigned under the Paperwork Reduction Act. Some have criticized the level of OIRA's effort and attention in this area. But important steps have been taken recently, such as issuance late last year of a comprehensive policy framework for managing Federal information resources. The administration has outlined a three-point information resources management strategy designed to ensure maximum return on the Government's investment in this technology.

My committee has worked diligently for 3 years to enact the legislation embodied in the continuing resolution. OIRA has functioned without a funding authorization since October 1983. While this situation has caused some uncertainty, Congress has provided appropriations to carry out the President's paperwork, regulatory, and information management functions. This year the situation is different. The other body deleted OIRA's appropriation because there was no authorization. The continuing resolution not only provides the necessary funds, but also the authorization of funds for 3 additional years. This is a great achievement for all those who were involved. Senator CHILES should particularly be complimented for his efforts.

Mr. President, in order to reach this goal, it was necessary to accommodate the other body concerning certain modifications to section 111 of the Federal Property and Administrative Services Act, otherwise known as the Brooks Act. I want to comment on two of those modifications.

First, certain clarifications were made concerning the applicability of the Brooks Act. I support strong oversight by OMB and the General Services Administration to ensure that procurements of automated data processing equipment are carried out efficiently and effectively and in accordance with the law. However, I also believe the Federal Government must take advantage of the efficiencies available through such equipment and that Federal agencies, when qualified to do so, should be made responsible for determining their ADP requirements and making the needed procurements. Actions by GSA and OMB should be designed to facilitate that process.

Second, the authority of the General Services Board of Contract Appeals to determine whether or not a procurement falls under the Brooks Act was made specific, subject, or course, to judicial review. Proceedings, decisions, and orders of the board are not to be subject to interlocutory appeal or review, that is review while the board's decisionmaking process is underway. I want to make it clear that the Federal Court of Appeals will still have the opportunity to review decisions and orders of the board once completed. The only effect on judicial review is in its timing, not its scope or nature.

I look forward to working with OMB and GSA to further improve the Federal Government's information management, reduce the paperwork burden, and reform the regulatory process.

COLUMBIA RIVER GORGE

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of H.R. 5705, Columbia River Gorge National Scenic Area Act.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, the request has been cleared on this side of the aisle. There is no objection.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5705) to protect and provide for the enhancement of the Columbia River Gorge, and for other purposes.

The Senate proceeded to consider the bill.

Mr. HATFIELD. Mr. President, this is a bill that has been passed by the Senate and has now been passed by the House with certain amendments which the Senate would agree to.

● Mr. McCLURE. I would like to ask a few questions of the sponsors of this measure with respect to the changes which were made to the version which passed the Senate on October 8. This version makes a slight modification to the savings language contained in section 17(a)(5) that nothing would affect any interstate compact made by the States. This version inserts "before the enactment of this Act". I understand that the reason for the addition is that this act grants the consent of the United States to an agreement between Washington and Oregon and therefore this act would obviously affect an agreement which would occur subsequent to enactment. I am not certain that such a clarification was needed since I think the application of this measure to the agreement set forth in the measure is obvious. I would like the assurance of the sponsors that the savings language contained in section 17(a) (2), (3), and (4) which respect to water does apply to any actions taken by States in the future.

● Mr. EVANS. The Senator is correct. In on way would this act or any provision thereof or any action taken pursuant thereto in any way affect any action taken by any State either individually or in concert with respect to water or water-related rights nor with respect to any future or past action by the Federal Government with respect thereto.

● Mr. McCLURE. I appreciate the assurance. I would like to specifically seek the assurance that nothing in this act or the change made in this section would in any manner affect the Idaho-Wyoming compact on the Upper Snake.

● Mr. EVANS. The Senator is correct. Moreover, there is nothing in this act which would in any way affect anything which has occurred or would occur in either the State of Idaho or Wyoming.

● Mr. McCLURE. I appreciate the assurance. I would further like to inquire whether this language or the change thereto would in any way affect the authorization for the Columbia River compact which was enacted in 1925 for the States of Washington, Oregon, Idaho, and Montana and then amended in 1952 to include Wyoming and again in 1954 to include Nevada and Utah?

● Mr. EVANS. The Senator can rest assured that there will be no effect in any manner on the authorization for the Columbia compact or on the abilities of the several States to enter into the compact if they so choose.

● Mr. McCLURE. I would like to reemphasize that. There is absolutely no effect whatsoever on the authorization for the Columbia compact or the ability of the States to enter into it.

● Mr. EVANS. The Senator is correct. This act is completely irrelevant to such a compact.

● Mr. McCLURE. I appreciate that assurance. I would like to inquire whether the change in the consistency language by the addition of new section 14(e) in any way affects the understandings which we had and which we expressed on the Senate floor on October 8 with respect to the relation of the Commission and various Federal agencies?

● Mr. HATFIELD. Absolutely not. Federal agencies would continue to exercise their functions pursuant to Federal law. To the extent that Federal actions would otherwise take into account actions by State or local units of government, that would be unaffected even if the Commission were exercising the authorities which normally would be exercised by either the State or a county. In addition, I would point out that section 14(e) operates only in the absence of the Commission.

● Mr. McCLURE. Does the last comment mean that section 14(e) could exist in perpetuity if the States decide not to establish the Commission?

● Mr. HATFIELD. The Senator is correct.

● Mr. McCLURE. So, if section 14(e) only operates in the absence of a Commission, then is it equally correct to say that section 14(d) is the only and sole provision governing consistency of Federal actions if a Commission is established?

● Mr. HATFIELD. The Senator is correct. If the Commission is established, section 14(e) will have no effect and for all practical purposes will no longer exist, except in the unlikely event that the Commission is disestablished.

● Mr. McCLURE. I thank the Senator for that assurance. I would note that under 14(d) there is no authority to withhold Federal funds. The determination of what actions of Federal agencies are consistent with this act, is made solely by the Secretary of Agriculture. I find this to be very troublesome. However, as we have previously stated both today and on October 8, the act does not override the authorities pursuant to other Federal law of Federal agencies, such as the Bonneville Power Administration, the Bureau of Reclamation, the Corps of Engineers, or the Forest Service. Am I correct?

● Mr. HATFIELD. The Senator is correct.

● Mr. McCLURE. Am I also correct in stating that each Federal agency is the expert in knowing what its powers and responsibilities are under Federal law including this act, and that the role of the Secretary in determining "consistency" is ministerial?

● Mr. HATFIELD. The Senator is correct. The Secretary of Agriculture is in no position to determine whether or not a particular action by an agency of the Federal Government is pursuant to its particular statutory mandates including this act. Therefore, the Secretary's determination of consistency must be based on the other agency's own determination. This section is not meant to estblish the Secretary as a miniczar in the area, is not intended to give him a veto of other Federal agency's actions, or replace his judgment for the expertise of the agencies.

● Mr. McCLURE. This legislation as it passed the Senate required both Federal and State agencies to act in a manner consistent with the act. That language has been changed to delete the State agencies. The original version would have required the States as a condition of the Federal agreement to direct all their agencies to operate in a manner consistent with this act. Now, we could have a perpetual Federal control over the area with the Federal agencies bound forever while the States can do whatever they like. In addition, even if the Commission is established, there is no requirement for State agencies to act in a manner consistent with the actions of the Commission.

● Mr. HATFIELD. While the Senator is technically correct, it is our view that the States will act responsibly, including their agencies and that the potential of a perpetual Federal presence and the restrictions contained in section 14(e) will act as an incentive to the States to establish the Commission.

● Mr. EVANS. I agree with the remarks of my friend from Oregon with respect to the consistency provisions of this bill.

● Mr. McCLURE. I would like to thank my colleagues for their clarifications of this legislation which they have worked so diligently to see enacted.

● Mr. GORTON. Mr. President, I would like to add that I fully concur with the statements of my colleagues from Oregon, Idaho, and Washington concerning the amendments added to the Senate bill by the House of Representatives. As I understand the amendments, there is nothing in the bill as amended that would affect in any way either the Idaho-Wyoming compact on the Upper Snake River, nor the Columbia River compact.

I also agree with the statements made by my colleagues about the changes made by the House to the consistency provision in section 14. The provisions of section 14(e) only operate in the absence of a Commission being formed. If the Commission is formed, then only section 14(d) applies. Additionally, it is my understanding that Federal agencies would continue to exercise their individual authorities pursuant to the Federal laws pertaining to those agencies. Each Federal agency will make the substantive determination as to the consistency of its action. The Secretary of Agriculture's determination of consistency would be based on the determination of the respective Federal agency. It is also my view that State agencies are to act in a manner consistent with the provision of the act. I would hope that when the States take up consideration of this bill in their respective legislatures, that they will make that point clear.

Mr. President, while I strongly support the passage of this bill today, I must say that I am concerned about both the constitutionality, and the policy implications of the provision added by the House of Representatives to section 10. The Senate bill provides the Secretary of Agriculture with a limited authority to use condemnation to acquire land in the scenic area. The purpose of this provision is to ensure that there will be some oversight for development in the scenic area during the interim period before each country adopts a land use ordinance. The condemnation authority is greatly limited. With two limited exceptions, the Secretary cannot condemn an existing use at all. The Secretary is precluded totally from condemning a single-family residence, farming and grazing lands, and lands used for educational, charitable and religious purposes.

The House amended the language in the Senate bill to allow the Commission, with a vote of two-thirds of its membership, or either Governor of Washington and Oregon to disapprove a complaint filed by the Secretary of Agriculture for the condemnation of lands or interests in land in the scenic area, outside the special management area and the urban area.

Mr. President, I seriously question the wisdom of a policy that removes one of the most important oversight mechanisms in the bill. It seems to be inconsistent with the rest of the bill, and indeed with the purposes of the act itself, to have included a provision that allows one Governor the ability to veto an action of the Secretary that is meant to provide needed protection of the entire scenic area.

I must also state that I am not sure that this provision will withstand constitutional scrutiny. Given the very limited legislative time that we have available to act on this bill, I believe this body must pass the House bill. For the most part, it is extremely close to the bill that the Senate passed on October 8. I think, however, that this particular provision will need to be corrected at some point in the future. Both here in the Senate, and in the House of Representatives, we have worked long and hard on this bill. I know that the greatest concern has always been that we produce a bill that is both fair, and effective.

Mr. President, I would also like to clarify and confirm a point regarding the future operation of the Burlington Northern Railroad and the Union Pacific Railroad, both of which operate on existing rights-of-way within the Columbia Gorge and within the scenic area designated in the act. For the purposes of this act, the operation of these railroads within the boundaries of the scenic area should not be considered to be industrial development.

Routine railroad operation and maintenance activities, necessary modifications and access, particularly in emergency situations for repair and rebuilding the roadbed, will continue in the scenic area, subject, as relevant, to the applicable standards in the act. In certain situations, this may mean that the Commission may require mitigation measures to ensure that the activity will not adversely affect the resources protected under the act. These are vital transportation links that have historically operated through the gorge, and it is important to confirm that their continued operation is not endangered by the provisions of his legislation.●

BONNEVILLE POWER ADMINISTRATION

Mr. McCLURE. If my colleague would indulge me for just one more matter, I would like to turn to the question of hydroelectric facilities managed by the Bonneville Power Administration within the proposed scenic area. Section 2(j)(2) of the Senate-passed bill exempted the upgrading of existing electric transmission facilities from the definition of "major development actions." The House-passed version deletes this exemption. However, a savings provision in section 17(a)(6) of H.R. 5705 states that nothing in the act affects or changes the ability of the BPA to operate, maintain, and modify existing transmission facilities. Can the Senator give me an assurance that this change is not intended to impair the BPA's present work or ability to make future improvements in such areas as, for example, the replacement or addition of substation equipment?

Mr. HATFIELD. The Senator is correct.

Mr. McCLURE. With regard to power system controls?

Mr. HATFIELD. The Senator is correct.

Mr. McCLURE. In the installation of system protection equipment?

Mr. HATFIELD. The Senator is correct.

Mr. McCLURE. And communications equipment?

Mr. HATFIELD. The Senator is correct. It is our intention that the BPA be able to operate, maintain, or modify its equipment and facilities without interruption so long as these activities do not create visual or other adverse environmental impacts. We are pleased with the BPA's express willingness to work with the Forest Service, the new Columbia Gorge Commission, and the local jurisdictions to insure that its operations conform with the nature of the scenic area and the purposes of the act.

Mr. McCLURE. I thank the Senator for this clarification.

Mr. HATFIELD. Mr. President, I move the adoption of the bill.

The PRESIDING OFFICER. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 5705) was ordered to a third reading, was read the third time, and passed.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I wish to thank many people and I will not take the time to list each one. But I see on the floor, particularly, the chairman of the Subcommittee on Public Lands, Reserved Water and Resource Conservation, Mr. WALLOP, and the chairman of the full committee, Mr. McCLURE, from whom we have had excellent support. And I see also Senator MELCHER on the floor. We have had broad-based bipartisan support for this.

We have had extraordinary leadership in the House of Representatives, as well, from both sides of the aisle in the House and from a major number of the Northwest Congressmen; unfortunately, not all.

So I just want to thank each of those activists and those who participated in now setting aside a very major, unique piece of God's creation for the preservation and the beauty

and for the enjoyment of generations yet to come.

IMMIGRATION REFORM AND CONTROL ACT—CONFERENCE REPORT

The PRESIDING OFFICER. The question is now on the immigration conference report pursuant to cloture vote earlier today.

Who seeks recognition?

Mr. BYRD. 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. DECONCINI. 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. DECONCINI. Mr. President, I will vote against the conference report on S. 1200. I believe that the conference report represents real progress, but I am greatly concerned about two actions of the conferees. First, the conferees agreed to the House provision creating criminal penalties for employers who are convicted of a pattern and practice of knowingly hiring illegal aliens. Second, the conferees did not include the House-passed provision temporarily suspending the deportations of Salvadorans and Nicaraguans from the United States. Although I do want to congratulate the Senate and House for the efforts they have made and the improvements in this conference report, I have concluded that the bill is still flawed.

I believe that we do have a problem in this country with our inability to control illegal immigration, but I am convinced that it is not as big a problem as many would have us believe. I grew up and have lived virtually my entire life near our border with Mexico. In southern Arizona, we have created a thriving society that has integrated two cultures and two peoples. While we do have our tensions and problems we are working together to make our part of the country a better place. I believe that our example can be followed all over the country and our tradition of being a melting pot can continue. America is the great country that it is because we have learned to take in all of the world's peoples and use the strengths and assets of each individual and each people. But it is certainly the case that we cannot take in everyone in the world who wants to enter the United States. We must have limits and we must regain control. These limits must have flexibility. Flexibility would help affect the control that we desire. For instance, in past versions of the immigration reform bill, a provision has been included to double the number of legal immigrants from Mexico. I have supported this provision and believe not only that it would have been fair but that it would have facilitated control of the border.

I do not believe it is the responsibility of America's business community to enforce our immigration laws. I have repeatedly supported and introduced measures to strengthen our border enforcement efforts. I am pleased that the bill before us does increase our efforts and abilities in this regard. But I am not pleased that primary enforcement responsibility under this bill is given to business. While I am concerned about the impact civil penalties for knowingly hiring illegal aliens would have on business, I am even more concerned that the conferees have chosen to implement a system of employer sanctions which includes criminal penalties. It is bad enough to ask our business community to enforce our immigration laws, a job we acknowledge we have been unable to do, without putting an employer in jail for matching our lack of success. I believe that civil penalties for hiring illegal aliens is sufficient. American business follows the law. If we make it illegal to hire an illegal alien, employers will simply not hire illegal aliens. The civil sanctions will result in a sharp reduction in illegal immigration on their own. The fact that the employment of illegal aliens is severely reduced will result in a raising of both wages and working conditions in jobs for which legal residents and illegal aliens compete.

I am also concerned that the criminal penalties that could be imposed under the employer sanctions will excerbate discrimination against legal residents of the United States. I have long worried that imposing any sanctions on employers might result in increased discrimination against individuals with foreign-sounding names or who retain foreign accents. I have hoped that the imposition of sanctions would not give license to those in our society who would choose to discriminate against people who are different. I am concerned that an employer would have a slightly higher employment standard for an individual with a Hispanic surname simply because that employer would want to avoid any chance of having to pay a fine or go to jail. I am concerned that an employer would develop different procedures for interviewing and hiring foreign-looking and sounding individuals. For instance, an employer might verify the employment eligibility of a Japanese-American before the interview process begins and check on the Anglo-American after the hiring decision has already been made. The difference in procedure places another burden in the way of minority individuals in the United States. If these practices might occur under a system of civil penalties, they are even more likely if criminal penalties and jail terms might be imposed. I believe that the conferees have erred by adopting the House provision including criminal sanctions.

I am also very concerned that the conferees were unable to work out any agreement providing some kind of protection for Salvadorans who have fled their country and have come to the United States for safety and protection. I have been working for 5 years to persuade or require the administration to stop the deportations of Salvadorans back to that violent and strife-torn country. I have not engaged in this effort in order to criticize President Reagan's policies in El Salvador. I have supported the President policies and have been pleased at the progress that President Duarte has been able to achieve. I have met with President Duarte and have encouraged him to continue his efforts.

While the political situation in El Salvador has gotten better since the election of President Duarte, the security and human rights situation in that country remains critical. There were over 1,900 political killings and disappearances last year. This number is higher than any country currently receiving extended voluntary departure status by the United States. There have been over 60,000 civilian deaths in El Salvador as a result of the civil strife there. Over a million Salvadorans have been displaced, both internally and externally, since the violence started in 1980. These individuals are spread throughout Central and North America because of what President Duarte himself describes as "culture of terror." Duarte has supported resettlement of displaced Salvaldorans outside of El Salvador. I believe there is overwhelming evidence of the dire and urgent need for Congress to provide emergency and temporary protection for the Salvadorans who have fled to the United States. I am extremely disappointed that the administration and the conferees were unable to agree to at least a short-term suspension of deportations. The recent earthquake in El Salvador has excerbated the already frightful situation and, in my opinion, presented the administration with an opportunity to make a humanitarian gesture without creating the adverse precedent that the administration has sought to avoid.

I believe that the United States has a tremendous responsibility to those citizens of El Salvador who have been displaced by the civil strife occurring there. We have this responsiblity because of our involvement in that country. An involvement, as I stated before, that I have supported. With that involvement, however, comes the responsibility to those innocent persons adversely affected by it. I am once again

disappointed that we have not met that responsibility.

For these reasons, I will once again oppose the Immigration Reform and Control Act. I believe that if the criminal sanctions had not been included and some sort of protections for Salvadorans had been included, I would be able to, at long last, vote for the bill. But, with congratulations to Senator SIMPSON for his perseverenace, I will cast a nay vote.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, we have now invoked cloture on the conference committee report as compiled by the House and Senate and are now proceeding under post cloture activities under rule XXII, and in view of that I would hope that those who are prepared to speak in some further detail on this bill will come forward.

I do not have a great deal of further commentary except to say that indeed I think it is apparent that by a vote of 69 to 21 we are anxious to proceed.

The House has completed its work by a substantial vote. The Senate, I hope, will complete its work, and I know they will because we have invoked cloture and will complete our activity at this time of the schedule of the Senate.

The President awaits the bill and has agreed to sign it.

I want to pay particular respect to Senator GRAMM. He has been a dogged and persistent adversary and has truly represented the interests of his State as he has sought to restrict or to delay this measure. That is a good faith effort. There is nothing contrived in that effort, nothing sinister. It has been bold and up front.

I admire him. I admire the work he has done. He has been in this Chamber for just really a span of months rather than years and what he has done in that period of time is truly extraordinary as we deal with the deficit and budget matters.

Senator GRAMM did ask, is this the best bill that can be written?

I can tell you that there never will be a perfect bill any more than there are perfect children, perfect marriages, perfect crimes, perfect anything.

It is always interesting to me how people expect perfection out of us as legislators when they do not have it in their own lives. In fact the less they have in their own lives the more they demand of us. It is almost like the person who is out of control and always trying to control others. Interesting people those. We know them.

That does not have anything to do with this particular debate, but if I were a shrink I would want to pursue that I think with some further detail.

□ 1640

But, in any event, it is not a perfect bill. There are some things in there that pain me. Chairman RODINO and I have both pledged in our oversight capacity, and it will not matter who is in the majority or minority, to assure that this legislation works, because, you see, by doing nothing we perpetuate a status quo which we all, every single one of us, agree is reprehensible and repugnant.

I can certainly understand why some do not care for legalization. Legalization is a necessity if we are going to preserve our scarce INS [Immigration and Naturalization Service] resources, to deter future illegal immigration, and to remove a fearful, easily exploited subclass from our society. These things will only happen along with employer sanctions and more immigration enforcement.

I say that one of the principal reasons we are in this box in the United States is because of a piece of legislation passed in 1952 called the Texas proviso. How ironic, but not coincidental, that the Senator from Texas has played such a leading role in this debate over the immigration bill. It was originally because of certain interests of Texas that we are here today at all debating immigration reform because, in 1952, the Texas congressional delegation was successful in adding the Texas proviso which stated that it was illegal to harbor or conceal or transport or aid an illegal alien, but the word "employment" was not considered as being harboring or aiding.

So the law of the United States is the most bizarre of any law in any country. It simply means it is legal to hire an illegal, but it is illegal for the illegal to work. Now that is the law of the United States and that is how we got here. And is that not absurd?

Well, I will not go on. The proviso, of course, became a tacit invitation for unauthorized foreign workers to enter the United States in order to find jobs. That is why they came. The main thrust of the bill—and this is the guts of immigration reform—is employer sanctions, penalties against those who knowingly—knowingly—hire illegal, undocumented persons.

So I understand those deep concerns of the Senator from Texas about legalization and the agricultural worker program. Many caring people share that view, and we will deal with that in our oversight capacity. I look forward to a colloquy between the Senator from Texas and myself with regard to that program.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. STENNIS. Mr. President, will the Senator yield briefly to me?

Mr. SIMPSON. Certainly.

Mr. STENNIS. Mr. President, I want to especially thank the Senator here for the splendid work I have seen him do over the period of years in this very difficult field. During the years I have been here, this has been a tremendous problem and often it was virtually impossible to do anything very effective about it. But the Senator from Wyoming and the group that has worked with him found a different way and made an effective contribution.

I think all of us, the Nation, owes you a debt of gratitude. I want to especially thank and commend you for the quality and competence of your work. I thank the Senator very much.

Mr. SIMPSON. Mr. President, let me just say, in response to the Senator from Mississippi, there is no one that I respect more than the Senator from Mississippi. He is an inspiration to us all on a daily basis, especially when we are in until 3:30 in the morning and then back at 8:30 and he is the first one to show up and the last one to leave. He is an inspiration.

He served with my father. My father and Senator STENNIS are dear friends. He has extended that same friendship to me, and I cherish it.

He is the one that told me: "When you come to the Senate, some grow and some swell." And he hoped that I would be in the former category rather than the latter. A couple of years ago he told me he thought that was the case. That made me exceedingly proud.

So I thank you, Senator STENNIS.

Mr. WALLOP. Mr. President, I will take some time that would be alloted to me under the rules of cloture to speak briefly on another subject.

SENATOR NUNN ON THE ICELAND SUMMIT

Mr. President, I read with intense interest the extraordinary speech by the Senator from Georgia on recent arms control developments in Reykjavik. And I must say I am intrigued by a number of points the Senator made.

I am most pleased with the Senator's recognition that there is an intrinsic relationship between our strategic nuclear deterrent and the conventional and theater nuclear forces that we rely on to defend Western Europe and our Asian allies. He acknowledged that this relationship is a critical one. It is somewhat ironic, however, that the Senator from Georgia has strenuously argued against our strategic deterrent forces enjoying the highest priority in our defense budget, even though by his own logic, they are essential not only to the defense of the continental United States but also to our friends and allies. I would suggest that his record does not indicate that he regarded our strategic nuclear deterrent as the preeminent guarantor of our security.

I am also pleased that the Senator has recognized the massive Soviet strategic defense effort, in particular the Soviet air defense system to which we

possess no equivalent. He rightly states that this asymmetry in air defenses should have a chilling effect on the United States entering into any restrictions on our bomber force. I am puzzled, however, how Senator NUNN can square this statement with his unambiguous support of continued adherence to the numerical limits of SALT II, which also places no restrictions on Soviet air defenses. In fact, my recollection is that the Senator has been arguing for all manner of nuclear arms reduction agreements, such as the build-down concept and others, that included no restraints on Soviet air defenses. Conservatives have been chided in this body by Members on the other side of the aisle for even suggesting that we limit Soviet air defenses.

Finally, I am pleased that the Senator from Georgia has recognized the overall importance of our nuclear deterrent to the defense of this Nation. I would assume that the implication of his assessment is that the United States must maintain a vigorous nuclear testing program designed to maintain the adequacy and credibility of our strategic nuclear deterrent, at least as long as we rely on nuclear weapons to the extent the Senator has indicated. I wonder, however, why the Senator from Georgia did not vigorously oppose the House Democrats in their effort to impose nuclear arms control restrictions on the administration, including a virtual ban on nuclear testing, forcing the President to negotiate with Congress before he could go to Iceland to negotiate with Gorbachev. Why has he been helping in the effort to tie the President's hands while President Reagan was negotiating our future with the Soviet Communist Party leader?

If I am not mistaken the Senator said he thought the President should attend the Iceland meeting? What did he expect to come out of such a meeting? He offers no alternatives, he merely criticizes the President for making arms control offers that are too far-reaching. I hope his suspicion of the Soviets, his recognition of the need for a strong and credible nuclear deterrent, and his cautioning that all arms control agreements are not by definition in our interest, will be sustained into the next budget cycle.

So all this appears to represent a change of heart. If it is real, I applaud it. If it is real, I expect to see the Senator from Georgia down on the floor supporting fully the administration's request for modernizing our strategic nuclear deterrent, for modernizing and continuing completion of the strategic defense initiative. I expect to see him here opposing restrictions on our bomber force that do not take into account Soviet air defenses, and I expect him to lead the fight for a vigorous nuclear testing program.

It is most refreshing to hear the Senator from Georgia now pleading to save the missiles. I look forward to working with him next year when some in this Senate attempt to trim the administration's request for MX deployments.

Mr. President, I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

I suggest that that document and his reading of its clear terms should supersede any subsequent informal oral expressions made by a U.S. official to Senators or to anyone else and should lay the issue to rest. In fact, it seems clear that the United States offer was not to eliminate all strategic nuclear weapons. No such offer was or is on the table. No such offer need be withdrawn because in fact no such offer was ever made.

I also find curious that portion of the statement of the Senator from Georgia having to do with the wisdom of an offer to eliminate all ballistic missiles. There are several interesting points.

First, at page 6 of his statement the Senator from Georgia states a fact that I think no one can dispute. He said speaking of Soviet air defenses:

> The United States has virtually no air defense network while the Soviet Union has made a massive investment in this area. It has hundreds of air defense radars, thousands of dedicated air defense interceptors and tens of thousands of surface-to-air missiles.

Mr. President, his observations about Soviet air defenses is absolutely correct. Indeed, I think he could have gone much further and said there is a distinct possibility that by changing the radar used in conjunction with existing Soviet air defenses, the entire network could be converted into a nationwide network of rather primitive but effective antiballistic missile defenses.

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, I, too, read with considerable interest the statement of the senior Senator from Georgia. Indeed, it was with more than with interest. It was with a great deal of curiosity on several points. The first of these had to do with the apparent uncertainty as to what the actual record was in Iceland. I must say that my curiosity was based in part upon a colloquy that I had earlier enjoyed with the senior Senator from Georgia and the junior Senator from Tennessee on this very point on what I believe was Wednesday afternoon, a day after we had received a briefing from the Secretary of State on that very point.

I felt a bit like Yogi Berra must have felt when he said, "I am feeling deja vu all over again," because we had, I thought, covered the point in the briefing with the Secretary of State and when we had our colloquy here on the floor the next afternoon. At that time I reminded my colleagues that the Secretary had produced a document which I thought disposed of the question.

Mr. President, as a distinguished old—well, not so old, certainly youthful and experienced trial lawyer, the Presiding Officer I am sure will recall from law school days, and from practice, something called the "best evidence rule." There is a precept in the law of evidence that the best evidence of the contents of a document is the document itself. And in that briefing for all Senators explaining what went on in Iceland, Secretary of State Shultz on Tuesday afternoon produced from his pocket a document which he identified as that from which he had read to the Soviets at Hofdi House, the United States offer, even as he was reading it to the assembled Senators in room S-407.

Another point raised by the Senator from Georgia had to do with the conventional imbalance in Europe—that is, inferiority of NATO's conventional capability as compared with that of the Warsaw Pact. He cites no less authority than the Supreme Allied Commander, General Rogers, who he quotes on page 7 of his statement for the proposition that this inferiority is so marked that it would necessitate going to a nuclear response on the part of NATO in days rather than weeks or months.

I do not take issue with the basic point. It seems to me, though, that it suggests a conclusion that can be fairly inferred from all else that is said in the Nunn statement: that we have come to rely long since upon our nuclear capability in order to equalize the odds in the NATO theater against the conventional superiority of the Warsaw Pact.

However, in the Senator's ensuing statement that if we cannot count on bombers to penetrate those Soviet air defenses, we are left to the inadequate capability of artillery, and aircraft-delivered tactical nuclear bombs, there is, strangely, no discussion of our cruise missiles. Perhaps unwittingly, and with unintended irony, the Senator's expressed concerns point out the wisdom of the President's announced intention to proceed to make the ALCM conversions that will exceed SALT II limits, and give the United States an increased ALCM capability that would seem even more needed against the background and context that the Senator from Georgia urged this morning as the true context of our NATO position.

Mr. President, I fully agree with the points made about Soviet air defenses and our lack of them. But I do not see

how anyone can argue that point, and when faced with the far more serious and destabilizing threat of ICBM's—the heavy hard-target killers that can reach America in 25 minutes—then vote to reduce the funding requested to try to provide an America now totally defenseless against that ICBM threat—except for MAD—with the necessary ABM defense that can be provided through the strategic defense initiative. And we have the rather anomalous position that those—not the Senator from Georgia, but all too many of his Democratic colleagues, especially in the House—who have at one time advocated a nuclear freeze rather than increase now seem to be urging upon both superpowers a freeze rather than reduction of their missile inventories. They seem to be urging that we undertake a movement to "Save the missiles."

What is clear is that there is a need to provide America with defenses against attack, both from Soviet bombers, from air-breathing attackers, and from Soviet ICBM's.

□ 1700

It is either explicitly stated or a fair inference from all that was contained in the statement made by the Senator from Georgia this morning that, without the assurance of a strategic deterrent, our conventional forces and those of our allies are inadequate; that in fact a ban on all strategic nuclear weapons would not be in our interest, and that it is largely the accuracy and credibility of our strategic deterrent which has preserved the peace in Europe.

It would be correct, Mr. President, to infer from this that today we rely more heavily on our strategic forces than on our conventional forces for deterrence. It would be correct to further infer by the Senator's own reasoning that an erosion in the adequacy or credibility of our strategic deterrent either by a treaty of the kind he has described, or by obsolescence, would pose a paramount danger for the United States and our allies.

And from that, the further logical inference can be made that as a result, our strategic deterrent forces should enjoy the highest priority in our allocation of resources during our defense budgeting process; that we should, in the instance of increasing budget constraints look first to cuts not in strategic forces, not in the nuclear deterrent, but rather in the secondary, although mightily important, conventional forces. That is the clear inference of the statements that he has made, and of his citation of General Rogers' admonition.

It is an ironic fact that, as we reduce defense spending, our emphasis upon strategic forces grows of necessity.

Reducing defense resources means increasing reliance upon our strategic forces.

Yet that clear point which the Senator seems at such pains to make to President Reagan is lost upon and is contradicted again and again by the record of his colleagues on the other side of the aisle, both in committee and on the floor, in voting to cut spending for that vital strategic capability in explicit preference for beefing up our conventional capability. There seems to be a sharp departure in the statement of the Senator from Georgia this morning from both his own prior position and certainly that of his Democratic colleagues in the Senate and in the House to a still greater degree.

There is also an inescapable implication that if we are in fact dependent, as he argues, upon a continued substantial nuclear deterrent, we are therefore dependent upon vigorous, continued nuclear testing to maintain the adequacy and credibility of our strategic nuclear deterrent; and that such required testing should be a very high priority for the United States.

If, in fact, he agrees, then I would urge upon the distinguished Senator from Georgia the role of needed advocate in admonishing his fellow Democrats in the House of Representatives who in this defense authorization bill insisted first upon an almost total ban of testing, a virtual elimination of any testing of the kind required to improve and maintain the credibility of our nuclear deterrent.

Mr. President, there is much in this statement to analyze at greater length. We will have the opportunity to debate its points in the future. But it raises points that require response now as well as more detailed discussion later, as the Senator from Wyoming and I have undertaken to provide this afternoon.

Mr. GORE. Will the Senator yield?

Mr. WILSON. I would be delighted to yield.

Mr. GORE. I missed part of the Senator's statement at the beginning. I heard it on the television system and came over to hear the rest of it.

I believe what the Senator has said, in part, is that the President of the United States did not agree, even tentatively, to eliminate all strategic nuclear weapons or all nuclear weapons because the Secretary of State produced a piece of paper which contained the formal offer made by President Reagan to General Secretary Gorbachev during their fourth and final meeting on the second day of their discussion. The Senator from California cited the best evidence rule to support that proposition. Before I ask the question, am I correct in my statement so far? Is that the Senator's position?

Mr. WILSON. The Senator is correct so far.

Mr. GORE. Might I ask my colleague this question: the piece of paper produced by the Secretary of State memorialized not an agreement but an offer. The Senator referred earlier to elementary contract law. There was a formal offer written down on a piece of paper, but according to accounts of participants at Reykjavik, General Secretary Gorbachev rejected that formal offer and said there was an inconsistency in the treatment between the two 5-year time periods. The 50-percent reduction during the first 5-year time period was intended to apply to all strategic weapons, but during the second 5-year period the reductions down to zero were to apply to ballistic missiles only, and the General Secretary at that point said, "We cannot accept that. Why not make it symmetrical and have the reductions to zero apply to all nuclear offensive weapons and not just the ballistic missiles?"

According to accounts by the President, and the Secretary of State as well, and also privately from members of the team over there, the President at that point said something to the effect, "If that is the point which hangs up an agreement that will be no problem. We can agree on that."

I ask my colleague whether or not he would not reach the same conclusion, that the written offer was superseded by the oral agreement. That may be stretching the definition of a word agreement, if someone says that will not be a problem if that is the only thing that hangs up an agreement. But it seems to me the statement earlier by the Senator from Georgia is right on target when he says it is impossible to determine the evidence any other way than to conclude that the President of the United States might very well have agreed to precisely this formulation, to eliminate all nuclear offensive weapons. Is that not a reasonable interpretation of events?

Mr. WILSON. I do not agree with my friend's statement of the facts as it varies from those made by certain officials on the record.

Mr. GORE. If I may ask the question——

Mr. WILSON. If the Senator from Wyoming will let me finish my sentence, I will be happy to yield to him as the manager of the immigration bill.

What is true, I think, is that the Senator from Tennessee is in error when he says that the written offer can be accepted orally in arms control negotiations. I think in anything as important as arms control negotiations, whatever preliminary oral discussions there may be is obviously not the final document upon which we

rely. We rely upon written records both to make the offer and to make the acceptance.

Mr. GORE. Will the Senator yield for one final short question?

Mr. SIMPSON. Would the Senator from California yield for a moment?

Mr. WILSON. I am happy to yield.

Mr. SIMPSON. Let me say I know this is going to get into a marvelously spirited debate on foreign policy, and I think that debate should go on. But I hope it does not go on during the conference committee report on immigration reform.

I have the greatest respect for the Senator from Tennessee. I frankly did not realize that those who were seeking time under the postcloture activities might not be directing their remarks toward the immigration issue.

If you have one further question, and one further response that could be shared, I am not going to object. But if it is going to go on, I will object on the basis that it is not germane to this issue.

Mr. GORE. I appreciate the statement of the manager.

If the Senator will yield for one further question, I will assure the manager of the bill I have no intention of getting into a lengthy debate. I felt if we were going to have a lengthy discussion of this issue, it ought not be one-sided.

To pose one further brief question, speaking hypothetically for a moment, if, in fact, the President of the United States had agreed that he would eliminate all strategic offensive nuclear weapons, would the Senator believe that would be a terrible mistake?

Mr. WILSON. First, I agree with the Senator from Tennessee that it would be wrong if there were a unilateral presentation of these issues, which is why the Senator from Wyoming and I sought time, with apologies to other Senators, to respond to questions raised by the Senator from Georgia.

Now, the answer to the Senator's question is that the situation he posits is purely hypothetical. It did not occur. Again I remind the Senator from Tennessee that the offer made in writing did not offer the terms he hypothesizes, nor was there any written acceptance of such terms.

Mr. GORE. If I may follow that answer, I neglected to realize that the colloquy was in response to the earlier speech today. Indeed, it was not a one-sided exchange.

□ 1710

I did want to seek clarification on those points and I thank the manager for his forbearance.

Mr. SIMPSON. I thank the Senator from Tennessee. I believe the Senator from Illinois, the manager of the bill on that side, has not made an opening statement. I yield so that he may be recognized.

The PRESIDING OFFICER (Mr. NICKLES). The Senator from Illinois.

Mr. SIMON. Mr. President, I want to speak briefly on this matter. I rise in support of the conference report.

I want to say first that our colleague, Mr. SIMPSON has done a tremendous job. He is a legislator. He is not only a man who bears the title of Senator; he has done a real, craftsmanlike job on the details. And he does not get any votes in Wyoming handling the immigration bill, let me assure my colleagues.

Let me also acknowledge the work in the subcommittee of Senator KENNEDY, Senator GRASSLEY, and Senator DENTON; also Senator METZENBAUM, who is not on the subcommittee now but formerly was on the subcommittee.

In the House, our colleagues were Representatives MAZZOLI, RODINO, BERMAN, PANETTA, LUNGREN, as well as the chairman of the full committee here [Mr. THURMOND]. In the past, I have voted against the immigration bill. I think that on balance, there have been some serious flaws in it. I do not like everything in the bill right now. I do not like some of the things that my colleague from Texas has criticized in this bill. But I believe it is as good a bill as we are going to get and I think it moves on a very fundamental problem.

First, it has something that is essential and something that causes oppostion. That is employer sanctions. You simply cannot have effective control of our borders without having employer sanction, and in this bill, the legalization and employer sanctions go together at the same time. That was my major reason for voting against the bill when it came out of the Senate this last time.

I think as long as you have employer sanctions, you are going to have some employers who are going to oppose it; you are going to have some in the Hispanic community who are going to oppose it. But I think those employer sanctions are absolutely essential.

Let me just add that with it goes the legalization for amnesty, whatever term you want to use. And it is not only Hispanics who benefit. We have people in the city of Chicago who are of Polish background or Greek background who are going to be able to benefit from the legalization provision. I think that combination is essential.

Second, there is protection for people here that was not in the original bill, that was not, with due respect to my colleague from Texas [Mr. GRAMM], who is a hard worker and, to his credit, digs in and does the kind of work that a scholar should do on these measures, there is substantially more protection in this bill than with the amendment that my colleague from Texas voted for when this bill was in the Senate originally.

We are offering legal assistance and we provide a legal status for people.

The third thing that I think we have to recognize is that it is absolutely essential that we get control of our borders.

Let me just give one illustration. I mention Mexico not because Mexico provides the only problems, but I think we have to recognize that the main problems are from Mexico. I see my other colleague from Texas here, too. Let me just give one illustration of why this is such a tremendous problem.

Mexico today has a population of 70 million people. If, by the end of this century, Mexico reaches a status where one female produces one female—I am not trying to be sexist, but that is the way demographers talk about zero population growth—Mexico will taper off with a population of 175 million people. If that does not happen until the year 2020, Mexico will have a population of 270 million people eventually. If we think we have illegal immigration problems today, my friends can look down the road a piece and the problems are just going to be horrendous. That means we have to work with Mexico.

We can pass a dozen bills like this but if we do not work with Mexico, we are not going to get anything done. I think this bill's provisions of working with Mexico are very important.

Among other things, it calls for the Immigration and Naturalization Service to report back to us 90 days after the enactment of this, consulting with Mexico, telling us what needs to be done in the way of personnel resources and technical help.

It adopts the sense of the Congress that the President of the United States should consult with the President of Mexico, because this bill is going to have a major impact on the economy of Mexico. And it provides other things that move us in the direction of working with Mexico.

Three other small points then—not small in terms of their importance. One is we talk about creating jobs in this country. The reality is we are going to gradually, under this bill, get hold of the agricultural worker program. It is not an ideal answer from my point of view, but it gradually gets hold of it.

There is no question that we have substitutions. The most conservative estimate I have seen is that 65 percent of those who come into our country illegally take the jobs of Americans. They take the jobs of low-skilled Americans, generally. In the city of Chicago, for example, it is estimated—and I do not know how accurate any of these estimates is—that there are 135,000 people who are there illegally.

Sixty-five percent means 81,000 jobs for the city of Chicago. That is a lot of jobs. Nationally, it is a major problem.

There is one small feature that is important to the Chinese-American community. That is increasing the quota for Hong Kong as part of this bill. I think it is an important part in view of the special problems and status of Hong Kong.

Finally, the bill requires reports to us on what is happening. It is very carefully drafted that way. But it will require oversight. I am sure that 2 years down the road or 3 years down the road, we may have to change the law. But the discrimination provisions to protect people, the provisions that give people legal status, I think on balance provide a very important piece of work here.

I add that there was some misunderstanding about legal services as a result of one statement in the House. I believe our colleague, Senator KENNEDY of Massachusetts, is going to put in the RECORD a colloquy between Representative RODINO and Representative BERMAN on this that clarifies that matter. But I think on balance, we have as good a bill as we are going to get.

On the Senate side, 95 percent of the credit for that goes to the Senator from Wyoming. A few of us have contributed just a little bit, but he is really the architect and has really done a tremendous public service for this Nation. I am grateful to him. I hope this body adopts this conference report overwhelmingly.

Mr. MOYNIHAN. Mr. President, I rise today in support of the passage of the conference report of the Immigration Reform and Control Act of 1985. We have before us, finally, an opportunity to act decisively to reform this Nation's laws dealing with illegal immigration in a comprehensive and just manner.

It is estimated that there are currently between 3 and 7 million illegal aliens in this country; between 200,000 and 250,000 in my own State of New York. The presence of so many illegal aliens within our borders is irrefutable testimony that our immigration laws are not working as they should, and reform of these laws is long overdue.

An essential part of any such reform must contain provisions granting amnesty to illegal aliens and penalties for employers who hire any illegal alien not granted such amnesty. The necessity for both provisions to be enacted simultaneously is clear. Employers will not hire any illegal aliens, even those who have resided and worked here for many years, if they face penalties for doing so. Imposing such penalties without providing some degree of amnesty will leave millions of these individuals with no means of support. Inevitably, then, the American taxpayer will be forced to foot the bill.

Fortunately, this bill does provide amnesty, for those illegal aliens who entered this country prior to January 1, 1982, enabling them to keep their current jobs and support themselves. Economics aside, this bill takes the important step of allowing these individuals the dignity and honor of supporting themselves and their families free from the fear of deportation. Together, the combination of amnesty and employer sanctions can reduce the influx of aliens by eliminating the attraction of jobs, and at the same time, protect those that have been living and working here for many years.

Importantly, this bill authorizes the essential funds to meet the needs of these newly legalized residents. Specifically, it will provide $1 billion annually for 100 percent Federal reimbursement for public assistance rendered to these individuals. It is reassuring that the Senate is not only enacting important legislation, but it is also providing the funds with which it can be successfully implemented.

On a related matter, I am pleased that the conferees chose to include an amendment which I offered during floor consideration of this immigration bill last September, mandating a study, to be concluded within a year of enactment, of technological alternatives for a more tamper-resistant Social Security card than that now issued. Since this bill declares that Social Security cards are a form of proof of authorization to work in this country, I feel that if is vital to curb abuse of these valuable documents by illegal aliens.

Another aspect of this bill, of great interest to me and the members of my State, is a provision to allow 10,000 additional immigration visas over the next 2 years for individuals from Ireland and Western Europe.

There is one problem, however, with the Immigration and Nationality Act which is not addressed in this bill, and it concerns the McCarran-Walter Act. This archaic provision allows INS officials to seize any alien in this country, or prevent the entry of an alien, who is suspected of Communist, subversive and terrorist activity designed to endanger the security of the United States. Just yesterday, the New York Times reported the detention of a very well-respected journalist from Columbia who was invited here by the Columbia University School of Journalism to receive an award for distinguished journalism. She was detained under the provisions of the McCarran-Walter Act apparently because she has written in opposition to President Reagan's policies in Central America.

This is reminiscent of the Alien and Sedition Acts, which, while in effect in the late 18th century, limited the right of free speech—one of the fundamental human rights upon which this country was built. This type of censorship was wrong then, and is wrong today and I look forward to next session, when I will fight for a full and complete review of this provision.

This reservation aside, let me again express my sincere desire that Congress see fit to pass this measure and to appropriate the necessary resources to fulfill the provisions of mandated by it. I am aware of the expense attached to this measure, however, I feel we must retain our firm resolve to carry out the intention of this bill—to give the preeminent country of immigrants fair and equitable immigrant laws at last.

Mr. President, immigrants have contributed so much to our Nation—and to my State. As a Senator from New York, I can particularly appreciate these contributions. Nathan Glazer and I wrote in Beyond the Melting Pot that New York, after all, is a merchant metropolis with an extraordinary heterogenous population composed of immigrants and their descendents. The first shipload of settlers sent out by the Dutch was comprised largely of French-speaking Protestants. British, Germans, Finns, Jews, Swedes, Africans, Italians, Hispanics, and Irish, among others, followed, beginning a steam that has never yet stopped. Nor, one hopes, will it ever. These immigrant groups have made, and continue to make, New York and these United States as a whole, the world's great cultural and financial center.

□ 1720

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me begin by joining my distinguished colleague from Illinois in congratulating the principal architect of this bill. It has generally been my pleasure in the last couple of days to have very intense discussions with him about the bill. I like somebody who feels strongly about what he is doing. I like somebody who is committed to the things he does and certainly ALAN SIMPSON is such a person. For many of us this is a relatively new debate. ALAN SIMPSON has been involved in it for 6 years.

When I first spoke on this bill yesterday, I raised major concerns. But I made clear at that time that my concerns about the bill say nothing in criticism of the efforts of those who have produced this bill. My concerns say nothing about the work that has been done and the value of the positive things in the bill. But each of us ultimately has to make a decision. And the decision is, given the possibility of a bill in the future, given the possibility of an alternative including no bill, does this bill represent an improvement over what we have today or what we might have tomorrow?

There has been a little confusion, Mr. President, and I would like to clear it up, about whether or not there has been delay on this bill: I did ask for a rollcall vote on the budget issue, and I thought it was important to have that vote. Because we are making a budget commitment on this bill, I thought it was vitally important that we have Members on record. This bill has substantial budgetary impact and through its adoption we commit ourselves to this budgetary impact, and we do so knowing that we face very difficult fiscal years as we try to meet a target we have set—to balance the budget in 1991.

I pointed out at that time to my colleagues that the direct spending provisions in the bill through 1991, are equivalent to authorizations and appropriations of about $4 billion. Trying to put together the conference report and moving between the House and the Senate, there are somewhere between $4.5 and $9.2 billion, probably about $6 billion of expenditures that occur directly or indirectly.

Now, Mr. President, the point is not that the bill spends the money. As the distinguished Senator from Wyoming has pointed out, maybe more money would be spent without the bill. But I wanted to make it clear on a rollcall vote on waiving section 303 of the Budget Act that we were knowingly entering this process, knowing that it was going to cost money, knowing that we were going to face the difficult decision next year and every year through 1991 as to whether or not we were going to make decisions about cutting other programs to pay for these new benefits and these new costs or whether we were going to call on the taxpayers to pay for them.

I think as a result of that vote—and the outcome of the vote was overwhelming—people made the decision that they wanted to go on record to waive the limitation on committing to expenditures in the future when a budget has not been adopted or when entitlements are being created. People said we are willing to pay for it, we are willing to take it away from other uses. And maybe some were saying they were willing to take it away from the taxpayers. But there is one positive result of that vote: Next year when the bills come due nobody can say, "Well, we had made these commitments about the budget but now all of a sudden there are these expenses nobody knew about, nobody could anticipate and therefore we are forgetting this idea of balancing the Federal budget."

That was my objective.

Second, I want to point out, Mr. President, that we have a rather unusual way of doing business around here sometimes. We had just 40 minutes of debate in opposition to this bill before there was filed a cloture motion. As a matter of fact, as far as I am aware—and we have been working long hours around here—I think the distinguished Senator from Wyoming filed a cloture motion before I ever spoke on this bill.

Now, that is how the process works, and it is perfectly legitimate. I probably would have filed it earlier had I been in his position. But the point I want to make is that we spent more time debating the President's proposals to Gorbachev than we had spent previously speaking in opposition to this bill.

Someone asked me outside, "Is it worth holding up the funding of the Government to debate immigration?" I think those who are really involved in the debate would be quick to point out that what held up the funding of the Government was not immigration. In fact, we spoke on immigration some 40 minutes yesterday before we pulled the bill down to go back to the continuing resolution. What held up the funding of the Government was an effort to build planes the Air Force did not want and to build buildings the GSA did not want and the Congress had not authorized.

So an effort to debate this bill has in no way held up the funding of the Federal Government.

Now, Mr. President, I have only been in this body for 2 years. I have had an opportunity to serve here in Congress for 8, and in this time I have learned how the process works. I have learned that you do not always win on issues. I like to win on issues, especially when I believe I am right, but I am not obligated to win. But I am obligated, just like every other Member of this body, to speak out when I am concerned about issues and to be sure the concerns of the people in my State are heard. I think that is especially important in the Senate.

I am reminded of the story of when Thomas Jefferson was our Ambassador to France. He had been in France while the Constitution was written. He came back to America and was having breakfast with General Washington, and he said:

> General, I've looked at the Constitution and I don't understand the bicameral government. What is the Senate for? What does the Senate do? What does it add to the process?

Jefferson had a habit, which Southerners in many cases still have today, of pouring his coffee into the saucer to let it cool, and he was sipping the coffee out of the saucer. General Washington pointed to the saucer and said:

> The Senate is the saucer. The public passion will overflow in the House. In the passion of the moment the House will act but the Senate will be the saucer where that passion will cool in the cold light of reality and objectivity.

Now, I have sought here not to delay this bill but to focus the cold light of reality on it. And I have done that. I believe that I have raised concerns. The concerns may not prove sufficient to prevent the bill from passing into law. In my mind they are. I am still struck by the provisions that would make a person who was here illegally for 90 days a temporary resident, then a permanent resident, and ultimately a citizen. I know that every one on the floor opposes those provisions, but we are taking them because of a conviction that that is part of the price you have to pay to get a bill.

I guess the reason I thought it was so important that this be thoroughly debated was because in the House, when the debate occurred on the McCollum amendment, that would have stricken the amnesty provision totally, the vote was 192 to 199.

□ 1730

I oppose the bill, Mr. President, not because I do not believe that we have an immigration time bomb; I believe we do. And I oppose it not because I doubt that we face a crisis; I believe we do face a crisis.

I listened to our distinguished colleague from Illinois talk about Mexico. I think the population is already up to 82 million. Perhaps he looked at last year's number.

With the problems in Central America, standing where I do in Texas, it is easy to see millions of people who want to come across the border. Quite frankly, I am sure like many here, I am struck with mixed emotions. I am always struck with mixed emotions on this issue.

My grandfather came here as an immigrant, as did my wife's grandfather. I have always thought, looking at this problem, that if I were in Mexico with my two little children and they were hungry, you would have to kill me to keep me from coming across the border.

So it is an incentive I understand. It is an incentive that drew people in search of opportunity, and, to some extent, that incentive is always going to exist.

However, I am concerned that this bill will not improve our circumstances. I am concerned that the amnesty provisions are so generous that we will immediately legalize somewhere between 4 million and 7 million people. Many of these people will not fit the traditional pattern that we have set out for legalization.

I listen to people talk about the amnesty provision and why it is needed, and it is hard to argue with the basic logic. Their logic is that we have people who have been in the country for many years, and when we impose employer sanctions, we are going to find that there are many people who

have become part of the fabric of our society who would be put out of work and, in essence, driven out of the country.

In fact, it is not unusual for us to vote on a private bill making somebody a citizen or halting their deportation when somebody has been here for 40 years, had a half-dozen children who have defended the Nation with great valor, and been contributing members of our society. That is a reality.

Nobody can argue that you could have employer sanctions and an immigration program without having some kind of program to differentiate between people who have established themselves here and people who have simply come here to work illegally. But I do not believe that anyone can argue that the provisions of this bill fit the pattern of what we are trying to do with amnesty.

I do not want to continue complaining about the bill. I have already decided that I am going to vote against it, and others I see on the floor have decided to vote for it. So I am not going to convince them. But I would like to use the time I have to raise some concerns. I hope that by raising those concerns, we can focus on the problems that are likely to occur, and perhaps in some way we can work, through enforcement and through the reforms we know will be made in the bill, to deal with these in the future.

The first has to do with the basic unfairness of the amnesty provision. Someone who is in the country, in agriculture last year for 90 days, is going to be a temporary resident alien and a permanent resident alien and ultimately a citizen. That is basically unfair to the 1.9 million people who are waiting to come to America, many of whom who have waited for a very long time.

I think it might be instructive to look at this unfairness; and in trying to be brief, let me just pick one point.

Let us say that you came to this country legally and that you are a permanent resident alien, and you wanted to bring in your spouse. So you go to the Immigration Service and, like going to Baskin-Robbins, you take a number. I thought my colleagues might be interested in what kind of situation you would face. You came to the United States from Mexico as a legal immigrant, and you wanted to get your wife into the country, and you went to the Immigration Service and applied. Do you know whose application they got to yesterday? Yesterday, they got to the applications of the people who applied on July 15, 1977. Yesterday, they got to the point of processing the people who applied 9 years ago as permanent resident aliens, under second preference, for spouse or unmarried son or daughter. Not that they came yesterday. They just started the paperwork yesterday for somebody who 9 years ago came here legally and said 9 years ago, "I would like to bring my wife to America."

We cannot correct this inequity in this bill, but I think it is important to look at it and, as we mold this legislation in the future, that we try to deal with this problem.

The second problem is that while we can all be unhappy about the 90-day amnesty, something that is anathema to the people of my State and greatly opposed, and something that, according to administration estimates, will legalize an additional 1 million people——

Mr. SIMPSON. Mr. President, will my colleague from Texas yield for a question? I know he is as interested as I am in clarification, and he has been very good with that.

Mr. GRAMM. I yield.

Mr. SIMPSON. The Senator is using the phrase "90-day amnesty," across the board. That is not correct. We are talking about two separate things. There is a legalization under this bill, with a legalization date set of January 1, 1982. I think the Senator will admit that that is the correct date.

Mr. GRAMM. Yes.

Mr. SIMPSON. That date is the date of legalization. Those persons who have been in the United States since that date are eligible for legalization in the United States. They will come forward. No figures I have ever heard, either from the Select Commission or in our studies, show that it is 4 million to 7 million. Indeed, the studies show that there may be no more than 2 million to 4 million here. I think there are more.

In any event, those persons will come forward, they will be given temporary status during the application period, and they will become permanent resident aliens. They are not citizens. They must remain in that status for 5 years, and then they may go forward to citizenship; and in doing so, they must pass all the tests for citizenship.

The 90-day provision is limited to a very small number of illegal immigrant population, and that is agriculture. Under that, they have to remain 3 years; they have to have been here 3 years. They must have worked 90 man-days a year for 3 consecutive years, with a residency requirement, and then they are temporary for a year, and then they go to permanent resident alien status, another 5-year wait. Then there is one group that is here for 1 year, a term already set, between May 1, 1985, to May 1, 1986. They are eligible, if they have worked here for 90 man-days during that time, to receive a status which will lead them to permanent resident alien status in 4 years, and on to citizenship in another 5.

As to replenishment workers, the Senator and I will discuss that, and I hope it will be a good discussion.

I just want to say that we are talking about amnesty, which is gut-hard, tough issue for Americans to swallow. At least, we are not talking about someone getting in in 90 days, as if they were getting amnesty in 90 days. That is not appropriate.

□ 1740

Mr. GRAMM. If I may respond, and I will make it clear I am not trying to make——

The PRESIDING OFFICER. If the Senator will withhold, the Senate will be in order. The Senator has a right to be heard.

The Senator from Texas.

Mr. GRAMM. I thank the President.

Mr. President, in talking about the extreme case, the 90-day case, I am, of course, talking about the following provision: Individuals who have worked in agriculture for 90 days during the year ending May 1 are eligible for temporary residency and that may be adjusted to permanent residency status after 2 years.

But my point remains basically the same: We do have a cap on that. But a person who was here illegally 90 days last year who can get in under the cap can become a temporary resident alien, a permanent resident alien and be on track toward becoming a citizen and toward the receipt of public benefits.

The final point related to this problem I want to talk about is the replenishment program. This bill has a very effective streamlined H-2 Program related to agricultural workers. It unfortunately, in my opinion, has a replenishment program that is based on the following logic, as best I can tell. The logic is that those who were here 90 days last year, who qualify if they continue to work in agriculture to stay here and become permanent resident aliens, are likely to then move on to other lines of employment, something that is as old as the Nation and is part of the Nation's growth process.

Those who had that concern put in a program called a replenishment program. Under this program, beginning in 1989, the year those who were here 90 days last year, if they chose to, would have become permanent resident aliens, there would be a program to replenish this pool of workers.

There is no cap on the number of people who could come into the country for replenishment work who, after they had worked here for 90 days, would, if they continue to work in agriculture for 3 years, then become permanent resident aliens and could move on to other employment.

This replenishment program would be in effect through 1993.

For it to come into effect, the Secretary of Labor and the Secretary of Agriculture would have to certify that there were shortages in agricultural labor. While there is no cap, they would certify the number.

Now we do not know who is going to be Secretary of Labor or Secretary of Agriculture beginning 2 years from now when the bill goes into effect.

But I would like, if I could, to engage in a colloquy here with the distinguished Senator from Wyoming on the subject of the replenishment program.

I would like to begin by asking the Senator from Wyoming the following questions on the replenishment program: As I look at the bill on the replenishment program, the Secretary of Agriculture and the Secretary of Labor would certify a shortage, individuals would be able to come in and with 90 days' work in agriculture for 3 years become permanent resident aliens. But what is not clear here is who these people would be, and I would hope through this colloquy to make legislative history. I would like to ask a question of the distinguished author of this movement—I will not say this bill, because I know he did not author this particular provision. Would it be his intent that if this program is ever used, and I will ask a question about that next, that this Replenishment Program be open to everybody around the world so that if there were somebody in Italy, or Germany, or Great Britain, or mainland China, or Taiwan, or wherever, that they would have an opportunity to apply, just as would someone who might show up illegally who had walked across the border whether they had come from El Salvador or from Brazil or whether they had flown over illegally from the Soviet Union?

Would it be the intent of the distinguished Senator from Wyoming here that if a replenishment program is ever employed that individuals from all over the world would have an opportunity to participate?

Mr. SIMPSON. Mr. President, of course that would be so. There would be persons from the United States, persons from abroad. There are no national limitations nor ethnic considerations. One of the things that was impressed upon the bill was the issue of discrimination.

So, obviously, anyone could come in as a replenishment worker under this limited program. And again, the Senator from Texas is so correct—I was not the author of this measure. The authors of this measure were Senator WILSON, Congressman PANETTA, and Congressman LUNGREN.

If I may, because the Senator is in an area which is tough and was not palatable to me, I think that we want to remember that the special agricultural workers who come, the first group, are a group that must have been here 3 consecutive years and have worked 90 man-days a year for that period. They then go into a temporary status for 1 year and then to permanent resident alien status. Those are called "SAW-1's," special agricultural workers-1. There is a cap on the number of those persons and that is an overall cap, a total cap, and that is 350,000. That is exactly the number as it left the Senate.

Then there is this group called "SAW-2's," special agricultural workers-2, those are people who have been here from May 1985 to May 1986. That pool never changes. They have to have been here. Obviously, you have to set the date before we were considering this bill.

Those persons are from that limited pool. It is difficult to know how many there would be there.

And then there finally comes a replenishment worker. Those people are admitted, and there is a difference because the number declines each year. The maximum number of replacement workers which may be admitted is the difference between 95 percent of the number special agricultural workers initially admitted and the number of special workers who remained in agricultural work during the previous year. The cap then declines annually.

But no replacement workers are admitted to the United States if the Secretaries of Agriculture and Labor find that workers here are available. They then have to go through a determination, the two Secretaries, in the replenishment program——

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

Mr. SIMPSON. I certainly will yield.

Mr. GRAMM. I do not know how much time I have. I ask unanimous consent that the time the distinguished chairman speaks will be on his time rather than mine.

Mr. SIMPSON. Mr. President, I further ask unanimous consent that my brief remarks to this point in this debate on the replenishment workers be allocated to my time and not to the Senator's time.

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

The Senator from Wyoming.

Mr. SIMPSON. Let me say they must make a determination on whether or not there is a shortage of labor in agriculture.

When doing that, they must make the determination, this evaluation of the U.S. labor market, estimating the supply and the need for agricultural labor, and I think it is most interesting and very important that we review just a very short section of the bill. The following factors must be considered, three of them, and, of course, they are not limited to these.

The Secretary shall adjust the number to take into account the projected growth or contraction in the requirements for seasonal agricultural services as a result of the growth or contraction of the seasonal agricultural industry and the use of technologies and personal practices that affected the need for, or the retention of, workers to perform those services.

It was the intent of the crafters of this amendment, which is solely to serve the perishable food and crop industry of the United States, I can assure you, but these factors—again not limited to these factors—are how many of them remain in agriculture, any decrease in the plantings of perishable crops, reduction in labor needed through mechanization, whether increases in wages and working conditions would attract more domestic workers, or additional labor that would be available from the increased recruitment of rural and low-skilled unemployed workers.

Then, Mr. MAZZOLI added an amendment which provided that, if workers were available in the United States to perform the needed labor, no replenishment workers would be required.

So, I share with my colleague from Texas that the workers who will be adjusted as special agricultural workers are professional farm workers, at least that is the feeling—with little education and few skills outside of agricultural work. As a result, I think they can be expected to remain in agriculture. That would result in a low cap and little need for the replenishment worker during the 4-year life of the program.

I could tell you that I am committed to an oversight activity which would hope to assure that we would not use replenishment workers.

□ 1750

Mr. GRAMM. If I might just pose two precisely defined questions here, again to make legislative history. Well, one to make legislative history, the other to make a point.

If the replenishment program, then, should be used, you might envision or would envision a program whereby people could apply to embassies all around the world to participate in such a program?

Mr. SIMPSON. Mr. President, I would believe indeed that is the case. There can be no possibility of discriminating against who could come. And the Senator from Texas. I know already knows this remarkable statistic, that of the 1.8 million who were apprehended at the border this year—and we think we apprehended one out of two—those persons have come from 81 different countries. And, admittedly, many of them through the Southern border, but many of them from the East and West through various vessels. But indeed, 81 different nationalities are represented in that

flow, because they know that, just by coming to this hemisphere, they could come to the United States. But we would expect, I think, most of them to come from Mexico or Central America.

The PRESIDING OFFICER. The Senate will be in order. Senators kindly take their conversation to the rear of the Chamber.

Mr. GRAMM. The point I wanted to clarify here for legislative history was that this was envisioned to be a program, if it is ever employed, that people all over the world would have an opportunity to participate in.

On the second question I would like to ask, I would like to first state my view. My view is that the H-2 Program, as was designed by the distinguished Senator from Wyoming, is not needed. I intend to work to see that it never goes into effect. And I wanted to ask the Senator from Wyoming if he shared that view.

Mr. SIMPSON. Mr. President, we have done some remarkable things with the H-2 Program in this bill. We streamlined it. We made it workable. We finally have the Secretary of Agriculture in that game, and not just the Secretary of Labor. H-2 has worked where people chose to use it. But it has been so burdensome, so tedious, so restrictive. The Department of Labor seems to get some perverse enjoyment out of cutting the employers or cutting the agricultural growers out of the game. We think we have solved that with the H-2 Program in this bill. It is a very exceedingly attractive thing. More States are using it.

My colleague from Idaho is in the Chamber and there is a great new influx of H-2 workers in his State—and in mine, too. But the H-2 Program is the program that will be available for use after the special agricultural worker program ends.

In other words, this does terminate. The replenishment worker program terminates at the end of 7 years. Hopefully, with oversight and amending, we will have the H-2 Program in such shape that we will not have the replenishment workers.

But let me commit that, in my duties as chairman of the subcommittee, or in any capacity on the subcommittee, I will commit to making every single effort, along with the Senator from Texas, to try to assure that the replenishment workers are not ever used.

Mr. GRAMM. Let me thank the distinguished chairman for that.

I would like to make one other point and then pose one additional question and then I will conclude.

An additional problem that I have and that many people who live in the border States have, Mr. President, is the whole problem of documentation. It is one thing to set out a set of rules. We might debate what those rules are—where should the cutoff be on amnesty? Your initial bill, at least that we adopted this year, had that set at 1980. This bill has it set at 1982, except for these special agricultural provisions that we have talked a great deal about.

But the question really boiled down to not just what we define as a threshold, but how we enforce it. I tried to come up with a way of expressing the concern of the people of my State, and I found a way to let them express their own concern. It just happens that last night on the ABC affiliate, that is channel 7 in El Paso, there was a news segment about the immigration bill. And it expressed a concern. And I would like to just read this little section and then express the concern and ask you again to be sure that we have clear legislative history of our intent.

The news segment starts out with a reporter and the reporter says:

> Immigration officials say it's difficult to estimate how many undocumented workers are in El Paso but believes it in the tens of thousands, and finding falsified documents to satisfy new employment requirements and amnesty could increase black market demands in El Paso.

And then there is a sound bite from a border patrol agent. And he says:

> Any form of utility bill, electric bills to a light company, gas bill, anything that will try to establish residency. So we are anticipating a big, big rush on bogus-type documents.

Now it is the reporter speaking—"if the immigration package does become law, it will take more than a year before enforcement begins."

Now, Mr. President, a great concern in my part of the country, and I am sure it is a lesser concern or maybe equal in other parts of the country, is that, no matter how we may debate about what the right amnesty provision might be, there is great concern about it being enforced.

Is it the intent of the distinguished chairman that when we set a legalization date—1982, or 90 days in agriculture last year with a commitment to stay—that there be clearcut documentation and proof provided that people have actually met these requirements?

(Mr. CHAFEE assumed the Chair.)

Mr. SIMPSON. Mr. President, this is one of the most curious things of the entire debate in the 6½ years I have been involved. Document fraud is a cottage industry in America right now. Within 500 yards of this Capitol, you can pick up anything you wish in the form of a green card, a nonimmigrant visa, airline passages, which give an indication of your presence in the United States to be legal; passports are rather expensive. But in literally hundreds of places in this community—and this is a very active community—of illegal, undocumented persons, it is a cottage industry. So document fraud was something that all of us have paid close attention to.

The immigration bill provides for this reality in two ways. We increase the document fraud penalties to hundreds of thousands of dollars per violation. It is exceedingly heavy. And it makes provisions for improving the documents that we will use for verifying employment authorization.

It is my expectation and intention that document fraud will be of primary importance to the INS, and I assure you that I will vigorously exercise oversight responsibility to see that this is carried out by that agency. This bill has, for the first time, almost every word of the Senate's new, tough antifraudulent documentation laws, with increased criminal penalties, not just civil penalties. Indeed, I know that during the legalization application period, there will be a period of 6 months—as we discussed in employer sanctions—for an education period, and then a period of 12 months for a period of warnings to employers as to what is coming.

□ 1800

I can tell you that indeed we intend to pay careful attention because I, too, feel that because of legalization process—please understand and hear this so carefully. When this bill is signed by the President, it will be, there is going to be an extraordinary jubilation within the United States which is going to stun the people of the United States. My mail for years has been from the people who have been here for 10 years, 15 years, 20 years, raising U.S. citizen children. This is their only avenue toward coming out. They are people who, yes, came here illegally but are people with every equity in the United States.

So when they legalize they will have to know, as that call goes out that this legalization period is existent, that they must come forward because this is the last call. This is the first call, and the last call, a one-shot deal. Come on out. Go to your church. We are not trying to fool you this time. We are not the Census Bureau. We are actually here to say if you will come forward, you will be legalized if you can show that you have been in the United States since before January 1, 1982.

I am certain at that time we will see a cottage industry in rent receipts, W-2 forms—but it certainly could not possibly match the blizzard of fraudulent documents that we find now. It is something the INS is going to have to be terribly alert to. But that is why we go into a better document in the future under this bill, provide a secure Social Security card, counterfeit resistance documents, and those are the things we are guided toward in this legislation.

Mr. GRAMM. The Senator raised one additional point that I would like to make part of the record. I think it is vitally important. One deep concern

that I have had about the blanket amnesty provisions—let me say to the distinguished chairman that for those who have been here 5, 10, 15 years that he spoke of, I certainly support amnesty for them and to clear the way so that there could be no legal cloud over their future.

So the debate on amnesty is not what the threshold is. But one of the things that has concerned me having looked at the problem on our borders, is that there may be those in other countries who will say that since we granted amnesty once maybe we will do it again. And rather than sign up to be on this list of 1.9 million people that have the dream of someday being able to come here, maybe people will just come on across the border thinking it will happen again.

So I ask my colleague, as one who has worked 6 years on this bill, and who clearly is going to have much to say about changes that will occur in the future, is it the clear position of the distinguished chairman that under no circumstances will there be another blanket amnesty in the future?

Mr. SIMPSON. Mr. President, I can assure the Senator from Texas that as long as I am involved in it that will be exactly the message that will be sent, that this is it. This is a generous Nation responding; instead of going hunting for you and going through the anguish of that in the cities and communities of America, this is it. It is one time. You either show up on this one or you will be rejected by the employers because employer sanctions will be in place. Your choice then is to return to wherever you came from, or to become legalized through the legal immigration system, and you are very adept as you describe at the legal immigration system.

I think the Senator from Texas would be very interested as he talks about that backlog in Mexico. That is a very fascinating thing because there is a large number in the backlog from Mexico—7 years, 6 years. But the average in other countries is 2 years. But you have to go to the consul in Mexico to see what happens when their number comes up. When your number comes up and you have had this long delay, they come down from the United States to pick up their number because almost 85 percent of the people who come up under the legal immigration number system are in the United States. They come down to pick up their green card, their legal documents. That is the most fascinating statistic—85 percent are already here. When their number is called, they go back to get it and come back up into the United States.

Mr. SIMON. Will my colleague from Texas yield?

Mr. GRAMM. I would be happy to yield. I ask unanimous consent that the time of the distinguished Senator from Illinois count against his time since I know I am not only using up my colleague's patience, but my time.

Mr. SIMON. I shall take a minute. I agree with everything my colleague from Wyoming said.

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

Mr. SIMON. I think part of the answer to the question is the second point. If you get rid of employer sanctions, you will, I think, discourage this train of people coming into this country and therefore when you do not have those numbers coming in, the political pressure for an additional sanction bill, I think, may not disappear but it will diminish appreciably.

Mr. GRAMM. I do not doubt that our distinguished colleague from Illinois is partially right about that. But let me say that I believe the magnetism of America is so great that if there were any doubt about the fact that there would not be another blanket amnesty provision in the future, we would literally be overrun by millions of people, many of whom would not be coming here to work but in some cases would be coming here hoping to hold on until they could qualify for public benefits.

Let me say that we have room for people who want to work. And I want to make it clear. I know each of us in our own States run into people who say let us slam the door of the country; Let us close the borders.

I want to close the door to illegal aliens. I want to close the door to illegal immigration. And employer sanctions are a necessary and indispensable part of that. It has taken me a while to come to that conclusion, but I have come to that conclusion with absolute certainty. And they have to be stiff.

I wish we could have done it the other way around. I wish we could have had the Senator's provision in the Senator's bill that would have allowed us to establish that we stopped the flow before we granted amnesty. But that was not to be. That was part of the political compromise based on the Senator's wisdom. And we accepted it. But I am convinced that employer sanctions are indispensable.

I am also convinced that we should open up trade with Mexico, so that goods and services can come across the border instead of people, so that people on both sides of the border can get a job, earn a living, feed their children and stay at home. I, for one, am willing to enter into a trade agreement with Mexico to give them some initial advantages, to get that trade going, recognizing that ultimately trade is a two-way street, and they have to open up their markets as well.

Let me conclude, Mr. President, and I want to thank my colleagues for their patience, with two final points: first of all, I want to make it clear for my part, and I think for the part of everybody in this Congress, that this immigration bill is not a response to a fear of foreigners. It is not a closing of the American door. We should not be symbolically tearing down the Statue of Liberty. It is not my intention ever to slam the door to America. I believe many of our greatest Americans are people who have been here just a short period of time. What a great country it is, that its miracles work for everybody. The greatness of America is not that its people are extraordinary people. In many ways we are the Heinz 57 variety nation. The greatness of America is that the American system of freedom and opportunity produces extraordinary results from just plain old common people like us. I have no doubt that this system produces extraordinary results from people who will be legalized through this bill.

□ 1810

I have no doubt that in the not too distant future there will be people performing great public services, serving in Congress, winning Nobel Prizes, finding cures to diseases, who will be people who will be legalized under this bill, and their children and their grandchildren.

The concerns I have had about the bill were how do we go about it. We have decided to go this way. I intend to work to try to make this bill work. I intend to follow how it works and how it does not work. I intend to try to work to improve it. I hope that our initial result will be successful.

But it is a historic move we are taking here. I want to congratulate those who have worked on this bill, and pledge to work with them in the future to try to make it work.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I share many of the concerns of my distinguished colleague from Texas. I understand his concern about the amnesty provisions.

This bill is not as I would have written and I am sure not as he would have written it. But that is the way it goes in a democracy. It reveals the differences and how you try to resolve them in a democracy, and that is through compromise.

I also know it is easy to bring a compromise apart by focusing on those parts or elements of a piece of legislation that we might think are the weakest link.

I have watched this piece of legislation for several years. I have watched it before the distinguished Senator from Wyoming was involved in it, back in the days of Senator Jim Eastland's bill.

I have supported immigration legislation since I have been in the U.S. Senate.

It is interesting to see the mood that has changed during that period of time, the intense opposition to it in the beginning and finally the understanding of what was happening to us as a Nation.

I look at the way this has been brought together by the distinguished Senator from Wyoming, Senator SIMPSON. As I reviewed that conference report, my feeling was one of gratitude to the distinguished Senator from Wyoming. I think his patient, informed search for a solution to what many have regarded as an intractable problem, ought to be held up as a model of what it is to be a U.S. Senator.

So I tip my hat to him for his patience, his sense of humor, and his dedication to the effort.

I thank my distinguished colleague from the State of Illinois, Senator SIMON, for his contribution to the effort.

I look at a situation in the area where I was born and reared down on the Mexican border in south Texas, the three highest unemployment areas in the United States, the three metropolitan districts in the United States with the highest unemployment, as high as 17.7 percent along that Mexican border.

I understand the attraction of this country. We are a wealth-generating society and a free society.

The magnetism of our country is like that of a magnet picking up iron filings as they rush to come here.

I look at a situation where in Matamoros a woman goes into labor and they put her in a car and rush her across the border to have her child born in the United States. I understand that. If I were a Mexican citizen and my wife was in labor, I would want her child born in this country too.

But I also look at Brownsville, TX, which is having severe economic problems, and I watch it adding one new school room every other week. One of the main problems is illegal alien children who have to be taught in that school.

That is the additional burden that is happening to us.

I look at a country with a 2,000-mile common border. I look at an industrialized nation that has a Third World country next door to it, and I know what that means to us.

I have watched at least three immigration bills progress almost to this point and then I have seen them fail because people were looking for a more perfect piece of legislation. I understand that.

I have also seen a situation where I sent a survey out to over 1,400 Hispanics in the State I have the honor of representing. I put in it provisions very comparable to the Simpson-Mazzoli bill and asked them how they stood on each and every one of those provisions and watched them vote overwhelmingly for the provisions.

Then you got to the last question and asked them how they stood on Simpson-Mazzoli and they said, "We are against that," because they had been told that bill was bad.

I understand the concern of those who want others of their own race to come in. All of us, really, have been foreigners in the not-too-distant past, whether we are naturalized citizens ourselves, or our parents, our grandparents, or before them.

Our attitude in this country is a complex one toward foreigners, a difficult one. But we have the most generous quotas of any major nation in the world, and I think we ought to have those, and I support those. But then we ought to abide by those quotas and observe those laws.

That is what this compromise piece of legislation is trying to bring about. If there ever was a problem that is serious and divisive it is the immigration problem, the problem of illegal immigration into the United States.

Many of them come from Mexico. A friend from Mexico says it has a population of 82 million with one of the highest birth rates in the world. You have a country there that has economic instability and serious problems, and that could have serious political instability. If that happened we would have 20 million more over that border in a hurry. There is no way in the world we could handle it without adequate immigation laws.

So what do we put on? We put on employer sanctions. I have sat down with ranchers and farmers and listened to those concerns about those kinds of sanctions and I share those concerns. I am still in farming, and I am still in ranching. I know what they are up against.

But I also know this: that we could not put enough border patrolmen on that border to stop them. There is no way we can do that. So you have to deny the reason for their coming here, you have to deny the job. That is what you do with employer sanctions.

Concerned about the burden, concerned about the paperwork? You bet I am. And so is the Senator from Wyoming. They have gone to great lengths to make it as easy as they could by a birth certificate, by a Social Security card.

All they ask is a good faith effort on the part of that employer, and then he is in compliance with the law.

The conference report emphasizes law enforcement. It substantially increases the funds available to Federal immigration authorities, and it doubles the size of the Border Patrol.

Incidentally, that stronger Border Patrol is going to help us on some drug interdiction, which is terribly important to our country.

The conference report also contains provision to regularize the status of illegal aliens who have been living continuously in our country prior to 1982; then, in turn, it gives three phases for agricultural workers, ultimately giving them a chance to become citizens of this country.

I, too, like the Senator from Wyoming, have talked to many who have been in this country for 10, 15 and even 20 years, and are still illegally in the country and are concerned about that tap on their shoulder.

Those people are going to be able to come out from undercover. They are here now. They are going to have a chance to become citizens of our country, and I think they will be good citizens.

□ 1820

The conference report contains money to help States and localities provide social services to newly legalized immigrants. There will be $1 billion per year for 4 years, less deductions for certain sums that will fund very limited Federal services under Medicaid and SSI. Legalized aliens are otherwise barred from Federal assistance for 5 years.

I say to my colleagues, I could go on and speak at length on this.

I also say, Mr. President, that we have climbed this hill time and time again in Congress only to see it crumble right at the last, because we wanted a more perfect bill. This is the best we are going to get. If we let it go without putting it into law, we are going to see the same result we have seen in years past when we had more millions of illegal aliens that came into this country and were not apprehended. The attraction was just too much for them to resist.

The sooner we pass an immigration law, the sooner we will finally develop integrity of our borders. One of the tests of a great nation is the integrity of its borders, and we have lost that. I think citizenship should have value in this country and we are losing it. I hope we can restore it with this legislation.

Mr. JOHNSTON addressed the Chair.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Let me thank the Senator from Texas for his gracious remarks. But let me say they are wholly too generous, because I watched the Senator from Texas in his election year vote for immigration reform and, representing the State of Texas, that was about the most courageous political act I have ever witnessed. He has been right here in my

corner since I started this operation. I am deeply appreciative.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I want to commend the Senator from Texas for a really outstanding speech. I think he puts his finger on the heart of what I consider to be one of the Nation's very top, foremost problems. I think he put it very well.

I also commend the Senator from Wyoming, whose dedication to this bill and whose good humor and perseverance have brought us to where we are. I think it is a miracle that we are here, that it has not fallen apart. I simply want to say that I think it has not fallen apart. I simply want to say that I think it is one of those efforts that is above and beyond the usual level of attainment in the Senate. I think his is an extraordinary achievement in getting this bill through and I want him to know that many of us admire him greatly for what he has done with this bill.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, the issue of how this country deals with illegal immigration remains one of the most vexing problems facing the Congress. It is an issue which forces us to balance our Nation's sovereignty—and ability to control the borders—with the role America has played as a haven for the oppressed. It is an issue which forces us to reconcile law enforcement needs with our commitment to civil liberties and civil rights.

The immigration issue must be addressed. Since the Carter-era Commission on Immigration issued its report, the Congress has labored to strike an appropriate balance between these competing, and often conflicting, values. Senator SIMPSON, in particular, deserves to be commended for his unrelenting attention to this issue.

Clearly, he wants to see this issue resolved. Many of our colleagues would like to see the problem of illegal immigration behind us.

When the Senate last considered this legislation, I identified a number of defects which forced me to oppose the legislation.

I opposed the bill because legalization and the imposition of sanctions were not contemporaneous.

I opposed the bill because of the provisions on agricultural workers.

And I opposed the bill because it offered insufficient protections against discrimination.

The employer sanctions and civil rights issues are, of course, related. The employer sanctions in the legislation will undoubtedly act as an incentive for businesses to "play it safe" and refuse to hire individuals whose status may be in question. This would mean that blacks, Hispanics, and Asians would encounter new difficulties in getting hired.

The conference report makes a major improvement in the legislation that initially passed the Senate. A special counsel in the Department of Justice is created to deal with discrimination issues. Language crafted by Congressman FRANK, based on the initial Hart-Levin antidiscrimination amendment, has been incorporated. That is an important step forward.

But anyone who votes in favor of this legislation must in conscience have lingering doubts. It is fashionable in this country to think that the major civil rights battles are behind us. We have made progress—laws have been passed and attitudes once hardened have softened with the passage of time.

But I would suggest this bill will recreate a civil rights issue—that of employment discrimination against blacks, Hispanics, and Asians.

In spite of the progress we have made in this country, men and women have a better chance of being hired if their skin color is white. The unemployment figures reflect that. Family income statistics reflect that. The street corners in our mighty cities reflect it.

When someone of color walks into the personnel department of a factory in search of a job, he is not going to be thinking about an obscure office in the Justice Department. An office which may or may not decide to protect his rights. That man or that woman will be thinking about the skin color God gave him. That jobseeker will be thinking about whether the threat of employer sanctions will work against him in that job interview. And he'll be thinking about providing for his family and his future.

The employer sanctions sunset in this legislation. And that means that the immigration issue will not, in reality, be behind us when this bill passes. It would be my hope, my plea, that Congress follows this issue as closely next year—and the years thereafter—as it has since this debate began.

Congress must watch the border patrols and the INS. Congress must monitor the Department of Justice. Congress must listen to the people of color who will be affected by this bill after it becomes law. Immigration reform does not end today. The search for a just and enforceable law begins today.

Mr. President, as an opponent of this legislation in the past, I want to join with many of our colleagues in commending my very dear friend and great American, the Senator from Wyoming [Mr. SIMPSON] for his steadfastness, commitment, and dedication to this issue, which have eventually brought us to this day and won many of us over. I want to add my words of commendation of him for the service he has provided our Nation on what is indeed a thorny and difficult issue.

I also express my own high regard to the distinguished Senator from Illinois, who has joined with the Senator from Wyoming in making this a bipartisan effort, providing enormous leadership, as he consistently does, on this very difficult question.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I will take a minute first of all to thank the distinguished Senator from Wyoming for coming this far after 6½ long years. It is certainly a personal tribute to him and the many of his colleagues who have worked on both sides of the aisle, and I think without the efforts of Senator SIMPSON this piece of legislation might not pass. And I say that as a compliment to the distinguished Senator from Wyoming and the Senator from Illinois [Mr. SIMON], and others, and many Members of the House. We ought to be grateful that this legislation is here and we are about ready to vote on it.

I want to alert the Members, because we are getting a number of inquiries whether we are going to complete our work this evening, I think we are. We, myself and Senator BYRD, have been visiting with the Speaker and the Republican leader of the House, Representative MICHEL. They are prepared to send us an adjournment resolution but we need to act on this piece of legislation as quickly as we can and then bring up reconciliation, which I understand may be subject to a point of order—there will be a point of order. We will have to waive the point of order—because the debt limit is included in the reconciliation package and the House, if that point of order should be sustained, would have to send us another debt ceiling. And they are reaching the point, as many former House Members know, of finding it hard to keep a quorum. So we have been urged by Speaker O'NEILL, in one of his last pleas, since this may be the last official day he is Speaker of the House, if we could be accommodative and try to expedite the process so they would not lose the quorum; in the event the point of order was sustained, they would have to call people back and it will probably then be Monday morning. So if we want to finish our work tonight, I encourage my colleagues to explain their marks as quickly as possible.

Mr. MCCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. MCCLURE. Mr. President, I am not going to burden this conversation very long because I think it is inevitable that this bill will pass tonight. Indeed, that is the meaning of the cloture vote earlier today. I join with the

Senator from Kansas, our distinguished majority leader, in paying a personal tribute to the distinguished Senator from Wyoming, the manager of the bill. I think it is more a tribute to his personal characteristics than it is to his skill as a legislator, however. I say that with great affection because I think he has laboured mightily and brought forth a mouse.

If that is all it was, I would not be speaking tonight. But I think there is a more fundamental problem, or perhaps two, inherent in this legislation, or expressed by this legislation that we as a Senate of the United States and we as American people must inevitably face. One is what is the nature of our society and our willingness to condone illegal actions. There has been a great deal said about amnesty, and I have a great deal of sympathy for some individuals who have violated the laws of this country and violated our borders on an individual basis. But on a policy basis they are rewarded for their illegality. They are preferred over others who try to comply with our laws, who seek entry into our country. Those who have complied with the laws are denied entry and those who violate our laws are granted amnesty. Now, why are they granted amnesty? Is is not really because of the merit of individual cases. It is because there is such a flood of them.

I listened to an earlier speaker expressing his concern over the unemployment rates in metropolitan areas in his State near the Mexican border. I will guarantee, with the passage of this legislation, the unemployment rates in those metropolitan areas will be larger. There will be greater difficulty for American citizens who are today unemployed, who will find it more difficult to obtain employment because of the passage of this bill. This is not answer to that problem. This exacerbates the problem.

□ 1840

We are told that no nation can be a great nation that cannot control its borders, and yet what is it we are doing? We are saying that we cannot control our borders, so let us ignore the fact that we cannot control our borders and make legal that which was illegal. Then we say, oh, no, never again. Five years from now, 7 or 8 years from now, we will have another illegal alien problem, calling for amnesty, because this does nothing to solve the basic problem. Well, it does one thing: it allows a program for those who are residents of Mexico to seek the opportunity to work in this country on a temporary basis, to fulfill the labor requirements in agriculture, that otherwise are unmet. That is one of the great provisions for the illegal immigration. But it does not close our borders to illegal immigration. It winks at it.

I am reminded of the schoolboy game in which, on the playground, you got into a confrontation with another boy. You draw a line in the dust with your toe and dare him to step across it. If he steps across it, you step back and draw another line in the dust with your toe and dare him to step across it. Then, if he steps across it, you step back and draw another line in the dust with your toe and dare him to step across it.

This bill is bluster. It is not policy. It reminds me, too, of that ancient allegory of which every person is aware, of the emperor who demanded new clothes and the tailor who hoodwinked him by saying that he had such fine clothes that nobody could see them. So the emperor rode through the streets naked and it took a boy to say: "Look, the emperor has no clothes."

We are saying in essence, then, "Look, the emperor is clothed in finery." There needs to be someone who says, "Look, the emperor has no clothes."

I am reminded further of another instance in more recent history, and in a more grim manner, when we refused to face the reality of the aggression by Hitler's Germany; and a prime minister went to Munich and said he had purchased peace in our time. This bill is another exercise in appeasement of a problem that will not be so appeased.

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

Mr. McCLURE. I yield.

Mr. SIMON. I should like to make one brief point.

My colleague said: "Why have amnesty? Why legalize people who perpetrate an illegal act?"

We have, as a matter of Government policy, said to employers, "It is OK if you hire people who are here illegally." So, really, through Government policy, we have encouraged this very illegal activity.

Mr. McCLURE. I could not disagree with my friend more. My friend is entitled to that viewpoint.

What this bill seeks to do, and another reason why I object to it, is to put upon private employers the burden of the enforcement of law, which the Government finds itself incapable of enforcing. It is a cop-out in terms of Government responsibility by loading the risk and the burden on people who really are only trying to make a living. In many instances, it is not the employer's fault as much as it is the fault of us as a nation, who have failed to confront the necessity for an enforcement policy.

So I say that this bill is a failure, a sham, and a fraud. That, by itself, is not bad enough, but it sets the stage for a repetition with greatly expanded numbers.

I have asked a question similar to the one the junior Senator from Texas asked earlier: How are you going to verify the genuineness or the lack of veracity of the documentation presented by millions of illegals in this country today, who seek to prove that they were here in one of the qualifying periods or in one of the ways in which they could qualify?

I do not know how many there are present in this country; no one really does. The Senator from Wyoming said earlier that the Senator from Texas comments that there are some 4 million to 7 million and it was wrong, that the official estimate was 2 million to 4 million, but he thought it was higher, which I think brings it back to the range the junior Senator from Texas was talking about. So it is somewhere in that range, so far as anyone knows.

How many documents will it take to prove the basic facts of the presence of 4 million to 7 million illegal aliens? Let us say they have to produce 5 million, offhand. That is 25 million to 35 million documents that they will produce, and we are supposed to have an Immigration Service that is capable of determining whether or not those documents are valid, whether the facts surrounding them can be verified, whether or not the person who has brought those documents forward has carried the burden of proof. That is going to take manpower.

The Immigration and Naturalization Service will be swamped, absolutely inundated, in a sea of paperwork which they must attempt to verify. We are told casually—no, I should not say casually—we are told it is as though it is no real problem, and we will simply put the burden of proof on them; and if they cannot prove it, there will be a severe penalty. What severe penalty? We will not deport them. We will probably put them in jail and support them and their families. What is that penalty to one to whom the greatest penalty is deportation? They are willing to take risks; that is why they are here.

There is a great magnet for people to come here. So what in the world do penalties mean to somebody who will risk that in order to come? They will take that chance, and they will provide the spurious documentation, and most of them will get away with it. As they get away with it, the example is set for millions of others to get away with it, and there will be the greatest flood of those seeking legalization under the amnesty provisions, far greater than just the ones who are here already: "Open the door. Come on in. Present your false documentation. All that you can happen to you if you get caught is that you will be sent back home. So try it."

I have asked our distinguished Attorney General how they will enforce this provision. He said, "We will have

to ask for more people." Yes, indeed, we will have to ask for more people.

I submit to you that if they get enough people to adequately enforce that one provision, just the documentation, they have enough people to enforce the current laws.

You do not have to wink at this problem and say that it will go away, as this bill attempts to do, by providing amnesty. If you are going to provide enough people and enough resources to enforce this statute, you could enforce the present statutes, and you do not have to invite it for the future.

Fundamentally, we, as Americans, are not yet ready to accept the fundamental necessity of allowing our own right to be here to be questioned. I say that because I agree with the Hispanic organizations that say that this bill and its enforcement will ultimately be racist, and it will be.

I say to the Senator from Wyoming, you are tall and relatively Caucasian-looking, and I suspect that, as a result, you will not be asked the question of whether you have the right to be here. I am blond and blue-eyed. I will have no problem being here. They will not even ask me about my right to stay here.

□ 1850

But I would suggest to you that if your skin is brown, your hair is dark, and your eyes are dark, and if by chance you did not learn to speak perfect English in our schools so that either you speak Spanish or you obviously speak with an accent, if there is to be any enforcement, that group of people will find themselves questioned more than other citizens of this country. That will apply to those who are American-born. It will apply to those who have exactly the same right of citizenship and the same right to be here as you and I, and they will not just be illegals who will be asked those questions; it will be people who look different than the Caucasian majority.

I object to an enforcement policy that does not force us as Americans to recognize, each one of us, that if we are to ask others in our society to justify their presence, we must be willing to have our presence justified. We must be willing to have them ask us that question.

I could not conclude my remarks in indicating that indeed I think employer sanctions are wrong. If the employer is hiring an illegal, the illegal can legalize his presence, but the employer is subject to sanctions.

There is the provision under this bill which rather curiously puts the employer in that rather strange case in which the illegal will be rewarded for his illegality and the employer is subject to penalty while the illegal is improving his right to be present.

I think we will have a nightmare for lawful employers in this country as a massive bureaucracy swoops down upon them trying to impose upon them the burden of enforcement of the law that the Government is incapable of enforcing.

Finally, Mr. President, I say as I did at the beginning, we are at this point largely because of the affection and esteem for which the Senator from Wyoming is held in this body. I share that feeling. When this bill first passed the Senate, I spoke very briefly against the bill and that bill which left this Senate is not nearly as bad as the one that has returned to it. Every reason to oppose it in the past is multiplied by its changes. For every reason to be fearful of its application as it passed the Senate there are much greater fears today as it comes back to us.

But it has its own inexorable momentum that says the show of achieving a bill is more important than what is in the bill.

I do want to thank my friend from Wyoming, however, for one provision which I think is essential in a variety of respects from civil liberties, to employer's rights, to the rights of individual Americans, and that is the search warrant provision that is required in the agricultural fields. That is an amendment which I offered and which was adopted in the Senate before it passed. It is a controversial matter in some areas. INS does not like it. They would rather be able to take a four-wheel drive pickup and run a worker to death in the field than to go down and get a search warrant. We have seen far too often that kind of enforcement activity by INS in the fields.

I commend the Senator from Wyoming for having not only accepted that amendent but protecting it throughout all of its processes as it comes back to us at this time.

Mr. President, I, with all due respect to my friend from Wyoming, must protest this legislation and urge the Senate to reject it.

Mr. SIMPSON. Mr. President, I just have a brief response to that.

I have come to highly respect the Senator from Idaho, my neighboring State. He is the most extraordinary legislator I have ever come across. I refer to him in a most extraordinary term, with my alliteration as a vacuum cleaner of legislation. He follows every single thing on this floor. He is like Senator DOMENICI. The two of them have an innate capacity to absolutely absorb everything that is going on in here. I do not have that. I have watched Senator MCCLURE do it. I have watched PETE DOMENICI do it, and it is extraordinary.

I want to say just one thing because obviously you can tell he feels very strongly about this.

All I want to add is that actually the Senator is too kind. It cannot be my personality that brought this here. I mean I have had some awfully good bills that they rammed in me since I have been here and if it is that good I am failing somewhere, so it cannot be that.

It is a national issue that will never go away and it is called sovereignty. It is called the first duty of a sovereign nation and the first duty of a sovereign nation is to control its borders. You can go through all the sophistries of the language and emotion, and as I say, this baby is filled with emotion, fear, guilt and racism. And I have heard the Senator from Idaho speak on terrorism with passion, on the security of our Nation with passion, and on drug abuse and control of drugs with passion.

How does anyone believe that we will ever have any of that when you have 1,800,000 human beings crossing our borders with no restrictions whatsoever.

That is the most extraordinary adventure into absurdity that I have ever had. One million eight hundred thousand people crossing the border each year, and we have apprehended one out of every two and we are supposed to have a country. We will not have a country. We will have an exploitable, subclass of human beings, based on one rich trait in America, which really may have been one that made our country.

I often said let us get to what made America great—greed—because that is what we have here. We have people who chose to take these people, have them here, use them, exploit them, and I think we fought a war about that about 120 years ago when we had people called slaves. It is what you got in the United States when you have a whole subculture of human beings who are afraid to go to the cops, afraid to go to a hospital, afraid to go to their employer who says "One peep out of you, buster, and you are down the road."

I tell you what you have. If you ever got the status quo you have a real society of discrimination. You are going to have a society where we will have more operation jobs, more operation sweeps, and when the employer has been busted about six times he is going to say, "I have got this baby figured out. I am never going to hire anybody again who looks foreign."

That is the way that one will work.

So we are asking here for the citizens of America and noncitizens and those who are authorized to work to present a document which probably is going to say on it "I am authorized to work in the United States of America."

It does not say whether you are a citizen. It does not say whether you

are a permanent resident alien. It does not say whether you are a temporary resident alien. But it says you are legal to work and that document is not intrusive. We have in this bill itself not a national ID. It need not be carried on the person. It is not used for law enforcement. It is not an internal passport, and it is presented at one time of life. It is presented at that time of new hire employment and it is presented by people who "look foreign" and by bald Anglo skinny guys like me, too. Anything else and you would truly have discrimination.

That is the issue. I have been through that one plenty of times, and it is extraordinary to me to think that the issue of employers being the policemen of the country, that one went out the window a long time ago. If we did not ask employers of America to handle our withholding tax, who would? Now we are going to ask the employer to sit there and check a box that says if you asked this person for his documentation or his work verification or his identification and he puts "yes" or "no." And the person stands there and the document written in about three or four or five languages says, "I am authorized to work in the United States under penalty of perjury," and that is what we are asking.

We have penalties against those employers who choose not to do that. That is what we are talking about.

You know, the issue is one if you stay in it long enough, I would say to people OK, if you do not like the bill, give us an alternative. But no fair quoting from the Statue of Liberty because it does not say on it "Send us everybody you have got legally or illegally:" That is not what it says. That is where you are in America. Prattle on all you want to about rights and humanity and everything else. But let me tell you when you have a United States of America that is going to be populated from stem to stern with illegal, undocumented people who have lesser rights than the rest of the citizens of the United States, if you think you have problems now, you try the status quo.

□ 1900

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, in the past two Congresses I have voted against the immigration bills brought to the Senate primarily because I felt they did not adequately guard against discrimination against minority Americans. However, I believe after much thought that the new version now before the Senate is a bill which this Congress should pass.

First, let me say that the problem of illegal immigration into this country is growing at an alarming rate. Public concern about this problem is also on the rise.

As the public concern about illegal entry into the United States continues to grow, I fear that without some legislative solution now, the future may bring a more repressive approach than what we are considering today.

Last year I strongly opposed the Senate version because it lacked adequate protections for those American citizens who, in the eyes of some, do not "look American" or "sound American"—in particular those of Hispanic descent. While I've always agreed that some type of limitation on immigration is called for, I remained troubled by the very real possibility of discrimination. My interest has been to minimize that risk and to support a reasonable process for redress of grievances that will surely arise. When this matter was debated last year I supported my colleague from Colorado [Mr. HART] in his amendment to provide a recourse for those violations of constitutional rights arising from employer sanctions. However, Mr. HART withdrew his amendment and the Senate never voted on the provision. Consequently, when the Senate passed its bill, it did not have the necessary protections built in against possible discrimination and redress of those violations. The version now before us does include such provisions, and several other changes that strike a fairer balance between individual and national interests.

First, the conferees agreed to include an Office of Special Counsel in the Department of Justice to investigate and prosecute claims of employment discrimination. Sanctions, including fines and granting of back pay, may be imposed against offending employers. An offending employer may also be required to keep paperwork on future job applicants. There was no similar provision in the earlier Senate bill because the Hart amendment, though debated, was not voted upon. I believe this is a most important feature of the compromise bill and am pleased it was included.

Second, the conferees agreed to keep the Senate provision requiring the General Accounting Office to submit to Congress and to a specially created task force, an annual report on possible patterns of employment discrimination based on national origins resulting from employer sanctions. Under the Senate version, if GAO finds such discrimination, the task force would then be required to submit its own report, with legislative recommendations, to Congress. Within 60 days after receiving the task force report, the Senate and House would hold hearings. Employer sanctions will cease if GAO finds discrimination, and Congress would enact a joint resolution stating that it approves the task force report's findings. In the event that Congress repeals employer sanctions by joint resolution, then the antidiscrimination provisions will also expire, since their purpose would have been removed.

In contrast, the House version provided an automatic termination of the employer sanctions and the Office of Special Counsel, 6½ years after date of enactment. The compromise, by adopting the Senate provision, guarantees at a minimum that we revisit the issue of employer sanctions. I supported this version when my colleague from Massachusetts [Mr. KENNEDY] offered it last year.

Third, my concern that employers will not hire foreign looking individuals to avoid sanctions was addressed in the conference report. The bill broadens the title VII protections of the Civil Rights Act to include national origin as well as citizenship. I believe this further protects against possible abuse.

Mr. President, in the 4 years I have been in this Senate, this is the first time that the two Houses of this Congress have been able to agree on legislation to reform our immigration laws. There are many criticisms that can be made of this bill and I share many of those criticisms. However, the choice before us is not whether we want this bill or a better bill on this subject. It is very possible, and even probable, that this is the best bill our complex system of checks and balances can come up with at this time. And time is of the essence in dealing with this problem.

I am persuaded that the choice before us is either this bill or no bill. Since I believe that action is needed on this crucial issue at this time and I believe that genuine effort has been made to craft a fair compromise on this difficult issue, I will support the bill.

I join with many of my colleagues in commending the Senator from Wyoming for his excellent work in fashioning this compromise.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, this bill comes before the Senate today because of the persistence, the patience, and, indeed, the fortitude of the distinguished Senator from Wyoming, Senator SIMPSON. It is truly a monumental accomplishment, and I would like to congratulate him.

There are others who have played a significant and, indeed, a large role in this whole process. The distinguished Senator from Massachusetts, Senator KENNEDY, for years before I even arrived in the Senate and I would say before the distinguished Senator from Wyoming arrived, was a champion of these immigration issues. The Senator from Illinois, Senator SIMON, Repre-

sentative MAZZOLI, and indeed Chairman PETER RODINO in the House all have played an enormous role in making this happen.

But this is really a moment when the distinguished Senator from Wyoming should stand tall and pull his shoulders back and be proud of a significant achievement.

Mr. President, I respect people who know what they are talking about and who are strong enough to listen and who do their work as legislators. Senator SIMPSON, I think, on this piece of legislation has epitomized what an ideal legislator means. He has shaped this legislation. He has listened. He has had countless hours of meetings with various groups and then with various Senators and various Members of the House of Representatives. The substance, you have got to assume, he knows it cold, but what he was dealing with were the personalities. He was looking for a change here, a modification there that might develop the consensus, that might produce the critical mass that would make this historic achievement a reality, and make it a reality without losing the core idea or the basic objective for the legislation in the first place.

Mr. President, an old coach used to say, "When you win, don't crow; when you lose, don't cry."

Back in 1982, Senator SIMPSON lost. The House did not even take it up. In 1983, we passed it quickly through the Senate again. It died in the House. Senator SIMPSON did not cry with the first loss or with the second loss. He kept working. He kept seeking that consensus. He kept listening.

And then in 1985, he assumed a leadership role in the Senate and people said, "Well, there goes immigration reform. All these new responsibilities." But, in fact, immigration reform was not put on the back burner. He kept working, looking for the consensus, shaping, committed to the idea as powerfully as he ever had been before.

Mr. President, this is truly a historic piece of legislation. And if you look back at the 99th Congress, I think this will be the most important piece of legislation. This will last. It will stand the test of time. Senator SIMPSON has made his mark on America.

Indeed, Senator SIMPSON, I believe, proceeds with good humor and sensitivity. He is unassuming, competent, responsible. And, before I start sounding like the Senate version of the Boy Scout oath, I will simply stop and say that he deserves our appreciation and our praise. As a friend, I will simply say to him tonight, I am proud of you. I am proud of this accomplishment.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I cannot say enough about my dear friend from Wyoming for his efforts, consistency, patience, and everything else that has been said about him with reference to this issue. So, suffice it to say, I do not think anyone could have done a better job.

I voted against the immigration bill the last time and I am going to vote against this one. I really cannot find within myself any justification for voting for this when I voted against the previous one because the problems I had with the previous bill are just magnified in this one.

But I want the Senate to know that I have been helpful to the Senator from Wyoming in making sure that we had this vote tonight. I did everything I could to help him make sure we got a Budget Act waiver, and I think he will agree with that.

In fact, I will say here that I told him exactly how he ought to do it and helped him plan to make sure that this bill would not be subject to any procedural shortcomings. I am very proud of that, because I think this is a major issue and we ought to vote tonight.

There is no doubt in my mind that this bill is going to pass. I am not in any way desirous of delaying that eventuality. We have to address the issue.

But, frankly, my vote "no" tonight is my way of saying I do not think this bill will work. And since I do not think it will work, I really do not want to be on the side of saying I am for it. Frankly, I believe we are creating an administrative nightmare. Maybe that is not enough reason to vote against it, but in my way of thinking we ought to try to solve this problem without creating some more very serious ones, as I believe we have and will.

I know this is not how this bill started out, and I know the distinguished Senator from Wyoming would not want it this way. But in an effort to get around the agricultural worker provisions that cleared the Senate, we have created an absolutely unworkable situation with reference to the agricultural workers and the privileges that we have given to them in this bill. I believe we are going to have a situation where our enforcement people will literally be besieged. There will be an invitation to fraud and abuse the likes of which we have not seen, as illegal aliens struggle to find a way to qualify as 90-day workers in the agricultural fields of this country, in the past and in the future under the replenishment provisions.

Although I have heard the Senator indicate that they will be somewhat controlled by Cabinet members who make the determinations, I am convinced that it is an invitation, an invitation to disaster and an invitation to a bit of servitude that I do not think anyone intended.

Having said that, obviously, I hope we vote tonight, and there is no doubt in my mind that it is going to pass.

As to the Senator from Wyoming, the distinguished Senator from Massachusetts, and the others on the committee obviously they deserve an A-plus in all respects for patience, consistency, determination, and just flat insisting that we do something.

□ 1910

So my vote is one that says this bill will not work. I would like very much to be wrong. On the issue of discrimination, I voted against the previous bills because I thought they were rather open-ended invitations to discrimination. I believe that possibility still exists. It is somewhat moderated in this bill, so if that were the only issue I would probably vote for it.

On the general idea of amnesty, I probably would support amnesty for people who have lived here long enough that they clearly deserve to be American citizens. But I predict this will not be the last amnesty. We will have a new one because this just will not work. Consequently, in 8 or 9 years we will have another of those serious social problems that come from this.

I close by saying the Senator from Wyoming could say that is all fine, but where is your proposal? I understand. But I do believe in the interest of getting the agricultural worker problem solved we really did not solve the problem at all. And I regret that they had to do that. I think it will be the cornerstone of its failure.

I yield the floor.

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Thank you, Mr. President.

Mr. President, much has been said in praise of the sponsor and manager of this legislation, the Senator from Wyoming; but not too much praise because he has deserved every word of it.

This tall, lean and humorous man has been, though he will not say it, a driven man in pursuit of a solution to a problem that no one else really had the guts to handle. But he has sustained with a moral stamina, rare even in the annals of this body, a search for a solution to what seemed to many people to be the intractable problem of how America should deal with the incredible, massive flow of humanity spilling across an 1,800-mile long land bridge which is only lightly guarded.

As time has gone on, those who have been either resident in or passing through the Republic of Mexico have looked North, and in explosively increasing numbers, they have come North with little impediment.

The junior Senator from Texas said in his rather eloquent comments that he recognizes that we face a crisis.

Indeed, we face nothing less than a crisis, Mr. President. This year, the INS and the Border Patrol will apprehend and detain over 600,000 illegal aliens within the San Diego sector, alone. The figure provided by the Senator from Wyoming dealing with the entirety of the border is 1.8 million. And for every one who is actually apprehended and detained, INS estimates that at least one other illegal eludes them and enters the United States illegally.

What does that mean? Do these illegal immigrants pose a threat to employment for U.S. citizens? Have they increased crime and burdens upon law enforcement? Have they increasingly burdened local governments that provide health care, various types of welfare assistance? Have they finally, even in a hospitable nation, reached such a saturation point that they have deteriorated the attitude of hospitality and replaced it with resentment and with fear?

The unhappy answer to all these questions is "Yes!" Mr. President. Long since that has come to pass. And I regard it as tragic. But nothing is going to change that. Nothing is going to alter the dimensions of the problem unless we have the courage to act.

Many people tonight have said they have opposed prior legislation. I was among them. In 1983 I argued vociferously and unsuccessfully against the basic premise of this legislation, employer sanctions. I expressed great skepticism that employer sanctions in and of themselves would be sufficient to stop this massive flow of illegal immigration. I remain skeptical.

But I will tell you, Mr. President, when the distinguished Senator from Wyoming asks of critics "What is your alternative?", I have come to the unhappy conclusion that there is no alternative. No one else on this floor is offering another solution.

In the not quite 4 years that I have been in the Senate, the dimensions of this problem have grown enormously. The tenor has changed drastically. I spent 11 years as the mayor of San Diego, the largest border city, the busiest international crossing in the world—busiest in terms of both legal and illegal crossings.

I spent a great deal of my time working, trying to build relationships with my Mexican counterparts. I think they, as well as I, must view with great sadness the deterioration of these relationships and decades of good will as this problem of a hemorrhaging border has inevitably and understandably produced an entirely different climate of opinion.

Mr. President, this is not perfect legislation. The reservations I had about employer sanctions—not just in terms of their effectiveness, but in terms of the burdens on small employees which they add, I have still. I share the concern expressed by the Senator from Idaho that small business men and women may very well resort to what I term defensive discrimination and seek to avoid the hassle of Federal prosecution by the simple device of choosing the applicant for the job who does not look or sound foreign.

But unlike the bill that passed in 1983 this one does contain at least some safeguards against that discrimination. The Senator from Massachusetts, I, and others have put them there. The bill also provides for a Commission that will assess whether employer sanctions are working effectively, and whether they are posing an unfair burden upon the employers to whom we look to enforce them.

But the real point, Mr. President, is that no alternative has been offered. Centainly there are desirable alternatives that one could conceive. In 1983 we discussed some of those. I can recall stating that perhaps we should consider providing Marshall plan-like economic assistance to the Mexican Government to permit the Mexican economy could employ the Mexican people, and to secure Mexican Government cooperation in restraining illegal entry on their side of the border.

Well, Mr. President, we have supplied such economic assistance in generous measure, in the indirect forms perferred by the Mexican Government.

But I will tell you that if we wait, Mr. President, for a Mexican economy that can employ the people of Mexico to relieve the pressure, we will wait for perhaps half a century, and we may wait forever. They have been willing to take our loans. They have been much less willing to take our investments. The fact is that for whatever causes, the Mexican economy does not and will not soon support the employment of its own people. Whether they are willing to admit it or not, the Mexican Government inevitably must regard illegal immigration to this Nation as a safety valve, a release for those with the gumption to try to come here.

Those who try are of many nationalities, 81 nationalities according to the Senator from Wyoming. Whatever their differences, they have a common courage and determination to seek something better, and they will continue to try to come.

Employer sanctions may be distasteful, but they offer the only device by which we may hope to reverse this tide of unfortunate humanity with the gumption to seek a better life.

Mr. President, the junior Senator from Texas and others have expressed concerns about the fairness of the legalization provisions. They are not perfect. These do not bear the stamp of the Senator from Wyoming. They bear the stamp of the House of Representatives. They are not perfect. But I will simply say this: If the concern is that we are rewarding those who have violated the law by coming illegally, then let us examine that law, the existing law of the land which this immigration bill seeks to reform.

Those who have come illegally have done so because of an anomaly in our law. It has been perfectly legal for employers to hire illegal aliens who are here in violation of the immigration law. Even Charles Dicken's character Mr. Bumble, famed for his outraged judgment that "the law is a ass!", would be dismayed by a law that permits employers to hire legally workers who are illegal by their presence in the Nation. We should share his dismay and change our law.

What is more, this anomaly in our law has produced an anomaly in the American democratic system which denies its ideals and is repugnant to common decency. It has produced a subclass of workers who are by their illegality vulnerable to exploitation. As an example, agricultural workers for whom housing is provided by growers are often afraid to live in that housing for fear they will be an easy target for the INS and the Border Patrol. So instead they literally go to earth, to live like animals in holes in a way that no one in America or elsewhere should be forced to live.

Mr. President, let me just say that the question was raised, and properly, by the Senator from Texas. Can we do better than this immigration reform bill?

This poor man (the Senator from Wyoming) has been pulled and hauled, but he is tough, he can take it. And his legislation has been pulled and hauled. It is not what we sent to the House. It is what they sent back and what we finally fashioned as a compromise.

Let me say that it is probably the best bill that this frustrating process of compromise can achieve, and certainly the best that we can reach at this time. And we dare not delay, Mr. President. If we fail to act now, we face a most uncertain future, except in one regard: We face the absolute certainty that the terrible problems for America that flow from this exploding illegal immigration will only return grown much larger and more difficult, until such time as they become in fact intractable.

If we are concerned about the fairness of the legalization proposed in this bill, will we not be even more concerned when the number of illegal aliens resident in the country has doubled because we have done nothing in the interval to forestall their coming?

This bill is not what anyone wants in all its parts. But the time to act is now. What we will achieve by delay is not just delay: We risk the serious further deterioration of an already grave situation, a situation that the Senator

from Texas correctly described as one of crisis.

Mr. President, I feel very strongly about this measure.

Late on a night not long ago I pleaded with the Members of this body to allow consideration of a measure that the Senator from Wyoming wished to send to the House to resurrect immigration reform when it seemed quite dead in the House of Representatives. Somehow it has been resurrected, due largely to the fortitude, skill, patience and dogged purpose of the Senator from Wyoming.

Let us not lose this chance. Let us seize the chance. If we fail to act now, we will be guilty of the most criminal dereliction.

Mr. President, despite my obvious feeling, I will say no more, except that I congratulate my friend from Wyoming and I thank his parents for having produced this tough-minded, tenacious, sympathetic, humorous man of good will to serve his nation as an outstanding Senator.

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I will just join with all of those who have congratulated our friend from Wyoming. I certainly share everything that the Senator from California and others have said about this remarkable colleague of ours.

That, of course, has nothing to do with the bill before us. For some reason this is the night when ALAN SIMPSON at least gets his well-deserved plaudits. I will not let that pass.

I listened with interest to what the Senator from New Jersey said and I agree with all of it, about his skill as a legislator and his intellect, and so on. The plain fact of the matter is, to anyone in the Chamber, ALAN SIMPSON is a beloved figure. That is not the issue in this legislation.

As I have listened, not only this day but on many previous days, I am struck by the fact that those who are going to vote in support of this bill have spoken at great length and have really gone to elaborate length to justify their position in support of this bill. Really, it comes down to two propositions: One, "We love ALAN SIMPSON and he has worked hard for this over a long period of time so I am going to vote for him," and, two, "There is a terrible problem and we do not know what to do, but this is the only thing we have so we ought to vote for it."

Mr. President, I am going to vote against this for several reasons. In the final analysis, in 5 years, 10, or 20, history will record whether or not it is a good piece of legislation.

Here is my prediction: First, it is not going to work. It will not stem the tide of illegal immigration into this country.

Second, it is a budget buster. It will be costly. While that is not the most important issue in this legislation, it is noteworthy at a time when massive deficits are an important concern of our country.

Third, I think it is a sad, indeed tragic, thing when we grant amnesty to millions of people solely on the grounds that they have gotten here through an illegal act.

That is the common denominator of every one of the people who get amnesty, that they came to this country illegally.

I think that is in its essense unjust to the millions of people around the world who would like to live in this country, including in many cases people who are political refugees, for heaven's sake, who are following the established procedure, who may have relatives in this country and who are waiting years and even decades for the opportunity to enter this country legally.

Instead, in preference to them, we are granting amnesty to those who have broken the law to come here illegally.

I also note in passing, Mr. President, that by granting amnesty in this way, we set a standard for citizenship which I do not think is very promising. I do not say, and I would not want to be understood to say, that nobody who gets amnesty and thereby becomes a citizen cannot make a contribution to this country because in fact many of the people who are working here, even though they are illegal in their status, in fact are people who have a lot of the qualities that made this country great.

But when all we do to make a citizen is to say, "If you have been here illegally for a certain period of time, we will grandfather you in, we will give amnesty," that does not establish a very high standard for the integrity of this precious right of citizenship.

Finally, Mr. President, I just note that in my opinion, this will encourage more, not less, illegal entry into the country.

So despite my regard and affection for the Senator from Wyoming and for the tremendous amount of talent and effort he has brought to bear on this question, in spite of the fact that I recognize, as has every other Senator who has spoken, that we have a tremendous problem, I do not think that to do something even if it is wrong is the right standard for legislating in this Chamber. That is what this bill is, in my opinion.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, have the yeas and nays been ordered on this measure?

The PRESIDING OFFICER. They have not been ordered.

Mr. HELMS. I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. HELMS. Mr. President, as long ago as July 21, 1981, Attorney General Williams French Smith testified that "We have lost control of our borders." Under this bill, illegal aliens who arrived prior to January 1, 1982, would be allowed to remain in our country. How many illegal aliens are currently here? While the exact number is impossible to calculate, estimates range from some 3½ million to over 10 million. Some estimates even range as high as 15 million. The administration has used a figure of 6 million which, it would appear, is a conservative estimate. Whatever the exact figure is, it is clear that effective measures are necessary to regain control of our borders.

EFFECTS OF AMNESTY

Mr. President, this bill would create a so-called legislation program which would give a legal right to millions of illegal aliens to remain permanently in these United States. It may well be that this amnesty proposal would create a precedent for further declarations of amnesty for those who might potentially be drawn here by the first amnesty program, drawn by the hope that the law would be set aside. The amnesty program would give a legal right to millions of illegal aliens to seek any job that an American worker has or might be able to find. It would give a legal right to millions of illegal aliens to full welfare benefits.

Other potential effects on our society could include a polarization between Hispanic-Americans and non-Hispanic-Americans. Additionally, polarization could well occur within the Hispanic-American community between those who have legally settled here and those involved in an amnesty program. Amnesty also creates a moral problem in that it rewards lawbreakers. In a society such as ours, respect for the law is fundamental to the well-being of our local communities and to our Nation as a whole. Therefore, there should be no amnesty provisions.

AMNESTY COULD INCREASE ILLEGAL FLOW

Amnesty for the millions of illegal aliens currently in these United States would establish a dangerous precedent which could well encourage additional illegal immigration. Additional millions of desperate people could head to the United States on the heels of economic chaos or political chaos in their homelands. For example, between the Rio Grande and the Panama Canal there are over 100 million people. If only 10 percent of these people flee

economic chaos or political chaos engendered by Communist expansion in this area the illegal population could very well be doubled in this country.

An Associated Press report from Mexico City on July 14, 1982, states that—

American officials predict that one of Mexico's worst recessions since World War II probably will increase the flow of Mexicans going illegally to the United States in search of jobs and a better life.

Inflation in Mexico is running at some 80 to 100 percent this year and Mexico's foreign debt has reached over $100 billion. The Mexican peso has been devalued which has added to Mexico's economic problems.

At the present time some 10 to 12 million Mexicans are either underemployed or unemployed in a work force of 24 million. Unemployment and underemployment now total about 45 to 50 percent of the labor force in Mexico and Mexico needs to create over 900,000 new jobs every year just to keep up with its population growth which is one of the highest in the world. Mexico is a resource-rich country with oil reserves which are well known as well as mineral and potential agricultural wealth. Yet, Mexico for decades has adopted a type of Socialist experimentation—including so-called land reforms—which has brought the country to its current straits. We would hope that the Mexican Government and all governments in the region would encourage policies which will lead to real economic growth. We in these United States should not adjust our immigration laws just to bail out other nations from the effects of decades of poor economic policies.

Mr. President, this year we expect to arrest some 1.8 million illegal aliens attempting to cross our southern border. For every illegal that is apprehended, Border Patrol officials indicate that at least two or three or more are able to slip through. Let us be frank, we cannot today control our own borders; yet, a massive amnesty is to be offered. Amnesty today encourages more illegal immigration tomorrow which may very well lead to proposals in the future for another amnesty based on the precedent set in this bill.

Mr. President, the San Antonio News has bluntly stated that—

It would be foolhardy to offer . . . amnesty without first beefing up the border patrol to a point where it can control our boundaries.

This bill does not provide for the dramatic strengthening of the Border Patrol that is necessary. To this Senator, it is essential to greatly strengthen our Border Patrol capabilities. Even if the Border Patrol were greatly strengthened, however, I believe that amnesty for untold millions of lawbreakers is foolhardy in the extreme.

SOVIET EXPANSION IN CENTRAL AMERICA

Mr. President, Soviet expansionism in Central America is causing havoc in Guatemala, Honduras, El Salvador, and Costa Rica. Nicaragua is a Soviet base. The fires are burning in Central America and could ignite a volcanic eruption in Mexico.

Recently, we have heard President Reagan describe the situation in Central America and the Caribbean. It is very grave. The convulsions wracking Central America today may well propel an explosion of "feet people" fleeing the chaos and illegally entering these United States.

Mr. President, we must regain sovereign control of our borders. Congress must have the will to face this very grave challenge to the peace and tranquility of our own homeland. Congress cannot buckle under to the voices of propaganda on this fundamental issue. Congress cannot buckle under to the voices of superficial rhetoric on this fundamental issue. Congress cannot jettison sovereign control of our borders by adopting an amnesty for illegal aliens. Those who come after us will rue the day should Congress grant amnesty to untold millions of illegal aliens and prepare the stage for further amnesties for further untold millions of illegal aliens.

AMNESTY AND U.S. UNEMPLOYMENT

Mr. President, there are today almost 8 million Americans out of work. Congress should be making every effort to remove illegal aliens from our work force and should avoid voting for legislation which will grant them legal rights and benefits through an amnesty program. It should be understood that illegals are at work in a broad spectrum of fields. Testimony before Congress shows that—

Only 15 percent of the illegals are estimated to work in agriculture; 50 percent are employed in service industries; and 30 percent are in blue collar jobs.

The Federation for American Immigration Reform has pointed out that, "half of all new jobs created in the late 1970's went to legal and illegal immigrants." FAIR also has pointed out that "there is not a single labor market that immigrants enter in which the majority of workers are not Americans." Marvin Stone, editor of U.S. News & World Report, has pointed out in this regard that—

If newcomers show skill and initiative as workers and entrepreneurs, they often cut in on the livelihood of local people and arouse hostility; if not, they lean heavily on the public purse.

I repeat that only 15 percent of the illegals are in agricultural jobs. It is a myth that illegal aliens seek and obtain only low-paying jobs; indeed, a number of studies and reports have found that illegal aliens obtain well-paying jobs. For example, the Phoenix Gazette of December 9, 1981 in reference to a nuclear reactor plant in Arizona stated that, "Immigration officials said they believe the relatively high-wage scale, which begins at about $10.50 per hour, has attracted a large population of illegal workers." Human Events some time ago described a case in Elgin, IL, in which Immigration and Naturalization Service officers arrested 69 aliens who earned between $4.50 and $13 an hour. Within hours, the Human Events story reported, hundreds of local residents had applied for these jobs, all of which were filled within 3 days.

Prof. Donald L. Huddle of the Department of Economics at Rice University has written a report on "Undocumented Workers in Houston Non-Residential and Highway Construction: Local and National Implications of a Field Survey." Professor Huddle has estimated, for example, that one-third, and possibly more, of the workers in the construction industry in the Houston area are illegals. He notes that residential construction is more heavily infiltrated by illegals than is commercial construction. This is because unions still act as a partial barrier in the commercial construction field. The wages earned by illegals ranged from $4 to $9.50 per hour. A study by Frank Bean and Allan King at the University of Texas for Governor Clement's task force on immigration was quoted in the Houston Post of April 7, 1982 and estimated that one in every five Texas Hispanics is illegal.

From his research, Professor Huddle extrapolates that, "For the United States as a whole, the number of illegals working in construction may reach an estimated 1 million or more." He then goes on to state that "the wages collected by the illegals in construction nationally probably exceed $7 billion per year and could well be over $9.5 billion."

Former Secretary of Labor, Ray Marshall, has stated that removing illegal aliens from the work force could cut our unemployment rate in half. According to Professor Huddle's research:

The amnesty provisions of the Simpson-Mazzoli bill are too generous * * * giving amnesty to illegals * * * will be costly in terms of implementation, will cost unemployed American citizens hundreds of thouands if not millions of jobs, and lead to many more millions of relatives of illegals not now in the U.S. becoming legalized in the future.

It is important to consider a report by the Congressional Budget Office which shows that each unemployed American received $7,000 annually in unemployment benefits and other public assistance. Thus, 10 million unemployed Americans cost the taxpayers a minimum of $70 billion annually. This does not include the loss of revenues to the Federal Government from tax payments generated by working Americans.

Where there is a genuine need for seasonal foreign workers, for example, in the agricultural field, the answer is a temporary Guest-Worker Program. Amnesty is not the answer. In fact, by giving permanent resident status and access to our generous welfare programs to millions of illegals currently in low-paying agricultural jobs we will encourage them to move away from this type of work and into the welfare system.

AMNESTY WILL INCREASE WELFARE COSTS

Mr. President, amnesty would increase welfare costs dramatically. Many millions of illegal aliens would qualify for various welfare programs—AFDC, SSI, Medicaid, Food Stamps, State and Local Assistance, and Public Housing. A number of factors currently are holding the use of welfare programs by illegal aliens down. These include the fear of discovery by authorities and the percentage of illegal aliens who are working males with their families across the border. Amnesty would change the situation significantly.

The National Association of Counties, in their newsletter states that:

Such a legalization program would constitute a costly new federal mandate which would require states and localities to provide increased services and assistance to illegal aliens granted residency status. As legal residents, they would become eligible for cash and medical assistance not available to illegal aliens. NACo estimates that the total cost to state and local governments for providing such assistance would exceed one-half billion dollars in the first year of legalization alone.

Mr. President, for a fraction of the increased welfare costs that amnesty would entail, the enforcement capabilities of the Immigraton and Naturalization Service could be substantially strengthened. Not only could enforcement be made more effective, but also, jobs could be opened up for hundreds of thousands, if not millions, of Americans as enforcement activities take effect over a period of time.

AMNESTY CAN POLARIZE OUR SOCIETY

Mr. President, I fear that the granting of amnesty to millions of illegal alien could polarize our society. With 8 million Americans out of work, with our economy suffering from unbalanced budgets, and with increasing crime and lack of respect for our laws, amnesty could engender a tremendous backlash.

This backlash could affect relations between Hispanic and non-Hispanic Americans generally as well as between illegal Hispanic and Hispanic Americans who have either legally settled here themselves or whose parents or ancestors came to our land to settle. It is not just illegal Hispanic aliens that we are talking about, of course; there are illegal aliens here from all parts of the world. We must not allow through an amnesty program, the polarization of our society.

Referring to illegal Mexican aliens, it is important for this body to consider the opinion of Hispanic-Americans who are legal citizens. The Dallas Times Herald, some time ago carried an article entitled, "Illegal alien issue splits Hispanic citizens." The article pointed out that, "in Dallas, most of the complaints to the U.S. Immigration and Naturalization Service about illegal aliens come from Mexican-Americans." The article goes on to state that the regional INS Director, William Chambers, reported that 85 percent of the complaints about illegal aliens are by Mexican-American citizens. He added that—

A lot of people are surprised by this, and it used to be that Mexican-Americans did not get into reporting illegal aliens. But they (Mexican-Americans) are being much more adversely affected than previously. The illegal aliens go into their neighborhoods to live and they are in direct competition with them for jobs.

In an article published by the Washington Post, additional information is presented which demonstrates that polarization is already in progress. For example, the distinguished State Senator Hector Uribe who represents the lower Rio Grande Valley in Texas was quoted as warning that—

Those most traumatized (by the Supreme Court's education decision) are Mexican-Americans at the lower rung of the ladder. They see themselves paying for the education of illegal aliens' children. And they see their jobs being taken away by these illegal aliens.

The Post article pointed out a study by the Institute for Constructive Capitalism at the University of Texas which found that among various demographic groups, Mexican-American citizens were those most likely to believe that illegal immigration was the most important problem facing Texas. Another study, a poll taken by the Southwest Polymetrics Co. of Austin, TX, found that 58 percent of those surveyed in the Lower Rio Grande Valley—State Senator Uribe's district—opposed free education to illegal alien children. Among the Mexican-American respondents to the poll, the percentage of negative respondents was even higher.

Raul Besterio, superintendent of schools in Brownsville, TX, expressed his sentiments in the Post article and the sentiments of many Mexican-American citizens stating that—

Think how I feel. I'm a Mexican-American. People say why are you against your own people. Well, I'm an American. I was born and raised here. The Federal Government made me a Mexican-American.

Mr. President, the polarization process has begun in our country between illegal aliens and our fellow citizens. This body must face up to this fact and act in a responsible manner to prevent any escalation in this process and to heal the wounds that already exist.

Mr. President, it is wrong to reward lawbreakers. It is wrong to set in motion a program which will encourage further lawbreaking and which will polarize our society. Citizenship in our great Republic is too precious to grant in a vast blanket program to millions of foreign nationals who have flagrantly violated our laws. We expect our fellow citizens to obey the law. We proudly say that this is a nation of laws. Yet, amnesty for millions of illegal aliens—for millions of conscious lawbreakers—would show our citizens and indeed the world, that our great country cannot muster the will necessary to enforce our own very generous immigration laws.

What will the working man and woman in this country think of this massive surrender? What will the children of the working man and woman of this country think of this surrender? Will it teach them respect for the law? Or, will it engender disrespect for the law and our institutions? My office has been deluged by phone calls and letters opposing amnesty for illegal aliens. The public outcry against amnesty for millions of illegal aliens may well exceed anything that we in this Congress have experienced in recent years.

Our duty, as representatives of the citizens of these United States of America, is to protect the interests of the American people. We are not here to legislate bailouts for foreign governments whose internal policies have led to severe problems in their own countries. These governments must accept the responsibilities to improve the conditions in their own countries in order to achieve progress.

Mr. President, I hope that all of my colleagues will carefully consider the far-reaching consequences of amnesty for illegal aliens before they vote on the conference report. What may appear to be the easy way out of a difficult and grave problem will cost the American taxpayer billions of dollars, and could encourage even more illegal immigration as well as a loss of respect for our legal system and institutions.

Let me say to Senators that Senators will rue the day that they allowed this bill to go through with amnesty for 6 million aliens, or is it 10 million, or 15? We do not even know.

I repeat, there is not a simple solution, there is not an easy solution. Certainly, we need to strengthen our Border Patrol. We have more people guarding the Capitol of these United States today than we have guarding our entire southern borders. That is a ludicrous situation under the circumstances.

Let me warn the Senate that giving amnesty to illegals will be costly in terms of implementation. It will cost unemployed American citizens hundreds of thousands, if not millions of

jobs that they might otherwise get. It will lead to many more millions of relatives of illegal aliens not now in these United States becoming legalized in the future.

Mr. President, the treatment of aliens and the question of citizenship have been issues throughout the ages. The consequences of the decisions made by ancient societies on these matters, by the Romans and others, endured for generations—indeed, for centuries. The decisions that we make on these matters will affect our Nation's destiny and the lives of those who come after us.

Mr. President, I ask unanimous consent that an article from the Wall Street Journal, dated October 15, 1986, concerning this subject be printed in the RECORD.

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

[From the Wall Street Journal, Oct. 15, 1986]

THEIR RANKS ERODED, UNIONS TRY TO RECRUIT ILLEGAL IMMIGRANTS

(By Dianna Solis)

HOUSTON.—As the gleaming oil palaces that jut into the downtown skyline here begin emptying of office workers around 5 p.m., they begin filling up again with mostly Hispanic janitorial crews.

These workers toil almost invisibly, scouring fern-lined foyers, swabbing porcelain toilets and even scrubbing down sidewalks. But one night recently, as their shifts ended at two downtown office towers, nearly 70 Mexicans and Salvadorans were hauled away as illegal aliens by agents of the U.S. Immigration and Naturalization Service.

Though the Department of Labor was a day away from certifying election results, the janitors already believed they were victorious in winning union representation. And as they were being hustled into immigration vans, an onlooker shouted an angry farewell in broken Spanish. Translation: "You damn wetbacks. Union in your own country."

CONTRADICTIONS AND IRONIES

Contradictions and ironies abound in the new drive by U.S. unions to organize millions of "undocumented" workers in such immigrant meccas as Houston, Chicago, Los Angeles, New York and San Francisco. Often low-paid and sometimes abused, these workers are seen as ripe pickings for beleaguered labor unions, which now represent a scant 18 percent of the national work force—half the postwar peak.

But local organizers who work the fields and factory floors are encountering more than ordinary difficulties signing up recruits. Foremost is the ambiguous legal climate in which the organizers must operate: Illegal aliens have the right to join unions and are covered by many labor standards. But they are still subject to deportation if discovered—and employers have been known to call in the INS at the first sign of labor unrest.

There are other obstacles, including language differences and mistrust of labor unions among certain immigrant groups. Finally, there is serious division within the U.S. labor movement over whether illegal workers should be organized at all.

The AFL-CIO leadership has fought vigorously to keep illegal immigrants out of the U.S. work force, this week continuing its lobby for a landmark immigration bill that would include fines against employers who knowingly hire illegal aliens (see story on page 3). While it is illegal for undocumented workers to be in the U.S., under current law it is not illegal for employers to hire them.

OUT OF TOUCH?

"Our experience is that they [illegal immigrants] have depressed wages," says Edward Hahn of the United Brotherhood of Carpenters and Joiners, an AFL-CIO affiliate based in Washington, D.C. "We don't think they should be allowed in any industry."

But locals of the Teamsters union, the United Auto Workers, the Service Employees International Union, the International Ladies Garment Workers Union (ILGWU), the Amalgamated Clothing and Textile Workers Union, and the Hotel Employees and Restaurant Employees International Union are actively recruiting illegal immigrants. Maria Elena Durazo, a Los Angeles organizer with the Hotel Employees union, says many union leaders are out of touch with the union trenches. "It's easy for someone in D.C. to say, 'Oh yes, employer sanctions, we're for them,' but they haven't organized in 30 years," she says. "There's no choice but to organize immigrants. You might as well come to grips with it."

This year for the first time, the Los Angeles and Orange County AFL-CIO Organizing Committee held a conference on unionizing immigrant workers, including illegal ones. Many local union officials considered it long overdue. "I was persona non grata with the AFL-CIO for a long time," says Mexican-born Humberto Camacho, a veterans organizer of undocumented workers for the United Electrical, Radio and Machine Workers union in Los Angeles. "These days I get more respect."

DISPELLING ANTAGONISM

A good number of the immigrant organizers are immigrants themselves or the children of immigrants. They argue that many illegal workers have built U.S. "equity" through homeownership, tax payments and productivity. They predict that successful organizing efforts will help to dispel the union leaders' antagonism.

"Myself, I came here as an undocumented worker," says Anthony Orea, a Los Angeles ILGWU organizer. "I know what it is like. People work 60 hours and get paid for 30 hours. Workers get hurt, and they don't know they can get disability." Organizing such workers, he says, "is the best way to defend the entire work force."

So local organizers are handing picket signs to the undocumented, staging boycotts and even filing a slew of labor-rights suits on their behalf. Organizers are also sponsoring citizenship classes and "know your rights" seminars and producing videotapes advising what to do during an INS raid. A few even post bond for illegal immigrants who are apprehended during organizing drives.

With union backing, once-pliant illegal immigrants are showing new militancy. Take Antonio Gallo, a janitor who led the organizing drive for the Service Employees union in Houston that was shattered by the INS raid. After losing his job in the incident, He filed an unfair-labor-practices complaint against his employer, American Building Maintenance Industries; the case was dismissed, but he has appealed to Washington, D.C., labor officials and is now fighting his deportation to El Salvador."Only with a union could we have a voice," says Mr. Gallo, whose union furnished him with a Spanish-speaking lawyer.

In Los Angeles, undocumented workers organized by the 15,000-member Hotel and Restaurant Employees union (Local 11) have been picketing a Hilton hotel for the past five months, protesting low wages and the hotel's demand for an open shop. The hotel's Mexican and Salvadoran maids, busboys and pantry workers say that the hotel's threat to call la migra, or INS agents, no longer frightens them. "They wanted us to disappear," says a 52-year-old maid from Mexico. "We are only mojadas [wetbacks], but with the union we have benefits like a medical plan. We have to fight for it." (The Hilton's general manager, calling the union's position on the open-shop issue "ridiculous," says the hotel has offered the union an 8 percent pay raise.)

Over the years, U.S. union chiefs have generally been antagonistic toward immigrants labor. (Among the exceptions: the legendary United Mine Workers President John L. Lewis, who argued that Mexican miners employed in the U.S. should be treated like their U.S. counterparts.) In the early 1900s, AFL leaders declared that it was best for the federation "to permit the newcomers to sink or swim by themselves." For years citizenship was a prerequisite for membership in many AFL-CIO unions. And during the Great Depression, AFL leaders fully supported the federal government's "repatriation" efforts that sent thousand of undocumented Hispanics—along with Mexican-Americans—back to Mexico.

Today, local union leaders often find themselves allied with illegal immigrants against government immigration officials. In Los Angeles, for example, the ILGWU obtained "INS clauses" in some of its contracts. These require employers to notify the union if INS agents are seen near the workplace and to reinstate any employee absent because of an INS proceeding.

In San Francisco, the Instituto Lagoral de la Raza, whose board consists of U.S. union leaders, assists Latino immigrant workers with job-related problems and immigration concerns. A recent issue of its bilingual newspaper carried this advice for undocumented workers stopped by the INS: "Do not allow them to force you to talk through threats, physical force, jailing, high fines or insults. Let them know that you will inform your lawyer and community organizers of their illegal procedures."

All the same, union leaders acknowledge the frustrations of trying to win job security and higher wages for undocumented workers. A case brought by a leather makers' union against Chicago-based Sure-Tan Inc. suggests the legal uncertainties: Two years ago, the U.S. Supreme Court ruled in that case that immigration raids were illegal if inspired by an employer's anti-unionism. But the high court provided none of the traditional remedies of job reinstatement and back pay for workers deported after such raids.

Redress for workers who aren't deported is still being fought in the courts. In a separate case this summer, the federal appeals court in Los Angeles held that undocumented workers who remain in the U.S. after losing their jobs in an unfair-labor-practice dispute are entitled to back pay. (The employer plans to appeal to the U.S. Supreme Court.)

Proving an employer's "anti-union motive" isn't an easy matter. The Service

Employees union in Houston raised charges of union-busting following the raids at the downtown office buildings, the only two sites in the city where janitors were organized. But an attorney for American Building Maintenance Industries, the employer, insists it was merely taking part in the INS's "Operation Cooperation," a campaign to encourage employers to divulge the names of undocumented workers. The attorney adds that participation in Operation Cooperation began before the onset of union organizing. Meanwhile, the maintenance crews that chose the union have scattered since the raid, thus undercutting the union's victory.

Union organizers also have a tough sell in those immigrant communities where anti-union sentiment runs high. Many Asian workers, for example, consider unions racist or communist.

Frank Cho, a 41-year-old Korean dentist in Los Angeles, is struggling to change those perceptions and in his spare time works to organize Korean and Latino garment workers. After one employer cut the immigrants' piecework pay by 30 percent, Dr. Cho began a door-to-door campaign to muster support for his Korean Labor Association. He says that his union lost the election, 97-82, in part because the company, French Rags Inc., charged that it was a communist-influenced organization. French Rags denies that it linked the union to communism.

Mr. HELMS. Mr. President, I wonder if I can spend a few minutes with the distinguished chairman with some questions.

Mr. SIMPSON. Certainly.

Mr. HELMS. I apologize to him. These points may have been covered while I was trying to shake the tree on some agricultural matters this afternoon.

Mr. SIMPSON. I will be delighted to respond.

Mr. HELMS. Mr. President, I noticed the distinguished Senator from Wyoming was feeling his pulse a while ago to see if he still had one.

Mr. SIMPSON. Mr. President, I was feeling the heat from the majority leader, who said that as soon as we finish this up, we can get to reconciliation, I say to the Senator from North Carolina.

Mr. HELMS. Let me ask my friend about the provisions on the legal services of H-2 farm workers.

It is true that under this bill, these foreign nationals will be treated as permanent resident aliens for the purposes of obtaining legal services?

Mr. SIMPSON. Mr. President, that is not correct. The legal services that will be available to H-2 workers—and they are foreign nationals, and the Senator from North Carolina is correct—are limited only to housing and transportation and wages and anything within the terms of the contract, nothing more. No adventurism, no domestic problems, no anything. The legal services are limited strictly to that.

Then we had an additional proviso to the effect that nothing in the contract would violate the present H-2 law. That is very precisely limited. It was one of the sticking points in conference, I can tell my colleague, because we did not want it to be something for activist groups to use to harass an H-2 employer.

Mr. HELMS. Then the Legal Services Corporation or any similar service would not provide legal counsel for suing employers on wages and other matters?

Mr. SIMPSON. They would be limited only to the employment issues related in the worker contracts, worker contracts made between groups and the employer. They cannot go off outside the scope of a very limited few items.

Mr. HELMS. I thank the Senator.

With respect to unionized aliens—let me give a hypothetical situation. A farmer contracts with a union to provide x number of workers. Suppose one or more of these workers is or are illegal. The employer is penalized in that event, is that correct?

Mr. SIMPSON. If the employer has failed to keep the minimal verification records, he would be penalized. That is correct.

Mr. HELMS. But the labor union would not be affected by this.

Mr. SIMPSON. In that instance, we have provisions where labor unions have the same burdens as employer organizations, associations, or workers, that type of thing. But in this instance the Senator speaks of, only if they were referred—if there were a referral for a fee—are they responsible.

Mr. HELMS. Why would there be any distinction whether there was a fee or not?

Mr. SIMPSON. Unions are exempted from this in that sense.

Mr. HELMS. The point I am making is, I do not think the labor union ought to be exempt from any action. If they send to a farmer a worker or workers who are illegal, do they escape any liability whatsoever in this way?

Mr. SIMPSON. I am sorry, I was preoccupied.

Mr. HELMS. I am asking if the labor unions in the hypothetical instance that I mentioned will be exempt from any liability in the event that they send an illegal worker to be hired by the farmer. The farmer would be penalized but the labor unions would not, is that correct?

Mr. SIMPSON. They would be exempt unless they charged a fee. But if the employer kept the paperwork, he would not suffer any penalties whatsoever. And the paperwork is simply checking the box and even if he is given fake documents and the person has given him fraudulent documentation, the employer is off the hook. As long as he has asked for the documents under the law.

Mr. HELMS. Can unions knowingly organize illegal aliens?

Mr. SIMPSON. Oh, Mr. President, they do that now with great gusto. Many union ranks are filled with illegal, undocumented persons. It has become a great source of discord in unions, because the INS will pick them up. But they recruit and organize many illegal undocumented people who pay dues, and these people lose their dues when they are deported.

Mr. HELMS. That is the point I am making, I say to my friend. I shall windup these questions in just a second.

I do not understand the construction of the responsibility in this bill whereby the burden is on the employer but the labor union goes scot-free. If I understand the bill correctly, it is not illegal for unions to supply such workers to an employer.

Mr. SIMPSON. Mr. President, under the bill, that is the case. That was one of the sticking points, again, in the conference. In the situation referred to, we have provided affirmative defenses for the employers, tried to remove the burdens from them as best was possible. But unless one refers for a fee, he is not subject to those penalties, that is correct.

Mr. HELMS. And the sticking point in the conference—was this mainly the House conferees who insisted on this inequitable situation, as I see it?

Mr. SIMPSON. That is correct. That was the case. It was one of the 91 items where the Senate receded some 43 times and the House about 48—it was about an equal receding in the conference.

Mr. HELMS. I shall make just an editorial comment. This is another example of the inordinate influence labor union bodies have over Members of Congress. This is patently unfair. It is unequitable. I say frankly to the Senator it is a defective bill, and I think he remembers my saying that. He also said to me, I believe, that he agrees with me that it ought not to be in this fashion in this bill.

Mr. SIMPSON. Mr. President, when it left the Senate, we had the previous language that would be embraced by the Senator from North Carolina. I shall work with him to see that we have appropriate hearings. I know in his State migrant labor is a critically important matter.

But I say to my colleague from North Carolina that under the language of the conference committee report, unions are not exempted from checking the documents. All must check the documents. Employers check the documents, the unions must check the documents. But the penalty provision——

Mr. HELMS. I understand that. But just as the Senator has indicated, the union can go ahead and send this illegal worker to the farmer and there is no penalty on the union, but there is a penalty on the farmer if he makes the same mistake.

Mr. SIMPSON. Yes, I would say that that is so, but the penalty can come if they do not do the paperwork. That falls against the unions, too.

Mr. HELMS. Let me say to the distinguished Senator from Wyoming what he already knows, that I admire him greatly. I am not going to be as profuse as other Senators, but you have done an astonishing job. It is an extraordinary piece of work and I compliment you, Senator, even though, as I told you yesterday, I cannot support you. I congratulate you and wish you well.

Mr. SIMPSON. Mr. President, I thank the distinguished Senator from North Carolina. He and I have had some interesting struggles in our time here. Since that one time some years ago, I have had extraordinary respect for him. That has grown each and every day I have been here and it means a great deal to hear that from him, particularly.

Mr. HELMS. I thank the Senator.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, it appears that in just a very few minutes the Senate will move to vote on this conference report. I have indicated my position in my statement to the Senate yesterday. I intend to vote in opposition for the reasons I expressed in my statement when we first laid down this conference report yesterday.

There are times when we take a position where we believe in it very deeply and we are called to vote yea or nay on some of matters of basic principles. We have differing degrees of intensity about the views which we do have. I believe that my position is the correct one, but I may very well be wrong.

One of the reasons that I think I may be wrong is the extraordinary amount of work and effort that has been done by the Senator from Wyoming in reaching a conference compromise, and this has been recognized by all of those who support this legislation and even those who will vote in opposition to it.

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Before taking a very few minutes of the Senate's time, I also want to acknowledge the excellent work that the chief counsel of the Immigration Subcommittee, Dick Day, and his colleague, Carl Hampe. They have been available not only to the majority of the committee but they have been available to all members on the committee and the Senate.

On my own staff, Jerry Tinker has been on the staff of the Judiciary Committee almost as long as I have and has worked through the immigration issues, the refugee issues for that same number of years. He has been of invaluable help and assistance to me. I am grateful to all of those who worked so hard in achieving this very signal time in the Senate's deliberation.

Mr. President, I remember in 1978 when we passed the legislation to establish the Select Commission to review immigration policy. It was to be implemented in 1979. I had the opportunity of going on that Commission since at that time the Democrats were in the majority and as chairman of the Judiciary Committee I could appoint myself as a member of the Select Commission. We were supposed to have a bipartisanship membership on the Commission, and I remember the ranking member, Senator THURMOND, going through the Republican members of the Judiciary Committee and saying, "We are having a difficult time finding enough Republicans interested enough on the question of immigration to assume that responsibility." So they turned to the most junior Republican member of the Judiciary Committee, the Senator from Wyoming [Mr. SIMPSON]. The Commission was established in 1979, reported back in 1981 after extensive hearings, which were very well attended, and that is when I really began to know of the interest of the Senator from Wyoming in this issue.

So many of the matters that we have here in the Senate and in which we are interested just affect our State, affect interests which for one reason or another we may have brought to the Senate or developed while in the Senate. I for the life of me always wondered what the immigration issue would mean to the State of Wyoming. Really, very, very little. I am sure the Senator from Wyoming would point out various occasions when it might have some impact on particular communities. The historical pattern of migration obviously had an important impact in the development of Wyoming, but this issue is not a burning issue, I do not believe, in the State of Wyoming.

For hours that Senator SIMPSON spent on this issue—weeks, months, years, some 6½ years exactly to reach this particular occasion—the citizens of that State must ask, what does it really mean to Rock Springs or Cheyenne or Cody or many other places in that very extraordinary State. The answer would be it is important and significant in terms of our national interest, and Senator SIMPSON was working to promote our Nation's best interests. It means very little I believe in terms of the people who he serves. I am sure they were asking him, "Why aren't you spending more time on matters more directly related to Wyoming?" But he has persevered.

We heard, in the very eloquent statement of the Senator from New Jersey [Mr. BRADLEY], talk about perseverance. In the words of Shakespeare: "perseverance, dear my Lord, keeps honor bright." I think that is what we have seen with Senator SIMPSON whether we agree or differ.

The fact is I believe even as one who will differ with the Senator from Wyoming, he may very well be right. Certainly the cause which has motivated him and activated him in this effort has been for a noble purpose.

I express again my very deep sense of appreciation for his willingness to spend the time and the effort on this issue. It is an extraordinary accomplishment, no matter where we come out on it. All of us feel this has been a real legislative effort which few of us have had the opportunity to see. I certainly have not seen many instances like this in the 24 years I have been in the Senate. All of us are indeed grateful and are in his debt for what he has done for our country.

The PRESIDING OFFICER. Does any other Senator desire to speak?

The Senator from Wyoming.

CLOSING REMARKS

Mr. SIMPSON. Mr. President, I am deeply honored by those remarks by my fine friend from Massachusetts. All the other remarks, too. I sniff that stuff but I don't inhale it! No, actually I love it! I do want to thank TED KENNEDY. He's been with me on this extraordinary adventure all these years. It was a tough issue for him. Tough pressures upon him. He has to represent a State with greatly diverse ethnic backgrounds and many illegal undocumented persons. He knows the great deal of extraordinary passion there is about this bill. I understand. He was loyal to the cause and there were many, many occasions in which he steered me through many of the boulders in the current. He has followed this issue for all the years of his Senate experience—and he was quick and generous to share all of that experience with me. I am deeply appreciative. And I thank him for the very special counsel and participation in this tough issue.

Let me try to conclude—for the hour is late and the majority leader is viewing us all with his steeley eye as we wind down the post-cloture activities on the Immigration Conference Committee report.

Someone asked me several years ago what it was like to pass immigration reform legislation. That was the first time and it was a quite complex and difficult procedure and I stated in a rather smart alec fashion that it was about like "giving dry birth to a porcupine." So it has proven to be! It's been 5 years now since introducing the first bill. It's been exhilarating, exciting, disappointing. It's been a drain, an adventure; at times a nightmare; but a necessary and sometimes very painful experience—yet I'm firmly and deeply convinced that it is in the broad national interest.

The situation was bad in 1982 during the debate on the first bill. It is much worse now. Border apprehensions and border violence have doubled. I've shared all of that with you. The American public has been demanding reform, but never, never have the long term national interests been so often thwarted by short term special interests—and those special interests are often driven simply by greed.

It was greed that brought the bill down in the 97th and 98th Congress. It was really tough for me to watch when you know you have the votes—if only you could get to a vote. But what's new about that? That's the litany chanted around this remarkable arena that we all love so well.

But watching the clock tick down in the House in the last two Congresses—knowing that somewhere down in there a majority of both Houses wanted a bill. That was tough for me. But I kept my patience and never wanted to lose my sense of perspective by becoming obsessed with the legislation. And I think my colleagues sensed that and then just several days ago I said "you know, I'm done." I can't get it and rather than brood about it, I'm sorry and I'm gonna forget it. I'm not saying that out of petulance or pettiness. We just have so much else to do and we'll deal with the issue of legal immigration next year and a review of the preference system and other things, but no more of taking my marvelous colleagues—both Democrats and Republicans alike—through the hoops again in the U.S. Senate. That was an honest and pure statement when I made it. Then my friend, that remarkable legislator from New Jersey, that superb man who was really "Mr. Immigration" of the entire Congress, Chairman PETER RODINO called me and he said "You know AL, I really didn't sleep. I was thinking about how important that bill is and why we ought to bring it up and do it and get is passed." And I said "PETER, I had the best night's sleep I've ever had last night because I knew the damn thing was finished up for another year and I'm just admitting it to myself and I'm quite resigned to the result. Disappointed, Yes. But resigned. And then PETER RODINO brought it back before us. Congressman CHUCK SCHUMER was an infatigable and dogged and persistent man as he pressed us all forward "to do something." He was probably the catalyst that kept it all moving through some very dark times. But the chemistry was remarkabl this trip. A blend of Congressmen RODINO, HAMM FISH, DAN LUNGREN, RON MAZZOLI, CHUCK, SCHUMER, LEON PANETTA, HOWARD BERMAN, SID MORRISON, BILL MCCOLLUM in the House. My indefatigable and extraordinarily loyal and supportive chairman in the Senate, STROM THURMOND who pushed me on and pressed me to continue over these entire past years. This man, STROM THURMOND, gave me the bouyancy and spirit to continue at all times. He was always available, always asking me if I was ready for markup, ready to proceed, could he be of any help. I could not have asked more—nor could he have given more. He has been like a second father to me in this remarkable institution and I cherish his friendship. And thny my friend, TED KENNEDY, my ranking miniority member on the subcommittee, I've stated my remarkable appreciation to him. And then my friend, CHUCK GRASSLEY, who has been right there at my side through all the years of activity on this bill. He has been superb. Helpful, questioning, supportive. Always there to make a quorum and always my bright and genial coworker. Senator JERRY DENTON who just recently came on the subcommittee and has turned his remarkable energies to the task. He, too, has been observant and thoughtful and most helpful as we deal with the legislation that confronts the subcommittee. It has been a pleasure to have him aboard. And then the others on the subcommittee, Senator PAUL SIMON of Illinois. Here is a man who probes and does his homework and his research and then in a very thoughtful and well modulated way states his case in a splendid fashion. He has added much to the subcommittee and it has been a great pleasure to renew a friendship that started when we were State legislators together in 1971. He from Illinois and me from my native State of Wyoming. Senator HOWARD METZENBAUM has been a strong and steady ally—through thick and thin. He and I argue like hell but I have rich respect for him. I owe him much on this one.

And then our majority leader deserves perhaps the richest portion of my commendation and appreciation. For he was always there to "open the door" to let me proceed with the bill, to get it to the floor and without his remarkable stewardship and guidance today and yesterday this bill would not be ready for your vote in just a few moments. BOB DOLE has been absolutely fair and persistent. There were several occasions where he could have taken up other business and I would say, "BOB, if you could just give me another hour or an hour and a half, I think I can get through this postcloture time activity. He'd stand at the back of the Chamber with that magnificant and impish grin and just keep pushing me on and yet letting me know that the business of the Senate had to go forward and that we would just simply have to conclude so we could move on to reconciliation and other matters which will consume us long into the night. That is typical of his generosity and fairness. Being the first lieutenant to BOB DOLE, the captain, has been one of the great pleasures of my past 2 years as assistant majority leader.

And then Senator ROBERT BYRD, my friend from West Virginia. It was he who when I first launched into this remarkable activity came to me and said "ALAN, you're on a very important mission with illegal immigration reform. And I support you. And I have only one question to ask." Then he asked his question. It had to do with his employers and H2 workers in West Virginia. That issue was early resolved back in 1982 and ROBERT BYRD became one of my most loyal and persistent supporters. He, too, always assisted me in getting the bill to the floor, pressing on, asking me about its progress and genuinely interested in it. When we thought we had lost it all, just 3 weeks ago, I remember my friend, ROBERT BYRD and I were opening the Senate for its morning business and I made my remarks about the disappointment of not seeing immigration reform come to pass again this year and Senator BYRD in his remarks which are on page S13865 of the CONGRESSIONAL RECORD of September 27, 1986, was beautifully expressive. He indicated that he hoped I would "take comfort" in the fact that Plato, wrote the opening sentence of the Republic 16 times before he was satisfied. And he urged me to continue and not be discouraged. He said "I've found after many, many years that there is nothing like patience and tenacity. When those two virtues are combined one may marvel 'What hath God wrought.'" And so it is. I shared with him at the time that I tried to live by a credo that I had framed and tacked on my wall many years ago. It didn't mean much to me then. It surely does now. Let me share it with you. It is entitled "press on." Here it is. "Nothing in the world can take the place of persistence. Talent will not; nothing is more common than unsuccessful men with talent—genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts. Persistence and determination alone are omnipotent." That is a credo I have learned and tried to live by. It means much more to me as I think of it and share it with you again today at this special time.

I want to pay particular thanks to you, my colleagues, right here in the U.S. Senate. You are the ones that helped me push that massive boulder up the mountain on three separate occasions. Admittedly Sisyphus had it worse. For he is still engaged in his mythical and arduous straining. For me, if we don't get this thing passed tonight the strained and arduous pushing will only continue. I hope we might do it right now.

Now we have the bill which will be approved in moments, I hope, by you

in the Senate. And the President has promised to sign it. That commitment was made yesterday.

The guts of immigration reform are here. All of it. Employer sanctions; increased enforcement, worker authorization system, verification systems, and legalization is there, as are provisions for farm labor. It has the essence of what the Select Committee on Immigration and Refugees Policy proposed and just what was incorporated in the bill in 1982 and every Congress since. All of these issues were addressed as completely in the first bill which we introduced in 1982.

No wonder it only gets done every 35 years. No one would touch it with a stick. Perhaps this rather ghastly job has to be done by people who are not as deeply involved and emotionally targeted by their constituents. During the last immigration reform 35 years ago it was Senator McCarren of Nevada and Congressman Walter from the 16th District of Pennsylvania. But the wheel comes around and it's just my distinct pleasure to be part of the combination working with PETER RODINO and RON MAZZOLI and TED KENNEDY and HAMM FISH and DAN LUNGREN and some of those persons I named before.

Let me pledge to you tonight that I will use all of my skills and abilities to work diligently in my oversight jurisdiction capability. I will work hard to study and improve and amend this legislation if necessary. I will work closely to observe the implementation of this bill and more assuredly I'll pledge that we will carry out the legislative intent of this measure. I can assure you that Congressman RODINO will provide that similar degree of oversight in the House of Representatives.

One final and significant tribute is yet to be made. That is to my friend of many years, Dick Day. He serves as the Chief Counsel and Staff Director of the Subcommittee on Immigration and Refugee Policy. Whenever I asked, he gave. He came to the inauguration in 1980 and I had just taken on my new duties as chairman and I said "Dick, I'm headed into the worst damn thicket and briar patch I can ever imagine in all of my public life. I'm going into an issue fraught with emotion, fear, guilt, and racism and I need someone at my side who knows me, cares about me, shares my ideas and ideals and spirit of adventure as we take on the cause. You're it, Dick. Pull up your roots in Cody, WY, where you've been practicing law, give up $30,000 or $40,000 difference in salary and come on out here and let's give it a whirl." He came here. A bright and intelligent man, a former professor, a most extraordinary lawyer. And he came here with his lovely wife, Judy, and they laid themselves on the line for me. The payoff is tonight. You have been my counselor, my right hand, an additional hemisphere of my brain, a lovely friend. I owe you much. The effort that you expended on my behalf, the diversions and alternations you made in your own life will never be forgotten by me. You are the splendid essence of the word "friend."

Many other things come to mind. If I go on I could become a bit maudlin. We're ready to vote. I'm ready to vote. And amidst all the rhetoric, all the debate, all the emulsification of words and words and words over the past 6½ years I think of only two that seem to suffice—and this is so in all situations of life. For at this point eloquence fails, verbiage never matches the mood, words can't match the feelings. And never will. So enough. From my heart—to each and every one of you who have been a part of this remarkable odyssey. Just simply and sincerely and expressively the two words "thank you."

PRESS ON

Nothing in the world can take the place of persistence. Talent will not; nothing is more common than unsuccessful men with talent. Genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts. Persistence and determination alone are omnipotent.

Mr. GRASSLEY. I rise to offer my most heartfelt congratulations to my good friend, the junior Senator from Wyoming.

He has labored long and with great patience on this bill. Everyone who discusses it mentions his efforts and the appreciation they feel for him. I have worked closely with him on this bill for more than 5 years, and I can tell you that these accolades for Senator SIMPSON are truly well deserved.

Immigration is one of the toughest issues Congress has dealt with in recent decades. We have had to counteract the efforts of 30 years of inaction in moving this bill forward. I know of no one who could have handled the sensitive and difficult job in a more evenhanded and courageous manner.

Every person in this country whether citizen, permanent resident, or illegal alien owes Senator SIMPSON a great debt.

In addition, I would like to thank the senior Senator from Massachusetts, Senator KENNEDY, for his patience and steadfast support for representation of those who are most concerned about this bill.

I would also like to express my deep appreciation for the efforts of the senior Senator from South Carolina, Chairman of the Judiciary Committee, Senator STROM THURMOND. Without his guiding hand and tremendous support, we would have never gotten to this point. He has long been involved in immigration reform and his knowledge and expertise has helped me and other members of the committee to understand the consequences of this legislation. His personal interest in even the smallest details has amazed those who know the demands on his time.

In addition both the President and the Attorney General have been directly involved in the development and progress of this bill. Their involvement has demonstrated the commitment this administration feels to immigration reform after so many previous administrations have ignored the problem and have been afraid to bite the political bullet.

I would also like to mention one of the unsung heroes of the Senate in the immigration area, the former Senator from Kentucky, Senator Dee Huddleston—who through many years of frustration and inaction by the body kept doggedly working to bring about these important reforms.

Finally, it is important to note the fine staff work of the Immigration and Refugee Policy Subcommittee. Dick Day and Carl Hampe have labored tirelessly to ensure every "i" has been dotted and every "t" has been crossed.

Without all of the efforts of these people, we would not now enjoy such a fine product. I hope we conclude this matter quickly and send the right message to the American public—that we care about immigration reform.

Mr. CRANSTON. Mr. President, I rise with very mixed feelings about the conference report on immigration reform legislation that is before us.

As many commentators have noted, including some of the bill's foremost proponents, this bill is far less than perfect, like most legislative compromises.

And, as legislators, we often settle for imperfect instruments.

I have devoted many hours of concern over this conference report.

That any bill on this vital subject should be at the verge of enactment is a tribute to the hard work, diligence, and perserverance of my good friend, the Senator from Wyoming, ALAN SIMPSON, who only a few short weeks ago, during one of those late-night Senate sessions, proclaimed his frustration by telling the Senate that he would not trouble us again on this subject.

I congratulate Senator SIMPSON on his efforts and his apparent success in bringing forth a bill which so many in both houses of the Congress support.

There has never been any doubt that illegal immigration and our uncontrolled Southern border are a major concern for our Nation, and that Congress needs to do something about it.

There has always been wide agreement on some of the steps that needed to be taken—strengthening our border

enforcement, for example. I have always supported such steps.

And there have been thorny, complex, multisided disagreements on the value, effectiveness, and potential side effects of some of the central strategies of the present bill and its predecessors, in the ways it attempted to control future illegal immigration and deal with the 2 to 12 million undocumented people—probably around 6 million—who are already here.

The conference report before us is, from my point of view, more tolerable than any version the Senate has considered.

It does strengthen our Border Patrol.

It assures—for the first time, in ways acceptable to both growers and American farmworkers—additional agricultural workers to harvest California's perishable crops under conditions where exploitation of foreign workers is less likely, and dependence on undocumented workers is unnecessary.

It offers more generous and humane terms of legalization for undocumented workers who qualify than any previous version presented to the Senate. I believe that the bill may reduce the vulnerability to exploitation of many of those who have been here without documents.

And, for the first time, it attempts to provide a remedy for those Americans—especially Hispanics and Asians—who may face increased employment discrimination as a result of the employer sanctions provisions of this bill.

I certainly hope, though I am not entirely convinced, that this remedy will deter or alleviate some of the consequences of that discrimination.

The inclusion of Frank amendment language, despite modifications which have weakened it almost to the point of meaninglessness, is a step forward over previous Senate bills, though I certainly would prefer a bill which does not engender employment discrimination over one which hopes to remedy the employment discrimination it may create.

These, then, are the major improvements in the present conference report over previous versions the Senate has considered and adopted over my objection. And many have suggested that if this conference report is not adopted, any subsequent version of this bill will be worse, not better. And that is a consideration that weighs heavily on me.

Against these developments, I am forced to consider that this legislation still depends on employer sanctions as its major enforcement tool to deter illegal immigration, and that its restrictions on Federal reimbursement will impose major new costs on many of my State's larger counties which will result from bringing the undocumented out of the limbo in which they previously have survived—costs that will not be shared by taxpayers in many other States.

These are costs that should be borne by the Federal Government, but under the formula in this legislation, much of these costs will be borne by taxpayers in Santa Clara, Los Angeles, Fresno, San Diego, and Orange Counties.

But, Mr. President, the crux of the immigration reform debate has always been over this bill's dependence on sanctions on employers to deter hiring of undocumented workers as the key to deterring illegal immigration.

Employer sanctions unwisely impose the burden of enforcing the Nation's immigration laws on the Nation's employers,

Employer sanctions may cause employment discrimination, because the safest way to avoid scrutiny and sanctions is to have an all-Anglo work force,

Employer sanctions may breed a cottage industry in forged documents, and

Employer sanctions can be the first step toward a national identification card-internal passport system—a primary tool of totalitarian governments to restrict the freedom of its citizens. And, when employer sanctions are discovered not to be working, they have not worked to quell illegal immigration everywhere they have been tried, that is when the danger of taking the second step occurs.

This danger underscores the importance of the provision crafted by the very able senior Senator from Massachusetts, EDWARD KENNEDY, for a triggered sunset of employer sanctions upon a finding by GAO that employer sanctions are causing discrimination. Oddly, the conference report has tilted that sunset language so that it now would eliminate the antidiscrimination language, if it proves to be a burden on employers, reflecting the feeling of the managers that sanctions are more important to protect than the civil rights of individuals.

I would have preferred stronger medicine, namely the "Pure sunset" on employer sanctions considered in the House.

This legislation leaves unresolved or unfinished some major immigration-related problems, and, predictably, it will cause some new ones.

By substituting beefed up labor law enforcement, coupled with sanctions targeted only on those employers with a pattern or practice of immigration-related labor law violations—that is, those employers who traditionally use or exploit the undocumented for their economic benefit—we could avoid the worst side effects of employer sanctions, while preserving whatever deterrent effect sanctions may have.

When we come back in 1987, we will need to come back to take care of the unfinished business: Alleviating any employment discrimination; dealing justly and promptly with the growing question of Central American refugees seeking political asylum; improving the service functions and eliminating the sometimes abusive practices of the Immigration and Naturalization Service; and returning to the Federal Government the properly Federal responsibility for paying the costs of our national immigration policy.

It is only in the hope that we can deal equitably and promptly with these remaining issues in the next Congress, and with recognition of the value of the improvements in the present bill that I announce my intention to vote for the conference report before us, in spite of my serious reservations about it.

Mr. HUMPHREY. Mr. President, I rise in strong opposition to the pending conference report, and particularly to the inclusion of various amnesty or "legalization" provisions therein. These provisions are found in title II and title III of S. 1200, now before us.

On September 19, 1985, the Senate passed a version of S. 1200 similar to that before us today. I was one of the 30 votes opposing the bill back in 1985, and I do not support the version of the bill before us today.

I oppose this version of S. 1200 primarily because it includes amnesty and "legalization" provisions. I believe that these provisions will not only counteract the positive provisions included elsewhere in this bill—they will gut the effect of employer sanctions and improved Immigration and Naturalization Service [INS] resources—but they also represent a basic unfairness that is unworthy and offensive to the millions of law-abiding immigrants who wait years to enter this country legally.

The amnesty—legalization—provision that is contained in this conference report includes the House provision granting temporary-resident status to illegal aliens who entered the United States prior to January 1, 1982, and who have resided here continously since. This date represents a compromise from the original Senate-prescribed date of January 1, 1980—a date I find less distasteful, but nevertheless a date which I could not support.

After 18 months, instead of the 30-month provision included in the Senate bill, these aliens will become permanent residents, assuming they meet certain other relevant conditions. Within 5 years, these aliens, formerly illegals, may now become citizens of the United States. It is my understanding that these provisions apply to any illegal alien, in any line of employment, or unemployment, and not just agricultural workers.

Another legalization provision, one which I find to be even less justifiable,

is the provision which applies only to agricultural workers harvesting perishable crops. This provision establishes classifications by which illegal aliens working in this country for as little as 90 days, may be granted amnesty or may be legalized. The bill sets up a two-tier legalization system:

Tier 1 allows illegals who resided temporarily—90 days—between May 1985 and May 1986, to receive 2-year temporary status, and after 2 years in that status, they could apply for permanent status. There is no cap whatsoever on the number of aliens who qualify under this tier.

Tier 2 allows illegals who resided temporarily—90 days—for 3 prior years to receive 1-year temporary status and to then apply for permanent resident status. Tier 2 is capped at 350,000.

Beyond this, the bill allows "replenishment workers" needed to fill farm worker shortages to receive 3 years temporary status with a requirement that they work 90 days each year.

As I have mentioned, these amnesty, or legalization, provisions are offensive to me. An important objection that I have to these legalization provisions is that it will destroy the other gains this bill seeks to achieve. Where employer sanctions have been enacted to eliminate one drawing card, or magnet, for aliens considering breaching our borders and entering the country, these amnesty provisions create another powerful magnet for illegals. Where sanctions would encourage legal entry, amnesty provisions only foster unnecessary and destructive hopes of future amnesty.

Not only are those illegals now here allowed to remain, and not only are they allowed to bring relatives into the country, further increasing the breach of our borders, but future aliens will enter the country illegally with the perhaps vain—but who can tell—hope of an amnesty in years to come.

I have been unable to find consistent estimates on the numbers of aliens who might be legalized under this amnesty provision, the number of relatives they might bring with them, and just as importantly, the number of aliens who would be encouraged to enter once these provisions are passed. All estimates range in the millions. For instance, the U.S. Bureau of the Census has estimated that currently from 3.5 to 6 million illegal aliens currently reside in the country. However, Congressman McCollum, an opponent of amnesty, who narrowly failed to remove the provision on October 9, 1986, from this bill, and his colleagues estimate that perhaps 20 million illegals currently reside here, and up to 70 million ultimately would be legalized, granted amnesty when the relatives of illegals now here, enter by way of a chain reaction of migration. These numbers are of shocking significance in relation to the current population of 250 million U.S. residents.

Nor have I been able to find consistent estimates on the cost to the Nation of such an amnesty program. I note however a Congressional Budget Office [CBO] report which estimates that in the later years of the program, the States would bear some significant costs as a result of legalization, despite the Federal payment provided to offset such expenses.

Under this bill the Federal Government will reimburse the States for costs they may experience as a result of providing assistance to legal aliens, up to $1 billion per year for each of 4 years. It is because of this that we were required to vote to waive the provisions of the Budget Act, a waiver that I opposed yesterday and continue to oppose. Note that this figure, while significantly greater than the $3 billion to be provided in the Senate bill over a period of 6 years, still will not cover the costs of providing that assistance to these aliens.

The Congressional Budget Office has calculated the expenses to State and Federal governments of providing the assistance that is permitted under the bill. That assistance now excludes most Federal assistance, except for specified education and health programs—Medicaid is not one of them, from being provided to newly legalized aliens for the period of 5 years. There exists however an exception for the aged, the blind, the disabled, and Cuban and Haitian entrants. Also note that these provisions are more generous than the Senate proposal which would have allowed no assistance whatsoever for 6 years.

So, after subtracting Federal share for SSI, Medicaid and food stamp benefits provided to legalized aliens, including the special agricultural workers, benefits provided through State programs, and after subtracting the estimated State costs for public assistance and education, the Budget Office has estimated the net gain or loss to the State after the Federal $1 billion grant.

Note that in the second 2 years the States will actually lose money in spite of the grants. I have very considerable concerns about the burden on the individual States and localities that this bill's legalization provisions will create.

I ask unanimous consent that the chart prepared by the Congressional Budget Office be printed in the Congressional Record.

Moreover, in analyzing the costs of this legislation it is imperative that we examine the costs to the Nation posed by displacement of American citizens from jobs that would subsequently be held by legalized aliens. Some of these costs are detailed in a table prepared by the American Immigration Control Foundation using the central office of the U.S. Immigration and Naturalization Service in Washington, DC, as a source. This table indicates that despite the aliens' tax contributions, the net cost to taxpayers of supporting illegals runs in the millions. I ask unanimous consent that the table be printed in the Congressional Record.

Mr. President, I suggest that notwithstanding the arguments above, the legislation before us is even more objectionable on the grounds that we violate the basic principle of fairness in passing such legalization provisions. The—by the count of my colleague, Mr. Gramm—1.9 million immigrants now waiting patiently to enter our Nation legally will, in effect, be punished when we legalize those who have not sought legal recourse, and have entered illegally. Here we are doing nothing more than sanctioning illegal activity at the expense of those hundreds of thousands of immigrants that have followed standard immigration procedures. This is wholly unfair.

It is the lack of a principle of fairness that I must oppose. I note that there are hundreds, even thousands of refugees from the tyranny of the Soviet invasion of Afghanistan who may have waited for years now to emigrate to the United States. These are refugees whose poverty is extreme, whose dignity has been gravely violated, and whose geographic proximity to the United States does not permit them the opportunity to walk across an American border. And yet these Afghan refugees, for example, who have waited patiently for a legal entry into the United States, will continue to wait, while those who have breached the borders illegally will now be granted legal residency status.

I also must oppose the principle that, in legalizing those who have entered the country illegally, we will be rewarding lawbreakers. This is a slap in the face to legal aliens who now reside here, it is a slap to those who continue to wait, and I believe it sets an untenable and undesirable principle for dealing with future lawbreakers. We should not reward those who have successfully violated U.S. immigration policy, those who can prove they have broken U.S. law.

I also wish to remind my colleagues that the American people oppose amnesty provisions such as these, and in fact oppose provisions which are significantly less generous than these. A recent U.S. News & World Report poll taken in February of this year, indicates overwhelming opposition to the general principle of amnesty or legalization. In that poll only 17.4 percent of those polled favored granting amnesty to those illegal aliens already living in the United States. At the same time, 75 percent polled favored further restricting immigration policy. An Associated Press poll supports this

latter view of where we want immigration policy to go.

I ask unanimous consent that these polls be printed in the CONGRESSIONAL RECORD.

It seems to me the primary argument in behalf of legalization is not one of principle, and is not one made in defense of those who have laid down roots in this country, have established homes and families, and may even be contributing members to our society.

Rather, in my view, the argument for amnesty and legalization provisions is one based on expedience. Supporters of these provisions, it seems, prefer to argue that without amnesty, we will not pass any immigration reform. Without a balance we will not be able to reach the compromises necessary to achieve such legislative reform. Supporters also argue that we do not have the resources to ferret out so many illegals who have resided here for years, and to send them back.

Mr. President, I do not believe it is wise to support legislation with provisions whose primary justification is expedience rather than prudent national policy. No, in this case we must err on the side of fairness and justice, respect for those who have waited patiently and respect for the law.

I support the Senator from Texas in his opposition to the amnesty provisions included in the version of S. 1200 now before us. I encourage my colleagues to oppose the amnesty and legalization provisions included in this bill.

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

METHODOLOGY

This Associated Press/Media General public opinion poll was conducted by Media General Research among a representative sample of 1,532 adults across the nation living in telephone households.

Interviews were conducted between February 6 and February 13, 1985, during the hours when men and working women could also be reached. Up to three callbacks were made to reach the appropriate respondent.

The telephone sample was drawn using a random method by Survey Sampling, Inc., of Westport, Connecticut. It included listed and non-listed telephone households.

The data projects to an estimated 161 million adults in telephone households.

11. In general, do you believe immigration laws should be changed to make immigration more difficult, less difficult, or should the immigration laws remain the same?

	Base	More difficult (percent)	Less difficult (percent)	Remain the same (percent)	DK (percent)
All Adults	1,532	55	9	24	12
White collar	609	54	11	24	11
Blue collar	308	62	8	23	7
Other occupations	146	57	13	21	9
Not in work force	466	51	6	26	17
18–34 years	632	51	11	27	11
35–54 years	498	57	9	24	10
55–64 years	202	64	6	22	8
65+ years	199	55	6	19	20
Not high school graduate	234	55	6	21	18
H.S. graduate	571	60	7	23	10
Part college	351	56	9	24	11
College graduate	374	48	13	28	11
Black	108	46	15	24	15
White	1,358	57	8	24	11
Other	62	47	16	29	3
Protestant	834	60	6	23	11
Catholic	365	50	13	28	9
Jew	33	37	24	24	15
Other faith	131	49	13	21	17
No preference	162	52	10	24	14
Democrat	489	55	11	23	11
Republican	435	64	4	23	9
Independent	489	51	10	27	12
Ind. Lean Dem	150	52	17	21	11
Ind. Lean Repub	162	55	8	25	12
Ind./Ind	177	47	6	33	14
Democrat + Lean	639	54	13	23	11
Republican + Lean	597	62	5	23	11

Most Americans polled are against amnesty.

[From the U.S. News & World Report, February 1986]

WHAT OUR READERS HAVE TO SAY

They're proud of America—but concerned about education, crime, the budget deficit and future of Social Security.

U.S. News readers have always shown a strong interest in what's going on in the nation and the world. They got their chance to express their views in the readers' survey included in the year-end Outlook '86 issue.

More than 36,000 readers took the trouble to tear out the questionnaire, mark their choices and mail it back. The results that follow—while not a true cross section of our readership—are a statistically reliable sample of the reader group that responded to the survey.

The survey answers reflect a strong sense of satisfaction in the way things have been going recently—58.4 percent saying their personal financial conditions are better today than four years ago. Just 14.3 percent said they were worse off. In the year ahead, 39.8 percent expect to be better off and 46.4 percent think they'll stay about the same. Just 10 percent think their personal condition will be worse.

A majority, 57.7 percent, said the U.S. position in the world is more secure today than it was four years ago. An additional 25.6 percent said things are about the same, and only 15.9 percent said the U.S. position is worse.

But that doesn't mean our readers are happy about everything. The hundreds who included letters with their survey forms wrote strong words about crime, education, immigration, the federal budget deficit and Social Security.

U.S. NEWS SURVEY RESULTS

Which of these concerns you the most?

	Percent
Crime	57.9
Another recession	22.4
Nuclear war	13.0
AIDS	6.6

Do you believe American children are receiving a good education?

	Percent
No	69.0
Yes	24.0
Don't know	6.6

If not, who is primarily to blame?

	Percent
Parents	39.4
Administrators	33.5
Teachers	17.9
Students	5.4
Taxpayers	4.8

How should immigration policy be changed?

	Percent
Restrict immigration further	74.9
Grant amnesty to illegal aliens already here	17.4
Let more immigrants come	6.1

Will the budget be balanced in 1991 as required by Congress?

	Percent
No	79.8
Yes	12.5
No opinion	6.8

Do you favor raising taxes, even your own, to reduce the federal deficit?

	Percent
No	52.8
Yes	43.3
No opinion	3.3

Would you rather retain Social Security or provide for your own old age?

	Percent
Keep Social Security	60.5
End it	32.3
Don't know	6.5

Asked to select among U.S. problems that concern them most, 57.9 percent of the respondents said crime. Other top concerns were a possible recession, nuclear war and AIDS, in that order.

Sixty-nine percent said they don't believe that American children are receiving a good education. The respondents split widely on a follow-up question about who is to blame for that—citing parents first, then school administrators, teachers, students and taxpayers.

"There is enough blame to go around for everybody," said a reader from North Royalton, Ohio. That sentiment was echoed by several others.

Our readers stood firm on the immigration questions, with 74.9 percent urging further restrictions on the influx. Said one: "I don't believe that everyone born into the world is an American who just hasn't gotten here yet, nor do I believe that everyone has a 'right' to come if they want to."

Worry about the deficit was a theme running through many responses, with 79.8 percent prediciting the federal budget will not be balanced by 1991, as the law now requires. "Gramm-Rudman can easily be amended or repealed by the next Congress," noted a reader in Omaha.

Although 52.8 percent opposed raising taxes to reduce the deficit, 43.3 percent said they would be willing to pay more. But many prefaced that with comments on the need to change Congress's spending habits. A Baltimore reader said he voted no on higher taxes because "Congress does not have the guts to say no to the special interests nor to stop trying to buy votes."

That 32.3 percent would opt to provide for their own old age without Social Security may be a bit surprising. But some who favored keeping Social Security said they would have switched sides if there were a workable alternative.

Many readers included complimentary notes about President Reagan, and there was heavy support for the Republican Party as best equipped to handle both foreign and

domestic issues. But there was wide divergence on what Reagan's main legacy will be.

While 33.9 percent said he will be remembered for having reduced the role of government, 32 percent said his legacy will be the "largest deficit in history." Other choices: Largest peacetime defense budget, 13 percent; peacemaker, 12.1 percent; tax reform, 9.5 percent.

A number chided us for not offering a wider choice on Reagan. "I believe Ronald Reagan's main legacy will be the restoration of America's pride and self-image," said a Texan.

Asked where war is most likely to break out this year, 75.1 percent said the Mideast, 13 percent said Central America and 11 percent said South Africa. Nearly 75 percent said the use of nuclear weapons is unlikely in the next 10 years.

Several questions drew inconclusive responses. These included whether having more women in the workplace is a positive or negative trend, whether farm supports should be continued and which environmental issues are the most important.

Our readers are bullish on the stock markets, with 56.5 percent predicting the Dow Jones index will be at 1,600 or higher at year's end.

A final question about the "mood of America" drew the response from 55.9 percent that it was "mixed, depending on income level." But 39.3 percent said they were generally happy, and just 4.2 percent were generally unhappy.

Legalization assistance under S. 1200 conference bill:

AMOUNTS FOR STATES UNDER A FIXED $1 BILLION A YEAR

(Fiscal years, in millions of dollars)

	1988	1989	1990	1991
Fixed $1 billion	1000	1000	1000	1000
Subtract Federal costs for SSI, Medicaid, and Food Stamps for legalized aliens (including special agricultural workers)	71	307	415	448
Remaining grant for State reimbursements	929	693	585	552
Estimated State costs for public assistance	108	429	588	613
Grant less costs	821	264	−3	−61
Estimated state costs for public assistance and education	122	593	849	804
Grant less costs	807	100	−264	−252

Mr. LEVIN. Mr. President, for years now the Congress has grappled with the problem of illegal immigration. There has been a consensus for some time that something must be done to stop the flow of illegal immigration, but there has not up to this moment been a consensus on how to achieve this goal.

I opposed the most recent Senate version of immigration reform when we voted on it in September 1985 because several of its key provisions were seriously flawed. It did not provide any mechanism to allow persons discriminated against as a result of employer sanctions to seek redress. By delaying the legalization program, it created a very unfair situation in which people who have been here long enough to quality for legalization could not be hired legally during a 3-year interim period, and would be subject to deportation during that period. And the Senate bill also created an unmanageable Guest-Worker Program which would have jeopardized the wages and working conditions of American farmworkers and allowed the large-scale influx of foreign farmworkers.

The conference report before us today goes a long way toward addressing the problems that caused me to vote against S. 1200 last September. It isn't perfect, but since it relates to a matter as perplexing and controversial as immigration reform, it is hard to imagine how it could be.

First of all, the bill that has emerged from conference contains the House provision known as the Frank amendment. It is similar to an amendment offered by Senator HART and myself last September. The Frank amendment prohibits discrimination by employers based on national origin or citizenship status, sets up a procedure for filing charges against such discrimination, and establishes the position of "Special Counsel for Immigration-Related Unfair Employment Practices" inside the Justice Department.

The bill also provides for GAO review of the employer sanctions and the possiblity that the sanctions will be phased out after 3 years if it is found that they lead to discrimination against legal residents.

Mr. President, we would be kidding ourselves if we think that the Frank amendment or any antidiscrimination amendment we might adopt will absolutely prevent any discrimination against Hispanic citizens and legal residents by employers who are subject to sanctions for hiring illegal aliens. But it does provide a mechanism for redress, it does designate a Government official whose sole responsibility will be to deal with this discrimination issue, and it does provide for a review and possible phaseout of employer sanctions if discrimination becomes a serious problem.

I am troubled by the possibility that U.S. citizens and legal residents might not be hired after this bill is enacted simply because they look Hispanic or speak with an accent. But the problem of illegal immigration is so serious and the window of opportunity for passing this legislation is so narrow that I am willing to give the Frank amendment a chance to work.

When S. 1200 was before the Senate last year, I offered an amendment to close the gap between the time employer sanctions were to go into effect—6 months from the date of enactment—and the time illegal aliens who have lived here long enough to be legalized would become eligible for legalization—3 years from the date of enactment. I thought this created an inconsistency and a terrible anomaly for those persons who would be eligible to become legal residents. These people would be eligible for legalization but it would be illegal to hire them during the 3-year interim period and they could be deported during that period. Unfortunately, my amendment did not pass. The failure of the Senate bill to provide stopgap protection for the narrow class of aliens eligible for legalization was one of the main reasons I voted against S. 1200.

This bill eliminates the need for my amendment because the 3-year delay for legalization in the Senate bill is not included. Instead, an alien who has been since January 1, 1982, can make application for adjustment to temporary resident status within an 18-month period beginning on a date designated by the Attorney General. And that date cannot be later than 180 days after the date of enactment. There won't be a gap between sanctions and legalization, and the group of aliens to whom we are saying, "you have been here long enough to have established roots—you are going to be eligible for legalization," will not be caught in this "never-never land" between legality and illegality that the Senate bill would have put them into.

Finally, Mr. President, this compromise bill contains a complicated compromise relating to foreign agricultural workers and the so-called guest-worker program. This was the provision that threatened to derail the bill in the House, and it was only after drawn-out negotiations between the various concerned parties that this compromise was worked out. I still have reservations about this provision. But it involves a compromise painstakingly arrived at and attempts to balance a number of conflicting interests. It appears that the bill could not pass without this comprise. Therefore, I will not oppose this legislation on the basis of the guest-worker provision.

The immigration bill before us today takes important steps toward addressing a critical problem. I will support it with the realization that the process of implementing such an extensive reform will be extremely difficult. I hope and trust that Congress is not simply sweeping this problem under the rug by passing this legislation, but that we will monitor the implementation of these reforms carefully with an eye to maintaining our country's commitment to a fair and compassionate immigration policy.

I congratulate intrepid, extraordinary magician, ALAN SIMPSON, for his unflagging effort and for a thankless task and his unfailing and robust good humor in prodding us to action.

Mr. DOLE. Mr. President, S. 1200 authorizes a substantial increase for the Border Patrol. My information is that this will amount to a 50-percent increase. At the same time, the drug bill also authorizes several enforce-

ment agencies to enhance their enforcement activities on the border. This raises the possibility of overlapping jurisdiction, duplication of effort, or rivalry occurring in our efforts to more effectively police our Southern border against illegal entry of individuals as well as dangerous drugs. Can you advise me of some of the Border Patrol's recent activities as far as arrests and seizures in recent months? Why was it felt necessary to increase the authorization so much? What will happen, as far as coordination of efforts and enforcement activities, if both pieces of legislation are enacted?

Mr. SIMPSON. Last year the Border Patrol broke all previous records for drug seizures between ports of entry along our southern land border. These seizures were more than any other enforcement agency including DEA and Customs combined.

There is good reason for this: The INS is the physical presence of the Federal Government along our Southern border. More specifically, the Border Patrol has had primary enforcement authority on the border; 2,700 of the total force of just under 3,500 agents are assigned to border service. After all, this is where the problems of illegal entry and smuggling of drugs are the worst.

The trends are truly alarming. The INS just announced a recordbreaking year for drug seizures—over 3,000 with a street value of over $170 million. In September, near Campo, CA, the Border Patrol made the largest seizure or cocaine and "crack"—some 1,300 pounds, worth an estimated $150 million—in the history of border seizures.

What makes the Border Patrol good at this dangerous job is its capability and extensive training, tracking, intelligence gathering, Spanish language capability, and the use of sophisticated equipment and techniques.

If new financial resources are to be made available to enhance border surveillance activities, certainly the lion's share of these resources should be allocated to the agency that has the prime responsibility for border enforcement.

Mr. DOLE. Both bills also provide authority for expeditious deportation of convicted felons. This is a particular concern of mine, since there are about 6,000 aliens currently in Federal prisons and many more in the State and local systems. Will these provisions give the INS and the Board of Immigration Appeals sufficient authority to remove these felons from our criminal justice system without years of delays and appeals? Are title VII of S. 1200 and the Narcotics Traffickers Deportation Act provisions of the drug bill compatible?

Mr. SIMPSON. Subtitle M of the drug bill amends the Immigration and Nationality Act to facilitate the deportation of aliens who have entered the United States for the sole purpose of importing and distributing narcotics grown and manufactured in their home countries.

I strongly support the revision of the immigration act to expedite the removal of alien narcotic traffickers. The change will key into the Controlled Substances Act, finally making it possible for the INS to respond effectively when aliens are convicted for the manufacture and distribution of opium and cocaine derivatives and "designer drugs."

The companion to this provision creates vital information exchange systems to provide our Embassies and consulates with information about aliens involved in narcotics traffic, in order to prevent the issuance of entry visas.

These important changes must of course be supported by resources from the INS to apprehend, detain, and remove illegal aliens engaged in narcotics traffic. Removal or preventing the entry of these aliens will interrupt the flow of drugs and money, and will improve the effectiveness of the system. Providing this authority to the Attorney General will give him an effective tool to be used by the INS and the Executive Office of Immigration Review for alien deportation. Not only will the Federal prison system benefit from an enhanced program to deport aliens in its custody, but even greater benefits can be anticipated at the State and local level, if the program can reach that far. It may well be that a supplemental request may be necessary to provide for additional personnel and resources to expedite these deportations. However, any such increases would be but a small fraction of the cost to provide prison and jail space for these individuals.

In my view, Mr. President, the provisions of the two bills are compatible. Taken together, they are a clear mandate to the Attorney General to deport these individuals forthwith.

INS RESOURCES FOR MICHIGAN

Mr. LEVIN. Mr. President, I would like to direct a question to my friend from Wyoming, the distinguished manager of this bill, Senator SIMPSON. I am concerned about the strain the requirements of this immigration bill will place on the already strapped Immigration and Naturalization Service in Michigan. It has been projected that 50,000 aliens in Michigan will be eligible for legalization under the terms of S. 1200. They will begin applying for legalization within the first 6 months after enactment of this legislation.

My understanding is that the demands of the legalization program in terms of INS personnel could easily paralyze the day-to-day operation of the Service. S. 1200 does contain additional funding for INS personnel, but I am not aware that the money is allocated geographically.

There has been a tendency to see illegal immigration as a Southern border problem, and therefore much of the attention when we speak of the issue is directed toward States that border on Mexico. And indeed, the illegal aliens first enter the United States through California, Arizona, New Mexico, and Texas. But what is often forgotten is that many of these aliens go on to settle in cities in the Northeast and Midwest. Many States in this region, including Michigan, have enormous illegal alien populations.

Can the Senator from Wyoming give me assurances, first that S. 1200 provides the INS with the resources it will need to carry out the provisions of the legislation before us while continuing its day-to-day operations, and second, that Northern States, like Michigan, will not be forgotten in the allocation of resources to different INS districts?

Mr. SIMPSON. I assure the Senator from Michigan that we expect that the additional resources this bill provides for the INS will allow it to perform its regular duties as well as the added duties this legislation calls for. I also assure them that it is my intention that the additional resources should go where they are needed. I understand that many States which do not actually border on Mexico have large illegal alien populations, that Michigan is one of these States, and I can assure him that those who crafted this bill intended for States like Michigan to receive their fair and needed share of the additional resources.

CUBAN POLITICAL PRISONERS

Mr. CHILES. Mr. President, there is a section of this comprehensive immigration bill that has particular interest to many Cuban-Americans. This provision calls on the administration to ease their restrictions which have denied entry into the United States for Cuban political prisoners who are stranded in third countries around the world, especially in Panama, Venezuela, Spain, and Mexico.

We are all too familiar with the number of Cuban political prisoners whom the Castro regime has held in prisons since 1960. Negotiations have resulted in the release of these persons, usually one by one over the past 25 years. Some of these persons have been allowed entry into the United States while others have attempted entry into this country through a third country. These former political prisoners in essence are stranded in these third countries such as Venezuela awaiting passage into the United States. Many are in a "limbo" status in these countries and in many instances forbidden work permits.

Mr. President, the language in the immigration conference report urges the administration to ease restrictions

on entry into the United States for these particular Cubans and I add my voice to encourage the administration to do so. Many of my colleagues in this Chamber have worked with me over the years to facilitate entry for Cuban political prisoners and this language reflects our keen interest. However, questions have been raised by this section in the report and I would like to ask Senator SIMPSON to clarify one point.

Senator, as you know, traditionally when the United States allows political prisoners from Cuba into this country under a refugee status, immediate family members are also granted entry. As family reunification is the premise of U.S. immigration and refugee law, I would ask the chairman of the Subcommittee on Immigration, if it is understood that the Congress in encouraging entry for Cuban political prisoners under this provision, intends that immediate family members be included in this allowance.

Mr. SIMPSON. Yes; the Senator from Florida is correct in his interpretation that political prisoners granted entry into this country traditionally are allowed entry for immediate family members. I would hope that the administration would grant such status to immediate family members of these particular Cuban political prisoners, if the administration, or when the administration, determines to again process these political prisoners for entry.

Mr. CHILES. I thank the Senator from Wyoming and know he understands the interest in this point for this Senator from Florida and for many Cuban-Americans.

Mr. DOLE. Mr. President, the Senate today considers the conference report on S. 1200, the Immigration Reform Act. That the Senate is able to take final action on this legislation is nothing short of a miracle. It is simply a monument to the leadership, dedication, and tenacity of the distinguished Senator from Wyoming [Mr. SIMPSON].

The immigration bill contains several features that fundamentally change our immigration laws. Leading the list is the legalization feature. This provision would allow hundreds of thousands perhaps even millions of persons now illegally residing in the United States to come forward and legitimize their status. Persons who can convince the Immigration and Naturalization Service that they have resided continuously in this country since January 1, 1982 or before, and are otherwise qualified to become citizens, will now be eligible to apply for permanent residence. The trigger date of this provision, January 1, 1982 is the date contained in the House bill. The Senate-endorsed date was January 1, 1980. This change will no doubt allow hundreds of thousands to come forward. Undoubtedly this will mean increased costs to Federal, State, and local governments to provide services and benefits to these individuals. At this point no firm estimates are available. We are truly signing a blank check that will impose heavy burdens on the taxpayers.

On the other hand, many of these individuals have demonstrated that they should become U.S. citizens.

This is the price we must pay for a new schedule of civil and criminal sanctions to be applied against employers who willfully hire persons not lawfully entitled to live or work in the United States. To this Senator, these provisions represent perhaps the last meaningful chance we have to stem the tide of illegal immigration. In the past few years the INS has made an ever-increasing number of arrests on our borders. This year the figure will probably exceed 2 million. However, for each arrest, others go undetected and successfully evade our immigration control system. How many succeed is anybody's guess. Perhaps now we can begin to get this problem under control.

Legalization will place a major new responsibility on the INS. Not only will the Service now have to process those who seek to legitimize their status—and this could mean a doubling or tripling of current workloads—but the INS will have to develop programs for effective oversight over employers. This too will mean a major new workload.

In addition, the Department of Justice is to be authorized to establish a special counsel to investigate and prosecute claims of employment discrimination against those who are legally entitled to work and live here.

The conferees also agreed to a verification process involving an enhancement of the Social Security card. As I understand it, the conferees generally agreed with the Senate on a future verification system. I have concerns about this issue and ask unanimous consent that relevant extracts of the report be inserted in the RECORD at the close of my remarks.

DEPORTATION

The new authority contained in S. 1200 as well as the drug bill also will give the INS new tools to deport those who should not remain here. I am particularly mindful of the thousands of deportable aliens who are now housed in our prisons and jails. In the Federal prison system alone there are over 6,000 convicted felons who are deportable. They are occupying space that is desperately needed. They are costing the taxpayers millions for their board and keep. These new tools should help deal with this chronic problem.

ENHANCED BORDER PATROL

S. 1200 and the drug bill both place new priorities on enhanced enforcement activities along our Southern borders. S. 1200 calls for a 50-percent increase in the authorization for the Border Patrol. This figure is probably just a downpayment on the increased resources that will be needed to do the job that we are entrusting to the front line enforcement agency protecting our borders.

It is regrettable, Mr. President, that the Senate was not able to complete action on my bill to provide a clarification of the arrest authority for the INS. This bill is pending in the Judiciary Committee. I have been assured by the distinguished chairman of the Immigration Subcommittee, as well as those who wanted to consider the proposal further, that this will be a priority matter in the next Congress.

It will also be my intention, Mr. President, to introduce amendments to the immigration legislation to authorize a new category of investors and entrepreneurs to be admitted outside of the existing quota system. Other countries such as Canada have successfully attracted new jobs and new investment this way. Perhaps a measure such as this will help to offset the massive costs of S. 1200.

FARM WORKERS

As I understand the conference report, the conferees adopted the House provisions which create a new program for agricultural workers. This will allow hundreds of thousands of temporary workers to enter and remain here permanently. This program alone could well double the number of persons lawfully admitted. Currently about 400,000 are legally admitted. S. 1200 authorizes up to 350,000 to be admitted on a temporary basis. These individuals would remain in this status for 1 year before they could apply for adjustment to permanent status. The conferees adopted the House version which was somewhat more generous than the earlier Senate version. This Senator would have preferred the Senate version, but will defer to the judgment of the Senate conferees who considered the matter in great detail and agreed to recede to the House.

In conclusion, Mr. President, I again want to pay tribute to Senator SIMPSON and his able staff, headed by Dick Day. I should also acknowledge the long-time interest and dedication to immigration legislation by the ranking minority member of the Immigration Subcommittee, Senator KENNEDY. He is ably assisted by Jerry Tinker who is one of the real pros in this complex and controversial legislative field.

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

IMMIGRATION REFORM AND CONTROL ACT OF 1985

Identification fraud is a staggering problem. A May 12, 1983, report of the Senate Permanent Subcommittee on Investigations

dealing with Federal identification fraud estimated that the cost of fraudulent schemes involving Federal, State, and local entitlement programs alone exceeds $24 billion annually. Hearings on this issue during the 98th Congress by Senator Dole's Senate Judiciary Committee's Subcommittee on Courts also found that, at present, there is easy access to counterfeit identification documents such as Social Security cards, birth certificates, and driver's licenses. Counterfeit documents can be obtained readily and inexpensively anywhere in the United States or neighboring countries from illegal commercial vendors or can be fashioned by "do it yourself" techniques.

Last October, as part of the Comprehensive Crime Control Act, Congress required that agencies operating identification systems use identification documents, insofar as possible, with common description terms and formats so as to reduce redundancy and duplication and to facilitate positive identification. In addition, the Congress required that within 3 years the President make recommendations to the Congress for the enactment of comprehensive legislation concerning Federal identification systems taking into account: (1) the protection of privacy, (2) appropriate civil and criminal sanctions for the misuse or unauthorized disclosure of personal identification information, and (3) the exchange of personal identification information authorized by Federal or State law.

The Committee expects that the President and the Attorney General will take the identification fraud considerations expressed in the Comprehensive Crime Control Act into account, including the results of the President's study, when available, when decisions are made about the type of identification and employment authorization documents which should be relied upon by employers to make determinations under section 121 and about the improvements which should be made therein.

Futhermore, the Committee believes that the President and the Attorney General, in conjunction with other interested Departments and agencies, should work with State and local identification document-issuing authorities to develop demonstration projects and programs to improve the reliability and validity of identification documents. Efforts should be made to bring State and Federal document-issuing authorities together to deal with the problems of document fraud and abuse and to develop common strategies to deal with them. Document formats could be standardized and software developed for the exchange of document information for the purposes of update, correction, and verification. For example, one of the most prevalent forms of document fraud involves the use of duplicate copies of birth certificates of deceased individuals to obtain new identification documents for an individual who then assumes the identity of the deceased individual. Unless some systematic means is developed for annotating the birth certificate with death information, the potential for fraudulent misuse will remain great.

Mr. SIMPSON. Mr. President, over the years of study, hearings, legislative drafting, debate, and negotiations leading to the enactment of this legislation—8 years, beginning with the appointment of the Select Commission on Immigration and Refugee Policy by President Carter, to the passage of the Immigration Reform and Control Act of 1986—many persons have made large contributions to this effort, sometimes little noticed, and I would like to recognize their contributions today.

Larry Fuchs, Executive Director of the Select Commission.

David Hiller, Don Baker, Ralph Thomas, Phil Brady, Greg Leo, John Bolton, Ken Berquist and Tom Boyd of the Justice Department

Donna Alvarado, Chip Wood, Arnold Leibowitz, Tina Jones, Betsy Greenwood, Carl Hampe, Jodi Brayton, Frankey Degooyer, Dee Dee Herzog, Helen York, and Stephanie Kellum of the subcommittee staff.

Jerry Tinker of Senator KENNEDY's staff, Ally Milder of Senator GRASSLEY's staff, Dick Dargon of Senator THURMOND's staff, Mark Contreras and Steve Smith of Senator SIMON's staff, and Ken Fulp of Senator DENTON's staff.

These and others have been an important part of the effort which has brought us to this stage of the process.

Mr. WILSON. Mr. President, on page 36 of the statement of managers there is a statement clarifying the residency requirements of the special agricultural workers. As a participant in the deliberations on the agricultural provisions of the bill, I do not think the language as it reads reflects the intent of the conferees. My understanding is that the intent of the conferees is to place at least a 6-month requirement on the first group and a 3-month requirement on group 2. Is that correct?

Mr. SIMPSON. If the Senator will yield, the Senator's understanding is correct.

Mrs. HAWKINS. Mr. President, I rise in support of the conference report to accompany the Immigration Reform and Control Act of 1986, S. 1200. No legislation during my tenure in the Senate has been as difficult to pass than this immigration reform proposal. This is unfortunate because I can think of no area more in need of major reform than our immigration policy. It is a basic responsibility of the Federal Government to control the flow of people into our country. It is clear that the Federal Government is failing to fulfill this basic responsibility. I hope the measure before us will be a step toward regaining control of our borders. Finally, I commend Senator SIMPSON for his tireless efforts to enact comprehensive immigration reform. All the American people owe a debt of gratitude to Senator SIMPSON for his dedication to this cause in the face of endless controversy, delay, and frustration.

Mr. President, I want take this opportunity to point out several provisions of the conference report, which I consider very important. First, the report contains a provision to establish a $35 million contingency fund to handle immigration emergencies. The State of Florida knows better than any other State how local communities suffer major dislocations when mass migration occurs. The Mariel boatlift overwhelmed local communities. Local services were strapped and Federal assistance failed to make up the difference. The Federal Government should never be caught as unprepared for this kind of emergency as it was during the Mariel crisis. The contingency fund provision contained in this conference report to this bill will make sure that the Federal Government has the resources to any future emergencies similar to the Mariel crisis. As the sponsor of this provision in the Senate, I am glad to see that this provision is retained in the conference report.

A second provision contained in the conference report to S. 1200, is the so-called SAVE amendment. SAVE is an acronym for systematic alien verification for entitlements. I offered this amendment during Senate consideration of S. 1200, last year. This provision will require States to verify, through INS computer records, the legal status of all aliens applying for benefits under certain programs of public assistance. The States will now be required to screen applicants for entitlements to determine if they are in this country illegally. It will prevent illegal aliens who are not entitled to receive these benefits from receiving them. The provision in the report also reimburses the States for 100 percent of the costs associated with implementing the program. These costs, however, will be more than made up in savings under the entitlement programs. I am very pleased that the final version of S. 1200 will include the SAVE provision.

Mr. President, one of the most controversial aspects of this immigration reform proposal is the provision granting legal status to illegal aliens who have resided continuously in the United States since 1982. I have been a reluctant supporter of past legalization provisions and I support the legalization provision before us now. The fact is that the Immigration and Naturalization Service cannot hope to find and deport all the illegal aliens who are currently in this country. There is not even a reliable figure as to how many illegal aliens there are in the United States. Given these circumstances, it is clear that we should give the INS a clean slate and encourage it to focus on preventing future illegal immigration.

While I share the concern expressed by those who believe that the legalization program is rewarding those who have broken the law, I see no other solution to the current crisis. Also, it is important to note that it is a fact that without a legalization there will be no

immigration reform. The need for comprehensive immigration reform is so great that we must move forward. This is the case now, just as it was the case when the Senate considered this bill last year.

I must state, however, that I have deep reservations about the provision in this bill that grants temporary resident status to designated agricultural workers. I fail to understand why we should give such generous treatment to these designated agricultural laborers in our immigration laws. I intend to follow the implementation of this program very closely and will work to tighten this provision if there is a need. I would prefer a more tightly controlled system to meet the labor needs of the producers of perishable commodities that is similar to the existing H-2 Program.

In a related matter, the conference report contains a provision to provide an immediate $1 billion appropriation for each of fiscal years 1988 through 1991 to cover the cost of the Legalization Program. There have been expressions of concern that this appropriation will not cover the real cost of the Legalization Program. The fact is that our immigration policy is the sole responsibility of the Federal Government and we should not saddle our local communities with extra burdens associated with this Federal policy. Thus, it is my hope that if the $4 billion does not prove to be adequate to cover that cost of the Legalization Program, that we will return to provide more funds.

Mr. President, the most important aspect of this bill is the question of enforcement. The bill contains an employer sanctions provision that will impose both civil and criminal penalties on employers who knowingly hire illegal immigrants. This provision is essential to preventing illegal immigration. If we are going to gain control over our borders, we must eliminate the incentive that brings illegal aliens to this country, the opportunity for employment. The bill also provides over $400 million in supplemental authorization funds for immigration enforcement and border patrol in both fiscal years 1987 and 1988. These supplemental funds should help the Immigration and Naturalization Service to increase Border Patrol personnel by 50 percent.

Finally, Mr. President, I must say that I am somewhat disappointed in the final outcome of this bill. When we first considered the question of comprehensive immigration reform in the 97th Congress it was a truly comprehensive reform proposal that was before us. I wish the bill before us now was not so limited in scope. Thus, I believe that it is important in the next Congress that we consider issues such as judicial reform and summary deportation, which are not included in the bill before us now. But I understand how the scope of this immigration proposal became so limited and I will support the conference report as a step toward more comprehensive reform of our immigration laws. Again, I want to commend Senator SIMPSON for his efforts on this bill. He has earned the Senate's respect on this issue. I commend this conference report to my colleagues and urge its adoption.

Mr. KENNEDY. The "Statement of Managers' that accompanies the conference report on S. 1200 contains a clerical error.

On the issue of "Time for Compliance with the Verification Process," the sentence in the statement that reads:

> However, the conferees direct the Attorney General to develop and promulgate regulations regarding the time for compliance which address the practical problems of farm workers and agricultural employers in satisfying the discrimination and verification requirements of this legislation.

should be the last sentence on this issue. Is that not correct, Mr. Chairman?

Mr. SIMPSON. Yes. The further language does not reflect the agreement of the conferees.

Mr. KENNEDY. Mr. President, I would also like to clarify a point raised in the debate in the House yesterday regarding our provision of legal services for H-2 workers.

When we provided that it was our intent that H-2A contracts "shall not violate any provision of the Immigration and Nationality Act authorizing the H-2 Program or any regulations" and went on to authorize Legal Services representation to secure "the rights * * * under the * * * contract," we obviously intended that such workers could use Legal Services attorneys to sue not only to enforce breaches of their contract but also, obviously, when those contracts violated the act or regulations. To hold otherwise is to deny the plain meaning of those two dictates. For it would allow an employer to offer illegal contracts that violate the law, but allow suit if, and only if, there was a breach of those—illegal—terms.

The language of the report and statement of the managers would be vitiated by such an interpretation.

Mr. HATCH. Mr. President, I rise in opposition to the Immigration Reform and Control Act of 1986. I well realize that the distinguished chairman of the Immigration Subcommittee, Senator SIMPSON, has spent 3 laborious years attempting to put together an act which would both control illegal immigration and reform our current immigration laws. As I said on this floor just over a year ago, Senator SIMPSON has done a herculean task of attempting to draft a workable, meaningful, and effective immigration bill. All of us in this Chamber are aware that we have lost control of our own borders. The President of the United States has made statements to that effect. I do not deny that something has to be done. I do not deny that perhaps as many as 1 to 2 million illegals are crossing our borders every year to enter the United States. I do not deny that illegal immigration has also been tied in with the enormous flow of illegal drugs into this country and to the potential, fortunately only potential at present, of international terrorist violence being exported here from abroad. I do not deny all of this. But this bill is not the answer, Mr. President. It will in no way resolve many of the basic problems which it makes more difficult rather than less difficult.

The idea that a legalization or amnesty can be given to potentially 6 to 16 million illegal immigrants, who arrived illegally in this country before January 1, 1982, is to undermine the very principles of legality upon which our entire immigration system is founded. In the words of my former colleague, Senator Richard Schweiker, the so-called legalization or amnesty "puts the Government squarely behind the lawbreaker, and in effect, says 'Congratulations, you have successfully violated our laws and avoided detection—here is your reward.'" In clear language, granting amnesty rewards the lawbreaker pure and simple.

Just yesterday, a representative of a coalition of Hispanic groups from my own State called our office to tell us of Hispanic opposition in Utah to the bill. Polls taken during recent years, such as the Associated Press Media Journal Public Opinion on February 6, 1985, of 1,532 adults in a scientific polling sample, indicate that almost half of the Hispanic citizens in this country oppose legalization and they wish to make our immigration laws more difficult instead of less difficult. A U.S. News & World Report survey, in February 1986, elicited 36,000 responses from its readership, 74.9 percent of those responding indicated that immigration should be restricted further. In the words of a senior fellow at a Center for Immigration Studies here in Washington, himself a Hispanic: "I know of many Mexican-Americans who are telling me that they feel that * * * the coin of citizenship for them is being debased by this virtually uncontrolled mass of illegal immigration." I might add that I have received literally dozens and dozens of letters from ordinary citizens who are in a state of outrage over using legalization as a tool to immigration control. These concerned citizens ask: Control what? And once legalized, is this not an incentive to other potential illegals to come here and to try and attempt to do the same thing? How do you explain to these unsophisticated

people that the Congress has decided that this should be a one-time-only amnesty?

Of even greater concern, Mr. President, are the punitive measures directed against employers in several serious forms. I opposed employer sanctions a year ago, when S. 1200 first came to the Senate floor, and I am still opposed. Employer sanctions are unjust. They are unwise. They are unfair. They penalize the wrong group for actions of individuals which sanctions cannot knowingly, willfully, and with the specific intent of violating U.S. immigration laws. They do not have a job waiting for them in advance as illegals. They do not know when, or where, or if they are going to find employment. But they come anyway. And they will continue to come with or without sanctions.

Employer sanctions have been legislated in 11 States in one form or another. Those States include the two jurisdictions where illegal immigration is at its highest—California and Florida—have chosen not to enforce them. Illinois and New Jersey have rejected such legislation, and for good reason. Sanctions will hurt the small businessman. Despite the so-called antidiscrimination provisions of this bill, which I shall address in a moment, sanctions will depress the employment market for Hispanic minorities in particular, and make it more difficult, rather than less difficult, for any business with a need for unskilled workers to function. Sanctions will make it more difficult for unskilled workers to find employment. Both a 1982 GAO report and a 1985 GAO report indicate, out of nine foreign countries surveyed, France and Switzerland definitely had numerous problems with making sanctions work. West Germany and Spain had to pass new legislation in 1985 to attempt to remedy the difficulties which arose from their initial sanctions legislation, and so far the results are inconclusive. Three other countries, Austria, Denmark, and Sweden attribute the workability of sanctions imposed by their governments to the assistance of the large and powerful labor unions in working with employers in a socialist society in limiting the employment of illegal immigrants. We are not a socialist society, nor do we intend to become one. Our large labor unions do not dominate our economy. And, it should be emphasized, the sanctions in those three countries are aided by a rigorous identification system with frequent identity checks at the workplace. Americans do not carry identity cards. Not everyone has a driver's license. Not everyone has a Social Security card. Identity cards for the general population do not fit in with the concept of individual rights as enunciated in our Constitution and Bill of Rights. We cannot impose the kind checks and control upon our citizenry that would easily identify who is illegal and who is not.

Criminal sanctions to be imposed upon "Any person or entity which engages in a pattern or practice of violations" are unacceptable. This will have an absolute detrimental effect upon the employment of unskilled workers. The language of this subsection is not clear. It is ambiguous, indeed, it is vague and overbroad; and thus there is a serious question of whether it will stand the scrutiny of the courts in a due process void-for-vagueness test. There is also a question of the enforceability of criminal sanctions and of the effect of their possible arbitrary and capricious application to offending employers and businesses. If criminal sanctions are not enforced, they will breed a disrespect and disdain for the law and the legal process. On the other hand, if they are capable of being vigorously and effectively enforced, that type of sanction is far too excessive for the violations which it is designed to prevent.

Mr. President, the burden on the employer to prove the legality of his workers is immense. It is not at all clear as to the requirement placed upon the employer with respect to determining the authenticity of the documents presented to him by the applicant worker. During the last debate of this body on S. 1200, a number of my colleagues pointed out how easy it is to obtain false or counterfeit documents in the Los Angeles and the San Diego areas. Social Security cards, counterfeited, sell for as little as $5. An entire documentation packet can be obtained for as little as $10 to $20, and top-of-the-line forgeries may sell for between $50 and $60, including birth certificates and drivers' licenses. This bill, in fact, will probably create a thriving new false documentation industry in southern California and elsewhere.

The paperwork to be created in checking out employers, in investigating violations, in holding hearings, and in reviewing the system is not only burdensome, it will also be costly. It will create a great deal of unneeded litigation, and place yet another financial burden on good-faith employers who are unable to determine the authenticity of documentation or the true status of their applicant workers despite appearances of legality. Cease and desist orders carry fines, there are automatic fines ranging up to $1,000 for paperwork violations, and there is a duty to open business records to anyone investigating alleged claims of illegal employment. The employer has a tremendous and unfair burden under this proposed system. The average businessman and grower will, inevitably, begin to shy away from employing any ethnic and minority groups, despite the attempt by this bill to prevent a pattern of discrimination on the basis of national origin. It will be done. It will be hard to prove. And the attempt at an "alienage provision" creating a new civil rights offense is bad policy and bad law.

S. 1200 makes it an unfair immigration-related employment practice for a person or an entity to discriminate against any individual, except for an illegal alien, with respect to hiring or to employment recruitment on the basis of an individual's national origin, ethnic background, or citizenship status. In other words, if an employer or business discriminates either in hiring, or recruiting, or referring, except for an unauthorized alien, that employer would be liable in civil penalty for an unfair immigration employment practice. The bill does, admittedly, permit employers to choose a U.S. citizen or national over another alien individual when the applicants are equally qualified, but who is to determine the degree and the measure of qualification between one individual and another? On the other hand, the bill provides for a special counsel to investigate and prosecute claims of employment discrimination. The special counsel is empowered to establish regional offices. In these days of fiscal responsibility, budget austerity, and enormous deficits, the creation of a new—and costly—bureaucracy to monitor and enforce this unsound system is bad politics and bad government. The cost of this program in just this one area would be enormous.

This bill further expands the civil rights provisions of title VII, first by adding the concept of a citizenship category, and second, by extending the coverage of title VII from employers and entities of 15 or more persons to employers and entities of 4 or more persons. This was not the legislative intent in enacting title VII. It will bring about a tidal wave of litigation that the employers and that the courts can ill-afford. The managers of the bill claim that its anti-discrimination provisions only grant this sweeping coverage as long as sanctions are in effect. The managers statement indicates that the remedy to the problems in this expansion is by the repeal of sanctions through a joint resolution of the Congress as contained in the language of the bill. In actuality, this is neither inevitable nor even probable. The drafters of the bill are on record as saying that the Immigration bill rests upon the twin pillars of employer sanctions and legalization. Viewed from this perspective, if one of the pillars should happen to be removed, the bill would then lose its meaning and its validity.

I fully concur that discrimination in any form is bad. And racial or religious discrimination is reprehensible. The stated purpose of the anti-discrimination clauses in this bill is to prevent

employer or business discrimination on the basis or national or racial origin. But the hard fact of the matter is that current civil rights law already prohibits discrimination on the basis of national origin, as well as race, gender, and religion. This is more than adequate to deal with a pattern of discrimination in any business, industry, or agricultural setting. But to reduce the exemption of the number of workers in a particular business or entity, down to three, will be unfair for both employers and employees. I should also note for the record, Mr. President, that union hiring halls are exempted from all sanctions, including the knowing referrals of illegal aliens. This in itself is discriminatory. It discriminates against business. It discriminates against the employer. And the result will be economic disaster, particularly for the small businessman. That also includes economic dislocation for the worker. It means economic difficulty for the entire country, just to give the appearance of the extension of civil rights to individuals who are already covered and protected by existing civil rights statutes.

In the Wall Street Journal of October 15, 1986, the lead news analysis story on the front page focuses on "the new drive by U.S. unions to organize millions of 'undocumented' workers in such immigrant meccas as Houston, Chicago, Los Angeles, New York, and San Francisco." A variety of unions are actively recruiting illegal aliens. These organizations include the UAW, the ILGWU, the Teamster's Union, the Amalgamated Clothing and Textile Workers Union, and the Hotel Employees and Restaurant Union. A Los Angeles ILGWU organizer admits that he began his own career as an undocumented worker, though he does not mention the way he removed the taint of his illegal status. What kind of fundamental fairness exists in an immigration policy which penalizes employers civilly and criminally from employing undocumented workers, but then allows the labor unions to do exactly what the employers are prohibited from doing? This is, as I have already said, bad policy and bad law. My good friends in labor should no more be exempt from the reach of the law than any other group. This approach is in itself discriminatory. It demonstrates all too graphically the major flaws in the premise underlying S. 1200.

I leave to my other colleagues in opposition to this bill the task of further analyzing the inequities of legalization and the other serious flaws in this well-intentioned but misguided effort. I do feel constrained to point out, in closing, that a recent Congressional Budget Office estimate put the probable cost of the entire bill at around $14 billion. Even if that estimate is too high by a factor of 10, the overall economic burden put upon a Government already weighed down by enormous debt is too costly for this country to bear. We cannot mortgage our present for the promise of a system the consequences of which we still cannot foresee but can very well surmise. There are too many controversial elements in this bill. There are too many unfair and unjust policies contained in its statutory language. There are too many uncertainties, the cost of which will be far beyond any benefits to be reached.

Mr. President, I again commend the sincerity, the diligence, and the good faith of the Senator from Wyoming in fashioning this bill. He has truly attempted an undertaking worthy of the legendary Hercules. But we legislators are mere mortals. We perhaps would be better off with a piecemeal approach. We would be much better off if we could concentrate on our security first and not attempt to restructure an economic system that does not need restructuring and will be harmed by it.

Mr. President, for all the reasons given, I oppose this bill. It is a well-intentioned attempt to do too much, too soon. I urge my colleagues to vote against it also. There indeed is a solution to our problems, but it is not contained in this legislation.

Mr. MOYNIHAN. Mr. President, I rise today in support of the passage of the conference report of the Immigration Reform and Control Act of 1985. We have before us, finally, an opportunity to act decisively to reform this Nation's laws dealing with illegal immigration in a comprehensive and just manner.

It is estimated that there are currently between 3 and 7 million illegal aliens in this country; between 200,000 and 250,000 in my own State of New York. The presence of so many illegal aliens within our borders is irrefutable testimony that our immigration laws are not working as they should, and reform of these laws is long overdue.

An essential part of any such reform must contain provisions granting amnesty to illegal aliens and penalties for employers who hire any illegal alien not granted such amnesty. The necessity for both provisions to be enacted simultaneously is clear. Employers will not hire any illegal aliens, even those who have resided and worked here for many years, it they face penalties for doing so. Imposing such penalties without providing some degree of amnesty will leave millions of these individuals with no means of support. Inevitably then, the American taxpayer will be forced to foot the bill.

Fortunately, this bill does provide amnesty, for those illegal aliens who entered this country prior to January 1, 1982, enabling them to keep their current jobs and support themselves. Economics aside, this bill takes the important step of allowing these individuals the dignity and honor of supporting themselves and their families free from the fear of deportation. Together, the combination of amnesty and employer sanctions can reduce the influx of aliens by eliminating the attraction of jobs, and at the same time, protect those that have been living and working here for many years.

Importantly, this bill authorizes the essential funds to meet the needs of these newly legalized residents. Specifically, it will provide $1 billion annually for 100 percent Federal reimbursement for public assistance rendered to these individuals. It is reassuring that the Senate is not only enacting important legislation, but it is also providing the funds with which it can be successfully implemented.

On a related matter, I am pleased that the conferees chose to include an amendment which I offered during floor consideration of this immigration bill last September, mandating a study, to be concluded within a year of enactment, of technological alternatives for a more tamper-resistant Social Security card than that now issued. Since this bill declares that Social Security cards are a form of proof of authorization to work in this country, I feel that it is vital to curb abuse of these valuable documents by illegal aliens.

Another aspect of this bill, of great interest to me and the members of my State, is a provision to allow 10,000 additional immigration visas over the next 2 years for individuals from Ireland and Western Europe.

There is one problem, however, with the Immigration and Nationality Act which is not addressed in this bill, and it concerns the McCarran-Walter Act. This archaic provision allows INS officials to seize any alien in this country, or prevent the entry of an alien, who is suspected of Communist, subversive and terrorist activity designed to endanger the security of the United States. Just yesterday, the New York Times reported the detention of a very well-respected journalist from Colombia who was invited here by the Columbia University School of Journalism to receive an award for distinguished journalism. She was detained under the provisions of the McCarran-Walter Act apparently because she has written in opposition to President Reagan's policies in Central America.

This is reminiscent of the Alien and Sedition Acts, which, while in effect in the late 18th century, limited the right of free speech—one of the fundamental human rights upon which this country was built. This type of censorship was wrong then, and is wrong today and I look forward to next session, when I will fight for a full and complete review of this provision.

This reservation aside, let me again express my sincere desire that Con-

gress see fit to pass this measure and to appropriate the necessary resources to fulfill the provisions manadated by it. I am aware of the expense attached to this measure, however, I feel we must retain our firm resolve to carry out the intention of this bill—to give the preeminent country of immigrants fair and equitable immigrant laws at last.

Finally, Mr. President, I would state my belief that immigrants have made our Nation great, and as a Senator from New York I can particularly appreciate these contributions. Nathan Glazer and I wrote in "Beyond the Melting Pot" that New York, after all, is a merchant metropolis with an extraordinary heterogenous population composed of immigrants and their descendants. The first shipload of settlers sent out by the Dutch was comprised largely of French-speaking Protestants. British, Germans, Finns, Jews, Swedes, Africans, Italians, Hispanics, and Irish, among others, followed, beginning a stream that has never yet stopped. Nor, one hopes, will it ever. These immigrant groups have made, and continue to make, New York and these United States as a whole, the world's great cultural and financial center.

IMMIGRATION REFORM—AT LONG LAST

Mr. CHILES. Mr. President, I rise to congratulate Senator SIMPSON, Senator KENNEDY, and the other members of the Subcommittee on Immigration who have diligently—and patiently—shepherded immigration reform through the Senate three times and at long last appear to have a victory. It was a tough battle—with much pain, arm twisting, and bruises. But, they finally won out, and I applaud their determination and stamina.

Yes, it appears that we are making a valiant attempt to gain control of our borders. This bill provides for several tools that will hopefully assist the United States in controlling the flow of illegal aliens into this country.

For the first time, it will be illegal for an employer to knowingly hire an illegal alien. Civil sanctions and criminal sanctions for those who repeatedly hire undocumented workers will be enforced. Fines as high as $10,000 per alien will be imposed against those who repeatedly hire illegal aliens. In my view, this provision will go far in doing away with the carrot that has long drawn persons over our border—a job.

In addition, the bill provides for long-needed increases in our enforcement at the border. The reform provides for a 50-percent increase in manpower for the INS which has been a recognized weakness of too many years.

Mr. President, I will support this conference report because the need for reform overwhelms my considerable concerns about several provisions. In particular, I have great reservations—distaste, in fact—about the so-called guestworker provisions. This program appears unworkable to me in many respects. In general terms, I cannot envision how it will be administered, let alone monitored. I want to go on record as objecting to this program and predict that this Senator will be the first to initiate a move to abolish this program if it proves to be a disastrous loophole in our new immigation law.

As a Senator from a major agriculture-producing State, I certainly understand and support the need for agricultural workers. However, the H-2 Program works in my State and provides adequate manpower for our year-round seasonal crops. I contend that such a documented worker program could be phased in, even in the Southwest and Western States. But, those regional representatives prevailed in this package and have their program. Time will tell if it provides adequate workers or a channel to seek entry into this country.

Another provision which alarms me is the cap on funds for reimbursement to the States for costs associated with the vast legalization program. As someone who is still battling for Florida to receive compensation for our immigration debts from the 1980 Mariel and Haitian influxes, I can't help but feel I'll continue to fight this uphill struggle. Immigration is a Federal responsibility, and that certainly includes costs. If this new amnesty program results in millions of new residents for my State, I can attest that this body will revisit this issue.

Mr. President, again I express my thanks to those who got us this far with immigration reform. I was one of those who feared, if it died in this Congress, most of us here, would never witness any reform. For all of these reasons, I support the conference report with reluctance, but with an overwhelming sentiment that necessary reform is hopefully at hand.

Mr. BIDEN. Mr. President, this is in essence the fourth time in 4 years that the Senate has been asked to consider comprehensive immigration reform legislation. I say that because the bill before us is distinctly different from the bills that have passed the Senate in previous years; and it is very different from the original S. 1200 that was approved by the Senate in September 1985. It is, in fact, so different, that it justifies a new look at this complex and troublesome issue.

Since 1980, with the recommendations of the select commission on immigration and refugee policy, three main concerns have dominated this long debate: First, liberal amnesty for those individuals who have established a place for themselves in this land of refuge and opportunity; second, the imposition of employer sanctions for knowingly hiring illegal aliens, and third, adequate civil rights protections to guard against discrimination based on alienage. These three elements taken together have served as the foundation for a variety of legislative proposals; and the failure to adequately take each element into account has been the reason each of the previous bills has failed.

Despite some serious doubts about some provisions in this bill, it is time to accept a new approach. If it is a truism that the United States is a nation of immigrants, it is also fair to say that it can no longer be a nation of unlimited immigration. While our Nation must remain the beacon of hope and refuge for "all of the huddled masses yearning to be free," we must be guided by the basic national and security interests of the people of the United States. And our people are telling us, from Maine to California, that the time has come to act.

We have before us a compromise which is by no means perfect. It would be possible to point to a number of flaws in this bill which might justify a negative vote.

The farm labor provisions create a terrible disparity between individuals who have been here long enough to make some investment in a future in our country for themselves and their families and those who have worked in the United States for as little as 90 days.

The criminal sanctions, even if necessary as a means of enforcement, are subject to criticism for vagueness as to what kind of "pattern or activity" would be prosecuted.

And finally, and most significantly, there remain serious doubts as to whether employer sanctions will actually stem the flow of illegal immigration into the United States, or whether only hardship and discrimination against American citizens and those legally in this country, will result.

But to my mind there are two features of this bill which demand support and override these other reservations. First, generous amnesty is provided for illegal aliens who have resided continuously in the United States since 1982. No one knows precisely how many people this will affect, but perhaps as many as 5 million individuals, from every country on Earth, will be offered the promise of American citizenship. Hopefully, this will move a growing underclass living in the shadows into the daylight of citizenship and opportunity. These individuals must become full partners in government and full participants in our society, not just the object of our concern. Immigration has always been in the national interest and the amnesty program in this bill represents the best of that tradition.

There is no question that this initiative is viewed with trepidation. But overall, the results may prove to be extremely positive. The American people have grown suspicious of people different from themselves, especially those who speak a different language. Action on this legislation may demonstrate that the problem has been acknowledged and it may cause Americans to rekindle the spirit of generosity and understanding that is so much a part of our national character.

Equally important, legalization will move millions of illegal aliens into the American mainstream. That means millions of new citizens, with real voting clout in their communities and in their States. It means the ability to determine their own political destiny and to significantly impact the future of the entire Nation.

Second, this conference report specifically prohibits employment discrimination based on citizenship status or national origin and establishes a new civil rights office within the Department of Justice to enforce these antidiscrimination laws. No immigration reform bill previously presented to the Senate has contained such provisions and all attempts to offer such amendments were defeated. These antidiscrimination provisions are absolutely essential to the success of this experiment. The fact that this was finally acknowledged in conference is a major victory for those concerned for the civil rights of aliens and American citizens alike and it cannot be lightly cast aside.

Mr. President, the fear that some employers may decide not to hire foreign appearing individuals, or those with a different accent, is real. The only way to gain the confidence of the Hispanic community or the Asian community is to put teeth into the antidiscrimination guarantees that are now part of this legislation.

Let me make my position on this very clear. And let those who will be responsible for the establishment of the new civil rights office in the Justice Department and for the initial enforcement efforts provided for in this bill carefully. As the ranking member of the Judiciary Committee, or perhaps even as its chairman, I intend to see that the civil rights mandate contained in this bill is carried out. Obstruction or delay will not be tolerated. The antidiscrimination programs will be fully funded. And enforcement efforts against those shown to be discriminate against Hispanics or other individuals of foreign origin will be vigorously pursued. This will be a matter of the highest priority for the Judiciary Committee and for this individual Senator.

There is no question that immigration reform is an experiment that will take the generosity, patience, and understanding of all Americans to make work. I believe that spirit exists, and that our people will accept this challenge with an open mind and an open heart. If it proves to be a source of misunderstanding and prejudice, then changes must and will be made. But now is the time to turn strangers in our midst into friends and neighbors we trust.

I will support the immigration reform conference report and I commend the tireless efforts of the distinguished Senator from Wyoming, the chairman of the Immigration Committee, and the distinguished Senator from Massachusetts, the ranking member. There have been, and there remain, disagreements about this legislation, but they have worked together in the best interests of the American people: Neither may be completely satisfied, but perhaps the best result has been obtained. I applaud them both and hope to join with them as we move to solve one of this Nation's most troubling and complex problems.

The PRESIDING OFFICER. Is there any other Senator desiring to speak? If not, then the question is on agreeing to the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called to roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. BROYHILL], the Senator from Washington [Mr. EVANS], the Senator from Arizona [Mr GOLDWATER], the Senator from Washington [Mr. GORTON], the Senator from Nevada [Mr. LAXALT], the Senator from Maryland [Mr. MATHIAS], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Idaho [Mr. SYMMS], are necessarily absent.

On this vote, the Senator from Washington [Mr. GORTON] is paired with the Senator from North Carolina [Mr. BROYHILL].

If present and voting, the Senator from Washington would vote "yea" and the Senator from North Carolina would vote "nay."

On this vote, the Senator from Alaska [Mr. MURKOWSKI] is paired with the Senator from Idaho [Mr. SYMMS].

If present and voting, the Senator from Alaska would vote "yea" and the Senator from Idaho would vote "nay."

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Arizona [Mr. DECONCINI], the Senator from Ohio [Mr. GLENN], the Senator from Vermont [Mr. LEAHY], and the Senator from Mississippi [Mr. STENNIS], are necessarily absent.

I further announce that, if present and voting, the Senator from Arizona [Mr. DECONCINI], would vote "nay."

I further announce that, if present and voting, the Senator from Vermont [Mr LEAHY], and the Senator from Ohio [Mr. GLENN], would each vote "yea."

The PRESIDING OFFICER (Mr. STAFFORD). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 63, nays 24, as follows:

[Rollcall Vote No. 357 Leg.]

YEAS—63

Andrews	Grassley	Nunn
Baucus	Harkin	Packwood
Bentsen	Hart	Pell
Biden	Hatfield	Proxmire
Bingaman	Hawkins	Pryor
Boschwitz	Heinz	Quayle
Bradley	Hollings	Rockefeller
Burdick	Johnston	Roth
Byrd	Kassebaum	Sarbanes
Chafee	Kasten	Sasser
Chiles	Kerry	Simon
Cranston	Lautenberg	Simpson
D'Amato	Levin	Specter
Danforth	Long	Stafford
Dixon	Lugar	Stevens
Dodd	Matsunaga	Thurmond
Dole	Mattingly	Trible
Durenberger	McConnell	Wallop
Eagleton	Melcher	Warner
Exon	Metzenbaum	Weicker
Gore	Moynihan	Wilson

NAYS—24

Abdnor	Garn	Kennedy
Armstrong	Gramm	McClure
Bumpers	Hatch	Mitchell
Cochran	Hecht	Nickles
Cohen	Heflin	Pressler
Denton	Helms	Riegle
Domenici	Humphrey	Rudman
Ford	Inouye	Zorinsky

NOT VOTING—13

Boren	Goldwater	Murkowski
Broyhill	Gorton	Stennis
DeConcini	Laxalt	Symms
Evans	Leahy	
Glenn	Mathias	

The conference report was agreed to.

□ 2000

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

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

The motion to lay on the table was agreed to.

□ 2010

The PRESIDING OFFICER. What is the pleasure of the Senate?

ANTI-DRUG ABUSE ACT

Mr. DOLE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 5484, the drug reform bill.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit

drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes".

(The amendment of the House is printed in the RECORD of October 17, 1986).

BIPARTISAN/BICAMERAL DRUG BILL

Mr. DOLE. Mr. President, sometimes the American people speak, and Congress listens. That's the way it has been with antidrug legislation. The momentum behind this measure was enormous. And it is a testament to the will and dedication of a small but tenacious group of Members and staff, that we are here today, ready to pass this landmark legislation.

The drug bill has traveled five times, back and forth through the rotunda. The latest round was initiated after bipartisan, bicameral meeting yesterday at which we ironed out the remaining differences between the House and the Senate. The only truly contentious issue was the death penalty. We devised a method so the House could pass the bill with the death penalty, but we would have the option of leaving it out.

This was achieved when the House approved a bill without the death penalty provision in it. But it also passed a concurrent resolution correcting the enrollment of the bill, which only included death penalty language.

The option is before us to do both. But I am not going to ask the Senate to go through the hoops on the death penalty again. We have a good fix on how a majority of Members feel about the issue. But we also must be realists. There is no way of resolving that controversy this year. The proposal, however, will no doubt be revisited next session.

Even without death penalty provisions, the bill before us contains tough law enforcement provisions, enhanced penalties for drug traffickers, authority for limited military interdiction, provisions for greater international cooperation on halting drug traffic and traffickers. What's more we provided additional funds for education, prevention and rehabilitation programs. We've done all this while managing to keep the cost of the bill to $1.7 billion—close to the original Senate level.

And this is not the end of the road. I know those who have a longstanding commitment to combating drug abuse will continue their efforts next session, with oversight and additional proposals.

Mr. President, before closing I want to offer my gratitude to that special group of colleagues: STROM THURMOND, PAULA HAWKINS, MACK MATTINGLY, JIM BROYHILL, and JEREMIAH DENTON, on the Republican side; the distinguished minority leader, JOE BIDEN, DENNIS DECONCINI, and LAWTON CHILES.

I also urge President Reagan to sign this measure. It has widespread support, in both Houses, on both sides of the aisle. It is not the final answer to this Nation's drug problem—but it is a meaningful first step.

Mr. CHILES. Mr. President, we have come a long, long way in a very short time to the completion of a comprehensive new drug policy. The Senate acted in a most responsible manner to draft and pass a bipartisan bill that provides for increased enforcement, enhanced eradication, reinforced interdiction and major new programs in drug education and treatment. Yes, it was put together on a rather fast track—when compared to normal Senate transactions. But, it is a good plan, it is a responsible policy and it is what the American people have asked us to produce. It is a comprehensive drug policy to meet the demands afflicted on this country by drug offenses and drug abuse.

There are a lot of people who deserve credit for this final, multifaceted product. I offer them my sincere gratitude for helping us to respond to the critical need for drug assistance in this country. First, we should acknowledge the influence of many Americans, including thousands of Floridians, who have impressed upon this Chamber their keen interest in securing a drug bill. I certainly heard them and thank them.

I want to thank the majority leader, Senator DOLE, Senator BYRD, and Senator THURMOND for their continued negotiations on this most important package. They have contributed and sacrificed much for this bill and I thank them for their tireless efforts and continued commitment.

A special nod of thanks to Senator BIDEN, my cochair on the Democrats Drug Task Force. His spirit of cooperation and knowledge of judicial issues contributed immeasurably to our successful efforts.

Many, many thanks to all Senators and their staffs who have devoted much time and effort to this final product. Our task force members—Senators CRANSTON, DECONCINI, DODD, LEAHY, MITCHELL, MOYNIHAN, NUNN, ROCKEFELLER, and SASSER have all left their mark on this bill. I appreciate their continued interest and dedication toward this accomplishment.

Sally Mernissi and Scott Bunton of Senator BYRD's staff were, as usual, of great assistance to us all.

Scott Green and John Bentigviolo of Senator BIDEN's staff committed hours of effort and counsel. I applaud and thank them.

Sheila Burke and Jim Whittinghill of Senator DOLE's staff offered guidance throughout the long debate and drafting of this vast package. I appreciate their assistance.

Terry Wooten and Diane Waterman of Senator THURMOND's staff were gracious and dedicated in their efforts toward a bipartisan bill.

Lastly, I want to thank my staff who banned together like an army to help us maneuver this package through the battles we have encountered—Rick Farrell, Lisa Faulkner, Mike Hall, Carnie Hayes, and Debby Kilmer. Their hours of efforts and persuasion significantly contributed to my commitment to secure this bill.

Mr. President, this bill is a major accomplishment for this Congress and every Senator should be proud of having a part in seeing its development.

Mr. LUGAR. Mr. President, the purpose of may remarks is to establish a legislative history for section 2005 of the Senate omnibus drug bill, entitled "Restriction on the Provision of United States Assistance."

As I said in my earlier remarks on September 27, our objective is to ensure that the U.S. Government uses the full measure of its economic, military and other assistance, as well as its diplomatic and political leverage, in pursuit of its international narcotics control objectives.

Section 481 of the Foreign Assistance Act has served us well, by initiating an annual review process through which the Department of State, in cooperation with other agencies, evaluates the adequacy of the narcotics control measures undertaken in the reporting period by each narcotics source and trafficking country which is deemed to be of significance. The resulting assessment is communicated to the Congress through the annual international narcotics control strategy report.

As much as has been done, and there had been progress in many countries, we must do more. In particular, we believe that all major drug producing and drug transit countries, regardless of their cooperation in the past, must understand that we definitely link our continued economic, military, and other assistance to their cooperation on narcotics control, to which we assign an increasingly higher foreign policy priority.

Therefore, in addition to providing us with an annual assessment in the report, we are requiring that the President certify the adequacy of narcotics enforcements actions taken during the previous year in controlling illicit narcotics trade. These Presidential certifications are subject to congressional resolutions of disapproval.

Given the number of countries which will likely be covered by the new provision, it is anticipated that the President may choose to submit a single statement of initial certification, identifying these countries in the report for which he is certifying ade-

quacy in accord with this law. This, of course, does not preclude an introduction of a congressional resolution of disapproval for an individual country listed in this single statement.

For these purposes, the reporting period is the previous calendar year. However, it is understood that the Department may include information in the report about activities or events occurring after the start of the new calendar year, if such information significantly changes the perspective of the country, that is the information is needed to clarify a situation, or provides the solution to a problem noted in the report, or identifies a remedial action taken. This information could, of course, also be taken into account in the Presidential certification.

Moreover, section 481 identifies a review and consultation process wherein the Congress considers the annual report and calls the Department and other witnesses to a hearing, wherein findings by the Congress can be presented, and responding statements provided by the administration. Obviously, any data or information, even concerning events coming after the end of the reporting period, which affect a country perspective should be provided at such hearing or during such consultation by the Department and other witnesses.

The data on fiscal year outlays available to the Congress indicate that withholding 50 percent of U.S. assistance—as defined under section 653(a) of the act—until March 1 should not create hardship for U.S. supported programs. However, the Congress recognizes that certain extraordinary circumstances could arise in one or more countries wherein it is necessary for our vital national interests to allocate at the start of the fiscal year all or nearly all of the economic and other assistance intended for said country. It is our intent that the authority under section (c)(2)(A)(ii) permits the President to submit a certification in advance of March 1, for any such country for which he believes the vital national interests of the United States require such funding. It is also our intent that such an early certification would be a rare procedure, used only in extraordinary circumstances.

In providing the authority under subsection (c)(2)(A)(ii), the Congress has deliberately cited "vital national interests" rather than security interests, and it is not the intention of the Congress that a section 614 waiver is required for these purposes.

The Congress recognizes that the administration, for good and sufficient reason, may want to delay certification. This contingency is anticipated in subsection (c)(5). No assistance may be received by such country and the country will receive negative U.S. votes in miltilateral development banks until such time as the President submits a certification request, subject to a joint resolution of approval. The Congress realizes this is a higher standard, in that the certification does not automatically become fact after 30 legislative days if Congress fails to take action, and the requirement is for joint approval, rather than disapproval. The intention here is to discourage late submissions of certifications to the maximum extent possible.

The intention is to focus the attention of the administration and affected countries on performance during each calendar year, with all parties acutely conscious that each year's achievements and failures must be reported to the Congress and the adequacy of that performance certified. If Congress is to render a proper judgment, it is desirable that reporting be as uniform as possible, and not have certifications staggered throughout the months following submission of the annual narcotics report.

These provisions affect major drug transit countries, which the measue defines as significant direct sources of illicit narcotic or psychotropic drugs, or a country through which significant sums of drug related profits or moneys are laundered with the knowledge or complicity of the Government. The Congress recognizes that the Department's annual report provides information on 3 dozen or more countries, and that a number of such countries are included because information on acitivities occurring within their territories is essential to filling out the global picture. It is not necessarily the intention of the Congress to ask the President to certify the cooperation provided by major allies such as the United Kingdom, France, Italy, the Federal Republic of Germany, and others, although illicit drugs do transit their territory en route to the United States and illicit drug profits may be processed through their banking systems. we believe the language about "knowledge or complicity" of the governments serves adequately in this regard.

Mr. LEVIN. Mr. President, I am pleased that both Houses of Congress have now agreed on a final version of this very important drug abuse legislation, so that it can be sent to the President and signed into law. I am disappointed, however, that the price of agreement with the House of Representatives was the striking of the section providing for mandatory life imprisonment without parole when there is an international murder in certain drug transactions. This penalty represents the kind of strong action which we must be willing to take as part of a serious and sustained war on drug abuse. It is more than unfortunate to drop this penalty from the legislation when it is so close to enactment. It is tragic that this strong medicine was rejected. In pushing to go in another direction, a misguided direction in my view, the House of Representatives has, in effect, decided that, because it is so committed to the death penalty, it is better than to have life imprisonment without parole. With all due respect, Mr. President, this reasoning flies in the face of logic, and just plain common sense. We should have done better.

STATEMENT ON H.R. 5484 TREATMENT PROGRAMS

Mr. BIDEN. Mr. President, much of the debate on the drug bill has focused on the incresed funding and tough new penalties in the area of law enforcement and rightfully so.

But, if we are truly interested in reducing drug abuse in America, we must advance new initiatives on the demand side of the drug abuse equation including in the often neglected area of medical research.

We must use every effort to turn today's addicts into tomorrow's productive citizens. These efforts include extensive professional counseling, and I'm glad to see the many programs established in both the private and public sector to provide this counseling; they include methadone treatment where effective; and they include the use of new antidrug pharmaceuticals. One such pharmaceutical which has recently come to may attention is Trexan.

Trexan is officially listed by the FDA as an orphan drug. It works by blocking the effects of narcotics, producing withdrawal symptons in opiate addicts who haven't been drug-free for 10 days or more. An addict who goes through withdrawal and continues to take Trexan cannot become readdicted to or feel the effects of such narcotics as heroin.

Dr. Arnold M. Washton, director of substance abuse research and treatment at Regent Hospital in New York, has commented that this is the first truly nonaddictive drug in the treatment of narcotic addicts to be approved by the FDA. Dr. Washton added that even if an addict takes narcotics while also taking Trexan, it is pharmacologically impossible to get readdicted or feel the effects of the narcotic.

I hope that we will see other innovative technology on the marketplace to help us fight this drug problem.

Mr. FORD. Does section 3403, the provision on ICC review of motor carriers acquisitions, address section 11243 of title 49 as well as section 11344?

Mr. DANFORTH. No, the only section that needs to be addressed is section 11344. That section was the subject of a recent court decision that overruled the ICC policy change that had been relied on by the parties. This provision of the bill reinstates the standards applied by the ICC for certain limited cases.

Mr. FORD. What then is the status of ICC exemption decisions under section 11343(e)?

Mr. DANFORTH. The exemption decisions under section 11343 are not directly affected in any way by this provision. Those decisions however are entirely consistent with the ICC policy statement under section 11344, consistent with this provision of the bill, and I believe accurately reflect congressional intent regarding the standards to be used in section 11343 exemption proceedings.

Mr. BIDEN. Mr. President, I rise today in support of the House/Senate compromise drug bill. For almost a month now, the leadership from both sides of the aisle has been crafting bipartisan legislation aimed at reducing drug abuse in America. The leadership of the House also has been working toward this same goal in the past few weeks.

And as you know, there have been substantial differences in the drug bills passed by the respective bodies, leading to what many thought were irreconcilable differences. Today, I stand before my colleagues very proud to report that these differences have been resolved, and that we are now able to enact the most comprehensive revision to this Nation's drug control strategy in almost two decades.

As I mentioned previously, I am very proud to be able to address this body and to report that we have achieved a consensus on the drug bill. Many of my colleagues doubted whether we would be able to pass drug legislation this session, and for good reason. The political posturing and maneuvering by Members from both Houses, and both sides of the aisle, has not made this an easy task.

The Members of this body faced a similar situation in the 98th Congress. When we attempted to pass the crime bill, many differences separated us, and on several occasions, it appeared that we would not get a crime bill that session. But the leadership of this body came together, in the true spirit of compromise, and carefully assembled a consensus bill that we passed nearly unanimously. That was no small achievement. Many Members had to be persuaded to accept provisions that, if it were left solely to their discretion, would not have been included in the bill. But what united this body, was the fact that there were so many areas of agreement, that it was obvious that it would have been irresponsible to let the many worthwhile and noncontroversial provisions in the crime bill die over the several significant areas of disagreement.

Fortunately, this same mood has prevailed with the drug bill. There have been major, major areas of disagreement. The death penalty is the most obvious, but there were others, too. Like the use of the military, modifications to the exclusionary rule, and others. In fact, I withheld a provision that I feel would be one of the most significant steps we could take in our effort to reduce the scourge of drug abuse in America. I am referring, of course, to the drug czar proposal, a proposal that I think is essential to our efforts in this area. But I withheld this proposal, because I wanted to see a drug bill pass. And I am proud of the leadership of this body, and the many other Members, who felt just as strongly about parts of the bill that they withheld in order to move this legislation.

We did not resolve all of the issues this time around. Many of the battles that we visited during our recent debate will be visited again, probably in the next session. I look forward to those debates, because I think there is still so very much more that needs to be done in the area of drug abuse. But I think that the result of the many hours of negotiations and debate is a very, very good piece of legislation.

This bill provides for tough new penalties for virtually all drug related offenses, and increases fines significantly to reflect the enormous profits generated from the drug trade. In addition, we provide assistance to State and local law enforcement agencies for drug law enforcement. We increase our commitment and funding for international narcotics control and we practically double the border interdiction budget. But what I think is the most significant component of this bill is the refocusing of resources toward the demand side of the drug abuse equation.

For many years now, we have recognized that law enforcement efforts alone will not solve the drug problem. And that does not mean that efforts to reduce demand will, in and of themselves, solve the problem. Rather, we need a balanced approach, combining rigorous law enforcement with efforts to reduce the demand for narcotics and other dangerous drugs through education and treatment programs. In fact, the President and the Attorney General and even the former DEA Administrator have said this on many occasions. But before this bill, we have never devoted the resources necessary to achieve a balanced approach. Right now, we spend $3 million annually on drug abuse education. That's less than 1 percent the total drug control budget.

This bill provides $200 million to State and local school districts for drug abuse education. It is the intent of this bill that every school child in this Nation, in both public and private schools, receives objective, credible information in the consequences and hazards of drug abuse. This bill further commits additional resources to treatment and rehabilitation programs, and for medical research in the area of drug abuse. The result is an entirely new strategy for drug control at the Federal level. After recognizing the need to develop a more balanced Federal response to the drug problem for many, many years this bill finally implements that policy.

I have heard a great deal of skepticism about what this bill will do. The grandiose statements and lofty political rhetoric that has characterized this debate has contributed to this skepticism. But I believe that this bill will contribute significantly to our efforts to move this country toward our goal in this area: A drug-free America. And I mention this because I think the Members of this body feel the same way as I do, and that's why this bill moved. It moved because there was so much agreement, on so many areas, that we were able to put our differences aside and move those initiatives upon which we all agreed.

I commend the leadership on both sides of the aisle for their incredible support and hard work on this bill. They too should be proud. I would further like to thank Senator CHILES, the cochair of the Democratic working group on drugs, for his leadership and effort in this area that were so valuable in crafting this legislation.

In sum, this is a very meritorious piece of legislation. It will not solve the problem. But it will move us significantly closer to our goal. I urge my colleagues to support this bill, and I thank the Chair.

TITLE XII OF THE COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986

Mr. DANFORTH. Mr. President, after months of effort we have reached agreement with the House on an important part of the drug bill, the "Commercial Motor Vehicle Safety Act of 1986" (title XII). This important truck and bus safety legislation will save lives by removing unsafe commercial drivers from our highways, particularly those who use drugs or alcohol.

Last December, I introduced the "Commercial Motor Vehicle Safety Act of 1985" (S. 1903) on behalf of myself and Senator PACKWOOD to address a number of critical motor carrier safety issues. The Commerce Committee favorably reported the bill on August 7, 1986, with an amendment in the nature of a substitute. On September 27, 1986, the Senate included my amendment incorporating the features of S. 1903 in its amendment to the House drug legislation (H.R. 5484). When the House subsequently sent the drug legislation back to the Senate, the House included its own version of truck and bus safety legislation as an amendment. On October 15, 1986, the Senate returned the drug bill to the House with a version of truck and bus legislation which incorporated a number of safety enhancing features

from the House version. Yesterday, we reached an agreement with the House on the final form of the legislation.

Mr. President, I will first briefly summarize the legislation's important provisions that have not been changed since the Senate's last action on it. First, the legislation provides that anyone who operates a commercial motor vehicle while under the influence of either drugs or alcohol loses his commercial license for a year on the first violation and permanently on the second violation. Anyone who uses a commercial vehicle in the course of a drug related felony loses his license permanently on the first violation. Second, it would direct the Department of Transportation to establish Federal minimum standards for licensing, testing, qualification, and classification of commercial drivers. This would end the 20 State practice of giving anyone who passes a driving test in a subcompact passenger car the right to drive a 40-ton truck or a bus carrying dozens of passengers. Third, it prohibits any commercial driver from having more than one license. This will end the notorious practice of using multiple licenses to spread traffic violations. Fourth, it directs the Department of Transportation to set up a computer link between the States so that they could determine if a commercial license applicant has another license, and transmit and receive driver record information to stop unsafe drivers from operating commercial vehicles. Fifth, it provides increased funding for inspections of commercial drivers and equipment.

Mr. President, I now turn to an explanation of the differences between the last Senate passed version of this legislation and the agreement we reached yesterday. One difference concerns the prohibited blood alcohol content [BAC] for truck and bus drivers. I strongly supported the Senate version of this legislation which would have established the BAC level at 0.04 percent—the same level that currently exists for other transportation professionals including railroad engineers, airline pilots, and flight attendants—to be effective on March 1, 1988. The House would not agree to the establishment of a 0.04 BAC level in this legislation. We agreed on the following: One, the National Academy of Science [NAS] must study the question of the appropriate BAC level at which a commercial driver would "be deemed to be impaired" and report to the Secretary of Transportation; two, based on the NAS study and other information the Secretary would issue a rule, not later than 2 years after the legislation's enactment, to establish the appropriate BAC level at which a commercial driver would "be deemed to be impaired;" and three, if 2 years after enactment, the Secretary had not set the level, it would automatically be fixed at 0.04 percent. I am confident that at the end of this process a 0.04 percent BAC level will be the established level for truck and bus drivers.

The dangers posed to the public by big rigs and buses are similar to the dangers posed by trains and planes. All these transportation modes should have the same BAC standard. Research and field tests indicate that BAC levels of 0.04 increase the risk of having an accident by impairing important driving abilities such as hazard judging, signal anticipation, and reaction in emergencies. The Secretary should interpret the term "deemed to be impaired" to reflect this research, and to be consistent with the Federal regulations which prohibit commercial drivers from consuming any alcohol while on duty, or for 4 hours prior to going on duty. It is not necessary to establish that everyone is impaired at the 0.04 BAC level. Rather, if some drivers' driving abilities are reduced, that is enough. The Federal regulations are clear: any alcohol is too much alcohol.

Enforcement of a 0.04 BAC standard is workable because there are inexpensive, portable devices capable of accurately measuring alcohol content at levels below 0.04 BAC. Furthermore, I do not believe the 0.04 BAC standard would place an undue burden on those commercial drivers who may be called to work. Over 90 percent of the drivers know exactly when or have a good idea of when they will have to report to work. In addition, an average 170 pound person must consume three beers within 1 hour, after a normal meal, before reaching 0.04 percent. Moreover, current Federal regulations already prohibit commercial drivers from drinking within 4 hours of reporting to work. The 0.04 percent standard would give enforcement officials an objective measure for determining if this rule had been violated.

On a related subject, the agreed upon legislation contains another sanction for those who are found to be in violation of the 4-hour rule or other Federal regulations related to driving. These drivers will be placed out-of-service immediately for a 24-hour period. This will keep them from further endangering the public.

Another difference in the agreed version is that it provides that a State must "substantially" comply with the new licensing requirements in order to avoid highway finding sanctions. The Senate passed version did not contain this qualifier. This term is to be interpreted narrowly as covering only inadvertent or technical noncompliance—for example, the failure of a State to file one of its reports on a commercial driver within the prescribed number of days. I would not permit a State to in any way reject this legislation's requirements.

In closing Mr. President, I am pleased that we will shortly have this historic legislation to eliminate unsafe commercial drivers and equipment from our highways.

Mr. DANFORTH. Mr. President, I wish to provide some additional interpretive language for a small but important provision of the drug bill that addresses a matter within the jurisdiction of the Commerce Committee. Section 3451 of that bill deals with communications. Many drug dealers rely heavily upon modern communications methods in their operations. To the extent that we can make it more difficult for them to use these methods for illegal purposes, we will have taken an important step in our war against drugs.

This amendment would authorize the Federal Communications Commission to assist in drug law enforcement in two ways: First, the Commission would be authorized to revoke any private operator's license issued to any person under the Communications Act of 1934 if the person is found, presumably by a court of law, to have "willfully used" the license "for purpose of distributing, or assisting in the distribution of, any controlled substance in violation of any provision of Federal law." The intent of this provision is to penalize only those persons who are using an FCC license for an illegal purpose, for example, a licensed radio operator soliciting a sale of a controlled substance in violation of Federal law. This language is not intended, however, to penalize those persons who hold an operator or station license which is being used by others in the ordinary course of business, but which is being used, without the licensee's knowledge, for illegal purposes such as drug dealing.

Second, this amendment would authorize the Commission to assist appropriate Federal law enforcement agencies "in the enforcement of Federal law prohibiting the use or distributing of any controlled substance where communications equipment" within the Commission's jurisdiction is "willfully being used for purposes of distributing, or assisting in the distribution of, any such substance." This provision would not require the Commission to use its own limited resources to assist other agencies in such drug law enforcement. Rather, it is contemplated that the Commission will enter into interagency, reimbursable agreements with the appropriate law enforcement agencies, as, for example, currently exist between the Commission and the U.S. Coast Guard.

Mr. HATCH. Mr. President, during the past 12 weeks Members of Congress have heard President Reagan's plea for the tools to conduct a massive war on drugs and other forms of substance abuse. And I am pleased that,

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today, Congress has granted his request. We join our fellow Americans as committed foot soldiers in this battle for the health, welfare, and, yes, national security of our citizens.

This is a truly historic event when you consider that Republicans and Democrats were able to rise above partisan politics to tackle this serious problem. It only took a few weeks to draft the basic components that became the cornerstone of this legislative initiative that will broaden our efforts against drug and substance abuse.

Our strategy is to attack from all fronts. We are not only expanding our treatment and education efforts, we are also targeting them.

We are also bolstering the criminal penalties for those criminals—the parasites—in our societies who are trying to infest our communities with the plague of drug trafficking. We are strengthening our border controls to stop foreign countries who import their illegal drugs into our country.

In conclusion, I can only say that we have found ways of making existing programs work better, and to harness some of this momentum into pushing some new initiatives along the same path.

At this time, I want to express my sincere gratitude and appreciation to Senator PAULA HAWKINS for her fortitude, patience, and perseverance in bringing the nature of severity of this problem to our attention. In addition, acknowledgment should be given to Senators CHILES, THURMOND, BIDEN, and LUGAR for their hard work. But I offer a very special tribute for Senators DOLE and BYRD for their leadership in putting this legislation on a fast track for action. I urge my colleagues to expeditiously approve this legislation so we can send it to the President for his signature.

Mr. DODD. Mr. President, I am pleased that the final version of the Drug Reform Act of 1986 contains my original proposal, S. 2800, authorizing model, community-based prevention and treatment programs for young people at great risk of abusing drugs and alcohol.

There can be no question but that drug and alcohol abuse crosses all economic, racial, age, ethnic, and religious lines. Nevertheless, a certain segment of our young people—we can call them high risk youth—are in much greater danger of drug and alcohol abuse than other children. If you talk to child protection workers who deal with the children who have been victimized by physical or sexual abuse; or to the directors of Shelters Harboring Runaway Adolescents; or to staff of the Boys and Girls Clubs, and other groups working with unemployed school dropouts, or to those who work with pregnant teens and teenage parents; they will all tell you that the chances that the young people they work with will end up abusing drugs or alcohol go way off the charts.

As a result, any package would be incomplete without a special program targeting drug and alcohol prevention and treatment services for high risk young people. In the case of these children, drug abuse does not occur in a vacuum. And unless we get at some of the underlying causes of such abuse, we will fail to make a big dent in the battle to combat the drug epidemic now confronting us. Failure to target high risk young people will keep us from preventing the birth of infants addicted to cocaine as a result of an adolescent mother's substance abuse problem. Moreover, we will not prevent some of the serious crimes committed by adolescents in association with drugs, unless we target some treatment and rehabilitation services to curb their substance abuse.

The Carnegie Corp. of New York and its president, Dr. David Hamburg, are to be commended for recently establishing a council on adolescence, focusing on high risk youth. As the Carnegie Council has so aptly stated, during adolescence a significant number of youth abuse drugs and alcohol; are the victims of physical, sexual or psychological abuse; drop out of school; become pregnant; are economically disadvantaged; commit violent or delinquent acts; experience mental health problems; attempt suicide; or are disabled by intentional injuries. The measure which the Senate is enacting today is an attempt to explore the connections between these problems and subsequent substance abuse. In addition, concrete help will be provided in the form of community-based prevention and treatment programs for such young people.

Although I would have preferred to have seen more resources directed toward such model projects, $20 million will be available for demonstration grants through a newly established office on substance abuse. I wish to express my appreciation to colleagues on both sides of the aisle and in both the Senate and the House for accepting these model projects directed toward high risk youth in the final package.

Mrs. HAWKINS. Mr. President, I rise to express great satisfaction at the passage of the Omnibus Drug Bill. This is a red letter day for America. Our Nation has been swamped in a flood of illegal drugs. They have brought violence to our streets, pain to our families, chaos to our schools, and inefficiencies to our industries. While the problem has grown more and more severe, the Nation seemed paralyzed to take effective action. Many argued that it couldn't be done. They said we couldn't afford it, or the necessary solutions would violate civil liberties.

Mr. President, I've said it before, but I'll say it again: Where there's a will, there's a way, and where there's no will, there are excuses. Today we proved that the Senate had the will, and that it managed to find a way.

Mr. President, you can't make significant progress such as that represented by this bill without the contributions of many people. I would like to commend the chairman of the Judiciary Committee, Senator THURMOND, for his dedication and commitment to this issue. Also critical to this effort was the efforts of the ranking member of the Judicary Committee, Senator BIDEN. But many others have played key roles as well: the majority leader, the minority leader, Senator CHILES, Senator MATTINGLY, Senator HATCH, Senator DECONCINI only to mention a few.

Mr. President, we shouldn't forget the staff as well. I would like to express my personal appreciation to Sheila Burke, Jim Whittinghill, Diana Waterman, and Terry Wooten, as well as to my own staff. I know that many other staff members have worked long and hard on this bill on both sides of the aisle and they deserved to be commended too. Recognizing that this bill will not solve all our problems, I believe it still is a piece of legislation of which we can be proud.

I don't mean to say by that, Mr. President, that this bill will solve all our problems—there are no magic bullets. Politics and the rush to adjournment conspired to make it impossible to include needed provisions in this bill. We need a death penalty for major drug crimes, and this bill does not have that. We need to get the military involved in the war on drugs in a big way, and this bill falls short of that goal as well. We need to reform the exclusionary rule, and again that's absent from this bill. Does this mean that this bill is ineffective. Absolutely not. But it does mean that it is weaker than it could have been, and for that reason I'm sure that we will have to come back and address these subjects again.

Mr. President, this bill is a good start. It contains tough new penalties and creates new crimes such as money laundering that will provide direct contributions in the war on drugs. In addition, we have increased spending for all the major drug law enforcement agencies; we've upped the money for drug education that teaches our kids to "Just Say No!" and we've added funds for rehabilitation and treatment. In all this bill will spend roughly $1.7 billion in the war on drugs. Perhaps the greatest accomplishment of this bill Mr. President was to focus national attention on the issue and move it up to the top of the national agenda—where it belongs. And Mr. President I'm committed to keeping it

at the top of the national agenda until the problem is solved.

Mr. MATTINGLY. For the third time, by an overwhelming majority, the House of Representatives has affirmed the firm view that drug kingpins who kill in the course of their continuing drug enterprises should be subject to the death penalty. That belief, as my colleagues know, is also held by the majority of the Members of this body.

On Wednesday evening, when the Senate approved a version of the antidrug legislation which omitted the death penalty and substituted mandatory life in prison without the possibility of parole, I said that pragmatism had prevailed. The price of attaining a critically important drug bill, for those of us favoring the death penalty, was the sacrifice of that provision. Of greater consideration was the approval of a comprehensive, bipartisan drug package which would arm the Nation to fight the war on drugs. We negotiated and arrived at an agreement that the full Senate could accept

The House rule which sends the amended drug measure back to us enables us to act on a bill which both the House and the Senate can approve and send to the President. That is something that I am committed to accomplishing. So I support this action.

My colleagues need to realize that the House has also offered us another opportunity to approve a death penalty. I think we should vote on that provision, because I am convinced that such a penalty would improve the antidrug package. Furthermore, I believe that the majority of Senators favor it. But I am a realist. I know that, in the last hours of the 99th Congress, we cannot begin consideration of a measure which would surely bring another filibuster. Once again, pragmatism will prevail. So we will not have a chance to vote—at least not this year.

During the course of Senate consideration of the drug package, I said on several occasions that I believe the American people support the death penalty for pernicious drug bosses who murder. A number of citizens have contacted my office to convey their support. Last week, in fact, the National Federation of Parents for Drug-free Youth held a convention in Washington. Those who attended that convention were parents who have been and are deeply involved in the antidrug movement in this country. They are, by their own description, American families who have borne the brunt of the drug epidemic. During the meetings, some learned of opposition to the death penalty by some Members of the Senate, and they drew up a petition. There was little time to circulate the petition. Nevertheless, more than 80 individuals from 18 States signed the petition. It was delivered to my office with the request that it be used to communicate support for the death penalty to the Senate. I want to make clear that the petition does not represent the official position of the NFP, which has not taken any position on the death penalty. Rather, it represents the strongly held views of a number of individuals. In order that my colleagues may examine it, I ask unanimous consent that the text of the petition be printed in the RECORD at the conclusion of my remarks.

Mr. President, the drug kingpins targeted by the death penalty are public enemies—the most despicable of criminals. They should be on notice that this is not the end of the debate on the death penalty. We will be back again next year, probably with a comprehensive death penalty bill. And I pledge now to work to see that it explicitly contains a provision applying to drug kingpins who in the course of a continuing criminal enterprise knowingly kill another. Given the time to debate the matter fully, I am sure that the Senate will approve a drug kingpin death penalty.

But, tonight is a night of victory when we have approved a strong bipartisan package. We have acknowledged that we have a serious drug problem—a crisis—and we have committed ourselves to solving that problem. We have said to the American people, yes, we will take a leadership role in the national crusade to which the President has called us. We have significantly strengthened our law enforcement capabilities. We have provided resources—funding, manpower, equipment—for improved interdiction activities. We have provided for assistance to State and local agencies. We have authorized funding for education, prevention, rehabilitation, and treatment. In short, we have adopted a comprehensive approach.

As I said the other night when we considered an earlier version of this bill, the bill is not perfect. But it is an excellent beginning. And our commitment to the drug bill must not end here, and neither must the American people.

In fact, the success of our campaign depends on the people and on their will to defeat what has been called the enemy within. I have spoken with hundreds of people about the drug issue; my wife, Carolyn, has spoken to thousands. From those conversations, we know of their sincere concern and of their dedication. And knowing that, we are certain of the victory ahead.

Again and again, I have called the drug problem the most serious we face. I am pleased and proud that we have given it time and attention and addressed the issue in a responsible way.

This is major legislation, the importance of which I am not sure we even realize. But, in a real sense, our future and that of our children, depends on it. It is fitting, I believe, that we close the 99th Congress with this bill, for it affirms our commitment to promoting the general welfare and securing the blessings of liberty—specifically freedom for addiction and death and the destruction and crime which accompany the drug trade—for ourselves and our posterity.

Mr. MOYNIHAN. Mr. President, I seek assurance from my distinguished colleague from Utah, the chairman of the Labor and Human Resources Committee, that he shares my intention that the new grants for treatment of drug and alcohol abuse be made available to States and localities as soon as possible.

Under the formula passed by this body, 45 percent of the funds are to be distributed immediately to the States based on their population. The remaining 55 percent is awarded on the basis of need. Although I realize it might take some degree of time for the Secretary of Health and Human Services to further develop the need criteria provided in this bill, do you agree that it is the intent of Congress that the Secretary act to release these funds immediately, and as expeditiously as possible, to those States most in need of treatment funds.

Mr. HATCH. Yes, I entirely agree. I will join my colleague from New York in working to see that these funds are distributed in an expeditious manner. I thank you for raising this issue.

Mr. DECONCINI. I would like to propound a question to the distinguished chairman of the Senate Judiciary Committee concerning the meaning of the language in the new substantive offense entitled "Engaging in monetary transactions in property derived from specified unlawful activity." Is it the chairman's understanding that the scienter requirement of "knowingly" in (a)(1) is intended to require that the defendant knows that he is engaging in a monetary transaction and knows that the property involved is from a specified unlawful activity?

Mr. THURMOND. The distinguished Senator from Arizona is correct. Thus, to be guilty of this offense, the mere suspicion that the property involved in the monetary transaction is derived from a specified unlawful activity will not be enough. The defendant would have to know that the property is criminally derived to be guilty of the new offense. Similarly, the mere suspicion that the person engaging in the transaction with the defendant is a criminal, based on allegations expressed in the media, for example, would not meet the requirement that the defendant has engaged in a transaction which he knows involves criminally derived property.

Mr. DECONCINI. I thank the chairman of the Senate Judiciary Committee. I know that his interpretation is the one that he and I along with Senator BIDEN intended when we agreed to the inclusion of this provision. I once again want to thank the chairman and the ranking member and say how pleased I am at the results we have reached in this money laundering provision of the drug bill.

Mr. DOLE. Mr. President, I move the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kansas.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. CHAFEE). The Chair, on behalf of the Vice President, in accordance with 22 U.S.C. 1928a–1928d, as amended, appoints the following Senators as members of the Senate delegation to the North Atlantic Assembly Fall Meeting during the second session of the 99th Congress, to be held in Istanbul, Turkey, on November 13–18, 1986: the Senator from North Dakota [Mr. BURDICK], the Senator from Maryland [Mr. MATHIAS], the Senator from Texas [Mr. BENTSEN], the Senator from Idaho [Mr. MCCLURE], the Senator from Arizona [Mr. DECONCINI], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Washington [Mr. EVANS].

Mr. FORD. Mr. President, I make the point of order that the Senate is not in order.

The PRESIDING OFFICER. The Senator's point of order is well taken. The Chair is unable to hear Senators asking for recognition. Once again, the Senate will not proceed until we have order in the Senate.

The Senator from New Mexico.

OMNIBUS BUDGET RECONCILIATION ACT—CONFERENCE REPORT

Mr. DOMENICI. Mr. President, I submit a report of the committee of conference on H.R. 5300 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The bill clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of today, October 17, 1986.)

Mr. DOMENICI. Mr. President, today we come to the end of a long, and at times very exasperating, process. I am, of course, referring to the completion of this year's budget proceedings. No one is more aware than I, and the distinguished ranking member of the committee, Senator CHILES, of the time and effort involved by so many in bringing this final reconciliation conference agreement to the floor today.

I would like to begin by complimenting all those members who have worked so hard over the last year, and particularly these last 2 weeks, to bring this final conference agreement to fruition. I am also grateful to the distinguished majority and minority leaders for their patience and understanding as we have worked to put together this year's budget.

Back on May 2, Mr. President, when we passed the Senate's version of this year's budget, I told the Senate about an old print in my office depicting the ancient Greek story of Sisyphus who was destined to spend his after life pushing a rock up a mountain. Only in his old Daumier (Doe-me-a) political cartoon of Sisyphus he is pushing a budget. As I told the Senate then, every time Sisyphus got just to the top of the mountain the rock came rolling back over him, and he began again his unending trek up the mountain.

Since last May, I discovered that the distinguished majority leader also has a copy of this print hanging in his suite of offices. Maybe Senators are all destined to spend our mortal life pushing, shoving, cajoling, and fighting this thing called the budget.

But, today I believe we can claim that we have at least traversed one small hill, if not a mountain, in this frustrating process of deficit reduction. The conference agreement on the reconciliation bill before us today will reduce the fiscal year 1987 budget deficit by $11.7 billion, and over the next 3 years the deficit will be reduced by about $17 billion. This bill provides the majority of budget savings needed to reduce the fiscal year 1987 budget deficit—under the Gramm-Rudman-Hollings scorekeeping procedures—to the $154 billion trigger point that would have been required to have avoided a sequester.

Given the outcome of the continuing resolution appropriations conference, the increased spending for the drug bill, and other direct spending measures that we have passed in the last month, the Congress would have had to enact savings of $16.7 billion in order to have met the $154 billion Gramm-Rudman-Hollings deficit target. This bill, together with the savings in the higher education conference report and the revenues in the Superfund bill as signed by the President today, will save $12.3 billion of this amount. The $11.4 billion in increase in fiscal year 1987 revenues from the tax bill will make up the remaining $4.4 billion required. We now estimate that the Gramm-Rudman-Hollings deficit estimate for fiscal year 1987 will reach $148.9 billion, well below the $154 billion trigger target.

Before we enter into a debate on the substance of the bill, I would like to make a few observations about the impact of Gramm-Rudman-Hollings on the budget process this year, particularly as it bears on this bill. For my part, Mr. President, this bill is the result of much hard work on the part of Members of this Chamber.

This bill contains primarily fiscal year 1987 deficit reduction activities. I must admit that it contains very few permanent spending cuts or tax changes that help reduce the deficit in the outyears. This bill contains almost $4.8 billion in one-time loan asset sales which may actually add slightly to future year deficits because they reduce receipts the Federal Government would ordinarily receive from these loan asset holdings.

In addition to the financial asset sales, this bill includes the long-debated sale of a major physical asset—Conrail. In total, then, asset sales total $7 billion in fiscal year 1987, or nearly 60 percent of the fiscal year 1987 deficit reduction.

Mr. President, I support this package and I urge the Senate to adopt it. Some may not agree with the budget policies in this bill, but what is clear to me from my experience with this year's process is that the Gramm-Rudman-Hollings legislation worked—in the sense that it set a fixed goal to reach, and Congress as guided throughout in its authorizing, appropriating, and budgeting deliberations to reach that goal. Next year we are going to have another goal to reach. And, if we are to meet that new goal with any degree of sincerity, we will have to build a substantial policy base early on in the regular budget resolution process and we will have to commit, through reconciliation, to meet the target that we set for ourselves.

As I said at the outset, maybe we are destined to spend our mortal lives rolling and pushing that budget toward some goal, only to find that once one goal is reached another one looms on the horizon. A major advancement was made this year. We should not despair.

For any reduction in the deficit of the magnitude we will see this coming year—from $230 billion in fiscal year 1986 to $150 to $160 billion in the current fiscal year—is an unheard of achievement in the fiscal annals of this country. Between fiscal year 1986 and 1987 Federal spending will grow at the slowest rate in over 30 years.

We have accomplished a great deal. It has not been easy. We should pause and take some pride in this accomplishment. But again, we cannot rest on our laurels. Another mountain looms in the near distance, and the 100th Congress will once again begin its trek up that difficult mountain.

Mr. President, I ask unanimous consent that descriptive material and data summarizing this conference agreement appear in the RECORD at this point.

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

SAVINGS IN CONFERENCE AGREEMENT ON THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 BY CATEGORY

[In millions of dollars]

	Savings from CBO's gradison base	Savings from CBO's adjusted reconciliation base			
		Fiscal year—			
	Fiscal year 1987	1987	1988	1989	1987–89
Asset sales:					
RDIF loan asset sales	−1,000	−1,000	−552	−547	−2,099
Rural housing loan sales	−1,715	−1,715	233	233	−1,249
Sale of Eximbank loans	−1,500	−1,500	424	398	−678
EDA loan asset sales	−50	−50	27	0	−23
Sale of Conrail	−2,160	−2,160	237	246	−1,677
College housing and higher education loan asset sales	−579	−579	−223	−13	−815
Subtotal, asset sales	−7,004	−7,004	146	317	−6,541
Revenues:					
Increase IRS penalties	−981	−981	−990	−1,020	−2,991
Accelerate excise tax collections	−319	−319	−1	−1	−321
Tax treatment of Conrail sale	0	0	0	0	0
Accelerate State and local deposits	−388	−388	−290	−1,158	−1,836
Foreign tax credits	−14	−14	−26	−28	−68
Pension benefit accrual	0	0	−(*)	−(*)	0
Increase IRS compliance	−2,355	−2,355	−400	−100	−2,855
Subtotal, revenues	−4,057	−4,057	−1,707	−2,307	−8,071
User fees:					
FERC annual charges	−60	−65	−66	−67	−198
Coast Guard user fees	−1	−1	−2	0	−3
Customs user fees	−790	−790	−780	−840	−2,410
Subtotal, user fees	−851	−856	−848	−907	−2,611
Other spending changes:					
Prepayment of REA loans	−797	−797	110	110	−577
Advance deficiency payments	0	0	0	0	0
Petroleum overcharge collections	−400	−400	−200	0	−600
Energy conservation programs	0	50	184	140	374
Strategic petroleum reserve	215	215	29	0	244
Maritime loan defaults	−12	−12	−36	−6	−54
Thrift savings participation	−96	−96	32	23	−41
Revenue foregone	0	0	0	−210	−210
Part-time annuity computation	−(*)	−(*)	−(*)	−(*)	−1
General revenue sharing	−680	−680	0	0	−680
Guaranteed student loans	−65	−65	−110	−270	−445

SAVINGS IN CONFERENCE AGREEMENT ON THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 BY CATEGORY—Continued

[In millions of dollars]

	Savings from CBO's gradison base	Savings from CBO's adjusted reconciliation base			
		Fiscal year—			
	Fiscal year 1987	1987	1988	1989	1987–89
Medicare Part A	533	533	−105	−498	−70
Medicare Part A and B	495	495	618	−27	1,086
Medicaid	170	170	394	519	1,083
AFDC/CSE	14	14	−2	−3	9
Eliminate COLA triggers	808	808	−761	75	122
Extend benefit accrual	−1	−1	−8	−19	−28
Subtotal, other	184	234	145	−166	212
Total reconciliation savings	−11,728	−11,683	−2,264	−3,063	−17,011

COMPARISON OF SAVINGS IN HOUSE, SENATE AND CONFERENCE RECONCILIATION BILLS [1]

[Fiscal year 1987, in millions of dollars]

	Senate-passed bill	House-passed bill	Conference
Revenues:			
Accelerate State and local deposits	388	388	388
State and local medicare coverage	789	0	0
Increase IRS compliance	2,355	2,400	2,355
Accelerate excise tax collections	319	153	319
Increase IRS penalties	987	656	981
Waterways bill (H.R. 6)	0	102	0
Oil pollution compensation	0	42	0
Foreign tax credits	14	0	14
Subtotal, revenues	4,852	3,741	4,057
Outlays:			
REA loan prepayments	−500	−1,095	−797
RDIF loan asset sales	−1,000	−1,000	−1,000
Rural housing loan asset sales	−1,405	−1,405	−1,715
Eximbank loan asset sales	−1,500	−2,810	−1,500
Housing bill (H.R 1)	0	468	0
Coast Guard user fees	−38	−1	−1
Ship Mortgage Act amendments	−12	−34	−12
Crude oil overcharges	−400	−336	−400
SPRO	0	242	215
FERC fees	−33	−33	−60
NRC user fees	−21	−130	0
EPA fees	−10	−3	0
Sale of EDA notes	−50	0	−50
Broaden FDIC assessment base	−310	0	0
Highway programs	0	0	0
Sale of Conrail	−2,160	−2,160	−2,160
Medicare	756	1,508	1,028
Medicaid	121	110	170
Assistance payments	14	15	14
Civil service retirement	−205	−135	−96
Sale of college housing loans	−579	0	(−579)
GSL changes	−30	0	(−65)
SBA loan asset sales	−343	−850	0
Advance final GRS payment	−680	−680	−680
Eliminate COLA triggers	808	808	808
Extend benefit accrual	−1	0	−1
Custom Service user fees	0	−1,830	−790
Farm deficiency paymetns	0	0	0
Part-time retirement computation	0	0	0
Increase IRS budget	384	0	0
Appropriations 50–50 cut in discretionary budget authority	0	0	0
Subtotal, outlays	−7,194	−9,351	−7,027
Total deficit reduction in bill	−12,046	−13,092	−11,084
Savings in Higher Education Act	(−644)	−644	−644
Total reconciliation savings	−12,046	−13,736	−11,728
Other savings (revenues):			
Superfund legislation	0	0	−583
H.R. 6 (waterways bill)	0	(−102)	−102
Total	−12,046	−13,736	−12,413

[1] Savings from Gradison baseline.

PRELIMINARY BASELINE DEFICITS ASSUMING SPECIFIC POLICY ACTIONS [1]

[In billions of dollars]

	Fiscal year—			
	1987	1988	1989	1987–89
CBO August baseline deficits	184.2	150.2	126.6	461.0
Technical changes since August	−2.0	−0.5	0.0	−2.5
Major policy changes: [2]				
Tax reform bill	−11.4	16.7	15.1	20.4
Appropriations [3]	−6.0	−6.0	−6.0	−18.0
Fiscal year 1986 reconciliation bill	−11.0	−1.9	−2.8	−15.7
Higher Education Act	−0.6	−0.3	−0.3	−1.2
Superfund bill	−0.6	−1.0	−1.1	−2.7
H.R. 6 (Water Bill)	−0.1	−0.2	−0.2	−0.5
Immigration bill	+(*)	0.3	1.0	1.3
Bankruptcy Amendments of 1986	−0.1	−0.1	−0.1	−0.3
Veterans compensation COLA	0.2	0.2	0.3	0.7
Compact of Free Association	0.1	(*)	(*)	0.1
Tariff and Customs bill	0.1	0.1	0.1	0.3
Subtotal, policy changes	−29.4	−7.8	−6.0	−15.6
Total changes	−31.4	−7.3	−6.0	−18.1
Debt service savings	−1.2	−2.2	−1.8	−33.6
Revised baseline deficits	151.6	155.3	130.7	409.3

[1] Estimates do not reflect economic and technical revisions that CBO will make as part of their February 1987, baseline estimates.

[2] Preliminary estimates of all policy changes. Certain estimates could change based on subsequent congressional action.

[3] Estimates assume funding levels in Senate-passed continuing resolution. Estimates not yet available for conference agreement. Outyear estimates are straightlined because reliable estimates are not yet available from CBO.

SUMMARY OF CONFERENCE AGREEMENT ON THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986

This summary provides a brief description of the major provisions in the conference agreement on the Omnibus Budget Reconciliation Act of 1986. A table following the narrative contains estimates from the Congressional Budget Office (CBO) for each spending or revenue provision in the Act. Based on CBO estimates, reconciliation savings total $11.7 billion in FY 1987 and $17.0 billion over the three years, FY 1987–89.

TITLE I—AGRICULTURE PROGRAMS

Rural development insurance fund loan asset sales

Directs the Secretary of Agriculture to sell notes or other obligations in the Rural Development Insurance Fund (RDIF) in such amounts as to realize net proceeds of not less than $1 billion in FY 1987, $552 million in FY 1988, and $547 million in FY 1989.

Prepayment of rural electrification administration debt

Requires the Federal Financing Bank (FFB) to waive prepayment penalities on a minimum of $2 billion of rural cooperatives' loans issued by the Federal Financing Bank and guaranteed by the Rural Electrification Administration (REA). Establishes criteria to determine which cooperatives would be eligible for refinancing. Save $0.8 billion in FY 1987 outlays.

The agreement also prohibits the sale and prepayment of REA direct loans after FY 1987.

Advance deficiency payments

Requires the Secretary of Agriculture to make advance deficiency payments for the 1987 crops of wheat, feed grains, upland cotton, and rice. These deficiency payments may not be lower than 40 percent for wheat and feed grains or 30 percent for rice and upland cotton. This provision results in no additional costs relative to CBO's baseline

estimates, because the baseline estimates already assume these payments will occur in FY 1987.

Farm credit institutions

Allows the farm credit system to ease its heavy debt load and excessive interest rates by changing its accounting practices. Each bank in the system would be permitted to amortize the capitalization of debt and excessive interest expense over 20 years.

TITLE II—BANKING AND HOUSING PROGRAMS

Rural housing loans sales

Directs the Secretary of Agriculture to sell rural housing loans to the public in amounts sufficient to reduce outlays by $1.7 billion in FY 1987. Does not require sales in FY 1988 and 1989.

Export-Import Bank loan sales

Requires the Board of Directors of the Export-Import Bank to sell loans to the public in amounts sufficient to reduce FY 1987 outlays by $1.5 billion. No further sales are required in FY 1988 and 1989.

Housing authorization

Does not include the housing authorization bill, H.R. 1, as proposed by the House.

FDIC fees

Does not include the provision to expand the assessment base of the Federal Deposit Insurance Corporation, as proposed by the Senate.

TITLE III—ENERGY AND ENVIRONMENTAL PROGRAMS

Recoupment of overcharge funds

Requires the deposit into Treasury of all crude oil and product overcharge funds not subject to a Department of Energy (DOE) administrative order or a court order. Does not affect the Stripper Well Agreement. Anticipated overcharge fund recoveries total $400 million in FY 1987 and $300 million in FY 1988.

Energy conservation grants

Requires the expenditure of recovered overcharge funds to ensure that Department of Energy (DOE) conservation state grant programs are funded at a minimum of $200 million annually. Increases budget authority by $200 million and outlays by $50 million in FY 1987 relative to CBO's baseline estimates.

Strategic petroleum reserve

Changes current law to increase mandatory fill rate from 35,000 barrels per day to 75,000 barrels per day. Increases FY 1987 outlays by $215 million.

Federal Energy Regulatory Commission (FERC) fees

Increases FERC fees to levels necessary to recover the Commission's entire budget. Saves $60 million in FY 1987 outlays.

Statute of limitations on petroleum pricing cases

Places a statute of limitations on further enforcement actions of alleged petroleum pricing violations.

Manufacturing energy survey

Redefines Department of Energy industrial energy survey activities.

Modifications of definition of "fuel costs"

Changes definition of fuel costs for the purpose of calculating energy savings in Federal buildings.

Department of Energy (DOE) oil study

Requires DOE to conduct a study on crude oil production and refining capacity in the United States.

Abandoned mine research and development

Transfers research and development activities on abandoned mine lands from the Office of Surface Mining to the Bureau of Mines.

Great Swamp National Wildlife Refuge

Requires the Environmental Protection Agency (EPA) to report to Congress on the progress in cleaning up the Great Swamp National Wildlife Refuge in New Jersey.

NRC fees

Drops House and Senate provisions requiring an increase in Nuclear Regulatory Commission (NRC) fees.

EPA fees

Drops a Senate provision requiring increases in Environmental Protection Agency (EPA) fees.

Oil pollution/ocean dumping

Drops provisions proposed by the House that created a new offshore pollution compensation program and revamped the Environmental Protection Agency's ocean dumping permit program.

Buy America (OCS)

Drops House provision that would require 50 percent of equipment used in the Outer Continental Shelf (OCS) to be American made.

TITLE IV—TRANSPORTATION AND RELATED PROGRAMS

Conrail

Sells Conrail through a public offering sale with a goal of $2.0 billion in proceeds to the federal government. The sale will be handled through a team of investment bankers chosen by the Secretary of Transportation. The House agreed to drop its provisions concerning railroad labor protection.

EDA asset sales

Sells defaulted Economic Development Administration (EDA) loans in amounts sufficient to reduce outlays by $50 million in FY 1987.

Highway programs

Drops all provisions on highway programs, leaving no change in current law.

TITLE V—MARITIME PROGRAMS

Maritime loan guarantees

Reforms the treatment of bankrupt firms in default on Title XI maritime ship loans. The Federal government may foreclose on ships guaranteed with Title XI loans owned by firms entering bankruptcy after August 1, 1986. Saves $12 million in FY 1987 outlays.

Coast Guard user fees

Drops Senate provision that created a voluntary stamp program through which boaters would pay in advance for certain Coast Guard services. Retains House provision that increases Coast Guard user fees by about $1 million a year.

Panama Canal investment

Drops House provision that changed the accounting of the Panama Canal Investment Base.

TITLE VI—CIVIL SERVICE, POSTAL SERVICE AND GOVERNMENTAL AFFAIRS GENERALLY

Thrift savings participation

Allows all Federal employees to contribute to the new thrift savings plan beginning April 1, 1987. Saves $96 million in FY 1987 outlays.

Civil Service Retirement System investment

Allows disinvestment of civil service retirement and disability trust funds to pay benefits when the debt ceiling is approached. Restores the portfolio and repays interest if disinvestment occurs.

Revenue foregone

Changes the method of computing the revenue foregone appropriation for the U.S. Postal Service.

Program civil fraud

Establishes procedures for certain Federal agencies to impose civil penalties on any person or organization that knowingly makes false claims or statements to the Federal agency or to intermediaries that disburse Federal funds.

TITLE VII—FISCAL PROCEDURES

Federal program COLA adjustment

Exempts Federal civilian, military, and related retirement COLA's from future sequesters under the Balanced Budget Act.

Dual benefit exemption

Exempts railroad retirement windfall benefits from future sequesters under the Balanced Budget Act.

Part-time annuity computation

Makes a technical change to the computation of retirement benefits for part-time employees at Veterans Administration medical centers.

General revenue sharing

Requires general revenue sharing payments normally made on October 5 to be made on September 30. (The payment was made on September 30, but legislation is needed to count savings of $680 million in FY 1987.)

Higher education savings

Conferees have agreed that the provisions of S. 1965, the Higher Education Act conference report, as passed by the House and Senate and submitted to the President for signature, shall be the vehicle for budgetary savings in compliance with the Budget Resolution for FY 1987. Accordingly, H.R. 5300 references the provisions of S. 1965, and previous Senate legislative language has been deleted from the bill. The main savings provisions in the bill are described below.

Guaranteed Student Loans

Requires guaranty agencies to pay an annual fee to the Federal government based on annual default rates of loans in their portfolios. Reduces the special allowance paid to banks from 3.5 percent above the three month treasury bill bond equivalency rate to 3.25 percent above that rate. Requires all students to demonstrate need for financial aid regardless of income, and limits borrowing to the "needed" amount or the statutory maximum. Tightens the definition of independent student and extends student deferments because of unemployment to 24 months. Saves $65 million in FY 1987 outlays.

Academic Facilities Loans

Instructs the Secretary of Education to sell Federal academic facilities loans in such amounts that will carry out the directions in the Budget Resolution for FY 1987. Reauthorizes and modifies the discounting provisions in current law in order to permit the necessary sales. Saves $579 million in FY 1987 outlays.

Bryd amendment

Modifies section 20001 of COBRA to clarify the application of the rules governing extraneous provisions in reconciliation bills in the Senate, and extends these rules through calendar year 1987.

President's budget submission

Does not change current law date for submission of the President's budget from the first Monday after January 3.

Treatment of loan sales

Drops general language in both the Senate and House bills concerning the treatment of loan asset sales.

TITLE VIII—REVENUES, TRADE, AND RELATED PROGRAMS

Increases penalties

Doubles the current 5 percent business penalty for failure to deposit withheld taxes in a timely fashion to 10 percent of the underdeposit. Effective for deposits required after date of enactment.

Increases the penalty rate from 10 percent to 25 percent of the portion of a tax underpayment due to substantial understatement of tax liability. An understatement is substantial if it exceeds the greater of 10 percent of the tax return or $5,000. Effective for penalties assessed after date of enactment.

Accelerate excise tax payments

Shortens the payments due date for beer, wine, distilled spirits and tobacco products to 14 days after the close of each semimonthly deposit period. The period is currently 15 days for beer, wine and imported distilled spirits, 25 days for tobacco and 30 days for domestic distilled spirits. Effective for semi-monthly periods ending on or after December 31, 1986.

Port use tax

Drops port use tax provision proposed by the House.

Oil spill liability tax

Imposes an excise tax of 1.3 cents per barrel on domestic crude oil and on imported crude oil and petroleum products to fund an Oil Spill Liability Trust Fund. The Trust Fund will be used to clean up off-shore oil spills with a limitation of $250 million per spill. The tax will trigger off when the Trust Fund contains $300 million and trigger on when it contains less than $150 million. This provision will become effective only if authorizing legislation is enacted by February 1, 1987.

Rate of FUTA tax

Drops extension of the FUTA tax proposed by the House.

Telephone excise tax

Drops telephone excise tax proposed by the House.

Customs user fee

Imposes an ad valorem fee of 0.22 percent in FY 1987 and 0.17 percent in FY 1988 and FY 1989 on entries of imported commercial merchandise. In FY 1988 and FY 1989, the fee will be reduced if the revenue gain exceeds the amounts necessary to fund customs commercial operations. The fee does not apply to products of least developed developing countries, Caribbean Basin Initiative countries. U.S. Insular possessions, or to schedule 8 products. Effective December 1, 1986.

Accelerate Social Security payroll deposits

Subjects state and local governments to the same standards for timely deposit of social security contributions as private organizations. Relieves states of the responsibility for collecting the social security contributions of their political subdivisions. Effective January 1, 1987.

Foreign tax credit

Denies the foreign tax credit to companies operating in countries that are not recognized by the United States or that have been determined by the Secretary of State to repeatedly support acts of international terrorism. Effective January 1, 1987.

IRS compliance

Provides that appropriations to the IRS shall be made at a level above baseline sufficient to fund increased revenue collecting activity. This is expected to generate $2.4 billion in increased revenue for FY 1987.

Tax treatment of Conrail sale

Provides that the stock sale shall be treated as an asset purchase with the result that no net operating losses or other carryovers such as unused investment tax credits will be usable after the public sale.

Debt limit extension

Temporarily increases the statutory debt limit by $189 billion, from $2.111 trillion to $2.300 trillion. On May 15, 1987, the statutory debt ceiling falls back to its previous permanent level of $2.111 trillion.

TITLE IX—INCOME SECURITY, MEDICARE, MEDICAID, AND MATERNAL HEALTH PROGRAMS

AFDC

Drops provision to mandate the AFDC Unemployed Parent program. Includes a hold harmless provision for states adversely affected by funding formula changes passed in COBRA.

Social Security

Eliminates the 3 percent social security COLA trigger, thus allowing a COLA to be paid in January. Drops the provision to guarantee that social security benefits will be paid even when the public debt limit is reached.

Medicare part A

Increases medicare hospital prospective payment rates by 1.15 percent, compared to the Administration's 0.5 percent increase. Limits the increase in hospital capital costs by 3.5 percent in 1987, 7 percent in 1988, and 10 percent in 1989. Limits the 1987 increase in the medicare inpatient hospital deductible to $520, and modifies the index for computing the deductible. Adds provisions to improve quality of care.

Medicare parts A and B

Eliminates medicare periodic interim payments (PIP), except for hospitals which serve a large proportion of low income beneficiaries and for rural hospitals with less than 100 beds. Requires prompt payment of claims in 26 days effective in FY 1988. Makes medicare the secondary payor for beneficiaries who receive employment-based health benefits. Prohibits the Administration from publishing before September 1, 1987, final regulations which effect hospital payments, hospital capital, or physician payments.

Medicare part B

Reduces payments for cataract surgery and specifies criteria which the Administration must consider before making inherent reasonableness decisions. Reduces end stage renal dialysis payments by $2 per service, compared to the Administration's regulatory reduction of $11. Limits payments for clinical labs and nutrition supplies. Allows medicare reimbursement for vision care services offered by optometrists. Provides a two-tier increase in medicare physician payments.

State and local Medicare coverage

Drops Senate provision to extend medicare coverage on a mandatory basis to all state and local employees.

Medicaid

Allows states to provide medicaid coverage for pregnant women and infants, and the elderly and disabled with income below poverty level, but who do not qualify for AFDC or SSI. Holds harmless those states adversely affected by a change in the medicaid formula made in COBRA.

Pension benefits

Requires employers to continue pension accrual for employees who work beyond the normal retirement age. Saves $1 million in FY 1987 outlays.

Risk pools/access to health care

Drops all provisions.

OTHER PROVISIONS DROPPED FROM HOUSE OR SENATE BILLS

Across-the-board appropriations reductions

Drops House language instituting an automatic reduction in FY 1987 appropriations sufficient to reduce outlays in that year by $1 billion, with the reductions to be implemented in the same manner as under the Balanced Budget Act.

Food for peace

Drops Senate language requiring all funds appropriated for FY 1986 for Public Law 480, Title II programs be obligated during FY 1986.

Medicare off-budget

Retains current law treatment of medicare as part of the unified Federal budget.

SBA loan asset sales

Drops both the House COSBI proposal and the Senate Section 503 loan asset sales from the reconciliation bill.

SAVINGS IN CONFERENCE AGREEMENT ON THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986

[In millions of dollars]

	Savings from CBO's Gradison base				
	Fiscal year 1987	Savings from CBO's Adjusted Reconciliation Base	Fiscal years—		
			1988	1989	1987–89
Title I—Agriculture Programs:					
RDIF loan asset sales	−1,000	−1,000	−552	−547	−2099
Prepayment of REA loans	−797	−797	110	110	−577

SAVINGS IN CONFERENCE AGREEMENT ON THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986—Continued

[In millions of dollars]

	Savings from CBO's Gradison base				
	Fiscal year 1987	Savings from CBO's Adjusted Reconciliation Base	Fiscal years—		
			1988	1989	1987–89
Advance deficiency payments [1]	0	0	0	0	0
Subtotal, title I	−1,797	−1,797	−442	−437	−2,676
Title II—Banking and Housing Programs:					
Rural housing loan sales	−1,715	−1,715	233	233	−1,249
Sale of Eximbank loans	−1,500	−1,500	424	398	−678
Housing Bill (H.R. 1) [2]	0	0	0	0	0
Broaden FDIC assessment base [2]	0	0	0	0	0
Subtotal, title II	−3,215	−3,215	657	631	−1,927
Title III—Energy and Environmental Programs:					
Petroleum overcharge collections	−400	−400	−200	0	−600
Energy conservation programs	0	50	184	140	374
Strategic petroleum reserve	215	215	29	0	244
FERC annual charges	−60	−65	−66	−67	−198
NRC user fees [2]	0	0	0	0	0
EPA fees [2]	0	0	0	0	0
Ocean dumping fees [2]	0	0	0	0	0
Subtotal, title III	−245	−200	−53	73	−180
Title IV—Transportation and Related Programs:					
Sale of Conrail	−2,160	−2,160	237	246	−1,677
Highway programs [2]	0	0	0	0	0
EDA loan asset sales	−50	−50	27	0	−23
Subtotal, title IV	−2,210	−2,210	264	246	−1,700
Title V—Maritime Programs:					
Maritime loan defaults	−12	−12	−36	−6	−54
Coast Guard user fees	−1	−1	−2	0	−3
Panama Canal investment [2]	0	0	0	0	0
Subtotal, title VI	−13	−13	−38	−6	−57
Title VI—Civil Service, Postal Service and Governmental Affairs Generally:					
Thrift savings participation	−96	−96	32	23	−41
Revenue foregone [3]	0	0	0	−210	−210
Subtotal, title VI	−96	−96	32	−187	−251
Title VII—Fiscal Procedures:					
Part-time annuity computation	−(*)	−(*)	−(*)	−(*)	−1
General revenue sharing	−680	−680	0	0	−680
Guaranteed student loans [4]	(−65)	(−65)	(−110)	(−270)	(−445)
College housing and higher education loan asset sales [4]	(−579)	(−579)	(−223)	(−13)	(−815)
Subtotal, title VII	−680	−680	0	0	(−681)
Title VIII—Revenues, Trade and Related:					
Increase IRS penalties	−981	−981	−990	−1,020	−2,991
Accelerate excise tax collections	−319	−319	−1	−1	
Tax treatment of Conrail sale	0	0	0	0	0
Accelerate State and local deposits	−388	−388	−290	−1,158	−1,836
State and local medicare coverage [2]	0	0	0	0	0
Foreign tax credits	−14	−14	−26	−28	−68
Customs user fees	−790	−790	−780	−840	−2,410
Waterway Bill Port use tax [2]	0	0	0	0	0
Telephone excise tax [2]	0	0	0	0	0
Extend FUTA repayment tax [2]	0	0	0	0	0
Oil spill liability trust fund [1]	0	0	0	0	0
Pension benefit accrual	0	0	−(*)	−(*)	0
Increase IRS compliance [5]	−2,355	−2,355	−400	−100	−2,855
Subtotal, title VIII	−4,847	−4,847	−2,487	−3,147	−10,481
Title IX—Income Security, Medicare, Medicaid, and MCH:					
Medicare, part A	533	533	−105	−498	−70
Medicare, part A and B	495	495	618	−27	1,086
Medicaid	170	170	394	519	1,083
AFDC/CSE	14	14	−2	−3	9
Eliminate COLA triggers	808	808	−761	75	122
Extend benefit accrual	−1	−1	−8	−19	−28
Subtotal, title IX	2,019	2,019	136	47	2,202
Other provisions dropped from bills:					
Appropriaitons 50–50 cut in discretionary budget authority [2]	0	0	0	0	0
SBA loan asset sales [2]	0	0	0	0	0
Subtotal, other	0	0	0	0	0
Total Savings in bill	−11,084	−11,039	−1,931	−2,780	−15,751
Savings in Higher Education Act	−644	−644	−333	−283	−1,260
Total reconciliation savings	−11,728	−11,683	−2,264	−3,063	−17,011

[1] Provision has no cost relative to CBO's Gradison or adjusted reconciliation baseline.
[2] Provision was dropped in conference.
[3] CBO scores this provision as an authorization. The Budget Committees have generally disagreed and scored this type of savings as direct spending.
[4] Senate and House conferees have agreed that S. 1965, the Higher Education Act, shall be the legislative vehicle for achieving savings in compliance with the reconciliation instructions for FY 1987. Therefore, CBO will not score these savings as part of the reconciliation bill. However, these savings will be counted in the reconciliation total for FY 1986.
[5] CBO will score the revenue increase associated with this provision if the appropriations for the IRS referenced in the reconciliation bill is enacted on a full year basis and necessary administrative actions are taken by the IRS.

Mr. ARMSTRONG. Mr. President, could we have order in the Senate and also could we ask if the chairman has copies of that that Members could refer to while this matter is under debate?

Mr. DOMENICI. I did not hear the distinguished Senator.

Could we have order, Mr. President?

Mr. ARMSTRONG. Mr. President, that underscores the first request, which was, could we have order in the Senate?

The PRESIDING OFFICER. If the Senator will withhold, the Chair will try to get order. We may be getting near the end of the session, I would say to Members, but we do need order in this Chamber if we are going to complete the work.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have a statement, dated October 17, "Statement of the Administration Policy from the White House on H.R. 5300." In essence, the statement of policy says:

The administration supports the enactment of reconciliation legislation for FY 1987. While the conference report on H.R. 5300 has addressed many of the concerns raised by the administration * * *.

Basically, the letter, while it says here they are disappointed, indicates that they support it.

I ask unanimous consent that the Statement of the Administration Policy be printed in the RECORD.

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

STATEMENT OF ADMINISTRATION POLICY

The Administration supports enactment of reconciliation legislation for FY 1987. While the Conference Report on H.R. 5300 has addressed many of the concerns raised by the Administration—including deleting AFDC-UP, deleting housing act provisions, and devising mostly acceptable language for the sale of Conrail—problems still remain.

Specifically, the Administration opposes several provisions still contained in the bill.

The provision mandating a fill rate of 75,000 barrels per day for the Strategic Petroleum Reserve (SPRO) is altogether unnecessary and would increase outlays by $220 million per year over the present minimum fill rate of 35,000 barrels per day.

Customs fees are set artifically high—exceeding the actual cost of cargo inspection and thus appearing to be GATT illegal.

The tax provisions relating to Conrail are burdensome and may interfere with obtaining the best price for the railroad.

It is disturbing and disappointing that this reconciliation bill, which is supposed to reduce spending, not only has few outlay reductions, but actually incorporates substantial program expansions, mainly in the Medicare area—increasing outlays on the order of $2 billion in FY 1987 and even more annually thereafter.

Mr. DOMENICI. Mr. President, I want to summarize in gross terms what this reconciliation bill does.

Mr. ARMSTRONG. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The point of order is well taken. The Chair is having great difficulty in persuading the Senate to be in order.

We will ask the Senator from New Mexico to withhold now until audible conversations have ceased. The Chair would urge Members who are conversing with staff to do so in the cloakroom.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, let me just summarize what we will accomplish if we adopt the reconciliation conference report that is before us.

We will reduce the deficit for 1987 by $7 billion with asset sales; we will reduce the deficit by $4.1 billion with revenues; $851 million with user fees; other spending changes add $184 million; for a total of $11,728 million in the first year.

I regret to say that that does not carry out into the out-years, but the sum total that we will effect by way of savings or reductions, I should say, off the deficit amount to, over the next 3 years, $17,011 million.

I would also like to inform the Senate that with the adoption of this reconciliation bill, if it is adopted—and I hope it is. It was adopted by the House about 2 hours ago by a vote of 305 to 69. If we adopt it and it is signed by the President, and as I indicated I have no doubt the President will sign it, we will have accomplished the following: The Gradison baseline deficit from which any sequester would have been calculated would be $148.9 billion. As everyone knows, when that is accomplished, there would be no sequester, even if we had the automatic provision that the distinguished sponsors of the bill are seeking to put into the legislation, because $148.9 billion is less than the $154 billion which we must reach in order to avoid a sequester.

Obviously, that includes the $11.7 billion reduction in this bill. It includes the $11.4 billion in tax reform, wherein the revenues go up. But it also contemplates that we take into consideration that we have passed an appropriations bill for 1 full year. When we voted in the CR awhile ago, that is calculated into this. That is why I have been saying for the last 3 or 4 weeks there would be no sequester. That is why I said yesterday that we were on a path now this year for the largest reduction in the expenditure side of this Government in some 30 years. As a matter of fact, the expenditure side is growing far less than inflation. In fact, there has not been a bigger decline in the last 30 years. The bill includes defense for a whole year, all of the entitlements for a full year, and all of the appropriated accounts.

Obviously, there will be a few supplementals that are necessary. I do not know how they will be worked out, because there is no more room left in the budget, but as of this point we are well within the sequester. And, as I indicated before, I complimented those who accomplished that.

Mr. President, I am not telling the Senate that we have before us a reconciliation bill that we should imitate in future years, even though it does exactly what I have just said and even though I hope it will become law. I am not suggesting that it is the kind of reconciliation bill that we should have in place as we move to reach the totals of Gramm-Rudman-Hollings because under the guidelines that the U.S. Congress followed, with the President of the United States admonishing us, most of these savings are one-time savings and most of the revenues, most, are nonrecurring revenues.

As a consequence, we will meet the targets this year and it will help us somewhat in 1988, but not a great deal.

Mr. President, there is one other feature of this bill that I must tell the Senate about. When this bill came out of conference, the Ways and Means Committee and the Finance Committee, because they were of the opinion that we ought to get the business of the Senate behind us here tonight, incorporated in their part of this bill the extension of the debt limit of the United States, so that it will continue until May 15 of the coming year.

□ 2020

In other words, instead of the full year extension of the debt limit, this reconciliation bill contains an extension until May 14 and contains within it the requisite deficit numbers to carry the Treasury of the United States through that day.

I do not want to deceive the Senate. This is extraneous. There is no question about it. It is in this reconciliation bill. It is not part of the reconciliation instruction. Under the Byrd amendment which we adopted unanimously, it is extraneous to the reconciliation bill. Everyone should know that is not fatal because we have within ourselves here as the U.S. Senate the prerogative to waive that. I will ask the U.S. Senate very shortly to waive that because I know it is extraneous.

Those who put it in, working with the leader of the U.S. Senate and myself as chairman of the Budget Committee, knew it was extraneous. But we thought we ought to present one package to the U.S. Senate. Let us vote on it. If somebody wants to challenge the debt limit's propriety, they can do so. I have been informed somebody intends to, and consequently I intend myself to move that we waive the requisite provisions of the current law. We will have to vote on that, and it will have to have 60 votes to be waived.

I am going to yield the floor in a moment. I am ready to answer any questions. But before I yield, I will move, Mr. President, that we waive the provisions of Senate Resolution 509 for the purposes of considering section 8201 of the conference report and H.R. 5300, the Omnibus Budget Reconciliation Act of 1986.

Mr. ARMSTRONG. Mr. President, will the Senator yield for a question?

Mr. DOMENICI. Might I just repeat for the Senate this motion that I made and that is now before the Senate is provided for within the rules of the Senate. The Senate will have an opportunity to decide whether they want the debt limit in this reconciliation bill or not. It will take 60 votes under our rules for us to leave the debt limit in this bill. But I remind the Senate if we take it out, we will have to send the bill back to the House, and we will have to see what they do about a debt limit bill.

I am pleased to yield to the Senator from Colorado for a question.

Mr. ARMSTRONG. Mr. President, the question I wanted to address to the Senator is this: If he is making that waiver motion on the expectation that I am going to make a point of order, he can save us all about 15 minutes of time and not make the motion.

I have been thinking about it. I have determined that there is no point in raising this point of order. I am going to resolve my concerns in a different way. I would speak on the bill. He can save us that time if he would like to.

Mr. FORD. Mr. President, would the Senator from New Mexico yield for a question?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Parliamentary inquiry. What would the Senator from New Mexico have to do to remove his motion from consideration?

The PRESIDING OFFICER. The Senator has the right to withdraw his motion at this time.

Mr. DOMENICI. I withdraw my motion at this time.

The PRESIDING OFFICER. Who yields time?

Mr. FORD. I would like to ask the Senator from New Mexico a question, if I could.

The PRESIDING OFFICER. The Senator is recognized for that purpose.

Mr. FORD. Would the Senator tell me what the debt ceiling increase is in this particular legislation?

Mr. DOMENICI. Let me say I did not tell the Senate the number. I told them the date. The date is May 15. The number is $189 billion, I am informed.

Mr. FORD. That is, $189 billion more than the present debt ceiling?

Mr. DOMENICI. That is correct.

Mr. FORD. That is the increase?

Mr. DOMENICI. The Senator is correct.

Mr. FORD. That will only carry us until May 15, 1987.

Mr. DOMENICI. The Senator is correct.

Mr. FORD. I thank the Senator.

Mr. CHILES addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, the reconciliation bill is the last piece of the budget puzzle that we have been building throughout the year.

The budget is not written on one piece of paper—it is written as the cumulative effect of a host of tax and spending bills we have written through the year. We have passed the tax reform bill, the continuing resolution appropriations bill, the Superfund bill, the highway bill, and many others. As we go to pass the reconciliation bill, we put the last piece in the puzzle and we get to see what the picture is which emerges. I would therefore like, at this moment to play art critic, and say I am not sure that we have painted a masterpiece in that puzzle which we put together.

The standoff locked inside this year's budget has a parallel in literature nearly identical to the story of the last 6 years.

The story is "Dr. Doolittle," and the character that best fits our recent economic policy is the Pushmi-Pullyu. It is an animal with conflicting ideas at both ends, an indecisive beast, constantly at odds with itself and making little progress.

After 6 years of pushing and pulling, when you look at the net results we are sort of where we were when we started. The budget deficit remains at over $150 billion, with a prospect for more when our goal is less. It is a product of pushing for budget cuts in one direction, while pulling out revenues at an even faster rate.

When you strip out the smoke and mirrors we end up with $6 billion in savings from a $180 billion deficit. It is not as much as we would like to have done, and certainly it is not as much as we should have done.

Our international trade deficit is at a record level, the result of too little pushing, and too much pulling, and a trade policy that does little, and produces less.

And although the administration pushed all year for its brand of tax reform, the outcome has been to pull the rug from beneath those who hoped revenue policy would be an ally in the battle for lower deficits.

After 5 years of administration policy that punished Government as a substitute for clear thinking about the future, we are at a standstill. We have said "no" so often without ever getting around to deciding which way we are headed.

In truth, things are static—a precarious inertia that finds the United States no better equipped to confront a competitive world today than we were 6 years ago.

We have been standing still, but our competition has been on the move. Germany, for example—a nation just over one-fourth the size of the United States—now exports more goods and services to the world than we do.

Japan—less than half the size of the United States—actually graduates more engineers than we do.

So we must do much better. We must be bold. But consider this year's budget.

We are better prepared to defend America. But we are no better prepared to pay for it. After years of increased spending, we have now essentially frozen military expenditures at last year's levels. To cut defense further, may well eat into our combat readiness.

We have made deep cuts in domestic spending to fight the deficit. But when the Senate was asked this year if it was willing to follow the White House notion that the budget could be balanced with domestic spending cuts alone, the proposition got only 14 votes.

We have said we will sell off our properties if it will reduce our debts. But even if we were to sell our direct loan portfolio and all Federal lands, we would still have a deficit 2 years from now of $122 billion.

We have passed a variant of tax reform on the pledge that it would be revenue neutral. But next year that so-called neutrality will add $17 billion to the Federal deficit, and that will make our hopes for sustaining recovery that much more difficult.

We have made some adjustments in the budget. We have reshaped some priorities. We will invest a bit more in education. We will apply a bit more of our resources to the war on drugs. But these investments are minimal compared to our needs. We have demonstrated a glimmer of wisdom, but what we need is a beacon.

Where we are now is not only back where we began, but a little farther back than that. In fact, a lot farther back. Our national debt is more than $1 trillion higher than it was 6 years ago. Our competition is stronger than it was 6 years ago. And after 6 years, it is time to rethink our prospects.

□ 2030

To begin with, we must disenthrall ourselves from the notion that government is the stumbling block to progress.

The central question of our time is not government. The central question is what will this country do as a people to leave its mark on history and the

hopes of all of us for a better life in a more peaceful world.

In that quest, the driving force is not government, but the people. It is not a matter of public activity versus private enterprise; it is a matter of whether we can join the two creatively to further our national purposes.

The GI bill was a partnership that put tens of thousands through college. The Federal Housing Administration and VA housing helped many of us buy our first homes. Land grant colleges are the combined vision of public and private initiative. And Social Security is a trust the people assigned the Government to safeguard funds for our retirement years.

If we want the next century to be another 100 years of American advancement, it is the people and their leaders—together—who must shape the policies and make them happen.

Within government, within business, industry, our schools and research centers, we must seek new paths.

One new path has recently been cleared. At the National Bureau of Standards, an alliance of business, industry, universities, and Government have created a workplace of the future. Computer-driven robots manufacture precision goods at low cost. From this experiment we can learn to improve our productivity, and provide our workers with the skills to reassert themselves as the best and most productive in the world.

As a people, we must decide which programs, now in place, serve us well, and which do not. As a people, we must decide which new directions we must follow—which new adjustments we must make—to strengthen our economy now and for the decisive economic competition that lies ahead of us.

If we are going to turn onto new paths, we must leave the old ones.

And as a people, we must decide whether the status quo is status enough for an inventive country with the proudest record of achievement in the history of the world.

The choices we must make are very hard. But we must make them in the years ahead because we have failed to make them in the years before.

What we must do is nothing less than mobilize our society in search of new levels of achievement for this Nation.

We have, today, a structural deficit that has defied every step we have taken. It is a deficit that will remain even under conditions of full employment because we do not have the financial resources to erase it. It will remain unless we reestablish a market vitality and rebuild our level of productivity. And its existence makes each of those steps more difficult.

But the problems are not insurmountable. Their solution rests on our ability to decide and our capacity for vision and daring.

We must do more than say "no" to excess spending; we must say "yes" to spending that invests in our future growth.

We must do more than tinker with existing programs. We must drop some of the old to make room for the new.

What we must do is boldly stretch our imaginations—and commit our resources—even within the constraints of our massive debts—to get this country moving into the future.

Our record this year—as it has been for the 5 years that came before—has been indecisive, and this year's budget confirms it. We had no end of opportunity to shift our thinking into a higher gear. But we clutched, and if we continue in that course, we will tie ourselves up in grid lock.

The explanation of the budget that follows includes some evidence that we are willing to change our ways. But we must do better—much better.

We have hopes to explore and commercialize space. But we must question those intentions in the aftermath of the *Challenger* tragedy. The questions are not about our will to go on. We will go on. But when the administration seeks a new orbiter without providing the funds to pay for it, the questions persist.

In the past 6 years, we have purchased $1 trillion in military hardware. We must now provide the resources to operate and maintain it.

In the past 6 years, we have spent a lot of money preparing for a nuclear war we hope we never have to fight. But with all that money—and all the funds we have invested to guard against a conventional war in Europe—we are still not prepared for the immediate threats we face in Libya, Lebanon, the Middle East, and Central America.

We are ill equipped to fight either the terrorist or the brushfire war. We are no better prepared to rescue hostages in 1986 than we were to get them out of Iran in 1980. Whether it is because of interservice rivalry or lack of planning, we still do not have the command structure, the transportation, or the communication to win the battles that could prevent the wars.

So we must do better.

In this budget we will find some discipline of our military spending, but we have not yet faced up to rethinking whether our military resources are being committed to the areas where we are most likely to fight.

In this budget we will find some savings, but most is for 1 year rather than the long haul; we are not on track to a balanced budget at any foreseeable date.

And in this budget we will find a measure of vision, but it is hindsight, combing through the same list of programs, adding a little here, subtracting a little there, but not providing any major policy departures. We seem to be providing a microscopic view of our problems, and losing sight of our opportunities.

We have crossed this path before—and recrossed it many times while we debate rather than make bold decisions.

Why is it that we react to crisis rather than plan ahead?

Why do we lock ourselves in the politics of random fear and narrow horizons rather than swinging open the doors to a higher ambition and expanding possibilities.

A great nation can only be timid so long. Our country deserves better.

It is time for this country to turn in a fresh direction, to put aside the political archaeology of the past, and pledge ourselves to boldness, advancement, exploration, and growth.

We must be daring and strong, willing to challenge every convention, ready to seize each opportunity, and determined to advance along the lines of leadership we must rediscover among ourselves.

Our future does not hinge on the size of Government. Our future does not hinge on how much money we can spend or how fast we can spend it. Our future is—to put it simply—ours. It is ours to decide the extent of the American adventure.

Mr. President, I ask unanimous consent to have printed in the RECORD a summary of the total budget.

There being no objection, the fiscal year 1987 budget wrap-up was ordered to be printed in the RECORD, as follows:

FISCAL YEAR 1987 BUDGET WRAP-UP

HIGHLIGHTS

FY 1987 Deficit: Deficit estimated at about $151 billion. Sequestration is avoided by coming within $10 billion of the Gramm-Rudman-Hollings target of $144 billion for FY 1987. More realistic budget estimates show the FY 1987 budget deficit is likely to end up at *$180–190 billion.*

Deficit Reduction in FY 1987: A Domenici-Chiles bipartisan budget proposal, reported by the Senate Budget Committee, would have achieved the Gramm-Rudman-Hollings deficit target of $144 billion in FY 1987 and exceeded the three year deficit reduction target of $322 billion. This would have been achieved largely through permanent changes, such as holding the line on defense spending, increasing revenues by $18.4 billion and saving some $14.3 billion in non-defense spending. Instead, in 1987, the first year of Gramm-Rudman-Hollings, *only $6 billion of deficit reduction from policy changes were enacted* (see Table 1).

In FY 1987, $26 billion was "cut" from CBO's baseline deficit of $182 billion by legislation that has no permanent or long-run impact on the deficit. $11 billion comes from the tax reform windfall and $8 billion in one time-only asset sales that will raise future deficits.

Some "savings" are highly questionable. For example, $3 billion of increased revenues from additional IRS compliance activities and penalties is doubtful. Moving the date of military paychecks by one day

(moving one paycheck into the next fiscal year) is purely an accounting change which "saves" $2.9 billion in outlays.

In FY 1987, only $4 billion net reduction in the deficit was accomplished by policy changes. Cuts include $3 billion in domestic appropriations; $2 billion from defense; and, $2 billion in increased revenues. These savings are offset by $1 billion in increased entitlement spending. Moreover, almost all of the savings in defense and domestic programs are derived by foregoing increases for inflation. In the aggregate, FY 1987 appropriations are above FY 1986 levels.

What Will the FY 1987 Deficit Really Be?: Deficit estimates made at the beginning of the fiscal year are often revised upwards (in FY 1986, for example, the deficit estimate rose about $35 billion during the year). When FY 1987 has ended next October, the deficit will probably be in the range of *$180-$190 billion* (see Table 2).

Higher FY 1987 deficits are likely due to: (1) Unrealistic economic assumptions ($10-12 billion impact); (2) Unrealistically low outlay estimates for defense and farm programs, and insufficient funds budgeted for the usual range of contingencies which arise in any given fiscal year (e.g., in FY 1986 extra funds for the FDIC and FSLIC were needed) ($9-12 billion impact); (3) Overestimation of revenues from tax reform ($5-10 billion impact); and, (4) A variety of other technical re-estimates (total of $5 billion impact).

TABLE 1.—*Current estimate of deficit for fiscal year 1987* [1]

[In billions of dollars]

CBO baseline deficit [2]	182
Policy changes reducing deficits:	
Defense	−2
Domestic appropriations	−3
Revenues	−2
Entitlements (new spending)	+1
Subtotal	−6
Other deficit reductions:	
Tax reform windfall	−11
Asset sales	−8
IRS compliance and penalties	−3
Move defense pay-date	−3
Debt service	−1
Subtotal	−26
Total deficit reduction [3]	−31
Revised deficit estimate	151

[1] Minority Staff Senate Budget Committee Estimate based on preliminary data supplied by CBO.

[2] CBO August Baseline Deficit Projection with adjustments for consistency with CBO August Sequestration Report.

[3] Totals may not add due to rounding.

TABLE 2.—*Likely deficit estimate for fiscal year 1987*

[In billions of dollars]

Current estimate	151
Reestimates:	
Economy	+10-12
Farm, defense and unanticipated contingencies	+9-12
Tax reform	+5-10
Other re-estimates	+5
Revised deficit estimate	180-190

FY 1988 and Outyear Implications: The FY 1988 deficit is likely to exceed $200 billion. The FY 1987 revenue windfall of $11 billion will become a $17 billion *revenue shortfall* in FY 1988 (adding almost $30 billion to the deficit). Asset sales of $8 billion in FY 1987 disappear in FY 1988 and, in fact, increase future deficits due to lost receipts. Thus, even with a deficit reduction of $20 billion, which naturally occurs from one year to the next with modest economic growth, the deficit is likely to exceed $200 billion. Meeting the FY 1988 Gramm-Rudman-Hollings target of $108 billion will be a monumental challenge.

GROWTH BUDGET

During Senate consideration of the FY 1987 Budget Resolution, Senators Chiles and Hart proposed a "Growth Budget" amendment, calling for increased funding for programs in science, education, technological development, training, natural resources, and trade promotion.

The proposal would have provided an additional $3 billion for these programs in fiscal 1987 and a total of $17 billion over three years—to be paid by increased revenues. $1.5 billion was eventually earmarked by the full Senate for these programs in FY 1987.

The growth initiative helped hold the line against many of the Republican cuts that would have undermined future economic growth. But measured against the initial proposal, the outcome was disappointing.

TRADE

During the 99th Congress, the U.S. merchandise trade deficit increased by $50 billion and will be a record $170 billion in 1986.

Despite these record trade deficits, and clear and convincing evidence that foreign trade barriers are a major impediment to U.S. exports, the Republican leadership failed to move a single piece of Senate trade legislation to the floor.

The only piece of trade legislation voted by the Senate was the textile bill. It was sent over by the House (never reported out of the Finance Committee), approved by the Senate, and vetoed by the President. The House failed to override the President's veto, preventing further consideration by the Senate.

Numerous trade bills were introduced during the 99th Congress. Three omnibus trade bills with widespread support were offered—S. 1837 (Bentsen), S. 1860 (Danforth) and S. 2033 (Chiles). Not one of these bills was reported from the Finance Committee.

The Telecommunications Trade Act of 1985 (S. 942) was reported from committee, as was S. 1404—the Japan Unfair Trade Practices bill. Neither bill was brought to the floor.

In the closing months of the 99th Congress, the House sent over its Omnibus Trade bill (H.R. 4800). As it had done in the case of all previous Congressional initiatives—whether protectionist or not—the Administration immediately labeled it as such. The Finance Committee failed to consider H.R. 4800 and it was not brought to the floor.

TAX REFORM

Although the recently passed tax reform bill increases corporate taxes $120 billion over the next five years, none of those dollars are used for deficit reduction. In fact, the new tax law increases outyear deficits by $17 billion in FY 1988 and $15 billion in FY 1989. During those same two years, the Gramm-Rudman maximum deficit amounts drop to $108 billion and $75 billion respectively.

In addition to projected revenue shortfalls over the next few years, the tax reform legislation is likely to even further exacerbate deficit cutting attempts since it is highly sensitive to economic performance. The Senate's tax reform package, for example, was reestimated and found to be $21 billion short of revenue neutrality only two weeks after the bills passage on the Senate floor.

RECONCILIATION REVENUE PROVISIONS

The President's budget called for increased revenues of $6.7 billion in FY 1987 and $21.9 billion over the next three years. The largest single component of that recommendation was $1.7 billion annually from retention of the 16 cents per pack cigarette excise tax. Congress voted to make the 16 cents tobacco excise tax permanent as part of COBRA.

Total reconciled revenues for FY 1987 are $1.5 billion below the level recommended by the Administration. When combined with tax reform, total revenues will be down by almost $10 billion over the next three years compared to baseline and nearly a full $32 billion below the increased revenue target set by the President.

[In billions of dollars]

	1987	1988	1989	Total
Proposed New Revenues				
President's request	6.7	7.0	8.2	21.9
Domenici-Chiles (Budget Committee reported)	18.7	26.8	28.8	74.3
Senate-passed	13.2	20.2	20.6	54.0
Conference report	3.5	2.6	2.4	8.5
Impact of Enacted Revenue legislation				
Reconciliation	+4.8	+2.5	+3.1	+10.5
Tax reform	+11.4	−16.7	−15.1	−20.4
Total	+16.2	−14.2	−12.0	−9.9

DRUG BILL

The Senate and House of Representatives adopted a comprehensive, drug enforcement, education and control act in the closing days of the 99th Congress. A total of $1.7 billion in new funds was provided to implement H.R. 5484, the Anti-Drug Abuse Act, in the FY 1987 Continuing Resolution. Major provisions of the measure are as follows:

Stiffer penalties for possession and distribution of "crack" cocaine, the manufacture of controlled substances within 1,000 feet of a college, and narcotics trafficking. Major drug traffickers would face a minimum of ten years and up to life imprisonment for a first offense.

Establishment of money laundering in narcotics enterprises as a federal crime and the setting of related penalties.

Additional funds ($504 million in FY 1987) for the Drug Enforcement Administration, the Federal Prison System, the U.S. Marshals Service, the Department of Justice and the Judiciary to improve the enforcement of strengthened federal drug laws.

Additional funds for the U.S. Customs Service, its air interdiction program and the U.S. Coast Guard to increase federal efforts to interdict illicit drug smuggling (a total of $575 million in FY 1987 was provided under the Departments of Treasury, Transportation and Defense for this purpose).

Additional funds ($58 million in FY87) for international narcotics control assistance to encourage foreign cooperation in eradicating illegal drug crops and to increase U.S. drug abuse education and prevention programs in other countries.

Expansion of federal support for state and local drug abuse treatment and rehabilitation programs through a new $228 million grant.

Promotion of "drug-free" schools and communities through a new $200 million grant to enhance drug prevention and education programs.

To Rethink Our Future: An Overview of the Budget

(By Senator Lawton Chiles)

The standoff locked inside this year's budget has a parallel in literature nearly identical to the story of the last six years.

The story is *Dr. Doolittle*, and the character that best fits our recent economic policy is the Pushmi-Pullyu. It is an animal with conflicting ideas at both ends, an indecisive beast, constantly at odds with itself and making little progress.

After six years of pushing and pulling, we have done very little. The budget deficit remains at over $150 billion, with a prospect for *more* when our goal is *less*. It is a product of pushing for budget cuts in one direction, while pulling out revenues at an even faster rate.

When you strip out the smoke and mirrors we end up with 4 billion in savings from a $180 billion deficit. Not very much. Not enough.

Our international trade deficit is at a record level, the result of too little pushing, and a trade policy that does little, and produces less.

And although the administration pushed all year for its brand of tax reform, the outcome has been to pull the rug from beneath those who hoped revenue policy would be an ally in the battle for lower deficits.

After five years of administration policy that punished government as a substitute for clear thinking about the future, we are at a standstill. We have said "no" so often without ever getting around to deciding which way we are headed.

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We've been standing still, but our competition has been on the move. Germany, for example—a nation just over one-fourth the size of the United States—now exports more goods and services to the world than we do.

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In this budget we will find some discipline for our military spending, but we have not yet faced up to re-thinking whether our military resources are being committed to the areas where we are most likely to fight.

In this budget we will find some savings, but most is for one year rather than the long haul; we are not on track to a balanced budget at any foreseeable date.

And in this budget we will find a measure of vision, but it is hindsight, combing through the same list of programs, adding a little here, subtracting a little there, but not providing any major policy departures. We seem to be providing a micro-scopic view of our problems, and losing sight of our opportunities

We have crossed this path before—and re-crossed it many times while we debate rather than make bold decisions.

Why is it that we react to crisis rather than plan ahead?

Why do we lock ourselves in the politics of random fear and narrow horizons rather than swinging open the doors to a higher ambition and expanding possibilities.

A great nation can only be timid so long. Our country deserves better.

It's time for this country to turn in a fresh direction, to put aside the political archaeology of the past, and pledge ourselves to boldness, advancement, exploration and growth.

We must be daring and strong, willing to challenge every convention, ready to seize each opportunity, and determined to advance along the lines of leadership we must rediscover among ourselves.

Our future dose not hinge on the size of government. Our future does not hinge on how much money we can spend or how fast we can spend it. Our future is—to put it simply—ours. It is ours to decide the extent of the American adventure.

Revenues and Spending Programs

(Note.—The figures labelled "final FY 1987" are estimates made by the Democratic Staff of the Senate Budget Committee based on preliminary data supplied by CBO)

REVENUES

The President's budget called for increased revenues of $6.7 billion in FY 1987 and $21.9 billion over the next three years. The largest single component of that recommendation was $1.7 billion annually from retention of the 16 cents per pack cigarette excise tax. Congress voted to make the 16 cents tobacco excise tax permanent as part of COBRA.

Total reconciled revenues for FY 1987 are $1.5 billion below the level recommended by the Administration. When combined with tax reform, total revenues will be down by almost $10 billion over the next three years compared to baseline and nearly a full $32 billion below the increased revenue target set by the President. Reconciled revenue provisions include:

REVENUES

[In billions of dollars]

	1987	1988	1989	Total
Proposed New Revenues				
President's request	6.7	7.0	8.2	21.9
Domenici-Chiles (Budget Committee reported)	18.7	26.8	28.8	74.3
Senate-Passed	13.2	20.2	20.6	54.0
Conference report	3.5	2.6	2.4	8.5
Impact of Enacted Revenue Legislation				
Reconciliation	+4.8	+2.5	+3.1	+10.5
Tax Reform	+11.4	−16.7	−15.1	−20.4
Total	+16.2	−14.2	−12.0	−9.9

REVENUE PROVISIONS—SAVINGS FROM CBO'S ADJUSTED RECONCILIATION BASE

[In millions of dollars]

	Fiscal year—			
	1987	1988	1989	1987–89
1. Accelerate State and local deposits	388	290	1,158	1,836
2. Telephone excise tax	0	0	0	0
3. Accelerate excise tax collections	319	1	1	321
4. Foreign tax credits	14	26	28	68
5. Pension benefit accrual	0	0	0	0
6. Customs user fees	790	780	840	2,410
7. Tax treatment of CONRAIL sale	0	0	0	0
8. Oil spill liability trust fund	0	0	0	0
9. Amend COBRA health insurance continuation in bankruptcy	0	0	0	0
Subtotal	1,511	1,097	2,027	4,635
10. Increase IRS penalties	981	1,010	1,020	3,011
11. Increase IRS compliance	2,355	400	100	2,855
Total	4,847	2,507	3,147	10,501

Note.—Finance Committee dropped a 3-year $5,000,000,000 revenue pickup from an 8 cents increase in the tobacco excise tax.

EXPLANATION OF PROVISIONS

1. Accelerate Deposits of Social Security Contributions by State and Local Governments. Subjects State and local governments to the same standards for timely deposit of social security contributions as private employees. States would be relieved of the responsibility of collecting social security contributions of their political subdivisions. Provision effective January 1, 1987.

2. Extend Telephone Excise Tax. Continues current law three percent telephone excise tax beyond December 31, 1987 for two additional years.

3. Accelerate Excise Taxes on Distilled Spirits, Beer, Alcoholic Beverages and Cigarettes. Shortens the time period for which excise taxes on alcoholic beverages and cigarettes are payable to the Federal government. The interval for payment of excise taxes, currently ranging from 15 to 25 days after close of the period in which the excise tax liability is incurred, would be reduced to 14 days.

4. Increase Certain Penalty Tax Collections. Raises to 10 percent the current 5 percent business penalty tax for failure to deposit withheld taxes. Increase to 25 percent, the penalty for "understatement of tax liability" that currently stands at 10 percent.

5. Deny Tax Benefits with Respect to Activities in Certain Foreign Countries. Denies foreign tax credit for taxes paid on income attributable to activities conducted in foreign countries that provide support for acts of international terrorism, have no diplomatic relations with the United States or, in general, have governments not recognized by the United States.

6. Extend Benefit Accrual Beyond Normal Retirement Age. Modifies the Age Discrimination in Employment Act, the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code to provide that an employee benefit plan may not require or permit the suspension or reduction of benefit accruals on account of attainment of a specified age. Under current law, a defined pension plan is not required to provide for benefit accruals for employees who continue to work beyond their normal retirement age.

7. Impose Customs User Fees. Imposes a customs user fee on all formal entries of imported merchandise for consumption based on the customs value of such merchandise of 0.22 percent in FY 1987; 0.17 percent in FY 1988 and FY 1989.

8. Modify Tax Treatment of Conrail Public Sale. Unlike current law, where the purchase of stock in a corporation has no effect on the corporation's tax attributes, the sale of Conrail's stock will be treated as an asset sale, thus, the aggregate basis for Conrail's assets will be adjusted to reflect the stock purchase price. Similarly, no NOL or other carryovers from periods before the public sale will be available for use in post sale periods.

9. Establish Oil Spill Liability Trust Fund and Tax. Establishes an Oil Spill Liability Trust Fund in the Teasury to be financed, in part, by a 1.3 cents-per-barrel tax on domestic crude oil and imported petroleum products. Amounts in the oil spill fund would be available for removal costs, certain damages sustained by U.S. claimants and certain related costs associated with oil.

10. Amend COBRA Health Insurance Continuation in Bankruptcy Provisions. Modifies COBRA amendments to Internal Revenue Code that prohibit deductions for employer contributions to group health plans that deny continuation of coverage to employees who would otherwise lose coverage as a result of specified qualifying events. Amendments add loss coverage of retiree through bankruptcy as a qualifying event. Changes also effect period of continuation coverage and definition of beneficiary in reorganization cases.

11. Increase IRS Appropriations. Provides for increased funding for IRS to be directed to functions involving examination, collection and related tax compliance activities.

FUNCTION 050—NATIONAL DEFENSE

HIGHLIGHTS

Defense budget authority decreased in nominal terms by $2.0 billion or 1 percent over FY 1986 levels. Defense outlays increased by $9 billion or 3.2 percent over 1986 levels.

Funding for research and development grew by $2.3 billion or 7 percent.

The operations and maintenance accounts grew by $3.3 billion or 4.4 percent.

Military personnel and DoD civilian personnel received a 3 percent January pay raise.

Procurement accounts were reduced by $8.3 billion or 10 percent below FY 1986 levels.

The President requested $5.4 billion for the Strategic Defense Initiative (SDI) program. This represented nearly an 80 percent increase over FY 1986. Final appropriations for the SDI totaled $3.5 billion, a 15 percent increase over FY 1986. This is more than twice the rate as the rest of the R&D appropriation.

Staff analysis prepared for the FY 1987 budget mark-up estimated that all major moderization programs could be continued, military and civilian personnel could receive a pay raise, and readiness programs maintained at current program levels for less than $290 billion.

Final appropriations show that all major conventional and strategic programs—M-1 tank, F-16 fighter, F-18 fighter, SN-668 attack submarines, Aegis cruiser, Trident submarine—continued apace. In addition, three major new starts the C-17 transport, small ICBM, and Stealth bomber received increased funding as they approach new production. This was accomplished with appropriations at $284.7 billion.

FUNCTION 050.—NATIONAL DEFENSE

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	286.6	284.3	−2.3	−15.1	−35.9	−16.7	+15.0
Outlays	273.3	279.2	+5.9	−5.4	−17.5	−2.8	+10.8
Baseline:							
Budget authority	299.4						
Outlays	284.6						
President's budget reestimated:							
Budget authority	320.2						
Outlays	284.6						
Senate-passed resolution:							
Budget authority	301.0						
Outlays	282.0						
1987 sequester:							
Budget authority	269.3						
Outlays	268.4						

FUNCTION 150.—INTERNATIONAL AFFAIRS

HIGHLIGHTS

Congressional cuts in this function represent one of the few real reductions in the budget.

Foreign aid appropriations were cut $1.1 billion (−7%) below FY 1986; $3.1 billion

(−19%) below the President's budget request.

President requested almost a 10 percent increase in foreign aid.

Funding for aid programs in Israel and Egypt was protected at FY 1986 levels of $3 billion.

Cuts were due to Congressional concerns about excessive growth in foreign aid during FY 1980–1986 period (outlays up 113%) and questionable performance of foreign aid programs.

A $4.5 billion, five-year embassy construction and security upgrade program proposed by the President was left unfunded due to Congressional concerns over program management.

FUNCTION 150.—INTERNATIONAL AFFAIRS

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year final:							
Budget authority	18.9	17.9	−1.0	−2.8	−5.8	.....	−0.3
Outlays	17.1	12.5	−4.6	−3.1	−4.0	−1.7	−2.0
Basline:							
Budget authority		20.7					
Outlays		15.6					
President's budget reestimated:							
Budget authority		23.7					
Outlays		16.5					
Senate-passed resolution:							
Budget authority		17.9					
Outlays		14.2					
1987 sequester:							
Budget authority		18.2					
Outlays		14.5					

FUNCTION 250—GENERAL SCIENCE, SPACE AND TECHNOLOGY

HIGHLIGHTS

Outlays for general science and basic research programs of the budget were essentially frozen at FY 1986 levels.

Funding for a replacement space shuttle was included in the budget, using $3.0 billion in budget authority transferred from the Defense function. Although the President requested a new shuttle, he did not specify a means for paying for it. How an additional $3 billion in outlays in FY 1988–1990 will be accommodated with the Gramm-Rudman-Hollings deficit targets has not been specified.

FUNCTION 250.—GENERAL SCIENCE, SPACE AND TECHNOLOGY

[In billions of dollars]

	Fiscal year—		Fiscal year final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	8.8	12.1	+3.3	+2.4	+2.6	+2.8	+3.5
Outlays	8.9	9.6	+0.7	−.1	+.5	+.5	+.7
Baseline:							
Budget authority		9.7					
Outlays		9.7					
President's budget reestimated:							
Budget authority		9.5					
Outlays		9.1					
Senate-passed resolution:							
Budget authority		9.3					
Outlays		9.1					
1987 sequester							
Budget authority		8.6					
Outlays		8.9					

FUNCTION 270—ENERGY

HIGHLIGHTS

Rural Electrification Administration: Final Congressional budget contains lending levels equivalent to 1986. President's budget request would have raised interest rates on REA loans, assessed an annual fee and phased out the loan program by 1990. The 1986 Budget Reconciliation bill will allow guarantee borrowers to prepay their high interest loans without prepayment penalty up to $2.0 billion. Proposals to permit unlimited borrower prepayment failed to pass the Congress.

Strategic Petroleum Reserve: Current policy assumes a 35,000 barrel per day fill rate. The President's budget request would have placed an indefinite moratorium on fill despite historically low oil prices and large carryover balances. The final Congressional budget provides sufficient funds to maintain a 75,000 barrel per day fill rate.

Power Marketing Administration: Under the President's budget request the five power marketing administrations would have been sold by 1990 and their debt placed on a fixed repayment schedule. Both of these proposals have been rejected by the Congress.

Energy research: The President's budget request assumed a 35 percent reduction for energy supply, fossil and conservation research programs and the termination of energy conservation grant programs. The Congressional budget provides a 20% increase above the FY 1986 levels for energy research programs.

FUNCTION 270.—ENERGY

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	−0.8	4.1	+4.9	−1.7	+0.3	−0.6	−1.4
Outlays	4.6	2.8	−1.8	−1.7	−1.6	−1.8	−1.5
Baseline:							
Budget authority		5.8					
Outlays		4.5					
President's budget reestimated:							
Budget authority		3.8					
Outlays		4.4					
Senate-passed resolution:							
Budget authority		4.7					
Outlays		4.6					
1987 sequester:							
Budget authority		5.5					
Outlays		4.3					

FUNCTION 300—NATIONAL RESOURCE AND ENVIRONMENT

HIGHLIGHTS

Superfund: The final Congressional Budget provides $9 billion for the FY 1987 program. An $8.5 billion Superfund program has been authorized by the Congress.

Soil Conservation Programs: The Administration proposed deep cuts in soil conservation programs (50 percent reduction from 1986) including the complete elimination of the Great Plains, Agricultural Conservation, Water Bank and Forestry Incentive programs. The Congressional Budget provides 1986 funding levels for most programs.

Water Programs: The President's budget request increased Bureau of Reclamation and Corps of Engineers construction programs by 18 percent and proposed increased navigation user fees to pay for new projects. In addition, an omnibus water bill which authorizes programs and increases navigation and barge user fees is pending before the Congress.

FUNCTION 300.—NATIONAL RESOURCE AND ENVIRONMENT

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	12.8	13.1	+0.3	−0.3	+2.1	+0.6	+1.3
Outlays	13.2	13.8	+.6	+.1	+1.7	+1.2	+1.2
Baseline:							
Budget authority		13.4					
Outlays		13.7					
President's budget reestimated:							
Budget authority		11.0					
Outlays		12.1					
Senate-passed resolution:							
Budget authority		12.5					
Outlays		12.6					
1987 Sequester:							
Budget authority		11.8					
Outlays		12.6					

FUNCTION 350—AGRICULTURE

HIGHLIGHTS

Farm Price Supports: Final Congressional Budget provides $21.2 billion in 1987 and $59.2 billion over 3 years for the Commodity Credit Corporation. No comprehensive farm policy initiatives passed the Congress this year although proposals were introduced to expand marketing loan provisions, impose mandatory controls and target payments. Southeast regional drought assistance which provides aid to farmers through expanded disaster assistance was adopted as part of the Appropriations bill.

Farm Credit: Final Congressional budget provides levels authorized in the 1985 farm ownership and disaster loan programs in 1987. Financial assistance was neither requested nor provided for the troubled Farm Credit System. Instead, changes in accounting procedures were incorporated in Budget Reconciliation legislation.

Agricultural Research: Final Congressional budget provides $332.2 million for the Extension Service; $192.2 million higher than Administration requests. Other agricultural research and services are largely frozen at 1986 levels.

FUNCTION 350.—AGRICULTURE

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	32.4	27.7	−4.7	+0.7	+4.5	+3.9	+1.9
Outlays	31.7	26.9	−4.8	.....	+4.5	+3.4	+1.3
Baseline:							
Budget authority		27.0					
Outlays		26.9					
President's budget reestimated:							
Budget authority		23.2					
Outlays		22.4					
Senate-passed resolution:							
Budget authority		23.8					
Outlays		23.5					
1987 sequester:							
Budget authority		25.8					
Outlays		25.6					

FUNCTION 370.—COMMERCE AND HOUSING CREDIT

HIGHLIGHTS

Congress rejected virtually all of the President's recommendations for this function, including proposals to:

Terminate funding for Section 202 elderly housing;

Eliminate subsidies to provide reduced mail rates for religious, charitable and nonprofit organizations, as well as free mail for the blind;

Deny FHA mortgage insurance to families with combined incomes of $40,000 or more;

Increase upfront FHA fees and closing costs effectively shutting out the bottom one-third of all FHA homebuyers;

Scrap all rural housing homeowner and rental assistance activities administered by the Farmers Home Administration;

Terminate Small Business Administration business development loans;

Increase Government National Mortgage Associations guarantee fees.

Congress approved funding for Function 370 as follows:

Section 202 housing funded at $508 million, enough to provide almost 11,000 new elderly housing units; provided $650 million for postal subsidies, enough to maintain current subsidized postal rates; maintained FHA and GNMA fees at existing levels and provided FHA mortgage insurance sufficient to aid all homebuyers eligible under current law; SBA business programs are frozen; and the rural housing insurance fund, with an appropriation of $2.456 billion, is authorized to provide just over $2 billion in new loan activity.

FUNCTION 370.—COMMERCE AND HOUSING CREDIT

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—			
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	8.8	8.8		+0.1	[1] −2.4	[1] −1.2	+1.5
Outlays	5.7	3.0	−2.7	−1.7		−.5	−1.1
Baseline:							
Budget authority		8.7					
Outlays		4.7					
President's budget reestimated:							
Budget authority		11.2					
Outlays		3.0					
Senate-passed resolution:							
Budget authority		10.0					
Outlays		3.5					
1987 sequester:							
Budget authority		7.3					
Outlays		4.1					

[1] Spending reductions largely due to technical and economic adjustments rather than actual program cuts.

FUNCTION 400—TRANSPORTATION

HIGHLIGHTS

Coast Guard: Congress enhances drug interdiction efforts. Congress adds $237 million for operations and $90 million for construction of new vessels. $200 million over the President's total request.

Conrail: Administration had proposed sale of Conrail to Norfolk Southern, with questionable impacts on competitiveness within the rail industry, for $1.2 billion. With reconciliation, Congress authorizes public offering of Conrail. Expected receipts: $2.2 billion.

Amtrack: President proposed elimination of subsidies. Congress maintained existing level of subsidies.

Highways: Four-year highway reauthorization stalled by disagreement on Senate provisions on liberalization of speed limits, highway beautification and House provisions on local projects. Temporary extension likely. Continuing Resolution limits obligations at $13 billion, $125 million below FY 1986 and $580 million above President's request.

Urban Mass Transit Authority: Frozen at FY 1986 levels.

FAA: Congress adds $175 million to FAA operations for improvements in air safety and security.

FUNCTION 400—TRANSPORTATION

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—			
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year: 1987 final:							
Budget authority	28.9	[1] 14.4					
Outlays	28.5	25.9	−2.6	−2.4	0.3	−1.9	−1.3
Baseline:							
Budget authority		29.2					
Outlays		28.3					
President's budget reestimated:							
Budget authority		22.9					
Outlays		25.6					
Senate-passed resolution							
Budget authority		26.8					
Outlays		27.8					
1987 sequester:							
Budget authority		[1] 15.0					
Outlays		27.2					

[1] Funding not included for programs where authorization has expired. Authorization of the Federal Highway Program expired on Oct. 1, 1986.

FUNCTION 450—COMMUNITY AND REGIONAL DEVELOPMENT

HIGHLIGHTS

Congress voted against the President's proposal to terminate:

Urban development action grants;

Housing development action grants;

Housing rehabilitation action grants;

Economic Development Administration;

Appalachian Regional Commission;

Rural water and sewer facilities program;

Small Business Administration disaster assistance;

Tennessee Valley Authority regional, economic, community and agriculture development programs.

Congress also rejected the Administration's request to defer $500 million of FY 1986 community development block grant appropriations and to rescind $220 million in UDAG monies.

Final spending levels for community and regional development programs include: Freezing CDBG funding at $3.09 billion; $229 million for housing rehabilitation and development grants; economic development assistance at $190 million; rural water and sewer facilities grants at $109 million; $220 million in UDAG appropriations; and $100 million for TVA funding.

FUNCTION 450.—COMMUNITY AND REGIONAL DEVELOPMENT

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—			
	1986	1987	1986	Baseline	President reestimated	Senate-Passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	7.3	7.8	0.5	0.6	4.0	0.9	1.0
Outlays	8.1	6.5	−1.6	−1.1	.2	−.7	−1.0
Baseline:							
Budget authority		7.2					
Outlays		7.6					
President's budget reestimated:							
Budget authority		3.8					
Outlays		6.3					
Senate-passed resolution:							
Budget authority		6.9					
Outlays		7.2					
Sequester:							
Budget authority		6.8					
Outlays		7.5					

FUNCTION 500—EDUCATION, TRAINING, EMPLOYMENT AND SOCIAL SERVICES

HIGHLIGHTS

Department of Education:

Administration sought cuts of 14 percent. Instead, Congress increased federal investment in education by 8 percent.

Elementary and secondary education: Congress rejected the Administration's proposals to freeze funding for most programs. Instead, Congress:

Increased funding for compensatory education by $416 million or 12 percent;

Doubled funding for math-science education. Support for such vital skills a key ingredient of the Chiles-Hart growth initiative;

Expanded the federal role in handicapped eduction by extending services to infants and increasing federal share of costs of education the handicapped. Funding increased by $392 million or 29 percent; and

Rejected Administration proposals to eliminate Impact Aid, Part B, and to cut funding for vocational education by 44 percent.

Higher Education: Administration targeted higher education for deep cuts (22 percent). Congress acted instead to curtail abuses in student financial assistance, yet also increased aid to most needy students.

Guaranteed Student Loan Program: Enactment of COBRA and the Higher Education Act achieved about $1.1 billion in three-year savings. Needs analysis to include assets test and extended to all students. Subsidies to banks and assist guaranty agencies reduced. Loan limits increased for needy students.

Pell Grants: Administration proposed 16 percent cut, resulting in 600,000 fewer students receiving aid. Congress increased funding by $265 million, enabling 280,000 more needy college students to receive grants.

Employment and Training Programs:

Job Training Partnership: Congress rejected Administration proposal to cut JTPA funding by 13 percent. Instead increased funding by 10 percent.

State grants for employment of disadvantaged youths and adults (IIa): Funded at $1.84 billion, $60 million over FY 1986.

Summer youth employment: Congress rejects Administration proposal to cut funding by 22 percent and instead increases funding for the summer of 1988 by $114 million. Congress however, did not revise funding

for the summer of 1987 (as established in the FY 1986 appropriations bill); unless Administration sends up a spring supplement, next summer's funding is still cut by $90 million to $636 million, resulting in 150,000 fewer teens employed in summer programs.

Dislocated workers: Congress funds at $200 million, double the FY 1986 level and the President's request for FY 1987.

Job Corps: Congress rejected Administration's proposal to cut funding by one-third. Instead, increases funding by $44 million and imposes moratorium on closing of centers until January, 1988.

WIN: Administration proposes elimination; Congress provides $110 million (half the FY 1986 level) for just three quarters, pending new welfare reform proposals in next Congressional session.

Social Services:

Social Service Block Grant: Remains capped at $2.7 billion.

Community Service Block Grant: Administration again proposed its elimination; Congress restored Gramm-Rudman cut (+$16 million).

Administration on Aging: Nutrition and social service programs for elderly received 10 percent increase over FY 1986.

Head Start: Congress increased funding by $90 million to $1.3 billion.

FUNCTION 500.—EDUCATION, TRAINING, EMPLOYMENT AND SOCIAL SERVICES

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	30.4	32.8	2.4	1.0	5.6	−0.4	4.4
Outlays	30.6	30.3	−.3	−.5	2.8	−.3	.5
Baseline:							
Budget authority		31.8					
Outlays		30.8					
President's budget reestimated:							
Budget authority		27.2					
Outlays		27.5					
Senate-passed resolution:							
Budget authority		33.2					
Outlays		30.6					
1987 sequester:							
Budget authority		28.4					
Outlays		29.8					

FUNCTION 550—HEALTH

HIGHLIGHTS

Medicaid: Congress rejected the Administration's proposal to cut payments for next year by $1.3 billion and cap increases in future years. Instead, modest, high priority benefit improvements were enacted to combat infant mortality and expand coverage for low-income elderly.

Biomedical Research: Funding for the National Institutes of Health was increased by $900 million, or 17.5 percent, to $6.2 billion. The Administration had proposed a cut of $600 million, or 6.7 percent.

Health Services: Congress increased funding for other public health services by $660 million over the Administration's request, rejecting many proposed freezes and cuts.

Federal Employees: Proposed cut of $1.2 billion in Federal Employee Health Benefit Program rejected.

Health Professions Training: Proposed elimination of all funding for nurse training and other health education assistance programs rejected.

Food Inspection User Fees: Proposed user fees to cover full cost of meat and poultry inspection rejected.

FUNCTION 550.—HEALTH

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	37.0	39.9	+2.9	+1.2	+4.4	+1.3	+2.4
Outlays	36.1	39.9	+3.8	+.8	+4.8	+1.6	+1.5
Baseline:							
Budget authority		38.7					
Outlays		39.1					
President's budget reestimated:							
Budget authority		35.5					
Outlays		35.1					
Senate-passed resolution:							
Budget authority		38.6					
Outlays		38.3					
1987 sequester:							
Budget authority		37.5					
Outlays		38.4					

FUNCTION 570—MEDICARE

HIGHLIGHTS

Total Cuts: Compared to original Administration requests during the year to cut Medicare by $9.0 billion in FY 1987, a combination of legislative initiatives and regulatory action resulted in total program restraint of $3.1 billion. Several Administration proposals were modified to lessen their impact on beneficiaries and providers, though savings were achieved. Others were rejected as too harsh.

Beneficiary Out-of-Pocket Cost Increases Reduced: The annual hospital deductible increase was limited to 5.7 percent in 1987, compared to anticipated 16 percent increase under prior law. (Would increase from $492 to $520, rather than $572.) Congress rejected Administration proposals to increase the Part B premium and deductible, require a new co-payment for home health services, and delay medicare eligibility for one month.

Hospital Cost Containment: Congress provided a 1.15 percent rate increase for hospitals (compared to 0.5 percent proposed by the Administration), and reduced hospital capital payments by $155 million (compared to a $390 million reduction proposed by the Administration.) Periodic interim payments were eliminated but exemptions were provided for certain financially troubled hospitals.

Physician Fee Restraint: An increase of 3.2 percent was provided for prevailing fees. Congress also continued limiting the increases in charges which can be passed on to beneficiaries.

Prompt Pay: New standards were set to ensure prompt payment of all Medicare claims (30 days in FY 1987, 26 days in FY 1988, except those physicians who take Medicare reimbursement as full payment would be paid within 19 days in FY 1988).

Secondary Payor: Medicare would become a secondary payor for all beneficiaries who are covered by employer health insurance, including disabled workers. The new extension to the disabled is limited to employers with 100 or more employees.

Quality of Care: Several measures were enacted to improve hospital, home health and HMO quality of care.

FUNCTION 570.—MEDICARE

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-Passed Resolution	Sequester
Fiscal year 1987 final:							
Budget authority	86.9	83.4	−3.5	−0.4	+1.3	+0.5	−0.4
Outlays	68.4	71.1	+2.7	+0.3	+0.5	−1.7	+1.6
Baseline:							
Budget authority		83.8					
Outlays		70.8					
President's budget reestimated:							
Budget authority		82.1					
Outlays		70.6					
Senate-passed resolution:							
Budget authority		82.9					
Outlays		72.8					
1987 sequester:							
Budget authority		83.8					
Outlays		69.5					

FUNCTION 600—INCOME SECURITY

HIGHLIGHTS

COLAs: Rejected President's proposal to eliminate COLAs for civil service retirees, military retirees and Tier II railroad retirees for a second year in a row.

New Civil Service Retirement System: Completed action on a new civil service retirement system for workers hired after January 1, 1984. Other workers have option to switch into new system or take advantage of its savings plan.

Current Civil Service Retirement System: Rejected President's proposal to permanently cut COLAs and benefits and increase contribution rate.

Child Nutrition: Rejected President's attempt to cut $800 million from school lunch and breakfast and other child nutrition programs. Passed H.R. 7 which provides for modest increase in benefits for school breakfast and special milk programs.

WIC: (Supplemental Feeding Program for Women, Infants and Children). The President proposed to cut the program $14 million below current service levels. The Congress approved funds to raise the program $51 million above current service levels.

Subsidized Housing: Congress rejected the Administration's funding proposals for subsidized housing. The President's budget proposal to rescind $4.4 billion of the $10 billion FY 1986 appropriation and to defer an additional $2.3 billion to be used as the FY 1987 appropriation. The House and Senate denied both the rescission and deferral requests and provided almost $8 billion for subsidized housing for FY 1987.

Aid to Families With Dependent Children: Rejected President's cuts including mandatory work requirements for all employable applicants and recipients.

Food Stamps: Rejected President's cuts, including repeal of benefit improvements enacted in December 1985, and initiation of mandatory work requirements for all applicants and recipients.

Low-Income Energy Assistance: Reduced FY 87 funding to $1.8 billion, about $.2 billion below FY 86 funding. Rejected Republican plan to cut funding by one-half. Republicans argued that Exxon oil overcharged cazse funds could be used as a substitute.

FUNCTION 600.—INCOME SECURITY

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987 final	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:						
Budget authority	149.8	160.8	+11.0	+2.4	+3.5	−0.6
Outlays	119.7	122.2	+2.5	−.1	+2.8	+.7
Baseline:						
Budget authority		163.2				
Outlays		122.3				
President's budget reestimated:						
Budget authority		157.3				
Outlays		119.4				
Senate-passed resolution:						
Budget authority		161.4				
Outlays		121.5				
1987 sequester:						
Budget authority		161.3				
Outlays		121.0				

FUNCTION 650—SOCIAL SECURITY

HIGHLIGHTS

Congress provided for a full COLA for Social Security recipients next January. Due to a low rate of inflation, this COLA will likely be about 1.2 percent.

Congress repealed the provision of law which postpones a COLA when inflation is less than 3 percent. Had Congress not done so, no COLA would have taken place next January.

Congress passed legislation that provided that the deposit of state and local payroll taxes in the Federal Treasury be made on the same schedule that is required for private sector employers. State governments would no longer collect funds on behalf of local governments.

The President proposed cutting 3,000 staff from the Social Security Administration. Although the Congress reduced overall administrative funding for the Social Security Administration, it provided enough funds to avoid some of the staffing cuts proposed by the President in order to avoid cutbacks in service to the public. It is unclear whether the Administration will follow Congress' intentions for staffing levels.

FUNCTION 650.—INCOME SECURITY

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987 final	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:						
Budget authority	201.3	228.3	+27.0	+0.8	+1.4	−0.1
Outlays	199.0	208.0	+9.0	+1.9	−3.6	−1.4
Baseline:						
Budget authority		227.5				
Outlays		206.1				
President's budget reestimated:						
Budget authority		226.9				
Outlays		211.6				
Senate-passed resolution:						
Budget authority		228.4				
Outlays		209.4				
1987 sequester:						
Budget authority		227.5				
Outlays		205.9				

FUNCTION 700—VETERANS BENEFITS AND SERVICES

HIGHLIGHTS

Veterans Disability Compensation and Pensions were granted a COLA increase of 1.3 percent, the same as Social Security.

Congress did not make cuts in the veterans medical care and education programs, as requested by the Administration. Congress also rejected a requested increase in veterans housing loan fees.

FUNCTION 700.—VETERANS BENEFITS AND SERVICES

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987 final	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:						
Budget authority	27.3	26.9	−0.4	−0.1	+0.2	−0.1
Outlays	26.7	26.3	−.4	—	−.2	−.2
Baseline:						
Budget authority		27.0				
Outlays		26.3				
President's budget reestimated:						
Budget authority		26.7				
Outlays		26.5				
Senate-passed resolution:						
Budget authority		27.0				
Outlays		26.5				
1987 sequester:						
Budget authority		26.2				
Outlays		25.8				

FUNCTION 750—ADMINISTRATION OF JUSTICE

HIGHLIGHTS

The Congress approved H.R. 5484, the Anti-Drug Abuse Act of 1986, in the closing days of the session, and provided a total of $1.7 billion to implement the act's provisions in FY 1987. Although the President's budget request did not include a proposal for comprehensive federal drug control, it was only after the introduction of two Democratic measures—one in the Senate, the other in the House—that the Administration was prompted to offer its own, less far-reaching version of this legislation. (For further details, see Highlights section.)

The Administration requested increases for the FBI and Drug Enforcement Administration; Congress provided $1.3 million for the FBI and $472 million for the DEA—an increase of $60 million over the President's proposal.

Congress rejected the Administration's proposal to cut the U.S. Customs Service and its air interdiction program and instead, increased these programs to $830 million and $171 million.

For the sixth consecutive year, Congress rejected the President's proposal to terminate the Legal Services Corporation, by providing $306 million for the program.

The Administration proposed termination of the Office of Juvenile Justice and Delinquency Prevention and State and local criminal justice assistance grants; Congress rejected this request.

FUNCTION 750.—ADMINISTRATION OF JUSTICE

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987 final	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:						
Budget authority	6.9	7.9	+0.1	+0.9	+0.8	+0.7
Outlays	6.9	7.5	+.6	+.4	+.4	+.3
Baseline:						
Budget authority		7.0				
Outlays		7.1				
President's budget reestimated:						
Budget authority						
Outlays		7.1				

FUNCTION 750.—ADMINISTRATION OF JUSTICE—Continued

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987 final	Baseline	President reestimated	Senate-passed resolution	Sequester
Senate-passed resolution:						
Budget authority		7.2				
Outlays		7.2				
1987 sequester:						
Budget authority		6.4				
Outlays		6.5				

FUNCTION 800—GENERAL GOVERNMENT

HIGHLIGHTS

Congress provided $4.2 billion for the Internal Revenue Service to enhance taxpayer compliance, improve tax processing and hire 2,500 additional auditors along the lines of the Administration's proposals for FY 1987.

Congress rejected the Administration's proposal to impose user fees for letters of determination and private letter rulings by the Internal Revenue Service, and also rejected the President's proposal to impose user fees on five government-sponsored credit agencies.

The Administration proposed Customs Service user fees on merchandise processing; Congress adopted this proposal.

FUNCTION 800.—GENERAL GOVERNMENT

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987 final	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:						
Budget authority	6.2	5.9	−0.3	+0.1	±0.4	+0.4
Outlays	6.2	5.6	−.6	−.2	−.6	+.2
Baseline:						
Budget authority		5.8				
Outlays		5.8				
President's budget reestimated:						
Budget authority		6.3				
Outlays		6.2				
Senate-passed resolution:						
Budget authority		5.5				
Outlays		5.4				
1987 sequester:						
Budget authority		5.6				
Outlays		5.2				

FUNCTION 850—GENERAL PURPOSE FISCAL ASSISTANCE

HIGHLIGHTS

The President's budget proposed the early termination of General Revenue Sharing by Advancing the fourth and final payment from FY 1987 into FY 1986; Congress adopted this proposal.

Congress rejected the Administration's proposal to allow the Federal government to deduct administrative costs of managing receipt-sharing programs under the Minerals Management Service, Bureau of Land Management and the Forest Service.

FUNCTION 800.—GENERAL PURPOSE FISCAL ASSISTANCE

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	5.2	1.9	−3.3	+0.1	+0.1	+0.1	+0.1
Outlays	5.5	2.0	−3.5	−.6	+.2	−.8	−.5
Baseline:							
Budget authority		1.8					
Outlays		2.6					
President's budget reestimated:							
Budget authority		1.8					
Outlays		1.8					
Senate-passed resolution:							
Budget authority		2.0					
Outlays		2.8					
1987 sequester:							
Budget authority		1.8					
Outlays		2.5					

FUNCTION 920—ALLOWANCES

HIGHLIGHTS

Congress provided funds for a 3 percent pay increase for Federal civilian workers on January, 1987.

In February, the President proposed a 3 percent pay increase but he wanted an increase of 2 percent in the contribution rate for civil service retirement, which would have led to a net reduction in pay for many Federal workers.

Congress rejected the President's proposal to raise the retirement contribution rate.

FUNCTION 920.—ALLOWANCES

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	0	0.4	+0.4	−0.9	−0.3	−0.1	+0.3
Outlays	0	.4	+.4	−.9	−.3	−.1	+.3
Baseline:							
Budget authority		1.3					
Outlays		1.3					
President's budget reestimated:							
Budget authority		.7					
Outlays		.7					
Senate-passed resolution:							
Budget authority		.5					
Outlays		.5					
1987 sequester:							
Budget authority		.1					
Outlays		.1					

FUNCTION 950—UNDISTRIBUTED OFFSETTING RECEIPTS

HIGHLIGHTS

Recoups $400 million in FY 1987 for crude oil and product overcharge funds not subject to a DOE administrative or court order. Uses some of these funds to increase Budget Authority for energy conservation state grant programs by $200 million in FY 1987.

FUNCTION 950—UNDISTRIBUTED OFFSETTING RECEIPTS

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	−33.6	−36.2	−2.6	+0.3	+0.6	+5.9	+0.6
Outlays	−33.6	−36.2	−2.6	+.3	+.6	+5.9	+.6
Baseline:							
Budget authority		−36.5					
Outlays		−36.5					
President's budget reestimated:							
Budget authority		−36.8					
Outlays		−36.8					
Senate-passed resolution							
Budget authority		−42.1					
Outlays		42.1					
1987 sequester:							
Budget authority		−36.8					
Outlays		−36.8					

ECONOMIC CONDITIONS AND PROSPECTS

Over the last several years, the Administration has projected an economic growth rate of 4 percent while CBO has projected growth rates near 3.3 percent. CBO's forecast has generally been close to the Blue Chip consensus of private economists, but recently it has become much more optimistic. The Blue Chip consensus foresees 2.7 percent growth in 1987 while CBO sees 3.4 percent. In the last year and a half, actual performance has been below all these forecasts, with a growth rate of 2.7 percent in 1985 and 2.2 percent in the first half of 1986.

The major cause of the slow growth has been the trade deficit. It has increased from the record $148 billion in 1985 and is running at an annual rate of $170 billion in 1986. Consumer spending has continued to grow at a brisk pace in 1986 (4.6 percent at an annual rate), but much of this demand has flowed to foreign rather than domestic producers. Investment is another weak sector. Nonresidential fixed investment (both structures and equipment) has declined as a result of poor sales prospects and excess capacity (largely related to foreign competition), the decline in oil and commodity prices, and reduced investment tax incentives.

Slow economic growth has increased our deficit problem—the deficit in 1986 would have been $30 billion lower if the economy had grown strongly.

The prospects for an economic rebound rest on the hope that the trade deficit will begin to narrow. The most favorable development is the recent decline in the dollar. But the decline has not been nearly as large as advertised. When measured using data that reflect existing trade patterns rather than those of a decade ago, the decline of the dollar is closer to 15 percent rather than the 30 percent that the Federal Reserve index shows. The currencies of countries such as Canada and Mexico have actually depreciated against the dollar.

While dollar depreciation aids our price competitiveness, foreign economies must grow strongly to absorb our exports. Foreigners are reluctant to lose market share and have responded by reducing their profit margins. And American firms that moved production overseas will not quickly reverse their decisions.

Even with a narrowing of the trade deficit, the American consumer must have the wherewithal *and* the confidence to continue spending. But employment and income gains have slowed markedly this year, and the Consumer Sentiment Index has fallen from 99.3 in June to 91.9 in September.

At the moment, the Federal Reserve finds itself "pushing on a string". The discount rate has been lowered four times this year but the economy has not yet revived.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, how much time does my friend from North Dakota desire?

Mr. ANDREWS. Ten minutes.

The PRESIDING OFFICER. I yield 10 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized

Mr. ANDREWS. Mr. President, the reconciliation package contains a number of Farm Credit Act amendments of 1986. As the Chamber knows, because it has been told so often, there are a number of economic problems in rural America.

Part of this Reconciliation Act, a very important part, are the Farm Credit Act amendments that are contained within it. This proposal is derived from S. 2770, a bill I cosponsored with Senator COCHRAN.

High interest rates, Mr. President, continue to take their toll on our Nation's family farmers.

This farm credit package is not a cure-all to this problem, but what we have before us is a step in the right direction.

Mr. President, I want to commend my colleague from New Mexico, the chairman of this conference, for this wisdom and for his understanding in including and keeping this package intact with these farm credit amendments. They are extremely important to us and I think they will have a great deal to do, Mr. President, with improving the infrastructure of our country about which the Senator from Florida spoke a moment ago.

This proposal provides the means for the Farm Credit System's interest rates to be competitive with other commercial lenders. It reduces the high cost of credit that the Farm Credit System now carries, and allows loan losses to be charged off over a longer period of time.

Across North Dakota, I have heard FCS borrowers say that the FCS interest rates must become more competitive. The FCS rates are above those of commercial lenders.

Service centers in my State have indicated a steady decline in loan volume that can be directly attributed to refinancing with competitive lenders at lower interest rates. One area reported having lost over 70 loans during a 5-month period, for a total loss in loan volume of approximately $5 million, a loss that is hardly acceptable to a lending facility of that size.

Many of my constituents are members of several commodity groups which have given their support for this proposal. The National Association of Wheat Growers, National Cattlemen's Association, National Milk Producers Federation, the National Pork Producers Council, as well as the American Soybean Association, are among those who have gone on record in support of this much-needed legislation.

This package does not guarantee lower interest rates for every borrower. However, it does provide the system the means to lower its cost of credit.

Frank Naylor, the chairman of the Farm Credit Administration Board—with whom many of use have fought in the past—said in last Sunday's Washington Post that this legislation should allow for interest rates to be reduced by 1.5 to 2 percent.

Mr. President, a reduction in interest rates to the farm customer in the neighborhood of 1.5 to 2 percent is a fantastically important item.

The PRESIDING OFFICER (Mr. TRIBLE). The Senator will suspend. The Senate is not in order. The Senate will be in order.

□ 2040

Mr. ANDREWS. Let me conclude, Mr. President, by pointing out that the board of the St. Paul District Farm Council stated in a recent letter:

> While passage of this legislation has the potential of raising unrealistic borrowers expectations for drastically reduced rates, we are confident you recognize we could not make large "across-the-board" interest rate reductions even if we had the authority to do so. We clearly understand that reducing FCS interest rates below competitive market rates would not be a "safe or sound" business practice in the eyes of Congress, the Farm Credit Administration, the U.S. Treasury or our stockholders. We do believe passage of this legislation can give us flexibility we need to provide more competitive rates to better serve our overall membership and stem the flight of borrowers from the system who have competitive options.

Mr. President, this is extremely important for rural America. There are two things we need: one, higher prices for the crops and the livestock we produce; two, lower interest rates for the cost of production. This amendment to this bill can give from 1½ to 2 percent lower interest rates to those farmer borrowers.

I applaud the Congress for the great job they have done in continuing to include this bill originally cosponsored by the Senator from Mississippi and myself.

Mr. DOMENICI. Mr. President, I yield myself one minute. Then I am going to yield the floor.

I just want to say I want to compliment Senator ANDREWS for the work he did on the REA effort and the other agricultural efforts here. Frankly, when the Senator from North Dakota compliments the Senator from New Mexico, I hope he understands that I just sort of help put it all together. Each chairman is responsible and each ranking member worked together with members on committees. So it was the chairman of the Committee on Agriculture and the ranking members who did what that the Senator alluded to. I assume when he thanked the Senator from New Mexico, he included the chairman of the Committee on Agriculture which did the work.

Mr. ANDREWS. The Senator from New Mexico and I served together on the Budget Committee and I know how often we have had individuals who say, no, it cannot be this way or it cannot be that way. But he, the chairman of the Agriculture Committee, and other conferees on both sides of the aisle recognized the need for this package and they included it in a vehicle that was moving and that is why we got our support. We appreciate what he has done and it is going to make a big difference in rural America.

Mr. DOMENICI. Does the Senator from Colorado desire 10 or 15 minutes? How much would he like?

Mr. ARMSTRONG. Mr. President, how much does the Senator from New Mexico have left?

Mr. DOMENICI. I have a lot of time, but the leader tells me we do not want to use it all. We have 5 hours.

Mr. ARMSTRONG. I would not need any such time as that. Would the Senator yield me an hour?

Mr. DOMENICI. I would be reluctant to yield an hour. How about 10 minutes?

Mr. ARMSTRONG. I hope the Senator from New Mexico would yield me an hour and then be pleasantly surprised at how much he is going to get back.

Mr. DOMENICI. Mr. President, I yield the Senator an hour.

Mr. ARMSTRONG. Mr. President, I assure the chairman of the Budget Committee that his patience will be amply rewarded because I am not going to speak for anything like an hour, but I may speak for 10 minutes.

I just want to make one point, Mr. President. I want to say this session is ending up in as disappointing a way as it could possibly end as far as the budget is concerned. I had high hopes last year that at long last, we were going to do something. In fact, earlier this year, when we adopted the Gramm-Rudman budget proposal, I believed that after years of horsing around with these budget deficits, we were going to get serious about it.

Even after watching the national deficit rise each year and the accumulated national debt rise year after year, from more or less $300 billion when I came here just 8 years ago to now over $2 trillion, I have remained an optimist. Despite the evidence year after year that Congress did not have the willpower or the horse sense or the integrity or the guts or anything else to do anything about these mammoth deficits which so greatly threaten our country and which have been acknowledged as a serious threat to the future of America, I remained—and even now, I guess, I remain—somewhat optimistic that we were going to do that.

I thought earlier, when we passed that famous Gramm-Rudman-Hollings budget mechanism, that this was going to be the year. My confidence that that might happen began to slip a few weeks ago when, after the court struck down a portion of it, we had an up or down vote on whether or not to restore the so-called trigger. That is where we actually do something if a deficit is going to result. I must admit, when the Senate declined to take that step, it sort of shook my confidence a little.

Then, when we put together a reconciliation bill intended to meet the spending targets to bring the deficit down, not to $144 billion, which was to be the target this year, but to $154 billion—you remember, we built in a $10 billion pad. We said it might be too tough for us to meet our target of a $144-billion deficit so we will give ourselves $10 billion more. That concerned me some.

But then, when I looked at the reconciliation bill that we passed a few weeks ago, I realized this is a joke. This has nothing to do with trimming Federal spending. This is a deal where we are basically going to do two things: we are going to raise taxes a little—in fact, quite a little. Some of them we call user fees, some we call tax reform. But in effect, it constitutes through various and sundry ways—user fees, State and local deposits—a substantial increase. The other piece is we are selling off a bunch of assets owned by the Government.

That is all right. I have no objection to selling off the agriculture loans, selling off the Eximbank loans. We are going to sell them at a discount because by and large, the marketplace does not think these loans are any good, or certainly not worth their par value. But I have no objection to selling them off.

Just as a matter of record, that has nothing to do with curtailing Federal spending. To put it into perspective, we started off with a projected deficit of $184 billion this year. After all our machinations, we hope to get down—I say we hope—to $151 billion for the year.

I have listened in the last day or two to extensive discussions about how, by achieving this, we will have held the rate of increase in Federal spending for fiscal 1987 to the lowest level we

have seen in years and years. And, of course, that is true. But, Mr. President, first, the Senate is not in order.

The PRESIDING OFFICER. The Senate is not completely in order. The Senate will be in order.

Mr. ARMSTRONG. I thank the Chair.

The point is that we have not achieved a budget deficit of $151 billion for fiscal 1987. That is the number that is written on this piece of paper that is floating around the Chamber. But I will tell you that a year from now—that is to say on September 30, 1987—we are going to look back and find the budget deficit will not be $151.3 billion. I do not know how much it is going to be. My opinion is it is going to be substantially more than that, maybe $20 billion, maybe $30 billion more than that. Maybe, if the economy turns a little sour—and it is turning pretty sour in a lot of places—maybe it will be $200 billion. I do not know what it will be.

But the one thing that is going to be certain is this: We can look back on this session of Congress and say we passed up a dozen or two opportunities to reduce the deficit. The Senator from Florida made a good speech not long ago about how it is time we took a good look at these programs and phased out the ones that are not working and maybe make some investments in programs that are going to do something for this country.

We did not do that in this session of Congress. We kept all the old programs, started a few new programs. Then, in order to make Gramm-Rudman-Hollings budget target, we are going to sell off a bunch of assets and raise taxes.

The PRESIDING OFFICER. The Senate is not in order. The Chair observes countless discussions going on on the floor. Will staff members engaged in conversations retire to the cloakroom or other chambers in the Capitol Building?

□ 2050

The hour is late. The Senate must be in order. The Senator from Colorado has a right to be heard. The Chair will insist order be maintained at this hour.

The Senator from Colorado.

Mr. ARMSTRONG. I am grateful to the Chair and I am about to sum up.

On the spending side we really have not done anything. That is the fact. We have not. We are going to sell off some assets and next year if we still want to do anything we can sell off some more. I guess we could sell off the national parks if somebody wants to do that or we could sell off the Russell Building or we could sell off the White House or we could sell off something else, but the reality is we are digging ourselves deeper and deeper into debt. The interest on the public debt is growing greater. The situation is getting worse and we are ignoring the problem. We are just basically ignoring it. That is what we are doing.

That would be bad enough, but to that we have added in this reconciliation bill, which I really think was a charade when it left the Senate, a huge increase in the national debt, which makes it even worse. In fact, that is the predominant feature of this legislation. It is called a reconciliation bill but the predominant feature in terms of its actual impact and substance and content as it comes before us tonight is not reconciliation, or spending cuts, or assets sales or whatever they are; it has just increased the national debt by, oh, I guess $189 billion.

Now, Mr. President, I am not going to vote to do that. I am going to vote against it. There was some thought that I might offer a point of order to separate that issue out as a separate matter. Clearly this violates the rules of the Senate. Clearly it is subject to a point of order, but what is the sense in voting on that separately? That does not get us anyplace. So I have decided not to make that point of order, but I just want to make it clear that I am going to vote against this reconciliation bill and why I am going to do so.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI addressed the Chair.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The time is controlled on both sides of the aisle.

Mr. METZENBAUM. I understand.

Mr. DOMENICI. Mr. President, I will yield to the Senator. Senator CHILES is not here but could I answer the Senator for one minute?

Mr. METZENBAUM. Of course.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. I yield myself 2 minutes.

Mr. President, I think the Senator from Colorado knows that I hold him in the highest of esteem but, frankly, I disagree with the Senator with reference to what we have before us and what we have done.

Frankly, this reconciliation bill that is before us is what the U.S. Senate basically told the committees of the Senate, and hopefully joined by the House, to do.

Now, if you start a year out when you are not going to change the revenue rates in this country, you are not going to change the entitlement programs of this country, you have 17.5 percent of the budget the discretionary nondefense appropriations of this country, and you have the defense of our country, and that is all there is to the cut, we have done pretty well. As a matter of fact, the appropriated accounts nondefense are down 5.4 percent in real terms.

Now, there are some who would say we ought to cut them 50 percent. Let me say, if you took them all out, eliminated them altogether, you would not get rid of the deficit. Every one of the programs of this Government from environmental protection to the highways of the National Institutes of Health. But, we did cut 5.4 percent and that's not bad.

So, I think we have done pretty well. Nobody wants to change the entitlement programs. You try and the President says no. Maybe when everyone says yes and the President says yes we will do it.

Revenues are the only other thing in the budget. The Senator from Colorado says we raised revenues. There is user fees of some $851 million. There are enforcement provisions under IRS which are supposed to raise revenues because people who do not now pay their taxes will pay, and a couple other mild provisions that the chairman of the Finance Committee would allude to. If that is some enormous, some enormous tax increase in order to get the deficit of the United States in 1 year from $230 billion to $149 billion as of this period, I just do not believe we have done very bad. I think we have done a pretty good job with the limitations that are imposed on us by the checks and balances of the executive branch, a House and a Senate.

Now, I will tell the Senate as of right now if we took a picture of Government, we pass this and let the President sign it, the tax bill gets signed, continuing resolution gets signed, Superfund gets signed, and if we just stopped it would be $149 billion or $151 billion if we locked the likely CBO estimates, but the Senator is right. We have to keep on going. We can only estimate agriculture. It may be off $2 billion, it may be off $10. I would say to my friend, however, incredible as it sounds, the estimates for this year on agriculture were too high. Current estimates are they are coming down.

Mr. ARMSTRONG. Will the Senator remind us of the occasions in the past when at the start of the fiscal year we overestimated the subsequent deficit?

Mr. DOMENICI. I do not know that we have ever done that.

Mr. ARMSTRONG. I do not think we have.

Mr. DOMENICI. But I was going to say to the Senator——

Mr. ARMSTRONG. Have we not done exactly the opposite every year?

Mr. DOMENICI. Yes. But I was going to say two things to the Senator. No. 1, we never had Gramm-Rudman-Hollings either, and as we move

through the remainder of the year it gets exceedingly more difficult to add new appropriated account money. We can do it but it gets pretty tough, because we are already up against the ceiling. We are getting better at estimating the program expenditures than we have been in the early part of this budget process.

It looks like the economy is stabilizing a little bit as compared to the first part of the year. But I am willing to say it will not be $149 or $151 billion come the end of September of next year, but do not forget it is $230 billion this year. If it ends up at $170 billion, which I think the Senator speculated may be at the low end of his assessment, if that is it, it will be the largest reduction in the deficit in 1 year in real terms or nominal terms in the history of the Republic. Not low enough certainly because we are still plenty high, but that will be quite an achievement, from $230 billion this year to $170 billion. I think that is about right.

Now, frankly, I say to my friend, he can vote against this because it has debt limit extensions in it, he can vote against it because it is not enough reconciliation. My respect for him will not be diminished one bit. But I do not believe the Senate could have done much better with the limitations that were placed on it. I just do not think it could have.

Mr. ARMSTRONG. The Senator is very skillfull in erecting a platoon of straw men. To say that because the Senate has voted not to cut entitlement programs, that somehow justifies this huge debt begs the issue entirely. Of course, the Senate should do something about the entitlement programs.

Of course, we should cut back on some of the programs that have run out of control. To suggest, either in so many words or by implication, that I was urging all of this come out of the appropriated accounts is completely off the mark. I think we have done a pretty good job on the appropriated accounts, which as the Senator pointed out correctly is the smallest end of the budget. Three-quarters of all the Federal spending, of course, is in nonappropriated accounts. So for my part I am ready to take on the entitlement programs any way, any time. I am well aware that there is not a very big constituency for that in this Chamber tonight, but clearly that is what we are going to do when we get serious about controlling the deficits. Passage of this bill is not a serious effort at controlled deficits.

Mr. DOMENICI. Mr. President, I yield myself 1 additional minute and then I am going to yield to Senator CHILES.

Mr. GRAMM. Mr. President, could we have order.

The PRESIDING OFFICER. The Senate is not in order. The Senate will be in order.

□ 2100

Mr. DOMENICI. Mr. President, I yield myself 2 minutes.

I say to the Senator from Ohio that I will stay on the floor if he desires to ask me questions. I just told the Senator from Florida that I must leave, and I will be right back. It will take me 3 or 4 minutes. I have summaries, if the Senator from Ohio wants me to go through them, or I will answer specifically, or the Senator from Florida will, or we will call the chairmen who put this together. I only help them package it, urge them, and push where I can.

If we need help to answer the Senator's questions, we will get some other Members here.

Let me make one point in response to the Senator from Colorado.

I do not want to leave this evening with the impression that the U.S. Senate has not tried to do a better job and address the entitlement issues and address the issues across the board, because we have. I do not want to leave the impression that this Senator has not tried and has not been in the vanguard.

I do not want to leave the impression that others were ahead of us by years, trying to change the entitlements somewhat and put some revenues on some meaningful level.

If the Senator, my good friend, my neighbor, thinks we ought to keep trying we will. But we have done it three times, only to find that the President, the House, or both say, "Don't touch it. We're not going to have anything to do with this entitlement business. There are too many beneficiaries out there, and don't touch the revenues." It does not appear to be a promising course.

I will tell my friend, Senator ARMSTRONG, that I have been there three or four times, and I did not choose to do it again this year, but I did anyway.

Then we were told that we could not do these things because the President and the House did not want it. Frankly, I am getting a little tired of it.

So, it is in that context that I say we have done fairly well.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. I yield 1 minute to the distinguished Senator from New Hampshire.

Mr. RUDMAN. Mr. President, before the Senator from New Mexico leaves the floor, I want to say something that ought to be said tonight about the Senator from New Mexico and the Senator from Florida.

As one who has been involved, with my friend from Texas, Senator GRAMM, and my friend from South Carolina, Mr. HOLLINGS, in this whole budget process, but not being on the Budget Committee, I think Congress and the American people owe a tremendous debt of gratitude to Senator DOMENICI and Senator CHILES for their leadership and their work. They have literally put their own health and themselves into trying to make this process work, and the results are what we have before us tonight.

It is not perfect. Senator CHILES does not think it is perfect. The Senator from New Mexico does not think it is perfect. But rarely in this body will we see two people, the chairman and the ranking minority member of one of the most important committees of Congress, work in tandem as they have this year for the good of this country.

I want to say that tonight, on the eve of the adjournment of the 99th Congress, because I have watched them up close. They are a remarkable team, and we are lucky to have them working for us.

Mr. CHILES. I thank the Senator.

Does the Senator need any more time? [Laughter.]

Mr. DOMENICI. I did no know he was going to say that, or I would have given him time. [Laughter.]

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

Mr. DOMENICI. I yield 10 minutes to the Senator from Texas.

Mr. GRAMM. I thank the distinguished chairman for yielding.

Mr. President, I should like to begin by explaining why there is no Gramm-Rudman-Hollings II on the debt ceiling. The Senate has adopted Gramm-Rudman-Hollings II twice. We adopted it as part of the permanent debt ceiling that went to the House on August 8. We named conferees, but the House never named conferees to deal with the debt ceiling problem.

Then, prior to the adjournment for Labor Day, we again adopted Gramm-Rudman-Hollings II in the Senate. We sent it to the House. They voted on it, rejected it, sent back a so-called clean debt ceiling, and then adjourned before we had an opportunity to deal with it again.

A great deal of thought has gone into whether or not we should reconstitute Gramm-Rudman-Hollings with an amendment on this debt ceiling extension that would restore the automatic trigger as a disciplining mechanism.

I think it is the virtually unanimous decision of those who have been actively involved in this process not to do that tonight, when we are on the eve of adjournment, and those who do not want the discipline of the process could simply say, "Don't let this be forced on us in the 11th hour." The House could reject it and simply adjourn.

Mr. President, we decided, rather than do that, to pass a debt ceiling that would extend through about May 15, when we will be in the heart of the budget debate. The debt ceiling will at that time expire prior to an adjournment date; and, as a result, we will have an opportunity to revisit this issue.

I can assure my colleagues that around May 15, when we again have the opportunity to vote on the debt ceiling, Gramm-Rudman-Hollings II will be offered. I am confident that it will be successful in the Senate, and I am confident that at that point, when we face the very difficult budget decisions in trying to meet the second year's target, we will find that the House will be cooperative. Under the circumstances, I think this is a wise decision, given the fact that our objective is not simply to vote on good legislation but to adopt it.

I heard my friends, the Senator from New Mexico and the Senator from Colorado, debate the question that we all have to ask ourselves: Did we succeed? People always ask me, "Did Gramm-Rudman work?" I try to answer it by saying that Gramm-Rudman is not a four-sided fort. When we passed the Gramm-Rudman-Hollings bill, we did not build a four-sided fort with a drawbridge that we could pull up.

In the vernacular of my State, Gramm-Rudman-Hollings is a good stone wall to your back in a gunfight.

When people ask, "Did Gramm-Rudman work?" they are asking the wrong question. Gramm-Rudman is like the wrench you use to do plumbing with. It is the plumber who does the work, not the wrench. And whether the plumbing is done well or poorly has relatively little to do with the wrench. It has to do with the person using the wrench.

Gramm-Rudman-Hollings did one and only one important thing, really: Prior to Gramm-Rudman-Hollings, every time some pro-spending interest group wanted money spent, they were looking over the Congressman's right shoulder; and he was sending letters back home, be he Democrat or Republican, telling the people how he cared for the poor, the sick, the tired, the bicycle rider, and the list goes on. Nobody was looking over the left shoulder and, as a result, day in and day out we spent money.

What the Balanced Budget and Emergency Deficit Control Act did was to set out targets. It forced the President to submit budgets. It forced us to deal with those targets, and it set out some binding constraints.

It did not solve the problem; it did not yield a solution, But, rather than the whole process of the Senate being biased against controlling spending, Gramm-Rudman-Hollings sought to bias the process in favor of controlling spending.

□ 2110

And despite the validity of much of what the Senator from Colorado said and much of the frustrations that he feels and that I feel and others feel, I believe that we have tilted the process toward controlling spending and fiscal responsibility.

People ask whether we will have the same deficit when the numbers are tallied up that we have today? Probably not. If the historical precedent holds, the economic assumptions we made will probably prove to be overly optimistic. Or, they may be overly pessimistic.

But because of Gramm-Rudman-Hollings there are a couple of things we know. We know, No. 1, that in order to raise spending, except through an entitlement, we are going to have to vote for it. And I agree with the Senator from New Mexico that we have gotten a lot better at estimating entitlement spending. I remember in 1981 when we were trying to estimate entitlement spending we were simply grasping at gnats in the air.

Our record is substantially improved, and I think we are not going to have a big entitlement overrun if we do not have a recession.

But one thing we know under the Gramm-Rudman-Hollings process is that if discretionary spending rises we are going to have to vote for it, and we are going to have to waive the Budget Act. That is a strength we never had before we created these strong, binding constraints on the budget at the 302(b) level and the 60-vote margin on the major point of order; and I believe these will serve us well.

Did we do a good job? Not as good as we should have done, not as good as I would like to have done, but we did better than we have done before in terms of controlling spending.

The Senator from New Mexico has said it and it is true. If we enforce this budget we will have a smaller real growth in spending than we have had since 1955. Eisenhower was President in 1955. We had a completely different political structure in terms of spending in 1955.

That is a remarkable achievement. This is an election year. Within 3 weeks the people go to the polls. Spending money buys votes. And if you do not believe it, for the last 10 election years Federal spending has grown on average by 11.2 percent in the budgets we wrote in those election years.

Does anybody think that it is an accident that this year we are not going to have any nominal growth in the budget.

Now, that did not mean that we did any dramatic cutting or that we reformed entitlements. I have consistently voted to control the explosive growth in entitlements. But with the exception of the fiscal year 1982 budget we have made little progress in reforming entitlements. What we have done this year is to freeze the aggregate level of spending so the $63 billion of new revenues that we anticipated will come from growth in the economy will not be spent. They will go to reduce the deficit.

Now, I submit that that is progress. Is it success? Well, we are not going to gauge success until we look back on this period.

I guess for those of us who were part of the 1984 mandate, who were elected in 1984 with Ronald Reagan, success has got to be gauged on how we use that mandate, and by that measure I do not call it success.

We turned the corner, we changed the direction, but I do not believe that we have fulfilled that mandate.

I believe the people in my State and the people in the Nation really meant for us to fundamentally reorder Federal spending.

This year's budget was essential to get an opportunity to do that. I hope we do it next year. I will be working on it.

I am proud of what we have done. I wish we had done more, but I am very grateful for the leadership of the distinguished chairman of this committee who have been kind to me in all ways, who really did more of writing Gramm-Rudman in many ways than I did, even though it has my name on it. And I want to thank Senator CHILES. Senator CHILES was not an initial proponent of this Balanced Budget and Emergency Deficit Control Act. But even though he did not support it initially, he has done everything within his power to carry it out, and I am grateful for that and I am very appreciative.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I just want to make this statement. I hope everybody that has listened to either how well we have done or how poorly we have done will understand that we still have for 1987 a deficit, somewhere between $151 billion and $175 billion, and that results, even though defense spending is growing at seven-tenths of 1 percent negative, not even inflation. Appropriated accounts are growing at negative 5.4, well below inflation. Entitlements are only growing at five-tenths of 1 percent negative, less than inflation.

So I ask the question: How are you going to balance the budget? How are you going to balance the budget?

You still have that much deficit and this year you have effectively done more than ever on the those accounts,

and there are many who say defense needs more, not less. There are many who say entitlements cannot be cut, and I believe the discretionary accounts have been cut as much as you could and you have to pay your debts to arrest interest. It floats up and down with interest. But it is going to be $2.3 trillion come May 15 of next year. You are going to pay interest on that much debt.

So I think the real question is how you are going to get down to zero in 4 or 5 years, and those are the stark facts facing us right square in the face.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. Mr. President, I yield 10 minutes to the Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii, Mr. MATSUNAGA.

Mr. MATSUNAGA. I thank the Senator for yielding.

Mr. President, as a member of the conference committee, I rise in support of the conference report on the Omnibus Budget Reconciliation Act, 1987—H.R. 5300.

Mr. President, in the face of budgetary constraints and many conflicting policy concerns, the conferees were able to agree upon numerous beneficial changes in the Medicare, Medicaid, maternal and child health, and income security programs. For beneficiaries, these program refinements will result in improved quality of care and the selective extension of coverage.

In particular, I point to the inclusion of two Medicare provisions in the legislation before us. The first authorizes direct part B reimbursement for anesthesia services and related care furnished by a registered nurse anesthetist which he or she is legally authorized to perform in the State. This provision also extends current payment provisions for the services of certified registered nurse anesthetists [CRNA's] until October 1, 1988. The second provision covers occupational therapy services under part B in a skilled nursing facility, clinic, rehabilitation agency, or public health agency.

Mr. President, in the first instance, the CRNA reimbursement provision addresses an urgent problem. The passthrough exemption, in which Medicare, outside the prospective payment system, pays hospitals for the costs of services performed for hospital patients by a CRNA, which Congress enacted as part of the Deficit Reduction Act of 1984—Public Law 93-369—will expire on October 1, 1987.

This provision extends and replaces the expiring passthrough which, in some locations, has not been achieving its desired result of not discouraging the use of CRNA's; this failure is attributed to its complexity and the assumption by hospitals that it will not be available as a source of funding for the long term. As a result, some hospitals are shifting CRNA employees to physician employment and billing Medicare and patients for these physician charges. Alternatively, they are reducing the use of CRNA's. The provision establishes a single, permanent, CRNA payment system replacing at least five payment methods currently in use. As the introducer of the original legislation designed to accomplish this end in the 98th Congress, I am especially pleased that we are finally recognizing CRNA's as directly reimbursable health professionals and consolidating and simplifying the payment methodology. We will be able to take advantage of a proven, cost-effective option in providing safe, physician-supervised anesthesia services at reduced costs.

Mr. President, the conference report also contains the occupational therapy services provision which I first introduced as a bill in the 98th Congress and which I offered as an amendment to H.R. 5300 during the Senate Finance Committee's deliberations earlier this year. Part B payments are authorized for occupational therapy services in certain settings which presently are not covered, including limited reimbursement for those provided in private practice settings.

Such services may reduce the need for institutional care or eliminate it entirely, while they enable the beneficiary to function more independently. Occupational therapy is a medically necessary rehabilitative service which provides treatment for persons suffering from strokes, rheumatoid arthritis, cerebral palsy, multiple sclerosis, spinal cord injury, severe burns, and mental disorders. There is a growing need for posthospital services that accompany the trend toward earlier and sometimes premature discharges. Without adequate coverage of these rehabilitative services, the relapse rate for patients, particularly the elderly, increases. Extension of part B coverage of occupational therapy services will address this growing problem because continuation of rehabilitative services after leaving the hospital is crucial in enabling Medicare patients to recover their physical independence.

Mr. President, this reconciliation bill represents the concerted efforts of the conferees to improve the Medicare and other Federal health and assistance programs. I urge my colleagues to approve the conference report.

□ 2120

The PRESIDING OFFICER. Who yields time?

Mr. EXON. Mr. President, I yield 2 minutes to the Senator from Oregon.

Mr. PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. I thank my good friend from Nebraska.

Mr. President, I am going to support the conference report, although I have grave misgivings about one particular section in the Ways and Means finance part of it. That is the custom user fee section.

We are starting down the road that is going to irritate our allies, that is going to be unfair to all our commercial importers and exporters by imposing a custom user fee, that is just a tariff. It collects much more money than we need to run the customs service.

In addition, we have exceptions for some countries from the user fee, all of the Caribbean Basin Initiative countries, all of the lesser developed countries, but we have not made an exception for Canada, our largest trading partner, or for Israel, our strongest ally in the Middle East, or for Mexico, or for any of the other major trading countries with which we do business.

So, first of all, we have made a mistake in starting down the road of calling something a user fee that is clearly a tariff. We have exempted some countries and covered others that should or should not be exempted as a whole but not piecemeal.

I think the reconciliation, on balance, I will support. But that particular section of the report I feel very badly about and, given my druthers, I would wish it was not in there.

Mr. METZENBAUM. Will the chairman of the Finance Committee be good enough to yield to me?

Mr. PACKWOOD. I do not have the floor. The Senator from Nebraska has the floor.

Mr. METZENBAUM. Will the Senator yield to me such time as I may need to ask a question?

Mr. EXON. I yield to the Senator from Ohio.

Mr. METZENBAUM. I want to ask the chairman of the Finance Committee his views with respect to using this vehicle to include tax provisions that the Senator from Oregon has already directed his attention to, not at this moment, but the so-called trucking amendment which was in the concurrent resolution which you brought to us the other day and which I know we passed at a cost of $8½ million, and the application of the at-risk rules to low-income housing credit, also, I believe, in the tax bill.

I am frank to say I do not know how many other provisions from the tax bill now wind up in the Budget Reconciliation Act. I just want to ask him whether or not he, as the chairman of the Finance Committee, is comfortable with the fact that matters that are unquestionably within his jurisdiction and that are matters which he supported, and I have indicated I had no objection of his proceding forward

with those matters, now wind up in the budget reconciliation bill because the concurrent resolution is in some difficulty?

Mr. PACKWOOD. Well, when you say a budget reconciliation bill, almost every committee has some part of this bill. They have done something to help it; Finance and Ways and Means did something to help. We have a debt ceiling in here which is clearly the jurisdiction of Ways and Means and Finance. We put it in this bill.

I have no objection in the sense I do not regard this as a budget reconciliation bill in the normal sense of a budget reconciliation bill. This is basically a composite of all the committees of the Senate, of the Congress, putting together their pieces to try to make the whole.

Mr. METZENBAUM. I thank the Senator.

Will the Senator be good enough to yield me 15 minutes?

Mr. EXON. I am glad to yield 15 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, I rise to indicate my concern about this process. Now I am a member of the Budget Committee. I have attempted to attend those meetings regularly and I have no fault to find with the leadership of that committee. I think they worked extremely hard. I think they have worked well and I think they are committed to the budget process. But I am very much concerned that we have emasculated the process.

In the effort to achieve some sense of unity, in the effort to achieve that which is considered to be a budget, we——

Mr. DOMENICI. Mr. President, could we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. METZENBAUM. We have looked around and scraped the bottom of the barrel for everything under the Sun and thrown it into this bill.

And there is no argument about the fact that a point of order could be raised with respect to the fact that the bill contains much extraneous matter, but I am not here to do that. I have no intention of doing that.

But I want to point out why I think this is a horrible way to legislate. Now at 25 after 9 on the last night of the session, we are going to pass a number of bills, a number of measures that the Members of this Senate have no idea about.

There is one provision that is cute. It is cute. It is literally cute. But when I am saying it is cute, I could describe it in another way and that is it consists of phony accounting. Phony, phony, phony accounting.

Now, I do not lay this at the doorstep of the Senator from New Mexico or the Senator from Florida. I lay it at the doorstep of those who are concerned about the agriculture legislation. I have no problem about dealing with the agricultural problems, agricultural programs, the Farm Credit Administration——

Mr. DOMENICI. Mr. President, could we have order?

The PRESIDING OFFICER. The Senator will suspend. Senators engaged in conversation are asked to take their seats. Senators in the well engaged in conversation are asked to take their conversations elsewhere.

The Senator from Ohio [Mr. METZENBAUM] is entitled to be heard.

The Senator will suspend. We will not proceed until the Senate is in order. Senators on both sides of the aisle are asked to take their seats.

Senators on both sides of the aisle are asked to take their seats and be silent in a measure of respect to their colleague from Ohio, Mr. METZENBAUM.

The Chair will insist in maintaining order. It is the duty of the Chair.

The Senator from Ohio is recognized. Mr. METZENBAUM.

Mr. METZENBAUM. I very much appreciate the courtesy of the Chair in bringing the Senate to order.

Let me read you one provision called accounting for the period. It has to do with the Farm Credit Administration. Now I am not opposed to our addressing ourselves to the concerns of the Farm Credit Administration in the normal legislative proposals. But let me read you what this provides.

"For the period July 1, 1986, through December 31, 1988"—Mr. President, I am going to again withhold until there is order in this body.

□ 2130

The PRESIDING OFFICER. The Senate is in order.

The Senator may proceed.

Mr. METZENBAUM. "For the period July 1, 1986, through December 31, 1988, the institutions of the Farm Credit System may, subject to such conditions as it may establish, capitalize annually their provision for losses in excess of one-half of 1 percent of loans outstanding, and amortize such capitalized amounts over a period not to exceed 20 years."

Members of the Senate, that may be hard to understand what I said as I read it. But let me explain it to you in simple terms. For those losses that are in excess of one-half of 1 percent of the loans that are outstanding, what they are saying is if that happens to be $1 billion or $5 billion—and I think this amendment has to do with $5 billion of excess obligations, excess losses—they are saying take those and do not show them as losses. Show them as a loss over the next 20 years. No business would be permitted to do that. That would just be considered totally phony. No accounting firm would certify an accounting statement on that basis.

And what are we doing? We are putting it into the Budget Reconciliation Act in order that we may get the bill through and somehow we are going to be able to claim that we are balancing the budget or getting closer to it.

Then there is a provision in here having to do with the Conrail sale. The Conrail sale was put in because ostensibly they were going to pick up some money from the Conrail sale in order to help balance the budget, but who had the audacity to take out of the bill provisions having to do with labor protection. That is bad enough.

But then let me tell you about another provision that is in the bill. This one ought to shock anybody within range of my voice. What they provided was that the company that was trying to buy this company, put it together, and to merge it together with its own Norfolk Southern, that or any other railroad company could start buying up the stock of Conrail 1 year after the transaction was completed. One year after, but listen to this. Neither you nor anybody else except a railroad would be able to start buying up that stock for a 3-year period.

So what we have said in simple language is that Norfolk Southern, which attempted over a period of months and months and months to take this railroad and put it under its wing, to merge it, cost jobs, and cost service to the community to put it together, what we now said is, well, we have given you an opportunity to do it. But no way did we do it so that it was through the normal legislative processes. We put it in the middle of a big bill. Nobody would know it was there. Nobody could do anything about it. We cannot come to the floor and knock that provision out. If we did, nobody would comprehend what it was all about. That does not belong in the budget reconciliation bill.

Then, as you look at some of the other provisions you provided that place after place after place that there are provisions in it. There is a whole list of them to be found on your desk. You'll find what we have done is we have made this into a total legislative package. I think some of the provisions might be right. It think some of the provisions may be wrong. But whether some of the provisions are right or whether some of the provisions are wrong, I am sure this is the wrong way to legislate.

I spoke to the chairman of the Finance Committee about two of the tax provisions in the bill. I stand before you, and I am frank to admit that I do not know whether there are 22 other provisions in the bill.

I would say last evening I was excoriated by the distinguished minority manager of this bill for putting into

the continuing resolution a provision having to do with RICO. There was merit to what he was saying. It did not belong in that bill. And the Senate turned it down. But at least the U.S. Senate had an opportunity to make its own decision as to whether they wanted to put it in or to take it out.

In this instance, the Members of this body do not have that privilege. We are called upon to vote the bill up or down. I think it is a horrible way to legislate. I think it is an abuse of the budget provisions. Some have stood on this floor and talked about whether or not we are balancing the budget, and whether we were doing the job that we were called upon to do. I agree that is a fair question to raise. But I think it is also a fair question to raise: Is it right to use the budget reconciliation measure to be a catch-all for every single kind of legislative proposal that has not been able to stand the light of day and has not been able to pass on the basis of its own merits?

This Senator does not think this is the right way to legislate.

Mr. COCHRAN. Mr. President, would the distinguished Senator from new Mexico yield to me 2 minutes?

Mr. DOMENICI. Mr. President, I will do that shortly.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. What I have been asked by the distingusihed majority leader—and I believe the minority leader, who is here on the floor concurs—I ask the Chair to lay before the Senate a message from the House on H.R. 5484, the drug reform bill.

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. DOMENICI. 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. DOMENICI. Mr President, I withdraw my previous request.

FURLOUGHED EMPLOYEES COMPENSATION

Mr. DOMENICI. Mr. President, In now ask unanimous consent that the Senate turn to the consideration of House Joint Resolution 754, relative to Government employees, just received from the House.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. There is no objection. It has been cleared on this side.

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

The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 754) providing for furloughed employees compensation.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. DOMENICI. Mr. President, I ask unanimous consent that statements on this issue by Senators WARNER and TRIBLE be inserted as if read. A Senate version has been prepared for introduction, cosponsored by Senators WARNER, TRIBLE, STEVENS, and SARBANES, but expeditious action by the other body has rendered that unnecessary.

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

● Mr. WARNER. Mr. President, I rise to take but a few moments of my colleagues time to assure that Federal Government employees will not be penalized because of the delay in our completion of the appropriations process.

I am pleased to be joined in this effort by my colleague from Virginia, Senator TRIBLE, my colleague from Maryland, Senator SARBANES, and the distinguished chairman of the Senate Civil Service Subcommittee, Senator STEVENS.

This action is not unprecedented.

Congress has historically tried to make Federal employees whole regarding their pay when we have found ourselves in a legislative logjam.

I make no criticism of the process.

Completion of the fiscal year 1987 continuing resolution has been delayed because of important vested interests—interests which reserve the benefit of full debate.

My interest, if you will, is the welfare of the Federal Government employee who may suffer a reduction in pay because of our intransigence.

Simply stated, this joint resolution will assure that Federal Government employees will be fully credited for any loss of pay due to a temporary shutdown.

They will be fully compensated, just as if we had completed the appropriations process in an orderly manner.

Mr. President, this is all that I am seeking, and I encourage the unanimous support of all of my colleagues.

The employees of the Federal Government deserve our good faith agreement in this important matter.●

● Mr. TRIBLE. Mr. President, I am a cosponsor of this joint resolution, offered by my colleague from Virginia [Mr. WARNER], and I urge its swift approval.

Federal employees are being released from work early today because the Federal Government is out of funds. Technically, there is no money to keep the Government in operation or to pay the salaries of Federal workers.

We all know the cause of this predicament. We have thus far been unable to enact the continuing resolution needed to provide necessary funding for the Government. Unfortunately, civil servants stand to lose pay as a result of congressional inaction. They could be penalized for a situation which is not of their making and one which is beyond their control.

Clearly, Federal workers should not be required to lose pay because we have been unable to complete our work in a timely manner. Civil servants are not responsible for our troubles today and they should not be required to suffer financial loss as a result.

Mr. President, this amendment would ensure that Federal workers are not penalized due to our inability to enact the continuing resolution. Fairness requires this amendment to be adopted and I urge my colleagues to support this measure.●

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 754) was ordered to a third reading, was read the third time, and passed.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I yield as much time as the distinguished Senator from Mississippi desires.

The PRESIDING OFFICER (Mr. BOSCHWITZ). The Senator from Mississippi is recognized.

OMNIBUS RECONCILIATION—CONFERENCE REPORT

The Senate resumed consideration of the conference report.

Mr. COCHRAN. Mr. President, I thank the distinguished chairman of the Budget Committee for yielding to me.

As the distinguished Senator from Ohio has pointed out, Mr. President, this legislation contains provisions which will permit the Farm Credit System to solve some of the critical financing problems that it is facing. Let me just say that I think there is a good reason for including this bill in this Reconciliation Act.

FARM CREDIT SYSTEM

Mr. COCHRAN. Mr. President, included in this conference report are provisions that will permit the Farm Credit System to alleviate some of the critical financial problems that it is experiencing.

The Farm Credit System is a federally chartered, cooperatively owned nationwide system of banks and asso-

ciations that provide credit and closely related services to farms, ranchers, producers or harvesters of aquatic products, rural homeowners, and selected farm related businesses. It also provides credit services to agricultural cooperatives and certain other entities. The System, operating under Federal law—the Farm Credit Act of 1971—is active in all 50 States and Puerto Rico.

The System has served American agriculture since 1916. It is a major provider of funds to this segment of the economy. While the amount of System loans outstanding has declined from a high of about $85 billion at the end of 1983 to a level of $61.5 as of June 30, 1986, it remains one of the Nation's primary financers of agriculture.

The severely depressed condition of the agricultural section is reflected in the financial condition of the Farm Credit System. To illustrate, the production credit associations (that make shorter term operating loans) and the Federal land banks (that make longer term loans, primarily of farm real estate) are carrying more than $7.5 billion in nonaccrual loans that are not considered fully collectible. They hold another $5 billion in other high risk loans. Even though repayments are not currently being made on most of these troubled loans, the Farm Credit System is continuing to bear the cost of servicing its obligations to investors who have purchased bonds to finance the System's lending activities. In other words, while the System tries to practice forbearance with its borrowers, it nevertheless must meet its bills when they come due to the investing public.

The growing volume of troubled loans has caught up with the Farm Credit System. Last year, the System posted the largest annual loss of any financial institution in history, nearly $2.7 billion. For the first 6 months of 1986, it lost another $968 million, and there is little reason to believe this trend has yet to run its course. In view of these fact, it is not surprising that the System faces a financial crisis.

Another major source of the System's stress is the high cost associated with much of its borrowings from the public. A heavy volume of System obligations of relatively long maturity was sold in the early 1980's when interest rates generally reached unprecedented levels. These obligations largely represent financing for the Federal land banks; $30.8 billion of such obligations have a weighted average maturity of 3.4 years and bear interest rates of 9 percent or higher, and the average cost of these System funds is 10.6 percent.

An additional factor also poses a serious threat to the System's viability. It is losing substantial numbers of financially sound borrowers to other lenders whose terms and conditions are more attractive and who respond more quickly to the overall downward trend of interest rates. The cost of money over the past year has declined rapidly. Interest rates of 5-year Treasury bills have dropped from 9.81 percent to 6.8 percent. Since August 1985, the prime rate has dropped from 9.5 percent to 7.5 percent. Home mortgage rates have fallen from an average of 12.41 percent to 10.5 percent. However, during this same period, the Farm Credit System's interest rates have only dropped an average of less than 1 percent. No business organizations can long survive a competitive disadvantage such as this.

In this regard, the Farm Credit Act explicitly gives the FCA a power unique among agencies that regulate financial institutions—the power to approve the interest rates charged by System banks and associations on their loans. Many System institutions have been seeking to lower their rates, but the System's regulator has not reponded in a timely fashion to request for limited interest rate reductions.

In another area of concern, the Farm Credit Amendments Act of 1985 established a new System entity, the Farm Credit System Capital Corporation. Its purpose is to marshal the resources of the System for "self-help"—so that financially stronger elements of the System can channel assistance to the elements experiencing financial stress. Although financially healthy System institutions have made over $1 billion available to their distressed sister institutions, further System self-help efforts recently have been frustrated. While the Capital Corporation is organized and is functioning, lawsuits filed by certain System institutions have challenged the ability of the Corporation to collect assessments from stronger institutions for redistribution to those that are financially troubled.

The combination of factors that I have outlined threatens the very existence of the System. Emergency action of the part of Congress is necessary to maintain, for the benefit of American farmers, ranchers and their cooperatives, this borrower-owned, cooperative-financing System.

The provisions of the conference report to which I refer will permit the System to address promptly its most pressing problems. These provisions will not cure these problems—only a recovery of agriculture to a healthy condition will do that. But I am confident that they will enable the System to continue to fulfill its vital role—and at least postpone, if not avoid entirely, the need to provide Federal financial assistance to the System.

With respect to interest rates on loans made by System institutions, the bill deletes from the Farm Credit Act the provisions that subject such rates to FCA approval. Thus, the establishment of interest rates—a fundamental, day-to-day business decision for any lender—will be left to the boards of directors of System banks. That is not to say, however, that the System will be allowed to operate free of any restraints. FCA will continue to have authority, under other provisions of current law relating to "safety and soundless" and "capital adequacy," to ensure that the System does not take actions that threaten its viability. However, the FCA will no longer have prior approval authority over the business judgment of System boards in fixing interest rates.

Other provisions confront the two problems discussed above that generate much of the System's financial distress—the high costs of its borrowings and the high levels of its loan losses. They make available to the System some effective tools to help it manage, and alleviate over time, the problems that now severely threaten it.

Use of these tools will give the System time to work off costs and losses that, if required to be recognized currently, would compound its financial woes. With the prior approval of the subject to conditions set by the FCA, each System bank would be allowed (1) to contract with a third party or a limited purpose System service organization for payment of the bank's and other System bank's obligations incurred before January 1, 1985, in consideration of payment of market interest rates on such obligations plus a premium, (2) for the period July 1, 1986, through December 31, 1988, to capitalize the "excess" interest costs on such obligations, or (3) to take other similar actions, and to amortize the premium or excess interest or like cost over a period of not to exceed 20 years.

Also, with the prior approval of the subject to the conditions set by FCA, for the period July 1, 1986, through December 31, 1988, System institutions would be allowed to capitalize their excess loan losses over a period of not to exceed 20 years.

With respect to the costs of borrowings, the excess would be the amount by which interest costs on System obligations incurred before January 1, 1985, exceed the estimated interest costs on a like amount of System securities of like maturities at prevailing market interest rates as of the date of enactment of the bill, a rate likely to be close to 6 percent. With respect to loan losses to be capitalized for calendar years 1986, 1987, and 1988, the excess would be the amount by which the System's provision for losses exceeds one-half of 1 percent of loans outstanding—the level of provision for losses ordinarily maintained by the System.

Under these provisions, the System would be relieved of none of its obliga-

tions. Holders of System securities would be paid interest and principal in full when due. However, the recognition of the excess costs and losses described could be spread over a period sufficient to permit the System to absorb them under normal conditions.

It is recognized that this treatment of costs and losses would not be consistent with generally accepted accounting principles [GAAP]. The Farm Credit Amendment Act of 1985 required that System financial statements be prepared in accordance with GAAP. An exception from this requirement would be made with respect to the extended amortization periods that are provided for. But it is expected that the System will make full and fair disclosure of precisely what its financial condition is. And it is expected that such disclosure of measures, taken under statutory authority, will enhance investor confidence in the System. This result should follow when it is clearly understood that such measures will increase the likelihood that the System will be able to alleviate its financial problems and continue as viable and healthy financial institution.

The accounting changes authorized should reduce—but will not eliminate—the need for the System to provide financial assistance to its troubled institutions. These changes do not, therefore, relieve the System of its self-help responsibilities. It is expected that the System will, as necessary, use its resources to help its own distressed units, as contemplated by the Farm Credit Amendments Act of 1985.

It should be strongly emphasized that the System's use of the fiscal tools supplied by the legislation will be subject to strict regulations. I reiterate that these tools may be employed only with the prior approval of the FCA, and subject to such conditions as the agency may establish.

Some of the provisions I have referred to present issues that merit further discussion. The legislation expresses the policy of Congress with respect to System interest rates. While the policy statement is not a provision of positive law, it does enumerate some of the elements to be taken into consideration with respect to levels of interest rates. It should be apparent that Congress expects no "free fall" of System interest rates, and no application of these remedial provisions in a manner that would dissipate System resources or undercut interest rate levels generally being charged by other commercial lenders on similar loans.

The accounting principles provided for in the legislation will have an impact on borrower interest rates. The ability of System institutions to offer competitive interest rates in order to retain creditworthy borrowers and preserve their earnings base will over time enable them to work out of their financial difficulties. As reflected in the policy statement, the Congress does not intend that System institutions depress earnings by charging interest rates that are below competitive market rates for similar loans from other commercial lenders. But it is recognized that the interest rates charged by the System need to respond to the various competitive environments in which it operates. Ailing System institutions simply cannot sustain a recovery by offering above-competitive interest rates to existing and prospective borrowers.

In this connection Congress is aware that there are areas of the country where the System supplies much of the agricultural credit. In some regions, few commercial lenders are actively engaged in financing farmers, ranchers, and their cooperatives. Agricultural producers and cooperative should not be expected to suffer unreasonable credit conditions simply because there is a dearth of aggressive competition for their business.

It should be clear, as the policy statement expresses it, that the System is expected to carry out these provisions in a fashion that allows its borrowers to derive the greatest benefit practicable from the legislation. So that such benefit is afforded to sorely pressed farmers in time to meet their financing needs for the 1987 crop, it is absolutely essential that the System and the FCA move swiftly to implement these provisions.

With respect to timely implementation of the legislation, its provisions would, as I have pointed out, permit the System, with FCA approval and for the period July 1, 1986 to December 31, 1988, to capitalize and to amortize over a period for up to 20 years, excessive loan losses—that is, loan losses that exceed one-half of 1 percent of loans outstanding, which in the traditional level of the System's provision for loan losses. To achieve the objective of this provision, it must be applied so as to be effective promptly.

To illustrate the proper application of the provision, assume an institution has $10 million in loans outstanding as of June 30, 1986, and has made provision for loan losses of $30,000 during the first 6 months of 1986. If approved by FCA, the institution may capitalize additional provisions to its reserves during the balance of 1986 that exceed $20,000. If the institution had made a provision for loan losses of $50,000 rather than $30,000 during the first half of 1986, the full amount of any additional provision for loan losses during the remainder of 1986 would be eligible for capitalization.

Further, it is intended that this provision be available for use in monthly or quarterly System financial statements. This would not be possible for calendar year 1986 if use of this provision were delayed until issuance of the 1986 annual financial statements.

The provisions that I have discussed represent our best judgment as to the action that Congress can take at this time to aid the Farm Credit System. These provisions, while far from perfect, represent a workable and practical approach to a problem that cannot be ignored. They will give the System a reasonable opportunity to remain a vital supplier of credit to American agriculture. And they will impose no cost whatever on the Federal Treasury. They deserve the support of the Congress.

Everybody knows, and it has been quietly publicized and discussed here on the Hill, in hearings, and committee meetings that the Farm Credit System is in very serious trouble. As a matter of fact, there is a danger that it could go out of business, that it could collapse, or in the alternative that it would have to turn to the Federal Treasury for a bailout.

The prospects for a drain on the Treasury in that instance is one reason why this is proper subject for reconciliation. The Agriculture Committee realizes after hearings and conversations from Farm Credit System officials, the Farm Credit Administrator, other experts in the field, that there is a way to at least postpone, if not alleviate, the need for direct Federal assistance to the Farm Credit System by the adoption of this legislation that is included in the bill. That is the point, Mr. President.

There is an opportunity to permit the Farm Credit System to reamortize, to stretch out, defer losses if we permit this legislation to be passed tonight.

□ 2140

The reason for that is to let borrowers who are part of this system share in some of the reduced interest rates that other borrowers from other institutions are enjoying in our economic system today.

The Farm Credit System has been charging its borrowers as much as 3 percentage points more than they could be getting if they were borrowing from banks or other lending institutions. This is a big problem. Better borrowers are really being encouraged under the circumstances to go elsewhere, to leave the Farm Credit System to those who are less able to repay their loans and service their loans.

So that is what the amendment seeks to do, Mr. President, to permit the Farm Credit System to have more flexibility through its production credit administration, its Federal land banks, and local lenders, with borrowers so that the system will have a

chance to work its way out of this difficulty.

The second thing it will permit it to do is to roll over some of this old, high-cost debt, stretch out the repayment, and reamortize it over a long period of time.

Mr. President, I have a letter which was unsolicited from an investment firm in New York City.

In direct response to one of the suggestions of the Senator from Ohio, I wanted to read a sentence:

We are less concerned with the accounting treatment of FCS losses under the reality of the problems the FSC currently faces.

Then they go on to say:

This change will permit FCS management to avoid the request of assistance. It will minimize the amount of assistance which might be requested. This new proposal seems a logical and favorable step in reducing and delaying the FCS need for assistance from Treasury.

Mr. President, I ask unanimous consent that the entire statement from Rothschild, Unterberg, Towbin, Inc., be printed in the RECORD at this point.

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

THE FARM CREDIT SYSTEM PROPOSES TO USE DEFERRED LOSS ACCOUNTING

The Farm Credit System (FCS) has proposed a new plan which would allow it to both lower its cost of loans to farm borrowers and delay indefinitely its anticipated request for Federal financial assistance. The plan is to defer losses, which while questionable from a strict accounting viewpoint, will achieve several important and productive ends for the FCS. Our investment conclusion is that the plan would be neutral for FCS bond prices, since the short term costs are at least matched by the long term benefits. We are less concerned with the accounting treatment of FCS losses under the new act than the reality of the problems the FCS currently faces. Any reduction in the rate of interest charged its borrowers will not only preserve FCS market share, but also conserve FCS capital and slow the rate of loan losses. The time when the FCS might ultimately require federal financial assistance will be postponed, and the additional breathing space the act provides improves the FCS' chances of surviving independently. Since the FCS can fund the losses with cash raised in the capital markets, this solution is workable, and the ends certainly justify the means.

The proposal is the Farm Credit System Borrower Interest Rate Relief Act of 1986. The FCS has issued a large volume of high coupon, long term non-callable debt over the last several years. As a consequence, the FCS average cost of funds is 10.6%, which is far above competing financial institutions. In addition, the FCS has high overhead expense. All these costs are passed through to FCS farmer-borrowers which makes rates on FCS loans non-competitive with other financial institutions. The market share of the FCS has eroded because of this differential in rates; FCS loans outstanding have fallen to $61.5 billion at 6/30/86 from $66.6 billion at 12/31/85, and $78.4 billion at 12/31/84.

The FCS had asked the Farm Credit Administration (its regulator) to allow it to lower the rate it charged on its loans, but the FCA refused on the grounds that lending at a negative spread would speed the erosion of FCS capital. The new proposal would take the rate setting power out of the hands of the FCA and place it with the 37 district banks of the FCS. This change, since it is endorsed by the Congress, would not stand in the way of any future needed financial assistance.

The new act would allow the FCS to charge a competitive rate to its borrowers and capitalize the difference between the actual cost of its funds and the prevailing market rate. The capitalized interest would be amortized as an expense over twenty years. Alternatively, the FCS could defer the high coupon bonds and capitalize the premium, also using a twenty year amortization.

In addition the FCS could, upon approval from the FCA, capitalize their annual provision for loan losses, which was in excess of one-half of one percent of loans outstanding, and amortize it over twenty years.

The FCS stands to have its operating losses reduced by up to $1 billion annually under the proposal. While the deferred loss treatment is not in accordance with generally accepted accounting principles it is not uncommon in regulatory reporting for the thrift industry. This process would reduce the market erosion the System is experiencing and reduce the debt service requirements on many farmers. The System's capital would be conserved by the retention of borrowers (since they supply the funds for the FCS Capital Stock and Participation Certificates) and market share would be maintained by competitive rates. In addition, a reduction in the rate of interest charged to the FCS farmer/borrowers would help prevent many marginal farmers from defaulting, thus reduce FCS loan write-offs.

Last week before Congress, H. Brent Beesley, Chief Executive of the Farm Credit Corporation of America discussed the System's future financial prospects. He reported that a projected System loss of $1.7 billion for 1986 compares to a loss of $2.7 billion recorded for the year ending December 31, 1985. In addition, System projections reflect losses of $1.1 billion in 1987 and $600 million in 1988. The System's surplus is projected to decline to $1.7 billion by year-end 1986, to $600 million by year-end 1987 and to a negative $100 million by December 31, 1988. Beesley cautioned that there are many uncertainties surrounding these projections. Changes in such factors as general interest-rate levels, federal farm programs, land values and commodity prices could alter the projected results significantly. At the same time the General Accounting Office projected FCS losses of $2.9 billion in 1986, which would reduce surplus to $354 million. It seems clear that without a drastic change in either the farm economy or the accounting system used by the FCS, federal aid would be needed soon.

While it is not certain that this measure would be sufficient for the FSC to avoid requesting Federal financial assistance, it reduces the amount of assistance that might ultimately be needed. The FCS management is fighting to avoid the need to request assistance, and to minimize the amount of assistance that might be requested. This new proposal seems a logical and favorable step towards reducing and delaying the FCS needs for assistance from the Treasury.

(By Allerton Smith)

Mr. ZORINSKY. Mr. President, title I of the conference substitute reported by the conferees on the Omnibus Budget Reconciliation Act of 1986 relates to agricultural programs. This legislation includes a provision relating to the repayment of rural utility loans financed by the Federal Financing Bank and guaranteed by the Rural Electrification Administration. Under the provision, such loans may be prepaid without penalty. In conference, it was agreed that the REA is to permit such prepayments under prescribed conditions, including the passing along of savings to utility customers. The objective is to realize net proceeds to the Government of $2,017,500,000 in fiscal year 1987. The administration would be directed to establish eligibility criteria to ensure that the loan prepayments will be directed to those cooperative borrowers in greatest need of the benefits of this program.

Another important part of title I requires that advance deficiency payments be paid to producers of certain agricultural commodities. The conference committee agreed to require the Secretary of Agriculture to make advance deficiency payments available for the 1987 crops of wheat, feed grains, Upland cotton, and rice under the criteria in current law, at a rate not less than 40 percent of the projected 1987 crop payment rate for wheat and feed grains and 30 percent of the rate for Upland cotton and rice.

Further, title I includes a provision relating to the sale of notes and obligations from the Rural Development Insurance Fund. The notes in this fund primarily represent Farmers Home Administration loans made to rural communities under its water and waste disposal and community facilities loan programs. This provision will require the Secretary of Agriculture to sell notes from this fund in such amounts as to realize to the Government net proceeds of $1 billion in fiscal year 1987, $552 million in fiscal year 1988, and $547 million in fiscal year 1989. Under this provision, the institutions of the Farm Credit System will be specifically authorized to purchase, service, collect, and dispose of these notes. This will provide an additional market to help ensure that the savings projections under the legislation will be achieved.

Mr. President, I fully support the provisions I have summarized. They will go far toward making the anticipated savings a reality. They will provide some desperately needed benefits to farmers and others who are bearing directly the burden of the continuing depression in the agricultural sector.

The conference report contains other provisions that relate to the financial crisis that now faces the Farm Credit System. While I support these

provisions as representing an emergency, stop-gap approach that may allow the System to alleviate this crisis, I am disturbed by the process that brings them before us at this late date.

Only a few weeks ago, a representative of the System appeared before the Agriculture Committee and stated that the System was not seeking Federal financial assistance this year. The System has not sought such assistance, and the legislation we are considering does not provide it. However, the legislation does give Federal approval to accounting procedures that depart from standards Congress prescribed less than a year ago. The need for the new changes in law was precipitated by a series of lawsuits by System institutions that at least temporarily hamstring the System "Self-help" measures that Congress also put in place just a year ago.

Mr. President, the System accounting that would be authorized can be briefly described. With the approval of its Federal regulation, the Farm Credit Administration, and under conditions FCA may establish, the System would be allowed, through December 31, 1988, to capitalize both the "excess" costs associated with bonds it sold before 1985, and the "excess" loan losses it is experiencing. The excess funding costs and loan losses are those that exceed, respectively: First, the amounts by which interest costs on bonds issued before 1985—at rates in excess of 9 percent—exceed interest costs on such bonds had they been issued currently—at rates of about 6 percent—and second, one-half of 1 percent of loans outstanding, which is the System's traditional level of loan loss reserves. These capitalized amounts could be amortized over a period of up to 20 years. This procedure is not consistent with generally accepted accounting principles; therefore, an exception from those principles is provided for that would apply to System accounting during the amortization period.

The objective is to permit the System to absorb, over up to 20 years, costs and losses that, if recognized currently, could push the System to the brink of financial collapse. The expectation—or perhaps hope—is that this approach will let the System charge its farmer-borrowers more competitive interest rates, reduce the amount of funds healthy institutions will need to transfer to those that are in most serious trouble, and postpone or possibly avoid the need for Federal assistance.

I know that these provisions will not solve the System's financial problems. They will merely alleviate them. I am, therefore, concerned that the institutions of the Farm Credit System not be lulled into complacency because they would no longer be required to record on a current basis the staggering losses they are suffering. In good conscience, I could not support these provsions if I did not make clear that the Farm Credit System must face head on its problems of waste and inefficiency, and must provide such self-help as may be necessary, just as Congress contemplated when it adopted the Farm Credit Amendments Act of 1985. I intend to keep the pressure on and to ask those questions that must be asked about streamlining the System, eliminating unnecessary bureaucracy, and using its own resources to address its problems.

Mr. President, I would add that deviating from standard accounting practices is not unprecedented. It was permitted in the insurance industry in the 1930's. The primary investment vehicle used by insurance companies has traditionally been corporate bonds. Prior to the Depression, statutory accounting recognized bond assets as a function of market value. However, with so many corporations having impaired value during this period, the solvency of several insurers was in question. As a result, enabling legislation at the State level was passed to allow fixing the carrying value of corporate bonds at their par or maturity value—with the purchase discount or premium being amortized over the duration of the investment. This acounting treatment assisted many firms through a very difficult period. A significant departure from standard accounting principles has also been implemented in the thrift industry with approval of the Federal regulator.

While I am very uncomfortable with both the timing and manner in which this legislation reaches us, and I am concerned that we are taking a step backward on accounting, I believe we have no other practical choice. Our failure to do so could imperil the existence of the System as a major source of credit for the farmers and ranchers of America and their cooperatives.

FARM CREDIT SYSTEM INTEREST RATES

Mr. BENTSEN. Mr. President, the reconciliation package now before the Senate contains a provision dealing with the Farm Credit System. Part of that provision is a modification of S. 2770, a bill which I joined with the distinguished Senator from Mississippi [Mr. COCHRAN] and others in introducing last August.

S. 2770 was intended to remove the Farm Credit Administration Board from the business of telling districts where to set their interest rates. The FCA board had been arbitrarily requiring interest rates to be kept at levels well above the market, arguing that more funds were needed to cover losses within some parts of the System. That short-sighted policy is penny wise and dollar foolish. It has run off many of the System's best borrowers, causing losses of annual revenue in the millions of dollars.

The proposal now before us allows the Farm Credit System to change its accounting practices and write off many losses over 20 years instead of recognizing them immediately. As a result, the day when Federal capital will be needed is delayed. Another result is that these paper savings can be used to lower interest rates to market levels for the farmers and ranchers who are borrowing from the System.

The interest rate reduction language in this bill has been modified, and has been weakened, from the proposal which we originally introduced. Nevertheless, I support its passage. It is the best available alternative in a very bad situation.

A major problem facing the System today is that interest rates charged to Farm Credit System borrowers are well above market rates. Repeated requests to the Farm Credit Administration Board from the Texas district board to lower these interest rates have been ignored, refused, or approved with restrictions that made them almost meaningless.

As a result the entire Farm Credit System, not just the Texas district, is threatened. New loans by Texas land banks in 1986 are down 58.3 percent from 1985 and 69.4 percent from 1984. In addition, loan payoffs for the Federal Land Banks of Texas in the first 9 months of 1986 were up by 102 percent from the same period a year ago, and up by 175 percent from 2 years ago. The payoffs alone have cost the Texas district more than $7.5 million in lost earnings.

At the same time, huge assessments are being levied against Texas and other healthy districts to cover losses in other districts. It is only a matter of time, and possibly a short time, until the capital of the entire system is exhausted if those assessments go forward.

Those assessments are not going forward because of numerous court suits questioning the validity of the capital adequacy regulations promulgated by the Farm Credit Administration. I objected to those regulations when they were proposed.

Last week a judge in Lubbock, TX, issued a temporary injunction blocking assessments against 42 of the 44 land banks and 23 of the 28 production credit associations in Texas. Also last week a Federal judge in Missouri issued a permanent injunction against those regulations, saying that the FCA board had exceeded the intent of Congress. Many other suits are also pending.

Under current accounting rules, major portions of the system, particularly in the Midwest, will soon be out of capital if these assessments remain blocked. When the capital of a local association is exhausted then the class

B stock, which is held by all borrowers as a condition of getting a loan, is frozen. It does not matter whether those borrowers are current on their loans or not, and they cannot get that money out even if they pay off their loans. The B stock funds are used to cover any additional losses, and then the remainder, if any, is unfrozen and distributed after the crisis is settled.

Thus anyone contemplating borrowing from the Farm Credit System now must be willing to pay interest rates that could be two full points or more above the market, and must also risk the freezing and possible loss of their B stock investment. It is no wonder that farmers are leaving the System in droves.

As these borrowers leave for other sources of credit, the FCS is squeezed even harder. It has a much smaller volume of loans, and thus less income. Also, the quality of the remaining loans is lowered by the flight of top-quality borrowers, leaving a portfolio with more potential losses and producing less interest income. The overhead costs of operating the FCS, however, are relatively fixed.

For the healthy districts and associations, the assessments take away funds saved up over decades for just such a rainy day as this. When those reserves are gone even small losses can result in capital impairment, and in today's depressed farm economy almost every association is going to have some loan losses. In addition, interest income from those reserves is lost, and more of the association's costs must be covered from interest rates charged to borrowers.

I am deeply concerned that this combination of circumstances poses a real threat to the long-term survival of the Farm Credit System as we know it today. And the longer that the FCA waits to deal with this the more difficult it will be. This bill gives the FCA another opportunity to deal with this problem.

Mr. President, I would also point out that the FCA we deal with today is not the FCA we dealt with last year, when the Farm Credit Amendments Act of 1985 was passed. The FCA is now under the control of a politically-appointed board of directors created by that act. That board has taken the broad powers given them in that bill and expanded them even further, to the point where the courts have now intervened.

Last year I warned when the bill passed the Senate that it was a bad bill. I said, "This bill will provide a lot of regulation and very little actual help. It will effectively eliminate the concept of local control on which the Farm Credit System was founded. It will wind up giving political appointees control of the System."

I pointed out last December that that legislation would not necessarily mean that financial assistance would be provided to the Farm Credit System. The problems of the FCS have now become critical, and we are finally here to provide some assistance.

Mr. President, this bill now before us provides smoke and mirrors help, but it is help. It does not require that all savings be passed on to borrowers as lower interest rates, as I would prefer. But it does allow that, and this is apparently the only chance to get those lower interest rates before the refinancing season for next spring's crops.

I want the farm credit banks of Texas to remain competitive and dedicated to serving the farmers and ranchers of Texas. This bill can help them do that, and I urge its passage by the Senate.

(By request of Mr. BYRD, the following statement was ordered to be printed in the RECORD.)

● Mr. LEAHY. Mr. President, certain provisions of the conference report amend important agricultural programs. These amendments should be supported by the Senate.

FARM CREDIT PROVISIONS

Provisions of the conference report will amend the Farm Credit Administration's authority to set or to approve interest rates of the lending institutions it supervises, and will permit farm credit institutions to purchase back outstanding high-cost debt. Under the debt purchase plan, the farm credit institutions will be able to amortize the expense of debt purchase over a period of not more than 20 years, with approval of the Farm Credit Administration.

Removing the FCA's authority to set or to approve interest rates is consistent with actions taken by Congress last year when enacting, striking in the 1985 Farm Credit Amendments Act. The FCA is entended to be an arms-length regulator, removing itself from the day-to-day management activities that it had previously engaged in. This same view was reaffirmed in the confirmation hearings for the FCA board members.

Unfortunately, today it is necessary to specifically limit FCA's authority in the area of interest rate regulation, making clear that such authority is inappropriate for a financial regulator. No other financial regulatory agency—the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, or the Federal Home Loan Bank Board, for example—has the authority to set, or to approve, interest rates for those lending institutions they regulate. I understand that there is not even the slightest suggestion in the rules or regulation of other, similar regulators that would suggest that those regulators might even require an institution under the supervision of those agencies—even a financially troubled trouble one—to charge competitive rates.

Mr. President, by enacting this legislation, Congress is making it clear to the FCA that it must remove itself from the setting or approval of interest rates for farm credit lending institutions.

Consistent with this congressional intent, I ask unanimous consent that comments made by the System to the capital adequacy regulations as proposed by the FCA be printed in the RECORD at the conclusion of my remarks.

If these regulations, as proposed, are adopted by the FCA as not proposed, one form of interest rate approval will be substituted for another. The System cannot achieve a financial recovery by charging uncompetitive interest rates to its borrower-shareholders, and these regulations must be rewritten to reflect congressional intent.

The interest rate charged by a lending institution is both a right and a responsibility of that institution, and should be based on the cost of debt, risk, and normal operating expenses. Of course, it is also congressional intent that these same institutions should not be allowed to artificially lower their rates in order to reduce the capital that they might otherwise have available to assist in this self-help effort.

The legislation included in the budget reconciliation bill also allows system institutions, with the FCA's approval, to change accounting systems in order to defer losses, and to amortize the expense incurred in buying back high cost debt that was issued over the last several years.

While this deferred loss accounting is not in accordance with GAAP [generally accepted accounting practices], it is not uncommon in regulatory reporting for the thrift industry. Furthermore, it will give the Farm Credit System the breathing room needed to mount a recovery. The action we take today will reduce the erosion of the market of the Farm Credit Banks, and reduce the debt service requirements on many farmers. It is also a logical step toward reducing and delaying the need for the Farm Credit System to seek Federal financial assistance.

Mr. President, my colleagues should know that, in approving this legislation, the authority of the FCA is not weakened. Like other Federal regulators, the FCA will have many powers available to it in dealing with the unsafe and unsound institutions. Authorities retained by the FCA include cease and desist authority, the ability to remove officers and directors for cause, and many other authorities that are available to other Federal financial regulatory agencies.

SALE OF RURAL DEVELOPMENT LOAN FUND ASSETS

The Budget Reconciliation Act also contains a provision to require the sale of Farmers Home Administration [FmHA] Rural Development Loan Fund [RDIF] loan assets. RDIF loans are made to rural communities to finance water systems and other community facilities. The purpose of this sale is to realize net proceeds to the Federal government of not less than $2.099 billion over the next 3 years.

Under the arrangement, RDIF assets—or loans—will be sold on the open market as a way to reduce the Federal deficit. Rural communities will make their loan payments to the holders of these notes. FmHA will no longer be responsible for servicing and providing assistance to rural communities on these loans.

Because maintaining the facilities financed by FmHA is very important to me, I strongly support the provision contained in the Reconciliation Act requiring the purchaser of RDIF assets to provide servicing, related assistance, and additional credit to rural communities.

About 12,000 loans have been made to rural communities through the RDIF. Many of these communities are small with few, if any, paid employees. As a result, they will continue to need servicing and technical assistance along with a reliable, sympathetic lender interested in resolving any credit problems that may arise.

While it is important to reduce the deficit, there can be no higher priority than maintaining the federally financed facilities that have so improved the quality of life in rural America.

The Reconciliation Act therefore establishes two goals. First is the reduction of the deficit through loan sales. Second, and equally important, is the continued assistance, by the purchaser, to rural communities, including servicing and additional credit.

CONCLUSION

Mr. President, in addition to the contribution the budget reconciliation actions will make toward reducing the Federal deficit, it makes the important changes I have noted. I urge my colleagues to adopt the conference report.

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

SELECTED SYSTEM COMMENTS ON FCA CAPITAL ADEQUACY REGULATIONS (SUBMITTED BY SENATOR LEAHY)

Sound management and careful FCA supervision are critical to the recovery of the System's troubled institutions. Indeed, management and directors of the highest caliber are required in the most troubled areas. Given the close inter-relationship of System entities, the System has great incentive to ensure that the proper individuals are placed in control of the troubled institutions and that such individuals be given the ample flexibility to address identified problems. We expect this to be a principal objective of the Capital Corporation. Similarly, we believe that one of FCA's primary objectives should be to ensure that the management and operating issues identified above are being addressed. Primary reliance on capital adequacy determinations will not, in our view focus FCA's resources where they are most needed and can have the greatest impact.

In this respect, our view of capital adequacy recognizes that the System differs markedly from other types of financial institutions which are not bound together with the legal and financial bonds present within the System.

USE OF CAPITAL ADEQUACY REGULATIONS TO CONTROL SYSTEM INTEREST RATES

While the System strongly supports the concept of eliminating FCA prior approval requirements with respect to "the establishment of or changes to the rate of interest charged on loans," it appears that the proposed Capital Adequacy Regulations would merely substitute one form of FCA control over System interest rates for another. Under the Regulations, System institutions would be permitted to establish or change interest rates if such action were taken "in accordance with the institution's financial plan." However, another provision of the Regulations imposes a limitation on the financial plans of System institutions that will effectively preclude many, if not all, System institutions from adopting financial plans that provide for competitive interest rates to borrowers.

During the period in which the Capital Corporation is in operation, the Regulations would require each System institution, regardless of zone classification, to adopt "financial plans" which conform with certain specified requirements. 51 Fed. Reg. 26,409 (1986) (to be codified at 12 C.F.R. § 615.5230) (proposed July 23, 1986). (Institutions classified in Zone D and certain Zone C institutions must have their "financial plans" specifically approved by FCA. 51 Fed. Reg. 26,408 (1986) (to be codified at 12 C.F.R. § 615.5225) (proposed July 13, 1986). One of the requirements applicable to all "financial plans" relates specifically to reductions in interest rates (or, as described in the Regulations, "any decrease in the base spread of the institution"). Under this requirement, any decrease in interest rate spreads must be "justified on the basis of a statistical and economic analysis that demonstrates that such decrease will increase total interest income over the level that the institution would have realized without the spread decrease." 51 Fed. Reg. 26,409 (1986) (to be codified at 12 C.F.R. § 615.5230(c)) (proposed July 23, 1986) (emphasis added).

This requirement constitutes a significant burden, if not an insurmountable carrier, for those System institutions that are considering reduction in interest rates in order to remain competitive in their respective markets. Indeed, it may well require many institutions to increase interest rates, and thereby become even more noncompetitive. The reason for this that many System institutions are now burdened with significant amounts of outstanding debt on which they are paying above market interest. Until these high cost obligations mature, the "weighted average rate paid for its outstanding interest/bearing obligations" will likely increase as the volume of loans outstanding declines. Thus, as volume declines in response to noncompetitive interest rates, the proposed regulation would, when applied literally, require the institution to increase interest rates to borrowers to maintain its "base" spread, making the institution even more noncompetitive and further exacerbating the adverse financial impact on the institution of its high cost debt.

The System cannot mount a financial recovery by charging noncompetitive interest rates to its borrower/shareholders. There is substantial and mounting evidence that the System's share of the total agricultural debt is declining, and that this decline is largely attributable to the System's noncompetitive interest rates. It is indisputable that the entire System is experiencing a substantial runoff of business, particularly on the part of its most creditworthy customers. In these circumstances, it is incumbent on all System institutions to determine whether their interest rates are at levels calculated to maximize interest income over a reasonable period of time. To look only to the short term impact of interest rate reductions on "total loan interest income" and ignore the impact of such reductions on the anticipated levels of nonaccrual loans, chargeoffs, and the long term earnings base of the institution is the epitome of "tunnel vision." Retaining existing rates and losing good customers because those rates are too high compounds the System's financial problems by reducing the volume of acceptable loans which form the earnings base of the System and by decreasing the System's ability to access new and lower cost funds.

While it is clear that projections of loan volume based upon possible change in interest rates will never be a perfect science, and that the advisability of interest rate reductions cannot be separated from the analysis of credit risk, the clear bias in the proposed Regulations against interest rate reductions is unjustified. Decisions to maintain or increase existing rates may, in our judgment, have just as profound and impact on the future financial health of the System as decisions to reduce interest rates. These are decisions that require the exercise of business judgment; they should not be made by an arm's-length regulator.

The System has carefully reviewed the existing capital adequacy regulations of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board, as well as the proposals that these regulators are currently considering with respect to amending to their present regulations. There is nothing in those regulations or proposals that even remotely resembles FCA's proposed requirements with respect to the interest rates charged by System institutions. While it may well be the case that other financial regulators can take enforcement actions to prevent a financial institution from dissipating its capital by charging less than competitive rates for its loans, there is no suggestion in any of these regulations that any of the other financial regulators would ever require an institution under its supervision to charge more than competitive rates. The absence of such provisions in the regulations of the other financial regulators strongly suggests that the control of System interest rates contemplated by the proposed Regulations cannot be justified on the basis of FCA's authority to establish capital adequacy levels under Section 4.3(c) of the Act.●

(By request of Mr. BYRD, the following statement was ordered to be printed in the RECORD)

FARM CREDIT SYSTEM PROVISION IN RECONCILIATION

● Mr. BOREN. Mr. President, during the conference on reconciliation, extraneous provisions relating to the Farm Credit System were added. Among other things, these provisions allow system banks to set their own interest rates and allow, with the approval of the Farm Credit Administration, system banks to amortize their losses over a period of up to 20 years.

While the House has passed these provisions as a separate bill, the Senate has not been given an opportunity to consider this legislation either in committee or on the Senate floor. It is true, that the Senate Agriculture Committee held a hearing on S. 2770, a bill which allows system banks to set their own interest rates. However, the only persons permitted to testify at the hearing were Frank Naylor, Chairman of the Farm Credit Administration Board and Brent Beasely, president of the Farm Credit Corporation of America. No one else was permitted to testify. None of the agricultural groups or persons representing the farmer-borrowers of the Farm Credit System were given an opportunity to express their views of this legislation.

There have been no hearings on the effect of permitting the banks to amortize their losses over 20 years.

Mr. President, I cosponsored S. 2770 when the bill was introduced in the Senate, however it was and is my belief that before the banks are allowed to set their own interest rates, all the farmer-borrowers of the banks must be guaranteed a reduction in interest rates. Regretfully, since the provision was added in conference, I had no opportunity to offer an amendment requiring that interest rates be reduced, if only minimally, across the board.

Once again, Mr. President, we are going to enact farm credit legislation which will not guarantee lower interest rates for all borrowers and will not provide any perceivable relief to the farmers and ranchers of this Nation. In fact, it is doubtful that all districts will be able to reduce interest rates. More than likely, only a few districts will be able to do so and those districts will not be required to lower interest rates for all borrowers. This may result in lower interest rates for 5 percent of the best borrowers, those who are in a position to obtain credit elsewhere.

There are two points I believe we must consider as we enact this legislation. First, if the healthy banks lower their interest rates, will that reduce the amount of capital that would otherwise be available for loss sharing with the weaker banks? It would appear to be quite possible that a loss in interest income would result in less assistance.

Second, the interest rate provision in this legislation is directed at preventing borrower flight. I, too, am concerned about borrower flight. However, it is important to remember that these borrowers can get credit elsewhere. This is not to imply that these borrowers are not important to the system. They are important, but they are not the majority of the borrowers. This legislation does nothing for the majority of the borrowers. In fact, it is quite possible that this legislation will only help the top 5 percent of all borrowers residing in healthy districts.

The Farm Credit System was not established to help the top 5 percent of the farmers in this country. Quite the contrary in fact. The Federal Farm Loan Act of 1916 which was the original legislation states specifically that the purpose of the act was to "provide capital for agricultural development * * * to equalize rates to interest upon farm loans." In 1916, the top 5 percent of farmers in the United States were not having difficulty obtaining credit. There was credit available in 1916, but there was not adequate credit available for all farmers. It was the lack of adequate credit and the need to equalize interest rates on farm loans that led to the Development of the Farm Credit System.

Regretfully, the purpose of the legislation we are considering today is not to help all farmers or to help any farmers in reality. Rather, we are once again enacting legislation to "save the system" and not farmers. This past December, we enacted legislation to "save the system" and not the farmers. In fact, an article to that effect by Jim Schwab appeared in the January 18, 1986, edition of the Nation. I ask unanimous consent that a copy of this article be included in the RECORD at the conclusion of my remarks.

At best, Mr. President, the system appears to only be interested in the top 5 percent of the borrowers. Despite the fact that thousands of farmers are being foreclosed this year by the system, the system has expressed no desire for legislation to prevent the massive foreclosures. Further, the system has failed to come forth with any meaningful restructuring program to keep producers in business.

In the 1930's when massive foreclosures were taking place, interest rates were reduced, across the board, to 4.5 percent for old and new loans. A special fund was set up to make "rescue" loans. These actions resulted in providing more than 760,000 farmers with loans, thereby keeping these farmers in business. Today, regretfully, system officials have expressed no interest in providing this kind of assistance.

The System apparently doesn't see its purpose as keeping farmers in business anymore. Like many large organizations, the Farm Credit System appears to have become a bureaucracy interested only in perpetuating itself.

While foreclosing on farmers everywhere, the System has developed, and this legislation contains, a proposal allowing the banks to amortize their losses over a 20-year period. I know hundreds of farmers who would give anything if they were permitted to "keep two sets of books." If farmers were permitted to amortize their losses over 20 years, we wouldn't see all these foreclosures, in fact, we could probably make all farmers completely solvent with this provision. They would be as solvent, at least, as the System.

Mr. President, I do have some reservations about allowing the banks to write off their losses over 20 years. First, it will make the System appear healthier than it is. Second, it reverses what we all attempted to do in the 1985 Act; that is, to force the system to clean up its accounting practices. Third, the current problem is merely delayed and the effect of this may exacerbate the problem in the long term. Finally, interest rates will ultimately have to rise to cover the losses that are deferred. This increase could force the System to charge extremely high rates in future years. More than likely, when that happens, the Farm Credit System will come back to Congress saying that borrow-flight has reached epidemic proportions because of high interest rates.

The Comptroller General cautioned against the enactment of this provision in a letter to the distinguished chairman of the House Agriculture Committee, Congressman DE LA GARZA. The Comptroller stated, "* * * these short-term benefits may be far outweighed by the long-term costs of failing to deal with financial problems in a direct and forceful manner." I ask unanimous consent that the letter from the Comptroller be inserted in the RECORD at the conclusion of my remarks.

Mr. President, perhaps it is a positive step to allow the banks to write off their losses over 20 years. We regretfully have not had hearings on this to determine whether this is the proper direction for the System. However, if it is good enough for the banks in the Farm Credit System, it ought to be good enough for commercial banks and it ought to be good enough for the farmer-borrowers. In this sense, by failing to extend this provision to commercial banks and to farmer-borrowers, this legislation is extremely inequitable.

Perhaps the System was afraid someone would want to require any benefits of legislation to be passed on to all borrowers and its officials therefore sought their legislation in an extraordinary manner—by gaining its inclusion in a conference report. As it

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stands now, we are granting all these new benefits to the System without requiring that the System pass on their savings to all borrowers, without requiring that the System do anything to help the borrowers.

I have long been a strong supporter of the Farm Credit System. I believe the system has, in the past, provided a valuable service to all farmers in this Nation. However, if the representatives of the System are only concerned with perpetuating the System and with the top 5 percent of all farmers, I am not certain we need a Farm Credit System any longer.

The Farm Credit System has strayed too far from its original purpose. It was established by Congress; it was chartered by Congress and it therefore is not merely a private lending institution. It was established to provide adequate credit for more borrowers than the top 5 percent of the farmers and it was chartered to equalize interest rates. This legislation flies in the face of the purpose of the System. This legislation, as it stands, is only, at best, directed to the best borrowers.

It is quite possible that this legislation, with a few modifications, could be a step in the right direction. If there were a requirement that all borrowers receive the benefits, this legislation could have a positive influence on the agricultural economy.

Mr. President, as the 99th Congress comes to a close, I am deeply disappointed in our failure to enact meaningful farm credit legislation. True, we have tinkered with various aspects of farm credit legislation. We have gone through the motions of helping relieve the farm credit crunch facing our farmers. However, we have not come close to dealing with the root of the problem.

The legislation we are considering today is a perfect example in that it fails to address the true problem of the Farm Credit System—the agricultural economy and the lack of income with which farmers can make loan payments. It is the farmers who are in trouble and the ills affecting the system are a symptom of that. This legislation falls far short of helping farmers through this difficult period.

It is my earnest hope that in the next Congress we will enact meaningful Farm Credit System legislation designed to help all of the System's farmer-borrowers. Only in this way will we provide any real assistance to the Farm Credit System.

Mr. President, while this legislation is far from adequate since no one had an opportunity to amend it, I will not stand in the way of its passage. Even a small, inadequate and less than fair provision may be better than total inaction. I do, however, want to clearly sound a warning that this legislation is no solution to the problem.

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

[From the Nation, Jan. 18, 1986]

SAVING THE SYSTEM, NOT THE FARMERS

(By Jim Schwab)

The new farm bill that President Reagan signed on December 23 seeks to reduce farm prices in an effort to make U.S. products more competitive overseas. According to the Food and Agriculture Policy Research Institute in Missouri, however, the law will reduce farm income by 23 percent. The result, says Gary Lamb, an aide to Iowa's Senator Tom Harkin, is a "growing sense of desperation among farmers."

"The Farm Credit System bailout bill that Reagan signed [the same day] will also do little to still the growing insurgency against the system's lending and foreclosure policies, and its plans to centralize its local associations. Many farmers feel the system has been more interested in saving itself than in helping them, and the bailout does nothing to dispel this impression." The new law provides scant direct aid to strapped farmers and only a modest borrowers' bill of rights, including the right of a farmer to examine his own loan file. The law also provides a Federal charter for the Farm Credit System Capital Corporation, which will buy up delinquent loans held by member banks in the system. For the first time the system is given a line of credit to the Treasury Department, which can grant additional funds at the discretion of Secretary James Baker. The end result is to put a Congressional stamp of approval on the consolidation moves that have been bitterly criticized by farmers who fear the remaining vestiges of local control will be wiped out.

Despite a decline from its peak $82 billion loan portfolio of 1983, the Farm Credit System is still by far the nation's leading agricultural lender, providing over one-third of all real estate and operating credit for farmers and their marketing and production cooperatives. It raises funds by selling bonds on Wall Street, and its members acquire "stock" by leaving a percentage of their loans on deposit. Each stockholder gets one vote in his local association. Local Production Credit and Federal Land Bank associations are represented on the boards of the twelve districts. Those boards each govern three regional subsidiaries—the Banks for Cooperatives, as well as the Federal Land Banks and the Federal Intermediate Credit Banks, which oversee the Production Credit Associations (P.C.A.).

Long before Congress passed the Farm Credit System bailout law, the system was moving to curtail the local autonomy enjoyed by the Production Credit and Land Bank associations. A report called Phase III-Project 1995, which was leaked a year ago, alerted members to this plan. "They are seizing an opportunity when farmers generally are in great trouble to centralize the system," complained Luman Holman, executive director of Grassroots, an independent group of nationwide stockholders.

The report envisioned the formation of a central bank that would expand the system's services to include insurance, brokerage, and related businesses not authorized in the Farm Credit System's Congressional charter. More significant, the report called for a reorientation toward serving larger farmers. "Votes according to [loan] volume, rather than membership, may be critical," it said. In other words, the principle that each stockholder would have an equal vote would be abandoned in favor of voting according to the number of shares, as in a private corporation. "The system can no longer afford the luxury of a slow, methodical decision-making process that involves grass-roots input to the extent utilized in the past," the report said. "The system needs national leadership that is accountable and positioned to move swiftly and take decisive action within appropriate checks and balances." Accountable to whom? disgruntled farmers are asking.

Under the bailout bill, a national farm credit bank company will buy up nonperforming loans (those not being paid off), using cash advanced by other system banks, and by the U.S. Treasury when those funds are exhausted. The foundation for this scheme was laid last July with the creation of the Denver-based Farm Credit Corporation of America. Citing the deepening agricultural crisis, the Farm Credit System announced the new bank would serve as "the central policy-making institution for the nationwide cooperative lending system."

The rush to reorganize aroused considerable bitterness, particularly in the districts at Spokane, Washington, and at Omaha, which are the first two to receive aid from other system banks because of their parlous financial condition. The Spokane Federal Intermediate Credit Bank received a $135 million aid package early in 1985, while the one in Omaha is scheduled to receive $340 million. In both cases, most of the money will go to the new Wichita-based Farm Credit System Capital Corporation, which will buy up delinquent mortgages and hold the properties off the market until land values begin to rise. The theory behind this policy is that removing a glut of foreclosed land from the market will stabilize the collateral value of the remainder of the system's loan portfolio.

Signs of the urge to centralize were apparent two years earlier in the Spokane district. The sparks first flew in 1983 during an audit of the Willamette Valley, Oregon, P.C.A. by the Farm Credit Administration, which serves as the regulatory body for the system. A surfeit of loans for fishing boats—an area the F.C.A., had encouraged P.C.A.s to move into—had weakened some of the associations. Nonethless, an audit by the regional Federal Intermediate Credit Bank two months earlier had found Willamette Valley to be in good financial health, though it did note $2 million in loan losses because of declining collateral values. The F.C.A.'s auditors, however, calculated those total losses to be $8.9 million, enough to place the P.C.A. in receivership. But its board of directors obtained a preliminary injunction on October 26, 1983, preventing the liquidation. Federal District Judge Owen Panner condemned the Farm Credit Association for its arbitrary appraisal methods and ordered a new audit.

Philip Brandt, president of the Willamette P.C.A. from 1937 to 1980 and since then a voluntary consultant to the board, told me what happened next: "They bled us to death." Brandt contends that the Farm Credit Association conducted "a laborious examination procedure," which lasted several months. During that time, the uncertainty about the P.C.A.'s future caused its most solvent customers to withdraw, leaving it a corporate shell. With two other coastal Spokane-district P.C.A.s also in financial trouble, Brandt said, liquidations caused the bottom to fall out of the fishing boat market, further eroding the banks' equity.

With the district in trouble, members were asked by system officials to vote for a plan that would consolidate all the Production Credit Associations into one entity and all the Land Bank Associations into another to serve the entire five-state region. Brandt and other members fought this proposal, mobilizing opposition through the Ag Credit Crisis Committee, in Salem, Oregon. The first vote, held in June, required the unanimous approval of all the local associations. The Eastern Idaho P.C.A. and the Blackfoot, Idaho, Land Bank opposed the merger and defeated the plan. Another vote was held in which rule required only 80 percent approval and allowed the dissenting associations to remain independent. This time the plan passed. A Montana P.C.A. voted to leave the system entirely and reconstitute itself as an independent lender. Meanwhile, several members of Congress requested that the General Accounting Office study several liquidations. The G.A.O.'s findings, released this past October, generally upheld the F.C.A's procedures but did not examine the Willamette Valley case because at the time it was still in litigation.

Last fall, farmers in the Omaha district were urged to follow the consolidation route. With fifteen of thirty-one Land Banks rejecting the merger, the Midwestern rebellion proved to be widespread.

Former Iowa P.C.A. loan officer Melvin Schneider maintains that farmers should follow the Montana association's example rather than knuckle under to system pressure for consolidation. If they formed and capitalized their own credit unions, he told me, they could acquire discounted loan funds from the Federal Intermediate Credit Bank under the 1971 Farm Credit Act. However, Schneider points out that the weak financial condition of most farmers makes it almost impossible for them to amass the capital necessary to qualify for those funds as an independent lending institution. An alternative would be for state governments to invest economic development funds in rural credit unions. Schneider says two such fledgling credit unions have already organized in Iowa and are signing up members. "They would be a much better investment for the state than the $30 million proposed for a World Trade Center in Des Moines," he says.

Merger drives by system banks in other districts also provoked member uprisings. Militant protests against P.C.A. policies started in Ohio, which is in the Louisville, Kentucky, district, two years ago and there have been revolts in Wisconsin and North Dakota, which are in the St. Paul, Minnesota, district. The St. Paul Intermediate Credit Bank fired its general counsel, James Corum, when he advised the board that P.C.A.s could not be forced to reorganize or merge against their will.

Texas, a single-state district and one of the most financially sound, has bred a unique rebellion. Forty-four of forty-six Federal Land Bank Associations there pooled their funds for a legal battle against the imposition of joint management for the three banks in the state. With Republican attorney John Connally, the former governor and Presidential candidate, among their counsel, the Land Banks have sued district officials, while intensively lobbying their Congressional delegation for measures to retain the existing structure. Representative Sam Hall has been leading their charge legislatively. Eleven Texas P.C.A.s joined the battle against the district consolidation. Voluntary assessments for the lawsuit by the Texas associations have made theirs the best funded rebellion in the country. They have also turned their statewide member group, Grassroots, into a national force representing disgruntled borrowers.

That attempt illuminates some divisions in the ranks of the rebellion. Unlike other districts, the revolt in Texas started among the Land Banks and is a preventative action by people who still have something to lose. Land Banks have traditionally dealt with larger customers than the Production Credit Associations. The Land Banks were the first part of the Farm Credit System to be authorized by Congress, in 1916, largely because private banks had failed to offer credit tailored to farmers' mortgage needs. Many farmers with those mortgages have also been able to get operating credit from private banks and do not have to go to Production Credit Associations. Thus, there has been a subtle class distinction between Land Bank and P.C.A. borrowers.

Texas Land Bank members feared joint management would lessen their power and independence. That does not necessarily imply that most P.C.A. borrowers desire mergers; the voting in the Omaha district refutes that notion. But the Texans bring a more conservative political flavor to their debate than the Midwestern dissidents. Horace McQueen, board chair of the Tyler, Texas, Land Bank, told two Nebraska groups at a September meeting in South Sioux City that the trend toward centralization of the system "smacks of socialism."

What bothered some of the Texans most bothered some of the Midwesterners least: the prospect of government intervention to bail out the system. The Texans maintained that a bailout could be avoided if officials used the available internal resources and reversed the consolidation movement. Iowans like Jim White, a member of a farmers' delegation that has met regularly with district and F.C.A. officials and with Iowa lawmakers, saw some form of bailout as inevitable. They'd been saying the system is in bad shape well before F.C.A. governor Donald Wilkinson, reversing a long-held position, declared last September that $5 billion in Federal assistance was needed. Lawmakers on Capitol Hill from farm states had mixed feelings about a bailout because they were not sure what good it would do. Senator Harkin, for example, said a bailout would help the credit system without helping the farmers. He preferred reforming farm policy to restore profitability. He also sought to set a floor under farm land prices below which lenders could not sell foreclosed land or value it as collateral. Harkin's approach was embodied in an amendment to the bailout bill but was defeated by a narrow margin. The amendment included a provision requiring the Capital Corporation to sell the properties it acquires by foreclosure to family farmers, thus preventing corporations and absentee owners from buying them up.

Meanwhile, Congress awaits the findings of a massive G.A.O. audit of the system due next spring. Last October, the General Accounting Office projected that the system's losses, through June 30, 1986, would be $2.6 billion, a figure F.C.A. spokesman Ron Erickson contested. The Reagan Administration ordered an independent audit by the Price Waterhouse accounting firm, but most people no longer see the question as whether the Farm Credit System is swimming in a sea of red ink. Now, it's what to do about the system before it drowns.

COMPTROLLER GENERAL OF THE
UNITED STATES,
Washington, DC, October 6, 1986.

Hon. E. (KIKA) DE LA GARZA,
Chairman, Committee on Agriculture, House of Representatives.

DEAR MR. CHAIRMAN: I wish to convey my deep concern over recently introduced legislation that would allow the Farm Credit System to amortize over a period of 20 years the losses resulting from its poorly performing loan portfolio and the high current cost of its debt. This legislation, if enacted, could have the effect of hiding the very serious financial problems that the System will experience in the future. We estimate that the accounting changes allowed by the legislation could overstate earnings by $5 billion or more over the next 30 months.

Of more importance, adoption of this legislation could impede the speed of reforms to the management practices and operations of the Farm Credit System that were contemplated by the Congress when the 1985 amendments to the Farm Credit Act were enacted into law just 9 months ago. In addition to putting the System on a solid basis of financial accounting, the amendments were designed to achieve desperately needed reforms to credit evaluation and approval procedures. In effect, the legislation may turn the clock back to the earlier era of undisciplined accounting practices and loose credit analysis and approval.

I urge you to carefully weigh the effect of the proposed legislation on the long-run viability of the Farm Credit System. These amendments may have short-term salutory effects on the appearance of the financial condition of the System as well as the federal deficit. However, reliance on legislatively sanctioned regulatory accounting in the thrift industry has taught us all too well that these short-term benefits may be far outweighed by the long-term costs of failing to deal with financial problems in a direct and forceful manner. The danger here, as there, is that System officials will begin believing the fiction that is created, which, in turn, will slow if not halt efforts at reform.

Sincerely yours,

CHARLES A. BOWSHER,
Comptroller General of the United States.89174—Taulton, J.—10/19/86—J. 91-060—Folio(s) 972S-972/2S—%128.0—Ext. A17OC6.632

Mr. CHILES. 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.

Mr. DOMENICI. Mr. President, I want to thank all the chairmen and ranking Members who, in these last 2 weeks, having more than enough to do, found time to work in many, many subconferences to put this together. I say to my friend from Ohio, this process is not perfect. Each year we do a little better than the previous year. This is slightly better, or maybe I should say just a little bit less onerous by way of content than the last one.

The Senator has talked about that and I respect him for it. I just wish we could find a way to get deficit reduction without that yearning to put new material on and to modify laws, which

is so prevalent in find its way into these bills.

Having said that, I understand the distinguished chairman of the Energy Committee, Senator McCLURE, has a bill that he has cleared and which he wants to ask the Senate to pass.

Mr. President, I ask unanimous consent that the matter that Senator McCLURE will bring before the Senate be in order and that immediately thereafter the rollcall vote which has been called for on the omnibus reconciliation conference report take place.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Has the matter of Senator McCLURE's bill been discussed with the majority leader?

Mr. DOMENICI. Yes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MODIFYING THE BOUNDARIES OF THE CUYAHOGA VALLEY NATIONAL RECREATION AREA

Mr. McCLURE. Mr. President, this matter has been cleared on both sides of the aisle.

Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further consideration of H.R. 4645, to modify the boundaries of the Cuyahoga Valley Recreation area, and I ask for its immediate consideration.

Mr. BYRD. Mr. President, the requests have been cleared on this side of the aisle.

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

The legislative clerk read as follows:

A bill (H.R. 4645), to modify the boundaries of the Cuyahoga Valley National Recreation Area.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3489

Mr. McCLURE. Mr. President, I send an amendment in the nature of a substitute 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 3489 in the nature of a substitute.

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 (No. 3489) appears in today's RECORD under Amendments Submitted.

Mr. McCLURE. Mr. President, this has been cleared by all parties on both sides of the aisle. I move adoption of the amendment.

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

The amendment (No. 3489), in the nature of a substitute, was agreed to.

Mr. DURENBERGER. Mr. Chairman, I commend your leadership on reporting out a bill that promises to take care of some serious resource challenges in the National Parks by providing additional funding for resources through increased fees.

It is my understanding that all revenues from fees, after defraying the cost of collection, would be available for resource protection, research, interpretation, resource management training, and maintenance activities pertaining thereto at the collecting unit and then to all other units of the National Park System as set forth in S. 2204.

I am particularly gratified that the bulk of the money from increased fees will go toward resource protection, which was the primary goal of S. 2130, which I introduced last February.

Am I correct in my understanding that the additional funds made available under S. 2204 would therefore not be spent on items such as concession management, law enforcement, and other items generally found under the category of park operations, but rather would be targeted to protecting resources and activities?

Mr. McCLURE. I am aware of the commitment the distinguished Senator from Minnesota has toward protecting the valuable resources of the National Park System. He is correct. Funds will go toward resource protection under this act.

Mr. DURENBERGER. Could you give me some examples of what those maintenance projects might be, because it is my understanding in Park Service budgeting that the Service might interpret this language to provide money for high-cost projects that were only tangentially related to resource protection and ones that are normally funded under direct appropriations? In my mind, this language would not provide authority to spend these funds on capital projects and other major infrastructure maintenance such as road repair for which we recently spent $1 billion under the Program.

Mr. McCLURE. I would be happy to give you several examples of projects which might be defined as maintenance. Under the National Park Service Act of 1916, the Service is given the fundamental charge "to conserve the scenery and the natural and historic objects * * * and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

By a system of fees dedicated to natural and cultural resource management, the legislation before us creates a direct link between requirements that have often been described as contradictory: (1) use and enjoyment of the resources and (2) leaving the resources unimpaired. In this connection, maintenance activities are defined as being those activities identified in natural resource management plans are prepared by park units or defined in NPS-28, Cultural Resource Guidelines. In short, the receipts from all fees will go directly to preserving the values for which the National Park System was established.

Cultural resources need money for several basic types of projects:

First. Stabilization, often undertaken in emergency circumstances, halts active deterioration. Stabilization of prehistoric ruins at Mesa Verde is an example.

Second. Restoration replaces missing elements in order to return the resource to a "historic" condition or appearance it had prior to deterioration or alteration, Robert E. Lee's home, Arlington House, has been partially restored.

Third. Rehabilitation returns a historic resource to a state of utility for contemporary purposes. The Park Museum at Yellowstone is located in an old Army bachelor officers quarters rehabilitated for that purpose.

Cultural resources that are in suitable condition—perhaps as a result of stabilization, restoration, or rehabilitation—require specialized cyclic and routine maintenance in order to prevent deterioration. Cylic maintenance includes the performance of certain tasks at approximately regular intervals, for example, painting of wooden structures, plaster patching on adobe structures, or repointing historic masonry.

Because historic properties are less predictable than new buildings, routine inspections and maintenance are of commensurately greater importance. A single strip of wooden siding must be carefully replaced if it has so deteriorated that moisture can penetrate the structure and cause greater harm. Snow needs to be shoveled away from the base of prehistoric ruins in order to minimize damage from the freeze-thaw cycle.

Housekeeping in a room full of historic furniture is a good example. Sweeping, mopping and other cleaning procedures acceptable for the visitor center floor could easily damage historic floor coverings, baseboards, wainscoting, wallpaper, chair and table legs, and so forth. Labor-saving waxes and compounds acceptable for office furniture and restrooms can easily harm irreplaceable historic materials. Temperature and humidity controls are necessary not for human comfort

but because fluctuations cause deterioration of historic objects. The homes of Carl Sandburg and Theodore Roosevelt, examples that represent many others, contain large numbers of original objects and papers directly associated with those great individuals.

Some of the types of activities that might be characterized as maintenance relating to natural resources management include hazard tree removal, fencing, trail maintenance, insect and pest management, vista clearing, some vegetation and fire management activities, the development of plant nurseries, and some aspects of campground rehabilitation. Though these activities are often perceived to be of a maintenance character, they are frequently contained in park natural resource management plans, are directly related to natural resources management objectives, and should be performed in accordance with natural resources management goals and concerns. For example, the building of fencing may be used to delineate boundaries or for aesthetic purposes and is generally considered a "construction type" activity. However, fencing is also an important resource management technique in order to keep within the park those park wildlife who are unwelcome outside park boundaries, that is, bison in Yellowstone National Park, and to keep out of the park unit nonnative animals who are damaging to park resources, that is, feral pigs at Hawaii Volcanoes National Park and trespass grazing at a number of park units. Similarly, trails serve a variety of purposes, but, in sensitive resource areas, it is particularly important that they be properly maintained so that visitors are encouraged to stay on them and not create adjacent resource problems such as soil compaction, plant damage, and erosion. Nevertheless, trails often cause erosion and some trail repairs are primarily erosion control measures. Campground rehabilitation often involves vegetation management concerns—a vegetation recovery project which allows existing camp sites to recover from use and the careful identification of new sites to be cleared.

Mr. DURENBERGER. Another area I would like to clarify is that the additional funds provided in S. 2204 would be used to supplement existing programs and projects under current appropriations—it would not be used to substitute for base funding of those programs. All those people who testified at the hearings on this legislation and all of us who support the objectives of this legislation are concerned that the small base level funding of these natural and cultural resource programs would be reduced by OMB in future years to take account of the increased revenues from fees. Is it your intention that these funds should supplement rather than offset current appropriations?

Mr. McCLURE. I thank the Senator for bringing this issue to the attention of the Senate for it is one with which we are all concerned. It is the committee's intent that these fees should not be used as an offset against general appropriations. Fee revenue is to be made available in addition to funds normally appropriated, not as a substitute for all or a portion of those funds. The committee feels very strongly that these revenues ought not be used as an excuse to reduce the base level of funding for natural and cultural resources programs. You can be sure we will diligently monitor OMB to ensure this does not happen.

In fairness, I do want to point out that this measure does not avoid either the appropriations process nor the effect of Gramm-Rudman on that process. I am confident that we will not see any attempt to use these fees to offset normal appropriations, but I do think that we should acknowledge the potential effect of Gramm-Rudman on the process.

Mr. DURENBERGER. I appreciate the Senator taking the time to clarify these points. It has been a pleasure to work with you, Mr. Chairman, in developing this legislation. I am satisfied that the revenues raised will be used to further protect and conserve the resources of the National Park System for the enjoyment of present and future generations.

FEDERAL ONSHORE COMPETITIVE OIL AND GAS LEASING ACT OF 1986

Mr. BUMPERS. Mr. President, I am extremely gratified to be able to rise today in support of S. 2439, the Federal Onshore Competitive Oil and Gas Leasing Act of 1986, which was reported favorably by the Committee on Energy and Natural Resources in July. The text of S. 2439 has been incorporated into the amendment in the nature of a substitute to H.R. 4645.

As every Member of this body knows, I have long fought for this change in our current leasing system, which I believe is outmoded, susceptible to fraud and manipulation, and not designed to provide the Government with a fair return. S. 2439, as reported by the Energy Committee, would enact several long overdue changes to the Federal onshore leasing laws. These reforms will establish a leasing system which is fair and workable and will enhance our domestic energy situation. I urge my colleagues to support this bill.

PROBLEMS WITH THE CURRENT LEASING SYSTEM

Mr. President, I believe that reform of the Federal Government's onshore leasing system is absolutely necessary. The current system serves neither the public nor the oil and gas industry's best interests. For the edification of my colleagues who may not have heard this speech before, and to refresh the memories of those who have, I will attempt to summarize the problems with the present Federal leasing system for oil and gas.

Under existing law—the Mineral Leasing Act of 1920—only those lands with known oil and gas potential—those overlying a known geological structure of a producing oil or gas field [KGS]—may be leased on a competitive basis. Because of this restrictive test, less than 5 percent of all onshore leases are now offered competitively. Oil and gas leases not within a KGS must be leased noncompetitively—for a small filing fee and a dollar an acre.

In addition to the restrictive nature of the KGS test, it is exceedingly difficult to apply with any degree of certainty. The distinguished Senator from Wyoming, Senator WALLOP, has called the KGS system "witch-craft, at best" and I emphatically agree. Currently, the Bureau of Land Management does not profess to make a technical or professional decision on whether lands overlie a KGS. They simply determine that if a tract is within a mile of producing acreage, it is presumed to be a KGS. Anything further than 1 mile from a producing tract is deemed not to be KGS lands.

The Bureau of Land Management has often made these determinations without current information on producing wells and complete, dependable geologic data. These problems have been further complicated by staffing and communications problems within BLM. As a result of errors in BLM's KGS determination process, several leases, determined by BLM not to be within, a KGS, have been leased on a noncompetitive basis, even though there was a high degree of competitive interest in the leases. In these instances, the Federal Government received far less than fair market value. The most egregious examples of these occurrences were at Fort Chaffee, AR, and Amos Draw, WY.

In 1979 the Interior Department issued noncompetitive leases on 33,000 acres near known gas producing wells at Fort Chaffee for $1 an acre. ARKLA Gas sued to set the leases aside, claiming that they were over a KGS and, under the law, should have been leased competitively. The district court agreed, ruling that the Interior Department's decision to lease the area noncompetitively was arbitrary. This decision has been upheld on appeal. In 1980, 24,000 acres of adjoining lands were leased competitively for $1,705 per acre. So intend of the Treasury receiving $24,000 for the leases, it received $43 million, half of which was returned to the State.

More recently, 18 tracts in the Amos Draw region of Wyoming located adjacent to producing lands were leased noncompetitively. The Government

received $13,000 in rental fees and $1.2 million in lottery filing fees for the tracts. Within 6 weeks, the lottery winners sold their lease rights for fees estimated at $50 to $100 million. The Amos Draw scandal led to a suspension of the onshore leasing program for 10 months from 1983 to 1984.

In 1984, the National Academy of Sciences began a thorough study of the KGS Program. The NAS report, issued earlier this year, makes several proposals for improving the program. However, the Academy's bottom line conclusion was that its proposals

> at best can lessen the criticism of the KGS program . . . (and that) the nature of both oil and gas exploration and existing law preclude resolving the issues to everyone's satisfaction. Uncertainty and individual judgment will always exist even if every piece of data were acquired by the BLM. Some errors in classification will always occur. (*Known Geological Structures under the Mineral Leasing Act: Interpreting and Applying the Term "Known Geologic Structure of a Producing Oil and Gas Field"*, National Academy Press, 1986, p. 52)

These findings support my belief that the existing competitive leasing system is anachronistic, wasteful and must be replaced. The committee bill would replace the KGS determination process with a neutral market based test. This change will help to assure that the Federal Government receives market value for its leases and will streamline the administration of the leasing program.

An equally serious problem associated with the current leasing system is the potential for fraud and abuse within the competitive system, particularly within the simultaneous filing [SIMO] or lottery system. In 1980, evidence of multiple filings by single applicants in the lottery led to a 3-month hiatus in the program and remedial rule changes. Shortly thereafter filing services for the lottery began to spring up in large numbers. These services recruit clients and then, for a fee, file lottery applications in their names. These services commonly misrepresent the value of the tracts to be offered for lease and the filer's chances of winning a tract. A number of filing services charge service fees greatly in excess of actual filing fees. Some even claim to guarantee their clients will be winners.

At one time there were over 500 filing services operating in this country and State and Federal officials estimate that the public has been defrauded of between $200 and $300 million each year by these companies. At present, 44 filing services operate nationwide. This drastic reduction is due in part to the increase in the filing fee to $75 and the required prepayment of the first year's rental payment of $1 per acre. The reduction also reflects the increased investigative efforts of State governments, the Department of Justice, and the Federal Trade Commission to halt fraudulent activities.

Nevertheless, the unscrupulous are ingenious and indefatigable and other types of fraudulent activities have been introduced into the system. One example involves the so-called "40 acre merchants" who break up leases, which are typically over a thousand acres in size, into 40-acre parcels and sell them to the unsuspecting public. Another fraud involves misrepresentation of the value of lands which were leased noncompetitively—for example tracts in Alaska with no known potential for oil and gas were sold as "valuable oil lands within sight of the Trans-Alaska Pipeline."

The committee bill enhances the Government's authority to combat fraudulent practices and provides the Secretary of the Interior with the authority to disapprove lease assignments of less than 640 acres. The requirement that all lands be subject to a competitive test before being offered noncompetitively should also reduce the lottery's attraction for speculators because lands available in the lottery would be presumed to be worth less than $20 an acre.

BACKGROUND AND SUMMARY OF LEGISLATION

At the beginning of this Congress, I introduced legislation (S. 373) to establish an all-competitive leasing system for onshore oil and gas resources on Federal lands. I have championed the all-competitive approach here in the Senate for the past 7 years and I would still prefer to see an all-competitive system. However, in the hopes of achieving a consensus regarding leasing reform I introduced S. 2439 in May of this year. It is this legislation, with a few modifications, which the Energy Committee considered and reported to the Senate by a vote of 15 to 2. The legislation creates a two-tiered system for onshore oil and gas leasing which can be summarized as follows:

All Federal lands subject to oil and gas leasing would be offered first for competitive bidding.

A minimum bid of $20 per acre would be required in the competitive tier. Parcels receiving at least one bid of $20 or higher would be leased to the highest bidder.

Parcels receiving no bids or bids below the minimum would then be available for leasing in the second—noncompetitive—tier for 1 year.

If these parcels are not leased within the year, they again become available only under the competitive system.

The royalty payment under this proposal would be fixed at 12½ percent. Other lease terms, such as rental rates and the length of the lease remain as in existing law. The maximum lease size would be 2,560 acres.

The primary virtue of this legislation, in my view, is that it eliminates the use of known geologic structures [KGS] as the determinant of eligibility for competitive leasing and substitutes a market-based price test. The lottery system—for lands which have been leased previously—and the over-the-counter system—for lands which have never been leased—are preserved for those parcels which the market has determined to be worth less than $20 an acre.

The Government's authority to combat fraudulent practices involving the onshore oil and gas leasing system would be enhanced under the committee bill.

The Secretary would have new authority to disapprove lease assignments of less than 640 acres in order to prevent "40 acre merchants" from marketing small parts of leases to the unsuspecting public.

Specific authority to combat fraud, including civil and criminal penalties, is provided for regulatory and enforement agencies.

The Congressional Budget Office estimates that passage of this legislation would increase gross Federal receipts from bonus bids by approximately $50 million in fiscal year 1987 and by about $100 million per year over the fiscal years 1988 through 1991. Net receipts to the Government would be $15 million for 1987 and $30 million, because half of the receipts go to the States and receipts for filing fees for noncompetitive leases would be slightly reduced.

The Senator from Wyoming, a State which has a high proportion of Federal onshore leasing activity, has proposed several clarifying amendments to the committee bill which I am willing to accept. The amendments generally spell out in greater detail how the Department of the Interior is expected to implement the new leasing program. One relatively significant change requested by the Senator to address concerns of small independents is to increase the length of time during which lands may be leased noncompetitively between competitive offerings from 1 year to 3 years. Thus, if a tract of land did not receive the minimum bid in a competitive sale, it would be available for lease noncompetitively for 3 years. This change primarily affects so-called "wildcat" lands in frontier areas where there is little, if any, competitive interest. Exploration in these areas should be encouraged, and although I would prefer a more frequent competitive test, I am willing to accommodate the Senator in this regard.

I have also reluctantly agreed to accept an amendment offered by the Senator from Montana which is intended to address a related concern of the independent oil and gas industry. The amendment would exempt lands from being subject to the provisions of the act requiring a competitive test until January 1, 1991 if: First, they

were available for noncompetitive leasing under existing law prior to enactment of this act; second, were not covered by an oil and gas lease on January 1, 1986 and; third, are not subject to a pending lease application or offer.

There are four major exceptions to this provision: lands within the State of Arkansas, lands under study for inclusion in a known geological structure or in a favorable petroleum geological province, in Alaska, lands referred to a surface managing agency such as the Forest Service for a recommendation or consent regarding leasing, and lands within the Overthrust Belt in Wyoming. These lands shall be subject to the competitive test provisions of S. 2439 upon enactment. The lands excluded from the competitive test for a 50-month period are those previously unleased lands—and those previously leased noncompetitive lands which failed to receive even one SIMO application—which are available for noncompetitive leasing today but for which no one has indicated a willingness to pay even $1 per acre to lease. Leases issued pursuant to this section, are intended to be subject to all of the conditions set forth in the act of February 25, 1920, as amended, including those pertaining to royalties, rentals and lease terms.

Given the current state of the oil market and its affect on domestic exploration the likelihood that valuable lands will be leased noncompetitively is remote during the next 50 months. However, the Secretary will retain his full discretionary powers under the Mineral Leasing Act to suspend leasing or to refuse to issue a lease during this transistional period, and Members of Congress interested in the leasing system will exercise our oversight duties vigorously during this period.

Finally, I wish to clarify the intent of the section of the bill relating to the National Environmental Policy Act [NEPA]. That provision is intended to preserve the status quo with respect to the application of NEPA to the Onshore Oil and Gas Leasing Program. It is not intended to have any impact on pending litigation. The provision merely makes clear that a programmatic impact statement on the regulations and procedures issued under this act, as well as environmental impact statements for future lease sales or future regulation changes, are not required under NEPA.

Mr. President, before I conclude my statement, I want to thank the Senator from Idaho, the distinguished chairman of the Energy and Natural Resources Committee, for his support for S. 2439. His knowledge of the current program and his understanding of the oil and gas industry were invaluable to me and, I am sure, to the other members of the committee as well, during our consideration of this measure. The staff of the Energy Committee on both the majority and minority side have also been most helpful.

I also want to recognize the contributions of the Department of the Interior to the development of S. 2439. I think it is fair to say that the problems in the current Onshore Leasing Program have received the attention of Interior's highest ranking officials and that they have worked closely with interested Members of the Congress on developing a solution to those problems. I am pleased that the committee's bill has the full support of the Department and the administration.

Mr. President, this legislation does not provide all I would wish for in a leasing system for our Federal oil and gas resources. It is less than half a loaf for me. But I think it is a workable bill and a fair compromise between diverse interests. I urge the Senate to adopt this legislation and I hope our colleagues in the House will see fit to accept our work without substantial amendment. However, if it is not enacted this Congress I will be back next year with stronger legislation to fight this battle yet again.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, is the bill open to further amendment?

Mr. President, a parliamentary inquiry. Is this measure open for amendment?

The PRESIDING OFFICER. No, it is not. With the amendment in the nature of a substitute having been agreed to, no further amendments are in order.

Is there further debate? If there be no further debate, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed for a third reading and the bill to be read the 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?

So the bill (H.R. 4645), as amended, was passed.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. McCLURE. I thank the Senator from New Mexico.

OMNIBUS RECONCILIATION—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. KASSEBAUM. Mr. President, I would like to make brief comments about the Farm Credit System reforms included in the reconciliation package.

I understand fully the concerns about the future of the Farm Credit System, and I have always committed my best efforts to assure adequate and affordable credit for our farmers. I am concerned, however, that we too often lack a comprehensive view of the credit crunch in American agriculture. For the second time in 11 months, we are focusing our discussion of farm credit problems only on the Farm Credit System. This ignores the needs of our commercial banks. In that same period we have offered no practical relief for private banks which support much of the farm borrowing. I would hope we can, in the near future, devote similar attention to commercial banks which face the same serious problems and struggle with the same bleak outlook for the future of the agricultural economy.

Congress must recognize that 25 percent of outstanding farm debt is held by commercial banks. In Kansas, the debt held by commercial banks, approximately 34 percent is even higher than that held by Federal land banks or production credit associations, approximately 30 percent. That debt is just as burdensome, just as troublesome, and relief is just as necessary as for Farm Credit System debt.

I continue to believe we should seriously consider a loan loss amortization program for commercial ag and energy banks. We are about to support this accounting concept for the Farm Credit System. It is a responsible way to give banks time to overcome today's challenges. This proposal would permit agricultural banks to amortize loan losses over a period of years. In essence, agricultural banks would only have to recognize a certain percentage of a loan's loss each year. Consequently, farm banks would not have to seek out new capital infusions. This step would be the most effective way to increase a farmer's access to credit.

Importantly, the Farm Credit System relief proposal before us today contains essentially the same relief but limits it to the Federal Farm Credit System. I am convinced that if we are to extend this benefit to land banks and PCA's, we should extend it to ag banks as well. If amortizing debt losses is acceptable for the local land bank or PCA, it should be acceptable for the more heavily supervised commercial bank.

This concept has been suggested before. Earlier this year, Senator

DIXON and others introduced legislation which incorporated this approach. Unfortunately, the farm credit package which emerged from the Senate Banking Committee in March did not include loan loss amortization. Instead, reliance was placed on relief initially offered by the Federal bank regulatory agencies. Agricultural and energy banks were to be saved by a capital forebearance program and greater utilization of rule 15 of the Fiscal Accounting Standard Board. Because these reforms were adopted through the regulatory process, Congress in fact did not act at all on a farm credit package.

How has the regulator's package worked? Not well. August figures show only 64 requests for capital forebearance had been received by the FDIC. Fewer requests have been received by the Comptroller of the Currency. Those figures are virtually the same today.

Nearly as many farm banks have failed in 1986, Mr. President, as have applied for assistance under the Capital Forebearance Program. More farm banks, 48, have failed than have received assistance.

There is only one way to ensure farm banks can survive this long period of a depressed agricultural economy. We should permit farm banks to write off loan losses over a 5-year period. By amortizing loan losses, we give banks, and their farm customers, a cushion against current hard times. If, on the other hand, we maintain current law and require banks to recognize the entire loan loss in a single calendar year, we can guarantee continued growth in the number of bank failures, smaller or nonexistent profit margins, and less credit available for the farmer.

Mr. President, let me cite a few facts prepared by the Kansas Bankers Association. These examples indicate that farm banks need help and that they need it now. Outstanding farm loans decreased by $250 million in 1985, indicating a reluctance to offer additional credit. During 1985, the last full year for which figures are available, Kansas banks charged off more in loan losses, $207 million, that they earned in net income, $159 million. Loan chargeoffs increased 40 percent from 1984 to 1985. Moreover, nearly 36 percent of the smallest banks—zero to $9 million in assets—and almost 26 percent of the next smallest banks—$10 to $24 million—operated at a loss.

Bankers in Kansas understand that they are going to take a loss on many of their outstanding farm loans. They can absorb that loss and continue to offer credit services in their community if, and in many cases only if, they can spread the pain of that loss over a period of years. I believe legislation implementing such a concept for commercial banks should be a priority when Congress reconvenes in January.

Mr. DOMENICI. Mr. President, when the Congress approved the Balanced Budget and Emergency Control Act of 1985, it changed the transmittal date of the President's budget to the first Monday after January 3. This change seemed desirable to us at the time because it would have given the Congress about a month longer each year to review the President's budget. It is obvious to me now that the date is unrealistic.

Such an early date would require that the budget precede the President's State of the Union by 2 to 3 weeks and, thereby, ensure substantial inconsistencies between the two. This would not be fair to the President, and we should not insist upon it.

This year Congress failed to complete its work in time. As a result, the executive branch must begin now—at this very late date—to develop a fiscal year 1987 reference base for the 1988 budget. This will take weeks of intensive work.

Having been forced by the Congress to delay its preparation of the 1988 budget, it is now literally physically impossible for the budget process to be completed in time for transmittal on January 3.

Mr. CHILES. When can we expect to receive the President's budget?

Mr. DOMENICI. The budget will be transmitted as soon as possible after the delivery of the State of the Union Message, the date of which has not been decided. We will receive it not later than the first Tuesday in February.

FEDERAL ONSHORE COMPETITIVE OIL AND GAS LEASING ACT OF 1986

Mr. BUMPERS. Mr. President, I am extremely gratified to be able to rise today in support of S. 2439, the Federal Onshore Competitive Leasing Act of 1986, which was reported favorably by the Committee on Energy and Natural Resources in July. The text of S. 2439 with certain modifications which I will describe, has been incorporated into the amendment in the nature of a substitute to H.R. 4645.

As every Member of this body knows, I have long fought for this change in our current leasing system, which I believe is outmoded, susceptible to fraud and manipulation, and not designed to provide the Government with a fair return. S. 2439, as reported by the Energy Committee, would enact several long overdue changes to the Federal onshore leasing laws. These reforms will establish a leasing system which is fair and workable and will enhance our domestic energy situation. I urge my colleagues to support this bill.

PROBLEMS WITH THE CURRENT LEASING SYSTEM

Mr. President, I believe that reform of the Federal Government's onshore leasing system is absolutely necessary. The current system serves neither the public nor the oil and gas industry's best interests. For the edification of my colleagues who may not have heard this speech before, and to refresh the memories of those who have, I will attempt to summarize the problems with the present Federal leasing system for oil and gas.

Under existing law—the Mineral Leasing Act of 1920—only those lands with known oil and gas potential—those overlying a known geological structure of a producing oil or gas field [KGS]—may be leased on a competitive basis. Because of this restrictive test, less than 5 percent of all onshore leases are now offered competitively. Oil and gas leases not within a KGS must be leased noncompetitively—for a small filing fee and $1 an acre.

In addition to the restructive nature of the KGS test, it is exceedingly difficult to apply with any degree of certainty. The distinguished Senator from Wyoming, Senator WALLOP, has called the KGS system "Witchcraft, at best" and I emphatically agree. Currently, the Bureau of Land Management does not profess to make a technical or professional decision on whether lands overlie a KGS. They simply determine that if a tract is within a mile of producing acreage, it is presumed to be a KGS. Anything further than 1 mile from a producing tract is deemed not to be KGS lands.

The Bureau of Land Management has often made these determinations without current information on producing wells and complete, dependable geologic data. These problems have been further complicated by staffing and communications problems within BLM. As a result of errors in BLM's KGS determination process, several leases, determined by BLM not to be within a KGS, have been leased on a noncompetitive basis, even though there was a high degree of competitive interest in the leases. In these instances, the Federal Government received far less than fair market value. The most egregious examples of these occurrences were at Fort Chaffee, AR, and Amos Draw, WY.

In 1979, the Interior Department issued noncompetitive leases on 33,000 acres near known gas-producing wells at Fort Chaffee for $1 an acre. Arkla Gas sued to set the leases aside, claiming that they were over a KGS and, under the law, should have been leased competitively. The district court agreed, ruling that the Interior Department's decision to lease the area noncompetitively was arbitrary. This decision has been upheld on appeal. In 1980, 24,000 acres of adjoining lands were leased competitively for $1,705 per acre. So instead of the Treasury receiving $24,000 for the

leases, it received $43 million, half of which was returned to the State.

More recently, 18 tracts in the Amos Draw region of Wyoming located adjacent to producing lands were leased noncompetitively. The Government received $13,000 in rental fees and $1.2 million in lottery filing fees for the tracts. Within 6 weeks, the lottery winners sold their lease rights for fees estimated at $50 to $100 million. The Amos Draw scandal led to a suspension of the onshore leasing program for 10 months from 1983 to 1984.

In 1984, the National Academy of Sciences began a thorough study of the KGS Program. The NAS report, issued earlier this year, makes several proposal for improving the program. However, the Academy's bottom line conclusion was that its proposals "at best can lessen the criticism of the KGS program * * *—and that—the nature of both oil and gas exploration and existing law preclude resolving the issues to everyone's satisfaction. Uncertainty and individual judgment will always exist even if every piece of data were acquired by the BLM. Some errors in classification will always occur." Known Geological Structures under the Mineral Leasing Act: Interpreting and Applying the Term "Known Geologic Structure of a Producing Oil and Gas Field," National Academy Press, 1986, p. 52.

These findings support my belief that the existing competitive leasing system is anachronistic, wasteful, and must be replaced. The committee bill would replace the KGS determination process with a neutral market based test. This change will help to assure that the Federal Government receives market value for its leases and will streamline the administration of the leasing program.

An equally serious problem associated with the current leasing system is the potential for fraud and abuse within the noncompetitive system, particularly within the simultaneous filing [SIMO] or lottery system. In 1980, evidence of multiple filings by single applicants in the lottery led to a 3-month hiatus in the program and remedial rule changes. Shortly thereafter filing services for the lottery began to spring up in large numbers. These services recruit clients and then, for a fee, file lottery applications in their names. These services commonly misrepresent the value of the tracts to be offered for lease and the filer's chances of winning a tract. A number of filing services charge service fees greatly in excess of actual filing fees. Some even claim to guarantee their clients will be winners.

At one time there were over 500 filing services operating in this country and State and Federal officials estimate that the public has been defrauded of between $200 and $300 million each year by these companies. At present, 44 filing services operate nationwide. This drastic reduction is due in part to the increase in the filing fee to $75 and the required prepayment of the first year's rental payment of $1 per acre. The reduction also reflects the increased investigative efforts of State governments, the Department of Justice and the Federal Trade Commission to halt fraudulent activities.

Nevertheless, the unscrupulous are ingenious and indefatigable and other types of fraudulent activities have been introduced into the system. One example involves the so-called 40-acre merchants who break up leases, which are typically over a thousand acres in size, into 40-acre parcels and sell them to the unsuspecting public. Another fraud involves misrepresentation of the value of lands which were leased noncompetitively—for example tracts in Alaska with no known potential for oil and gas were sold as "valuable oil lands within sight of the Trans-Alaska Pipeline."

The committee bill enhances the Government's authority to combat fraudulent practices and provides the Secretary of the Interior with the authority to disapprove lease assignments of less than 640 acres. The requirement that all lands be subject to a competitive test before being offered noncompetively should also reduce the lottery's attraction for speculators because lands available in the lottery would be presumed to be worth less than $20 an acre.

BACKGROUND AND SUMMARY OF LEGISLATION

At the beginning of this Congress, I introduced legislation—S. 373—to establish an all-competitive leasing system for onshore oil and gas resources on Federal lands. I have championed the all-competitive approach here in the Senate for the past 7 years and I would still prefer to see an all-competitive system. However, in the hopes of achieving a consensus regarding leasing reform I introduced S. 2439 in May of this year. It is this legislation, with a few modifications, which the Energy Committee considered and reported to the Senate by a vote of 15 to 2. The legislation creates a two-tiered system for onshore oil and gas leasing which can be summarized as follows:

All Federal lands subject to oil and gas leasing would be offered first for competitive bidding.

A minimum bid of $20 per acre would be required in the competitive tier. Parcels receiving at least one bid of $20 or higher would be leased to the highest bidder.

Parcels receiving no bids or bids below the minimum would then be available for leasing in the second—noncompetitive—tier for 1 year.

If these parcels are not leased within the year, they again become available only under the competitive system.

The royalty payment under this proposal would be fixed at 12½ percent. Other lease terms, such as rental rates and the length of the lease remain as in existing law. The maximum lease size would be 2,560 acres.

The primary virtue of this legislation, in my view, is that it eliminates the use of known geologic structures [KGS] as the determinant of eligibility for competitive leasing and substitutes a market based price test. The lottery system—for lands which have never been leased—are preserved for those parcels which the market has determined to be worth less than $20 an acre.

The Government's authority to combat fraudulent practices involving the onshore oil and gas leasing system would be enhanced under the committee bill.

The Secretary would have new authority to disapprove lease assignments of less than 640 acres in order to prevent 40-acre merchants from marketing small parts of leases to the unsuspecting public.

Specific authority to combat fraud, including civil and criminal penalties, is provided for regulatory and enforcement agencies.

The Congressional Budget Office estimates that passage of this legislation would increase gross Federal receipts from bonus bids by approximately $50 million in fiscal year 1987 and by about $100 million per year over the fiscal years 1988 through 1991. Net receipts to the Government would be $15 million for 1987 and $30 million, because half of the receipts go to the States and receipts for filing fees for noncompetitive leases would be slightly reduced.

The Senator from Wyoming, a State which has a high proportion of Federal onshore leasing activity, has proposed several clarifying amendments to the committee bill which I am willing to accept. The amendments generally spell out in greater detail how the Department of the Interior is expected to implement the new leasing program. One relatively significant change requested by the Senator to address concerns of small independents is to increase the length of time during which lands may be leased noncompetitively between competitive offerings from 1 year to 3 years. Thus if a tract of land did not receive the minimum bid in a competitive sales, it would be available for lease noncompetitively for 3 years. This change primarily affectes so-called wildcat lands in frontier areas where there is little, if any, competitive interest. Exploration in these areas should be encouraged, and although I would prefer a more frequent competitive test, I am willing to accommodate the Senator in this regard.

I have also reluctantly agreed to accept an amendment offered by the Senator from Montana which is intended to address a related concern of the independent oil and gas industry. The amendment would exempt lands from being subject to the provisions of the act requiring a competitive test until January 1, 1991, if first, they were available for noncompetitive leasing under existing law prior to enactment of this act, second, were not covered by an oil and gas lease on January 1, 1986, and third, are not subject to a pending lease application or offer. There are four major exceptions to this provision: lands within the State of Arkansas, lands under study for inclusion in a known geological structure or in a favorable petroleum geological province in Alaska, lands referred to a surface managing agency such as the Forest Service for a recommendation or consent regarding leasing, and lands within the Overthrust Belt in Wyoming. These lands shall be subject to the competitive test provisions of S. 2439 upon enactment. The lands excluded from the competitive test for a 50-month period are those previously unleased lands—and those previously leased noncompetitive lands which failed to receive even one SIMO application—which are available for noncompetitive leasing today but for which no one has indicated a willingness to pay even $1 per acre to lease. Leases issued pursuant to section 307(a) of the act are intended to be subject to all the conditions set forth in the act of February 25, 1920, as amended, including those pertaining to royalties, rentals, and lease terms.

Given the current state of the oil market and its affect on domestic exploration the likelihood that valuable land will be leased noncompetitively is remote during the next 50 months. However, the Secretary will retain his full discretionary powers under the Mineral Leasing Act to suspend leasing or to refuse to issue a lease during this transitional period, and Members of Congress interested in the leasing system will exercise our oversight duties vigorously during this period.

Finally, I wish to clarify the intent of the section of the bill relating to the National Environmental Policy Act [NEPA]. That provision is intended to preserve the status quo with respect to the application of NEPA to the onshore oil and gas leasing program. It is not intended to have any impact on pending litigation. The provision merely makes clear that a programmatic impact statement on the regulations and procedures issued under this act, as well as environmental impact statements for future lease sales or future regulation changes, are not required under NEPA.

Mr. President, before I conclude my statement, I want to thank the Senator from Idaho, the distinguished chairman of the Energy and Natural Resources Committee, for his support for S. 2439. His knowledge of the current program and his understanding of the oil and gas industry were invaluable to me and, I am sure, to the other members of the committee as well, during our consideration of this measure. The staff of the Energy Committee on both the majority and minority side have also been most helpful.

I also want to recognize the contributions of the Department of the Interior to the development of S. 2439. I think it is fair to say that the problems in the current onshore leasing program have received the attention of the Interior's highest ranking officials and that they have worked closely with interested Members of the Congress on developing a solution to those problems. I am pleased that the committee's bill has the full support of the Department and the Administration.

Mr. President, this legislation does not provide all I would wish for in a leasing system for our Federal oil and gas resources. It is less than half a loaf for me. But I think it is a workable bill and a fair compromise between diverse interests. I urge the Senate to adopt this legislation and I hope our colleagues in the House will see fit to accept our work without substantial amendment. However, if it is not enacted this Congress I will be back next year with stronger legislation to fight this battle yet again.

DISCLOSURE OF AGRICULTURAL CONTRACTS

Mrs. KASSEBAUM. Mr. President, this year's Budget Reconciliation Act includes a small but significant reform of the Staggers Rail Act of 1980. In a nutshell, the Staggers Act is amended to specify more conclusively the "essential terms" of a rail contract for the shipment of agricultural commodities which are to be disclosed to the public. I have been working for this reform since 1983, when I chaired a Commerce Committee hearing on the issue in Hutchinson, KS, and I would like to make a few comments on this provision.

The Staggers Act effectively deregulated the rail industry. In most instances, railroads were freed from rate regulation. The level of scrutiny by the Interstate Commerce Commission was reduced in virtually every phase of rail regulation.

One of the most significant changes made by Staggers was permitting railroads and shippers to enter into individual shipping contracts. Contract rates and terms were allowed to vary from published tariff rates. However, the statute and its legislative history make very clear the fact that Congress did not sanction all contracts in all situations. Special and specific protections were included where there was the potential for anticompetitive or discriminatory activity.

During debate, many Members of Congress recognized the potential for abuse of this contracting power. Shippers with large market power or shippers with transportation alternatives, either intramodal or intermodal, could exert substantial leverage over a carrier's contracting practices. Smaller and captive shippers, lacking the advantages of contract terms and rates, could face economic disaster. In short, it was recognized that situations exist where supervision of contracting practices was required.

In response to the specific concerns of small agricultural shippers, special protections were provided in the statute to ensure fair competition in contract rates. Railroads could not engage in unfair discrimination nor could railroads and shippers engage in destructive competitive practices.

To effectuate these special protections for small grain shippers, Congress mandated the disclosure of "essential terms" of rail contracts.This disclosure was intended to allow agricultural shippers the opportunity to discover contracts which could potentially affect them and to challenge those contracts before the ICC. By granting this unique measure of protection, Congress sought to provide a particular remedy for discrimination or unfair competition.

The potential for competitive damage from contract rates has been documented by a U.S. Department of Agriculture study entitled "Impacts of Rail Deregulation on Marketing of Kansas Wheat," released in October 1985. That study indicated that shippers with origin contracts to the Gulf paid an average of 17 cents per hundred weight less on grain transportation than shippers using the published tariff rate. In addition, the study reported that the average shipper with a contract for shipping wheat from Kansas has approximately three such contracts, and average of 18 shipping locations in four States, and a total licensed storage capacity of about 40 million bushels.

These conclusions demonstrate that large shippers with transportation alternatives have advantages over smaller and captive shippers. The disclosure mandated by the Staggers Act was intended to permit a competing shipper to test the legality of those advantages before the Commission. The provisions included in this legislation would mandate further study of the effect of contracting on grain shippers. I believe that completion of this study will demonstrate that this is a serious problem.

Unfortunately, in 6 years not one small shipper has been able to successfully negotiate the obstacle course established by Commission rules. The minimal disclosure required by the Commission is essentially useless. The Commission's interpretation of "essen-

tial terms" has fostered a disclosure environment in which the information is too general to provide any benefit.

Shippers are expected to identify contracts which may affect them by studying thousands of contract summaries which include the broadest possible terms—including "all points in the States of Kansas, Nebraska, and Colorado" for origin information. Shippers attempting to avail themselves of the statutory remedy understand that too much general information is no information at all.

In order to provide the small shipper the opportunity to challenge potentially destructive or discriminatory contracts, more specific information is required in the contract summary. Such information need not and will not unduly undermine the legitimate or necessary right to confidentiality. Nor will it deter legitimate and economically efficient contracting activity. The disclosure requirements contained in this package are, I believe, the minimum necessary if shippers are to have access to the statutory protections enacted in 1980.

These provisions are the heart of the disclosure issue. Unless and until the Commission provides specific information on the "essential terms" of a rail contract, shippers will be forced to expand valuable resources in a nearly impossible search for "the right contract" or will face the prospect of competing in an environment where the concept of "fair competition" cannot be tested.

On May 14, I introduced S. 2447, which would define specifically those essential terms which are to be disclosed in the nonconfidential contract summary. The heart of S. 2447 has been included in the reconciliation package.

This bill would mandate the disclosure of certain terms which I believe everyone in 1980 considered essential. The identity of the shipper party to the contract, the specific origins, transit points and other shipper facilities, the duration of the contract, and the actual volume requirements, if any, would be disclosed. These disclosures do not include any direct economic terms of the contract. To protect the legitimate confidentiality concerns of contracting shippers, a first-tier disclosure proceeding should not disclose the actual rates in the contract or other obvious economic terms. It should, however, include sufficient data for potentially aggrieved shippers to evaluate the potential impact on their operations.

The Commission should not infer from this legislation that second-tier discovery should be curtailed or limited simply because more information is required at first-tier disclosure. Once a shipper can demonstrate that he or she is affected by a contract, the liberal discovery mandate of this legislation should facilitate access to the contract. ICC regulations currently provide for the use of protective orders to limit further disclosure of confidential contract information to persons other than those who must need that information in order to prosecute a complaint that the contract constitutes either unjust discrimination or a destructive competitive practice.

The price term, while undoubtedly an "essential term" of a contract, is not included in first-tier discovery because of the need to balance competing interests betweeen the carrier's and shipper's reasonable expectations of privacy in their contract and a shipper's aright to reasonable access to a remedy. At first-tier, that balance is struck against disclosure of the actual price term and in favor of the contracting parties' reasonable expectation of privacy. The balance at second-tier should be in favor of the complaining shipper's right to access to the remedies provided for in the Staggers Rail Act.

Mr. President, enactment of this legislation will grant small shippers the day in court promised them 6 years ago when the Staggers Rail Act was signed into law.

Before I close, I want to express my appreciation for the efforts of my Kansas colleagues who have joined in a united effort to secure this reform. Senator DOLE cosponsored S. 2447 in the Senate. Congressmen BOB WHITTAKER and JIM SLATTERY, both members of the House Energy and Commerce Committee, shepherded the legislation in the House. Finally, I wish to thank Senator DANFORTH and Congressman DINGELL who, as cochairmen of the conference committee, were able to reach an agreement on this matter. These efforts have been worthwhile.

THE CORPORATION OF SMALL BUSINESS INVESTMENT

Mr. DOMENICI. Mr. President, the conferees from the Senate and House Small Business Committees had under consideration but were unable to agree on a proposal to create a new Government-sponsored enterprise known as the Corporation for Small Business Investment [COSBI]. While this Senator is concerned that there is no small business title in the reconciliation bill, I also believe that we are best served not enacting the COSBI legislation at this time.

Mr. President, there are still too many questions that remain to be answered about COSBI. Foremost among them is whether we ought to be creating another one of these Government-sponsored enterprises. These are private entities that enjoy substantial advantages in the marketplace, but which operate totally outside the budgetary controls of the Congress.

Even if the Congress decides to establish another Government-sponsored enterprise, there are many questions that need to be answered about how it should be structured. A recent article by Thomas Stanton in the Legal Times raises a number of these questions. Mr. President, I ask unanimous consent that this article be reprinted in the RECORD.

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

PENDING LEGISLATION WOULD END IMPASSE OVER SBA PROGRAM

(By Thomas Stanton)

Hidden in House bill H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, is legislation to create the Corporation for Small Business Investment (COSBI). The corporation, designed to allocate credit to small business on favorable terms, would be capitalized from the sale of stock to small business investment companies (SBICs) and boosted by purchase of federally guaranteed Small Business Administation (SBA) assets at a favorable price.

COSBI would pay $850 million for assets valued at about $1.1 billion, giving the corporation an initial capitalization of $250 million.[1]

The creation of COSBI would resolve an impasse between the administration, which has sought to zero out the entire SBIC program, and the small business community, which has successfully resisted. The tug-of-war over the past six years has cast uncertainty over the future of SBA programs, restricted available funds, and even forced SBA to close its loan windows on several occasions.

The creation of COSBI would permit the Federal Government to provide substantial advantages in funding SBIC securities, without actually committing appropriated funds after the initial sale of assets.

The COSBI model is an enticing alternative for other direct credit programs now feeling Federal fiscal pressure; after the initial capitalization, the Federal Government continues to support a favored economic sector without spending scarce appropriated funds. Federal maritime or export loans, for example, might lend themselves to the COSBI model, instead of current Maritime Administration or Ex-Im Bank programs.

In analyzing a program such as COSBI, which is backed by a perceived special Federal relationship, the charter legislation must be carefully drafted to limit the government's exposure to substantial financial losses while assuring the new corporation's dedication to intended public purposes. Within this framework, the COSBI legislation is structured to maximize business opportunities for dealing in small business investment securities while minimizing government regulatory control.

Compared with other government-sponsored enterprises (GSEs), Treasury regulatory authority over COSBI is circumscribed, and COSBI is free from intervention by any other regulator. Under prudent management, as the House committee report urges upon the corporation, COSBI will do well.

Under less prudent management, however, COSBI invites financial difficulty followed by belated Federal efforts to impose strong regulation. (This occurred last year with the Farm Credit System.) At press time, the Senate conferees appeared to be addressing some of these concerns. COSBI is likely to

[1] Footnotes at end of article.

emerge, however, in approximately the format analyzed here, albeit with a lower initial capitalization from the SBA asset sales.

COSBI is based on the model of five GSEs that are currently directing funds to selected sectors of the economy. They are the Federal Home Loan Banks; Federal Home Loan Mortgage Corporation (Freddie Mac); Federal National Mortgage Association (Fannie Mae); Student Loan Marketing Association (Sallie Mae); and the Farm Credit System (composed of Banks for Cooperatives, Federal Intermediate Credit Banks, and Federal Land Banks).

Because they are privately owned, these institutions are not included in the federal budget. By law, their debt obligations (and some other securities) clearly state that they are not guaranteed by the United States.

Despite this explicit disclaimer, the financial markets perceive a special relationship between GSEs and the Federal Government. Thanks to this perception, GSEs sell their debt obligations at more favorable rates than commercial companies without the perceived relationship.

Because the borrowing costs of these enterprises are lower, they can purchase assets (student loans, farm mortgages, home mortgages) bearing lower rates of interest. The intended result is lower borrowing costs for students, farmers, and homeowners than would otherwise be the case.

While the implicit subsidy is not as substantial as when loans are funded directly by Treasury borrowing, as they are currently in the SBIC program, it is a significant benefit nevertheless.[2]

In addition, the COSBI charter act is drafted to provide COSBI an exemption from state and local taxes—except for property taxes—to exempt COSBI obligations (i.e., interest income on those obligations) from state and local taxes, and to provide other benefits accorded some of the GSEs.

Several statutory characteristics, varying somewhat among the five GSEs, lead the market to perceive the special federal relationship. COSBI creates this perception with the following features (relevant charter act sections are noted in parentheses):

(1) COSBI is federally chartered with presidential appointment of one-third of its 15-member board of directors. The remaining directors are elected by shareholders (§ 352(d)).

(2) COSBI obligations may be issued only upon approval of the Secretary of the Treasury (§ 354(a)).[3]

(3) All COSBI stock and obligations are exempt from regulation by the Securities and Exchange Commission to the same extent as U.S. government securities (§ 355).

(4) COSBI obligations, preferred stock, and guaranteed securities are lawful investments for fiduciary, trust, and public funds; are eligible to be bought and sold in Federal Reserve open market operations; are legal investments to satisfy reserve requirements of banks and thrift institutions; and are deemed U.S. agency obligations for purposes of Bankruptcy Code provisions relating to repurchase agreements (COSBI § 355 and § 9009 of H.R. 5300).

(5) COSBI obligations are exempt from state and local taxation (§ 355). This is a substantial benefit not afforded to Fannie Mae and Freddie Mac.

(6) The Secretary of the Treasury is permitted to purchase up to $500 million in COSBI obligations. With variations, such a so-called backstop authority is common to virtually all GSEs. In contrast to other GSE charters, the COSBI legislation provides that funds for this Treasury backstop must be appropriated in advance by the Congress (§ 354(c)).

By conferring on COSBI stock and obligations the same preferred investment status as U.S. Treasury obligations, the Federal Government makes a strong statement to investors. The exemption from SEC laws removes investor protections considered necessary for all but the most secure—i.e., federally backed—securities.

Similarly, the exemption from investment restrictions on banks and thrift institutions is otherwise limited to federally backed securities. Investors perceive that the Federal Government would not permit these exemptions from basic investor protection unless the securities were extremely safe.

Over time, the market can become even more confident about the government's likelihood of backing obligations of GSEs. At the beginning of this year, GSEs had more than $350 billion in debt obligations outstanding. The government would be unlikely to permit any one of these institutions to default on its obligations for fear of shaking investor confidence in all GSE obligations, and potentially causing the price of more than one-third of a trillion dollars in such securities to plummet.

Thus, while borrowing costs did rise somewhat for the Farm Credit System during the financially troubled period leading up to the 1985 remedial legislation, yields on farm credit securities remained significantly below yields on A-rated private corporate bonds.[4] In other words, investors look primarily to the implicit Federal backing as a guarantee of GSE creditworthiness. As the value of outstanding GSE obligations increases, so does the inability of the Federal Government to intimate that it would not stand behind this debt.

In summary, then, COSBI represents a true compromise position between an administration that seeks to end all support for SBICs and the small business community now accustomed to receiving federally guaranteed funds to support small business investment.

MINIMIZING RISKS TO TAXPAYERS

The contingent liability of the Federal Govenments has increased sharply over the past decade because of the increasing volume of outstanding GSE debt. To assure that the public is protected against the need to bail out a failing GSE, a course that some suggest is now necessary with the Farm Credit System, each one must be carefully structured regulated. When one looks at the technical language of the COSBI charter legislation, significant questions arise.

Consider the extent of potential public exposure. Because the market essentially looks to the Federal Government to assure creditworthiness of outstanding GSE debt, GSEs can afford to issue high amounts of debt relative to their equity capital.

Under the House bill, COSBI would have an initial capitalization about $250 million from its favorable purchase of SBA assets. COSBI is statutorily committed (§ 361(a)) to placing $100 million of this in a trust to subsidize special SBICs, those owned by socially or economically disadvantage enterpreneurs. This leaves $150 million as start-up capital, plus $15 million in an initial offering of common stock (§ 325(d)).

Since the perceived Federal relationship gives GSE's the opportunity to achieve very high debt-to-capital ratios—for examble, at the start of the year, Fannie Mae stood at about a 70-1 ratio of debt to shareholder equity—COSBI could eventually issue billions of dollars in obligations, plus additional debt leveraged from stock issued after the initial offering. This could mount to several times the current SBIC assets outstanding. Indeed because of COBSI's additional authority to guarantee securities, the potential public exposure could be immense.[5]

Compared with other GSE charter acts, the COSBI charter fails to include a number of protections that would limit this huge potential public exposure. In particular, COSBI lacks internal and regulatory controls familiar from the other charter act.[9]

(1) Ther is no statutory of regulatory limit on COSBI's debt-to-capital ratio; there is also no statutory requirement that COSBI refrain from issuing debt in excess of its assets.

(2) There is no statutory or regulatory limit on the quality of assets of COSBI may purchase; under the broad definiton of "small business investment securities," COSBI is allowed to buy stock, warrants, and even junk bonds of small business investment companies, virtually without statutory limitation as to the credit quality of the asset.[7]

(3) COSBI is structured so that the board of directors is likely to represent the interests of COSBI's loan customers. The House committee report (page 384) makes this explicit: "The Committee expects elected members of COSBI's Board will be experienced SBIC professionals and leaders in the industry." This was a problem for the Farm Credit System. It is hard for representatives of borrowers, unless fortified by tough statutory requirements and regulatory enforcement, to turn down loans to their less creditworthy peers.

(4) COSBI's regulatory is a toothless watchdog. Indeed, the Small Business Administration has no formal regulatory authority over COSBI at all. Instead, SBA is given mere "review authority" (§ 360(a)), with power to examine the corporation's books and records, and to require the corporation to make reports.[8] Additionally, the Secretary of the Treasury may inspect the corporation's books, verify transactions, and receive an independent audit of the corporation's accounts.

The absence of more systematic regulatory control places COSBI under more lax supervision that most of the other GSEs, with the possible exception of Sallie Mae, and under substantially less supervision than the Federal Government provides for banks and thrift institutions. Finally, unlike some GSE charters, the President has no power to remove shareholder-elected COSBI directors, even for cause. With its weak regulatory framework, COSBI is inviting financial instability followed by future strong regulations such as Congress belatedly imposed upon the Farm Credit System in 1985.

Besides the public loss exposure, there is the question of COSBI's public purpose. GSEs are intended to serve public purposes. Fannie Mae and Freddie Mac are limited to making a secondary market in mortgages on homes below a certain mortgage limit; Sallie Mae is limited to purchasing student loans whose terms, including loan size, are largely dictated by other governmental programs.

By contrast, COSBI is virtually unlimited in the size or type of SBIC security in which it may deal (§ 356). While the structure of COSBI's activities to further its public purpose depends upon careful economic analy-

sis, some statutory criteria beyond the limitations in the current COSBI charter legislation would seem to be in order.

GSEs have many advantages as a tool of Federal policy. They have successfully overcome market imperfections. Allocating credit to such special sectors of the economy as housing, farming, and education.

Over the years, Fannie Mae has helped standardize the previously regionalized and overly fragmented residential mortgage market. The Farm Credit System made a market in farm loans that commercial banks were unwilling to make. Sallie Mae has greatly increased the supply of student loan funds. Significantly GSEs allocate credit without drawing on federally appropriated funds.

But there is no free lunch. Like Continental Illinois Bank and other large financial institutions, GSEs are too big for the Federal Government to permit a failure. That means that the chance of failure must be reduced, both in the enabling legislation and in careful regulation and oversight.

This is not to say that past regulation has been ideal. HUD's zealous attempt to regulate Fannie Mae's mortgage purchases in the late 1970s led to virtually no positive results.[9] The Farm Credit Administration lost its independence regulating the banks of the Farm Credit System.[10] But COSBI goes too far in excluding itself from regulatory oversight (except for the limited Treasury approval power needed to assure market perception of a special Federal relationship). Beyond mere review authority, an independent regulator must be able to intervene to prevent catastrophe. The House committee report (page 387) completely glosses over this problem.

From the regulatory perspective, the professional industry leadership elected to COSBI's Board of Directors should do a far better job of regulating business practices of SBIC's than government regulators. The knowledge and awareness of these professional SBIC managers and the self-interest in keeping the industry free from abusive practices should create a tremendous incentive for consistent and diligent oversight and strong enforcement of proper business practices.

Maybe so, but financial institutions, including GSEs, are too large and too vulnerable today to permit such intentions to stand unsupported by a carefully designed regulatory structure.

FOOTNOTES

[1] The Congressional Budget Office says that the entire $250 million would count against Federal budget targets for purposes of Gramm-Rudman. In addition, other SBA assets would be used to further support special SBICs, assisting disadvantaged entrepreneurs. House Comm. on the Budget, *Report: Omnibus Reconciliation Act of 1986*, H.R. Rep. No. 727, 99th Cong., 2d Sess., at 398-399 (July 31, 1986) [hereinafter *House committee report*].

[2] *See, e.g.*, Congressional Budget Office, *Government-Sponsored Enterprises and Their Implicit Federal Subsidy: The Case of Sallie Mae*, ch. 3 (Dec. 1985); General Accounting Office, *The Federal National Mortgage Association in a Changing Economic Environment*, at A-80 to A-85 (Apr. 15, 1985); Moran, *The Federally-Sponsored Agencies: An Overview*, Fed. Reserve Bull., June 1985, at 373-88.

[3] Unlike other GSEs, this regulatory authority has been carefully drafted to limit Treasury to approving time of issuance, rate of interest, and other terms and conditions (and not, for example, the volume of securities issued). Also, Treasury has no approval authority over issuance of subordinated debt or COSBI guaranteed securities. (§ 353, § 354(b), and § 356(c)).

[4] Office of Management and Budget, *FY 1987 Special Analysis of the Budget of the United States Government*, Special Analysis F, "Federal Credit Programs," at F-27 to F-28 (1986).

[5] One question is whether the market will accord these COSBI-guaranteed securities the perception of Federal backing. In contrast to guaranteed securities of other GSEs, the COSBI legislation does not exempt such COSBI securities from SEC regulation and does not require that they be approved by the Treasury.

[6] The Sallie Mae charter is closest to the COSBI legislation in this regard. Yet Sallie Mae's board of directors is statutorily required to be more diversified than COSBI's; more important, Sallie Mae's portfolio consists almost entirely of student loans guaranteed by others, rather than COSBI's inherently more risky portfolio of SBIC paper.

[7] Although COSBI is required to set criteria for SBICs with which it does business, the statutory language is permissive rather than mandatory. "Such criteria *may* include, among other things, the general business reputation and character of the owners and management . . . and the probability of successfully operations . . . including adequate profitability and financial soundness." § 357(a) (emphasis added).

[8] The COSBI charter act also expressly removes current SBA regulatory authority over SBICs, *House committee report*, at 375-76, 387-89.

[9] *See, e.g.*, General Accounting Office, *Symposium: The Federal National Mortgage Association in a Changing Economic Environment*, at 233 (1985).

[10] *See, e.g.*, Farm Credit Amendments Act, Pub. L. No. 99-205, 99 Stat. 1678 (1985) Agriculture Comm., H.R. Rep. No. 425, 99th Cong., at 11-13 (1985).

MEANING OF PRESENT VALUE

Mr. DOMENICI. Mr. President, I would like to engage in a colloquy for clarification on the provision relating to prepayment or sale of direct or insured REA loans.

The provision provides that an REA direct or insured loan "when sold to or prepaid by the borrower" will be accomplished "at the lesser of the outstanding principal balance due on the loan or the loan's present value discounted from the face value at maturity at the rate set by the Administrator."

I would ask Senator HELMS, the chairman of the Senate Committee on Agriculture, to inform me if my understanding of that language is correct. My understanding is that in selecting a discount rate for the purpose of determining present value of loans, the Administrator may use an appropriate private-market rate which reflects the borrowers cost of replacement financing, rather than Treasury's rate.

Mr. HELMS. Mr. President, the Senator is correct. It is expected that in selecting a discount rate for the purpose of calculating the loan's present value, the Administrator shall use the cost of money to a doubled A rated utility or some similar financial benchmark.

ASSET SALES

Mr. DOMENICI. Mr. President, if I may have the attention of the chairman of the Agriculture Committee, I have a question concerning the intent of language dealing with the sale of assets from the rural development insurance fund by the Secretary of Agriculture. According to subsection (e) of section 1001, the Secretary must require potential purchasers of the assets in question to demonstrate an ability or resources to provide servicing of loans to ensure their continued performance. It also requires persons offering to purchase the note or other obligation to demonstrate the ability to generate capital to provide the original borrowers such additional credit as may be necessary for the proper servicing of the loans.

I understand that the administration has expressed concern that these two requirements could be interpreted as imposing such an array of restrictions that many otherwise qualified purchasers would be deterred—if not prohibited outright—from making offers to purchase these assets. If that is the case, it will reduce the marketability of these issues and proceeds to be realized from the sales. Would the Senator comment?

Mr. HELMS. The Senator from New Mexico has raised a good question.

I would say to the Senator, we gave considerable attention to this issue in the statement of managers accompanying the conference report. For example, it was brought to the attention of the conference committee that the pending language could be construed as limiting potential bidders to one category of purchasers or perhaps a handful of major institutions. That is certainly not the intent.

The bill provides the loans that are sold must continue to be serviced, which may include the availability of additional credit to accomplish the purposes for which the loans were made. As the managers' language also makes clear, however, there is ample flexibility in the statutory language to allow purchasers of notes "to conduct loan servicing directly, indirectly through contractural arrangements with third parties, or through such other vehicles as the purchasers may develop." Any such requirements is not intended to inhibit the marketability of the notes, nor are such requirements to be drawn so stringently as to reduce the market value of the notes.

In this respect, the conference report concludes as follows:

The Committee also intends that any regulations issued to implement the servicing of notes not substantially reduce the pool of potential purchasers. An environment should be established in which competitive bidding among large numbers of potential buyers will result in the Government obtaining the highest possible price for the notes.

I believe this should allay the Senator's concern.

Mr. DOMENICI. I thank the Senator.

NUCLEAR REGULATORY COMMISSION USER FEES

Mr. SIMPSON. Mr. President, I have just a few brief remarks that I would like to make about the issue of NRC user fees. Both the Senate and the House included provisions in their respective bills authorizing the NRC to collect additional fees from NRC licensees.

Section 502 of the Senate bill would have authorized the NRC to assess and collect annual charges from its li-

censees on a fiscal-year basis for fiscal years 1987, 1988, and 1989, for costs incurred by the Commission with respect to such licensees, if the Commission demonstrates that—First, the fee to be assessed a given licensee is reasonably related to the regulatory service provided by the Commission to the licensee from whom the Commission proposes to collect the fee; and second, the fee fairly reflects the actual cost to the Commission of providing such service to each such individual licensee. The fees collected pursuant to this provision could not, when added to other amounts collected by the Commission pursuant to other provisions of law, exceed 38 percent of the funds appropriated to the Commission each such fiscal year.

The House bill contained two separate provisions. Section 4001 of the House bill, recommended by the Committee on Energy and Commerce, would have required the Commission to collect 100 percent of its regulatory costs through fees and charges that, when combined with other fees levied by the Commission, would total about $270 million in fiscal year 1987, or about $135 million more than would be collected under current law. Section 5001 of the House bill, recommended by the Committee on Interior and Insular Affairs, would have required the Commission to assess and collect annual charges from its licensees beginning with fiscal year 1987. Under this provision, the charges are to be assessed at the rate of $750 per million watts of the rated thermal capacity of nuclear powerplants operated by NRC licensees, and are applicable to any nuclear facility with a rated thermal capacity in excess of 50 million watts.

The conferees were unable to reach agreement. Accordingly, the House and Senate have agreed to recede from their respective provisions, and include no provision in the legislation.

With the decision by the House and Senate conferees not to include any additional NRC user fee legislative authority in this year's reconciliation bill, the existing statutory authority for the assessment of fees by the NRC—contained in section 7601 of the Consolidated Omnibus Budget Reconciliation Act and in the Independent Offices Appropriation Act—will continue to govern the conditions under which NRC may assess fees and the procedures and requirements which must be met before such fees may be assessed.

The Commission's implementation of section 7601 was the subject of considerable discussion by the conferees charged with addressing the NRC user fee issue in this year's reconciliation conference. In fact, a number of Members raised questions about whether section 7601 could be implemented by the Commission, in a manner that would result in the assessment of the fees contemplated under this provision. I strongly disagree with those who have maintained that section 7601 cannot be implemented and that it will not result in the assessment of fees approximating 33 percent of the NRC's budget. Accordingly, I would like to take this opportunity, Mr. President, to review just briefly the background of this provision and the steps that, if taken by the NRC, should result in the successful—and highly legally defensible—implementation of section 7601.

Section 7601 authorizes the Commission to assess and collect annual charges from its licensees, on a fiscal year basis, in an amount up to 33 percent of the annual costs incurred by the Commission, provided that the Commission can demonstrate that the charges assessed are reasonably related to the regulatory service provided by the Commission and fairly reflect the cost to the Commission of providing such service. In addition, section 7601 provides that any assessments imposed pursuant to this provision shall be established by rule.

On July 1, 1986, the Commission published proposed regulations to implement section 7601 (51 Fed. Reg. 24078), and on September 18, 1986, the Commission promulgated a final rule (51 Fed. Reg. 33224).

The approach that the Commission has taken in implementing section 7601 does not meet the clear and unambiguous requirement of section 7601 that the charges assessed must be reasonably related to the regulatory service provided by the Commission and also must fairly reflect the cost to the Commission of providing such service. In fact, Mr. President, by adopting a flat annual fee for all nuclear power reactors—other than those not authorized to operate—regardless of the variance in the regulatory service that would be provided to each individual licensee and the corresponding variance in the cost of providing such service—the Commission has virtually disregarded the directive contained in section 7601. Indeed, the "back calculation" that the Commission has undertaken in order to reach this flat fee—dividing its total budget by 3 percent, subtracting the fees collected under part 170, and dividing the remainder by the number of licensed reactor—is about as far from what was contemplated under section 7601 as anything I can possibly imagine. If the fee reached through this bizarre calculation has any relation to the actual regulatory costs for individual licensees, it is only by coincidence, Mr. President—and certainly it is not the kind of determination that I think the Congress had in mind when it enacted section 7601.

Beyond this fundamental problem, Mr. President, the Commission had excluded a large number of licensees from consideration, citing in the proposed rule "the administration costs for administering such a collection program." It is for these reasons, all related to the implementation of section 7601—and not because of any fundamental infirmity in section 7601—that the Commission is now embroiled in legal controversy over its final rule.

Although section 7601 requires the Commission to demonstrate on a licensee-specific basis that the fee to be assessed is reasonably related to the actual cost of the regulatory service provided, this is a standard that, in my judgment, can be met—if the Commission establishes a procedure for identifying licensee-specific costs and a mechanism for assessing such costs against individual licensees. This standard was adopted by the Congress because of a strong feeling—which I share—that where the Commission devotes substantial resources to a given license—such as, for example, a "problem plant" or a plant applying for an operating license—the fee assessed should reflect such actual costs. On the other hand, where the Commission devotes lesser resources to a given licensee, that, too, should be reflected in the fee collected from that licensee.

Some have argued that this standard is so stringent that the Commission will never come close to collecting the 33 percent contemplated under section 7601. I crisply disagree with that assessment. In fact, Mr. President, I would be astonished if the Commission—whose regulatory program is now, by and large, concentrated on operating reactors and high- and low-level waste disposal—all of which involve specific licensees and presumably specific benefits—could not demonstrate that 33 percent of its budget is related to licensee-specific services. If this standard cannot be met, I think the time has come to take a much more careful look at the NRC's budget when it is submitted in January in order to determine why less than one-third of the Commission's money is going to identifiable expenses for individual licensees and more than two-thirds of the Commission's budget is going to generic expenses, rather than just hop to the conclusion that the standard must somehow be fundamentally flawed and must therefore be relaxed.

With regard to the issue of "administrative costs," Mr. President, I am wholly unpersuaded that the "administrative costs" of a fee collection system, as provided for in section 7601, are substantial. Nevertheless, I remain willing to consider whatever further information the Commission wishes to provide to use on this issue and, if necessary, take appropriate steps to ensure that the administrative costs of the Commission's fee program remain within reasonable bounds.

I appreciate the opportunity, Mr. President, to provide this additional background, together with my thoughts on how we can best proceed with a successful program for implementing section 7601. I look forward to a redoubled effort on the part of the Commission and I trust that next year, if and when we revisit this issue, the Commission will have done everything within its current statutory power and authority to carry out section 7601 in the manner contemplated by the Congress. I will surely be watching with great interest.

LOAN ASSET SALES

Mr. CHILES. Mr. President, as part of this reconciliation package, the Federal Government will be selling some $5 billion of loan assets in fiscal year 1987.

These loans will be sold from a variety of portfolios, including rural development and housing programs, the Economic Development Administration, the Export-Import Bank, the college housing program, and the Small Business Administration.

Five billion dollars—that is a lot of loan sales. And we have to make sure that the Government gets the best possible price. The trouble with our selling these loans, is that we are real newcomers to this game.

Suddenly, many of our executive agencies will have to play in the big leagues with the world's best investment bankers. If we are going to get our money's worth, we're going to have to be as quick and as clever as Wall Street's finest.

Most importantly, we've got to make sure that we play by a set of rules that protects the public interest.

I've recently sent letters to OMB and the Treasury Department, two agencies which have major responsibility for overseeing the sale of loans by Government agencies. I have also sent a letter to the Securities and Exchange Commission in their role as watchdog for our private investors.

The letter serves notice that Congress will see that the public interest is served. We must guarantee that the proceeds from the sales are as great as possible.

And we have to make sure that the investment banking community serves our interests rather than their own. Wall Street knows how high the stakes are—just look at the fight over who will manage the sale of Conrail.

We do not want a situation in which a small number of underwriters can come in with low bids and turn around and sell the loans for much more. We want their fees and commissions to depend on the amount of money they can make for the Government.

Everything must be kept out in the open. Audited records and evaluations of the loan assets as well as final details of the sales need to be part of the public record.

Last July, the Office of Management and Budget issued guidelines for loan asset sales. Those guidelines are a start—but there is a long way to go. My letter to the agencies raises numerous questions that need to be answered.

For example:

How can we protect the rights of borrowers? Will they still have the same provisons regarding repayment procedures, use or nonuse of collection agencies, and forebearance?

How should the compensation of underwriters be structured so that we get their best efforts at making money for the Government?

Should these loan offerings be exempted from SEC registration requirements?

And there are numerous other questions. I ask unanimous consent that a copy of the letters be placed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Washington, DC, October 9, 1986.

Mr. JOHN SHAD,
Chairman, Securities and Exchange Commission, Washington, DC.

DEAR MR. SHAD: Both the President and Congress have proposed loan asset sales as part of our effort to meet the Gramm-Rudman-Hollings deficit goals. In his fiscal year 1987 budget request, the President proposed the sale of $15 billion of loans from 13 loan portfolios. And the Conference Report on the Reconciliation Bill proposes loan sales that would yield approximately $5 billion in fiscal year 1987.

The federal government has relatively little experience with loan sales and has certainly never engaged in transactions of the size currently being considered. As we go forward with these sales, it is essential that procedures be established and followed to guarantee that the public interest is served.

Specifically, we must insure that:

The government's proceeds from the sales are as great as possible;

There be no collusion or uncompetitive practices on the part of underwriters;

The rights of current borrowers are protected;

There is full and open competition in choosing financial advisers for the loan sales;

Audited records and evaluations of the loans to be sold are made publicly available; and

Final details of the sale be made part of the public record.

Several aspects of loan sales require greater scrunity. For example:

Many borrowers from the agencies enjoy a variety of consulting and advisory services that have traditionally been a part of the loan package. What would be the status of these services when the loans are sold?

Many existing loans carry special provisions regarding repayment procedures, use or nonuse of collection agencies, forebearance, etc. What would be the status of these provisions when the loans are sold?

OMB's guidelines for loan asset sales disallow the sale of assets with recourse. Might not some forms of pooling of assets, combined with certain types of government guarantees result in greater revenue to the government?

How should underwriters' compensation be structured to maximize the proceeds to the government? Flat fees offer little incentive for extra effort by the underwriter, whereas percentage fees (and perhaps graduated fees) could make the public and private interest coincide.

Should a fixed bid by an underwriter be allowed in cases where the bid is negotiated with little or no competition?

In cases where the underwriters' bids appear too low, can a third party be brought in (and rewarded) for seeking out underwriters with higher bids?

Should government loan sales be allowed exemptions to SEC registration requirements?

What agencies should be involved in oversight to protect government and investor interests?

Do individual agencies have the expertise to market their loans—or is a centralized effort required?

In the months ahead, I will be leading an effort to insure that loan sales serve the public interest. With the huge sums involved and the potential for abuse, it is imperative that we institute appropriate procedures and be vigilant in our oversight.

It is my expectation that you will investigate the above questions that fall in your areas of responsibility and report back your conclusions. I look forward to working with you in this critical area of oversight as preparations for loan sales go forward.

Sincerely,

LAWTON CHILES.

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Washington, DC, October 9, 1986.

Hon. JAMES BAKER,
Secretary, 15th and Pennsylvania Avenue NW., Washington, DC.

DEAR MR. BAKER: Both the President and Congress have proppsed loan asset sales as part of our effort to meet the Gramm-Rudman-Hollings deficit goals. In his fiscal year 1987 budget requests, the President proposed the sale of $15 billion of loans from 13 loan portfolios. And the Conference Report on the Reconciliation Bill proposes loan sales that would yield approximately $5 billion in fiscal year 1987.

The federal government has relatively little experience with loan sales and has certainly never engaged in transactions of the size currently being considered. As we go forward with these sales, it is essential that procedures be established and followed to guarantee that the public interest is served.

Specifically, we must insure that:

The government's proceeds from the sales are as great as possible;

There be no collusion or uncompetitive practices on the part of underwriters;

The rights of current borrowers are protected;

There is full and open competition in choosing financial advisers for the loan sales;

Audited records and evaluations of the loans to be sold are made publicly available; and

Final details of the sale be made part of the public record.

Several aspects of loan sales require greater scrutiny. For example:

Many borrowers from the agencies enjoy a variety of consulting and advisory services that have traditionally been a part of the

loan package. What would be the status of these services when the loans are sold?

Many existing loans carry special provisions regarding repayment procedures, use or nonuse of colleciton agencies, forebearance, etc. What would be the status of these provisions when the loans are sold?

OMB's guidelines for loan asset sales disallow the sale of assets with recourse. Might not some forms of pooling of assets, combined with certain types of government guarantees result in greater revenues to the government?

How should underwriters' compensation be structured to maximize the proceeds of the government? Flat fees offer little incentive for extra effort by the underwriter, whereas percentage fees (and perhaps graduated fees) could make the public and private interest coincide.

Should a fixed bid by an underwriter be allowed in cases where the bid is negotiated with little or no competition?

In cases where the underwriters' bids appear too low, can a third party be brought in (and rewarded) for seeking out underwriters with higher bids?

Should government loan sales be allowed exemptions to SEC registration requirements?

What agencies should be involved in oversight to protect government and investor interests?

Do individual agencies have the expertise to market their loans—or is a centralized effort required?

In the months ahead, I will be leading an effort to insure that loan sales serve the public interest. With the huge sums involved and the potential for abuse, it is imperative we institute appropriate procedures and be vigilant in our oversight.

I request that you exercise your responsibility as the chief officer for federal financing to explore the issues, to ensure that agencies making loan asset sales do so prudently, and provide me a report on your conclusions. I look forward to working with you in this critical area of oversight as the loan sales go forward.

Sincerely,

LAWTON CHILES.

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Washington, DC, October 9, 1986.

Mr. JAMES MILLER,
Director, Office of Management and Budget, Washington, DC.

DEAR MR. MILLER: Both the President and Congress have proposed loan asset sales as part of our effort to meet the Gramm-Rudman-Hollings deficit goals. In his fiscal year 1987 budget request, the President proposed the sale of $15 billion of loans from 13 loan portfolios. And the Conference Report on the Reconciliation Bill proposes loan sales that would yield approximately $5 billion in fiscal year 1987.

The federal government has relatively little experience with loan sales and has certainly never engaged in transactions of the size currently being considered. As we go forward with these sales, it is essential that procedures be established and followed to guarantee that the public interest is served.

Specifically, we must insure that:

The government's proceeds from the sales are as great as possible;

There be no collusion or uncompetitive practices on the part of underwriters;

The rights of current borrowers are protected;

There is full and open competition in choosing financial advisers for the loan sales;

Audited records and evaluations of the loans to be sold are made publicly available; and

Final details of the sale be made part of the public record.

Several aspects of loan sales require greater scrutiny. For example:

Many borrowers from the agencies enjoy a variety of consulting and advisory services that have traditionally been a part of the loan package. What would be the status of these services when the loans are sold?

Many existing loans carry special provisions regarding repayment procedures, use or nonuse of collection agencies, forebearance, etc. What would be the status of these provisions when the loans are sold?

OMB's guidelines for loan asset sales disallow the sale of assets with recourse. Might not some forms of pooling of assets, combined with certain types of government guarantees result in greater revenue to the government?

How should underwriters' compensation be structured to maximize the proceeds to the government? Flat fees offer little incentive for extra effort by the underwriter, whereas percentage fees (and perhaps graduated fees) could make the public and private interest coincide.

Should a fixed bid by an underwriter be allowed in cases where the bid is negotiated with little or no competition?

In cases where the underwriters' bids appear too low, can a third party be brought in (and rewarded) for seeking out underwriters with higher bids?

Should government loan sales be allowed exemptions to SEC registration requirements?

What agencies should be involved in oversight to protect government and investor interests?

Do individual agencies have the expertise to market their loans—or is a centralized effort required?

In the months ahead, I will be leading an effort to insure that loan sales serve the public interest. With the huge sums involved and the potential for abuse, it is imperative that we institute appropriate procedures and be vigilant in our oversight.

I request you to use the management responsibilities of OMB to require the agencies involved to address the above questions and provide me a consolidated report of your conclusions. I look forward to working with you in this critical area of oversight as the preparation and execution of loan sales go forward.

Sincerely,

LAWTON CHILES.

Mr. CHILES. Mr. President, with the huge sums that are involved in these sales it is our responsibility to do it right. I intend to get the answers we need and make sure we do just that.

HOUSE RESOLUTION 5300

Mr. McCLURE. Mr. President, for the last 5 years the Congress has made many difficult budgetary choices in our efforts to achieve fiscal restraint and streamline the Federal Government. For example, funding for programs within the jurisdiction of the Energy and Natural Resources Committee have decreased by approximately 19 percent from approximately $16 billion down to $13 billion for fiscal year 1986. These budgetary cuts in Federal energy and natural resource programs have affected all regions of our country.

Since we began this process in 1981 with the fiscal year 1982 budget, considerable progress has been made in bringing efficiency to the Federal Government. But in our efforts to achieve fiscal restraint, there is a point of diminishing return. At stake is the economic viability of the U.S. energy and resource future. Also at stake is not only the U.S. long-term economic viability, but the daily lives and livelihoods of current and future Americans.

For these reasons, as well as others, I am concerned should there be further uniform, across-the-board cuts, such as those that would occur if it became necessary to enact a fiscal year 1987 sequester resolution. What is needed instead is carefully tailored appropriations acts, accompanied by targeted reconciliation measures such as those contained, in part, in the conference report before us.

The reconciliation portion of this conference report on the Omnibus Budget Reconciliation Act of 1986 represents the culmination of a long process that began last year with enactment of the Gramm-Rudman-Hollings Act. This measure represented the first opportunity afforded under that act for the Congress to consider an alternative to an across-the-board sequester of the Federal funds for certain, exempted programs. Therefore it is indeed unfortunate that this measure is also being used to raise the limit on the Federal debt.

It is my judgment, Mr. President, the Congress has risen to the task necessary to avoid a sequester. The reconciliation portion of this conference agreement represents a constructive alternative to a fiscal year 1987 sequestration and, as such, should be approved. Nevertheless, I must vote against the measure because it also raises the debt limit.

With regard to matters within the jurisdiction of the Committee on Energy and Natural Resources, which I chair, the conference agreement is consistent with the assumption in the Senate-passed measure and the original reconciliation instruction to the committee. For example, the conference agreement provides for the recoupment of additional petroleum overcharge funds over the next 3 years and provides for recovery by the Federal Energy Regulatory Commission of its direct and indirect costs through the use of fees and annual charges assessed against all companies that are subject to its jurisdiction.

The committee participated in two subconferences which emcompassed programs and activities of the Department of Energy, the Federal Energy

Regulatory Commission, and the Department of the Interior.

Consistent with provisions in both the Senate- and House-passed measures the conference agreement includes provisions regarding: First, the distribution of petroleum overcharge funds; second, the DOE manufacturers energy consumption survey; third, a DOE study of crude oil production and refining capacity in the United States and the effects of oil imports thereon; and fourth, recovery by the Federal Energy Regulatory Commission of its direct and indirect costs through the use of fees and annual charges.

The conference agreement also includes provisions addressing the two matters from the Senate-passed measure: Federal energy management and the Great Swamp National Wildlife Refuge. In addition, the conference agreement includes the two matters from the House measure: The strategic petroleum reserve and State energy conservation programs.

In the aggregate, the conference agreement achieves direct spending savings in fiscal year 1987 of approximately $460 million in budget authority and outlays, when adjusted for strategic petroleum reserve funding which was provided earlier in the Urgent Supplemental Appropriations Act for 1986 and carried over into fiscal year 1987. In addition, the conference agreement achieves savings in fiscal years 1988 and 1989.

PETROLEUM OVERCHARGE FUNDS

With regard to the recoupment of petroleum overcharge funds, the conference agreement provides for eventual distribution as either direct or indirect restitution of all crude oil overcharge funds not subject to the so-called "Stripper Well" agreement and settlement, and all petroleum product overcharge funds. The provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 establishes a policy for the eventually final distribution of certain crude oil and petroleum product overcharge funds resulting from alleged crude oil or petroleum product pricing violations under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1973.

The conference agreement provides, to the greatest extent possible, for direct restitution to those individuals and entities, such as farmers, school districts, small businesses, utilities, governmental entities, transportation entities, and other consumers, who experienced injury. With that objective in mind, the conferees encourage and expect the Department of Energy [DOE], acting through its Economic Regulatory Administration [ERA], to identify injured customers and provide direct restitution to them.

The conference agreement covers all overcharge funds—whether crude oil funds or product funds—other than funds already disbursed or designated for disbursement, either as direct or indirect restitution; and funds to be distibuted to overcharged consumers who prove direct injury in a DOE claims process. In addition, the conference agreement excepts from recoupment those funds governed by the "Stripper Well" settlement approved on July 7, 1986, by the U.S. District Court of the District of Kansas; and those funds to be allocated to the States to make up for appropriations shortfalls for certain specified energy conservation programs.

By specifically excluding those funds covered by the court-approved "Stripper Well" settlement from recoupment, the conferees leave it to the terms and conditions of the settlement and court approved order themselves to determine what funds are covered by that settlement. The disbursement of any crude oil overcharge funds not covered by that settlement are subject to the conference agreement.

In this regard, Mr. President, I am pleased to report that the conference committee fully carried out the intent of the Senate, as was elaborated in the July 29, 1986 report of the Committee on Energy and Natural Resources, which was incorporated in Senate Report No. 99-348. That intent was to preserve fully and in all respects the "Stripper Well" settlement and judgment, and to neither expand nor reduce in any way the scope or the settlement agreement or the court's judgment approving the settlement, including the amount of funds covered by the settlement and judgment, and the terms and conditions applicable to the distribution and use of such funds. Thus, future orders and judgments implementing the settlement, such as the court's August 7, 1986 order of disbursement, are also excepted from requirements of the conference agreement.

In the Stripper Well settlement the court also imposed certain reporting requirements which are excepted under the conference agreement. However, the conference agreement does require the Secretary of Energy to monitor the disposition by the States of any funds disbursed to the States by the court pursuant to the "Stripper Well" settlement in a manner substantially similar to that required under the earlier Warner amendment—section 155 of Public Law 97-377. Nevertheless, this monitoring requirement by the Secretary does not authorize him to require preapproval or approval of State plans for the utilitization of such funds.

As in the Senate-passed measure, any funds to which the Federal Government is entitled under this subtitle will be deposited into the general fund of the Treasury as "miscellaneous receipts."

Under the conference agreement, all future DOE rules, policies, guidelines, et cetera, and all future court orders, et cetera, must be consistent with the agreement. The agreement includes a disclaimer that the legislation does not change the Stripper Well settlement as approved by the court on July 7, 1986 or affect orders issued by the court to implement that settlement in the form and substance approved on July 7. However, if the court or the parties change the settlement or the court's approval as of July 7, the changes must be consistent with this legislation.

Accordingly, the conferees agreed to a statute of limitation provision modified from the Senate version. It is the expressed intent of the conferees that all alleged violations of the applicable law and regulations be pursued fully, fairly, and expeditiously. The conference agreement thus includes a nonbinding statement of congressional intent that ERA bring these cases to litigation this year as promised by Secretary Herrington in his letter of October 2, that I request be included at this point in my remarks.

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

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to you in your capacity as Chairman of the Committee of Conference on H.R. 5300, the "Omnibus Budget Reconciliation Act of 1986." It is my understanding that the conferees have agreed to amend the Emergency Petroleum Allocation Act (EPAA) to apply a statute of limitations to the government's cases regarding oil pricing overcharges committed by petroleum sellers. It is my understanding that the amendment would bar the Department's initiation of any action after September 30, 1988, or six years after the violation, whichever, is later. The conferees, however, would have Congress express the intent that the Department will commence all actions sooner. I can assure you we will.

The Administration supports vigorous and timely enforcement of all the laws of this nation, including enforcement actions under the now-expired EPAA, even though we believe, for example, that the petroleum pricing laws have resulted in undue governmental interference with free market forces. Consistent with our convictions, the Department is now in a position to bring all pre-litigation matters to a conclusion. By December 31, 1986, the Economic Regulatory Administration (ERA) will have initiated litigation, settled, decided to close out on the merits, or entered into a tolling agreement on all pre-litigation matters. Even absent this legislation, I would have allowed no ERA staff reduction which would have impeded this effort.

I hope this will allay any concerns that the enforcement program will be extended unnecessarily.

Yours truly,

JOHN S. HERRINGTON.

Mr. McCLURE. From this perspective, Mr. President, the conferees applaud that promise and encourage

ERA and the Secretary to fully exert themselves to bring these cases to litigation.

Finally, in adopting this limitation, the conference agreement also includes provisions aimed at ensuring that there will continue to be sufficient personnel—and a proper mix of personnel—to pursue all cases fully and expeditiously.

STATE ENERGY CONSERVATION PROGRAMS

The conference agreement provides for the disbursement of specified excess amounts of petroleum overcharge funds for the four energy conservation grant programs managed by the Department of Energy: the Low-Income Weatherization Program the Schools and Hospitals Program, the State Energy Conservation Program, and the Energy Extension Service Program. The aggregate of direct appropriations and disbursement of excess funds under the conference agreement for these programs is to $200 million per year.

STRATEGIC PETROLEUM RESERVE

In recognition of the importance of full implementation of the International Energy Agreement, particularly those provisions regarding emergency stocks, the conference agreement provides a 3-year authorization for the strategic petroleum reserve. I repeatedly have urged that we take advantage of low oil prices to upgrade the Reserve.

Recently, on August 6, the President supported such an effort by the United States and called on the other oil consuming, International Energy Agency member nations to upgrade their strategic stocks as the best defense against world oil supply disruptions. Japan has accelerated the filling of its reserves to 60,000 barrels per day from 50,000 barrels per day.

Much more can and should be done by our IEA partners to shoulder the burden of maintaining adequate emergency stocks. Therefore, it is incumbant of the United States to set an example for other IEA member states.

The conference agreement also provides for a minimum fill rate of 75,000 barrels per day until there are at least 750 million barrels stored in the reserve. If this minimum fill rate is not achieved, the conference agreement, consistent with previous authorizations, provides for a shut-in of the naval petroleum reserve [NPR] production or transfer of NPR oil to the SPR.

The conference agreement mandates a SPR fill rate of "the highest practicable fill-rate achievable subject to the availability of funds" during fiscal years 1987 through 1989. Because current law provides authority to the reserve for interim storage of SPR oil, the conferees intend that insufficient availability of permanent SPR storage capacity would not render a particular fill rate impracticable.

FERC FEES AND ANNUAL CHARGES

This conference agreement provides the Federal Energy Regulatory Commission with additional authority to collect fees and annual charges. The Commission is required to assess and collect fees and annual charges in amounts equal to all of the costs incurred by the Commission, including any hearing costs and indirect personnel costs.

Mr. President, as I stated earlier, the reconciliation portion of this conference agreement represents a constructive alternative to a fiscal year 1987 sequestration and, as such, should be approved in its own right. Nevertheless, I must vote against the conference agreement because this measure is also being used to raise the limit on the Federal debt.

Mr. WEICKER. Mr. President, I would like to explain to my Senate colleagues the Small Business Committee's decision with regard to title IX of H.R. 5300, the Reconciliation Act. The Senate, to meet its mandated savings, had proposed the sale by the Secretary of the Treasury of guaranteed loans from the portfolio of section 503 debentures in sufficient quantities to meet the goal of $412 million over 3 years. The House, by contrast, had proposed the creation of a new Government-sponsored enterprise called COSBI, which would purchase the entire billion dollar portfolio of SBIC loans currently held at the FEB, thereby producing the necessary savings.

The COSBI concept is not one that I am unfamiliar with, and indeed it is similar to legislation that Senator BUMPERS and I introduced on July 16, 1986 as S. 2647, and on which the Small Business Committee held 1 day of hearings on August 7, 1986. While the committee did not have time to report out S. 2647, it remains an idea whose time may well have come and which has generated a great deal of interest from the small business investment companies [SBIC] and the small business community in general. Although there are a great number of points of agreement between the House-passed version of COSBI and S. 2647, there were fundamental issues unresolved by our deliberations, not the least of which was whether the sale of the billion dollar SBIC portfolio held at the Federal Financing Bank should be sold with or without recourse to the Federal Government; the Senate and House Small Business Committees felt it would be imprudent to sell the loan assets without recourse since it would require a deep discount of the securities. The Congressional Budget Office required a nonresource transaction if the committee were to receive any credit under reconciliation for cost-savings.

Mr. President, COSBI—the Corporation for Small Business Investment—would be the latest Government-sponsored enterprise, and much like its successful prior models such as Fannie Mae and Sallie Mae, it would borrow money from the private capital markets at rates slightly above the Government's own cost of money, relending the money to SBIC's and MESBIC's, the small business investment companies and minority enterprises small business investment companies. The SBIC's and MESBIC's would in turn continue to make debt and equity investments in small businesses as they do now. One of the great advantages of COSBI is that the legislation would free the SBIC and MESBIC industries from the vagaries of the appropriation process and the bureaucratic burdens of SBA regulations. SBIC's and MESBIC's are essentially venture capital companies servicing small business in America; they are risk-takers by nature and they have sought from some time to privatize their funding mechanism. COSBI is responsive to those concerns.

While we were able to make substantial progress in hammering out the details of COSBI in conference, we learned of strenuous objections from both the Treasury Department and the Office of Management and Budget. The Treasury Department, for example, wanted language assuring its ability to control the volume of issuances of COSBI securities and limitations on the Corporation's debt-to-equity ratio similar to the one under which Fannie Mae operates. OMB and Treasury wanted a greater degree of regulatory supervision over the Corporation, at least so as to have control over the quality of COSBI's assets and liabilities. It was clear that to fully address the specific concerns of Treasury and OMB would have required both committees to revisit the entire legislation.

In addition, the exact terms and conditions of the sale of the SBIC debentures to COSBI was still at issue, and it was not clear whether the portfolio would be sold with or without a Government guarantee. Because this matter was unresolved, there was commensurate disagreement as to the appropriate degree of Federal regulatory supervision over COSBI. The case for regulation is all that much stronger if the portfolio were to be sold with the Government's guarantee attached thereto. Mr. President, I ask unanimous consent that the full text of the letters I received from the Secretary of the Treasury, James Baker, and the Director of the Office of Management and Budget, James Miller, be printed at this point in the RECORD.

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

THE SECRETARY OF THE TREASURY,
Washington, DC, October 1, 1986.
Hon. LOWELL P. WEICKER, Jr.,
U.S. Senate,
Washington, DC.

DEAR LOWELL: I am writing to express my strong concern regarding the provisions approved by the conferees on the Reconciliation Bill to establish a Corporation for Small Business Investment.

Although the proposal has been advanced as a "privatization" measure, the proposed corporation would not be truly private due to the extensive financial ties to the Federal Government and other benefits which would be provided to the corporation. These ties and benefits include the authority of the Corporation to borrow from the Treasury to backstop its financial obligations, the ability to purchase SBIC debentures held by the Federal Financing Bank at prices unrelated to market prices, exemption from State and local taxation, and exemption from SEC regulation.

I strongly urge that the COSBI provisions be deleted from the bill.

In addition to my general opposition to the creation of a new Government sponsored enterprise, I am deeply concerned by what the bill would not do. In particular, I am very disturbed about the absence of any effective oversight or control over the Government's exposure to loss from the operations of either COSBI or the SBICs. There should be some clear regulatory oversight over COSBI, as HUD has over FNMA. This COSBI regulator should have reasonable oversight and authority over the SBICs. The Treasury should have approval authority over the issuance of COSBI debt, not just its terms and rates. There should be a reasonable debt to equity ratio limit on COSBI's borrowings reflecting the credit quality of its assets, which could easily be argued to be as low as 3-to-1 given the default record on SBIC debentures to date.

Sincerely,

JAMES A. BAKER, III

EXECUTIVE OFFICE
OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, October 1, 1986.
Hon. LOWELL WEICKER, Jr.,
Chairman, Senate Small Business Committee, U.S. Senate, Washington, DC.

DEAR LOWELL: We understand a proposal to establish a Corporation for Small Business Investment (COSBI) may be added to the Senate Reconciliation bill. I would like to convey again Administration views on the legislation.

COSBI would be a new government sponsored corporation to provide funds for small business investment companies (SBICs). The Administration objects to its establishment most strongly. We further believe it is inappropriate to put such a complex and technical proposal in the reconciliation bill, especially at this late date. Therefore, if the COSBI provision were included in reconciliation, the President's senior advisors would be inclined to recommend veto.

COSBI would enjoy special advantages over fully private borrowers in the credit markets. These advantages would include standby ("back-stop") borrowing authority from the Treasury, exemption from securities regulation, and treatment of its securities in the same manner as Treasury instruments are treated. These Federal ties would enable COSBI to borrow at lower interest rates than it would otherwise experience. The lower borrowing costs constitute implicit Federal subsidies to one special category of borrowers. As the Grace Commission noted, the demand for credit by GSEs, like COSBI, raises the overall cost of Treasury borrowing, thereby increasing the Federal deficit. By reducing these implicit subsidies, the overall availability of credit is increased and the cost of credit is lowered to non-subsidized borrowers, such as the vast majority of small businesses. Therefore, rather than benefitting only 3,000–4,000 small businesses per year through the establishment of COSBI, the Administration believes that all of this Nation's 15 million small businesses would be better served by a lower Federal deficit and reduced competition in the credit markets from Federal and federally-sponsored agencies.

Thank you for considering our views.

Sincerely yours,

JAMES C. MILLER III,
Director.

MAJOR OBJECTIONS TO COSBI (TITLE IX)

1. Terms of sale of the $950M SBIC portfolio (currently held by the FFB) to COSBI—

Under the negotiated sale mechnaism, net proceeds from sale could be as little as $410M ($560M minimum price less the $150M for the MESBIC Trust). Treasury should have the ability to walk away from the sale.

Loss on sale would be realized by FFB or Treasury, not by SBA inspite of SBA's 100 percent guarantee of the SBIC debentures from the sale.

Treasury should be "held harmless" as a result of the sale, and budgetary impact should be reflected on SBA's books.

2. $500M backstop line of credit to Treasury: No restrictions on the use of proceeds is provided (At a minimum, COSBI should only have access to Treasury only to avoid default.)

3. Federal oversight, investigative, and regulatory authority over COSBI is insufficent.

No Federal agency (SEC, SBA, Treasury) has any general regulatory oversight of COSBI (unlike the authority provided to Treasury and HUD over FNMA). (Although SBA has "review" authority and can report findings to Congress, SBA cannot take any enforcement action.)

Some control over COSBI's debt to equity ratio, the type of assets COSBI can hold, etc. to protect the Federal interest is needed.

The Board structure, heavily dominated by SBIC industry representatives, will not be able to protect the Federal interests. Authority should be provided to remove Directors.

4. Transfer of the $255M MESBIC portfolio to COSBI for nothing.

5. Prohibition of additional loan asset sales.

Mr. WEICKER. Given the intensity of administration opposition to the version of COSBI under discussion and given the tight timeframe within which the committees were expected to reach an agreement, the Senate conferees felt it imprudent to continue to review such sweeping and complex legislation as COSBI within the constraints of the reconciliation process. The Senate Small Business Committee therefore made a counteroffer to the House to sell loans from the 503 portfolio currently at the Federal Financing Bank. The house rejected that offer and the conference was deadlocked. In the interest of not jeopardizing the entire reconciliation bill, the House and Senate Small Business Committees agreed to disagree.

This decision to disagree must be understood in the context of the entire $15 billion reconciliation bill. Passage of H.R. 5300 will generate enough spending reductions in fiscal year 1987 to avoid the prospect of another painful round of across-the-board percentage cuts, or sequestration, called for under the Gramm-Rudman-Hollings. Everyone agrees that such blind cuts, oblivious to priorities and needs, are the worst way to meet our deficit targets for 1987, and should be avoided at all costs. Reconciliation is our last hope of avoiding sequestration. Thus, given the administration's strong opposition to COSBI and its threat to veto the entire bill if COSBI were included, it would have been hazardous to pursue the COSBI concept on this bill.

However, Mr. President, I believe that we can build upon the significant progress on COSBI that was made in the reconciliation conference. I intend actively to pursue the COSBI concept next year and will reintroduce legislation to create the Corporation next January. The enactment of COSBI will be one of the committee's top priorities for the 100th Congress. In the interim period, I will be meeting with all interested parties in an effort to resolve some of the outstanding and difficult issues.

Mr. HELMS. Mr. President, Senator THURMOND and I, as well as others, have reservation concerning the constitutionality of denying a right to jury trial under the so-called antifraud provisions of the Budget Reconciliation Act.

In that connection, I ask unanimous consent that there be printed in the RECORD during the debate on the Reconciliation Act an article entitled "Jury Trials for Business, Federal Regulators Show Indifference," by Paul Kamenar and Kevin McIntyre, printed in Legal Times, October 6, 1986.

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

FEDERAL REGULATORS SHOW INDIFFERENCE

(By Paul Kamenar and Kevin McIntyre)

When the U.S. Supreme Court reconvenes today, one of the more important constitutional questions before the Court will be whether a businessman is entitled to a jury trial under the Seventh Amendment when the government seeks to impose civil penalties for alleged violations of federal law.

In *Tull v. United States*, the government sued Edward Tull in federal court for $22 million in penalties for violating the Clean Water Act and the Rivers and Harbors Act by developing land without a permit from the U.S. Army Corps of Engineers. A district

court's denial of Tull's request for a jury trial was affirmed by a divided panel of the 4th Circuit.

This case may force a change in the procedures used to enforce the civil penalty provisions of about 225 federal statutes—ranging from the environmental laws involved in *Tull*, to antitrust, aviation, banking, and election laws. Overzealous regulators who delight in fixing and assessing civil penalties reaching into the millions of dollars have been operating with seeming indifference to the right to a jury trial, a basic constitutional protection with roots back to the Magna Charta. The Supreme Court now has the chance to call a halt to this situation.

It will be interesting to see how the Justice Department—whose attorney general and assistants are strong advocates of the jurisprudence of original intent—presents the government's case in its brief to be filed later this month.

Tull's argument should appeal not only to many supporters of the original intent theory, but also to supporter of the "living Constitution" theory. And civil libertarians would also seem willing to embrace a concept that protects individual liberty from encroachment by the state.

The Seventh Amendment to the U.S. Constitution, ratified in 1791, states, "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." No interpretation, of course, is needed to understand the meaning of "twenty dollars," nor is there a serious problem understanding what is meant by a "jury trial." The controversy centers on the meaning of the phrase "suits at common law."

At first blush, one might simply conclude, since modern statutes did not exist in 1791, that enforcement actions and civil penalties brought under these laws are by definition not "suits at common law" and that therefore no jury trial is available unless Congress provides for such a remedy in the statute.

But the proper meaning of "suits at common law" has long been determined by the Supreme Court to include actions involving rights and remedies of the sort typically enforced in an action at law as opposed to an action in equity.

When the Seventh Amendment was adopted, the phrase "suits at common law" referred to those actions triable in an English court of law before a jury (such as a suit for a money judgment), as opposed to those cases tried in a court of equity before a judge sitting without a jury (such as a suit for specific performance or an injunction).

Jury trials were commonplace in civil penalty actions both during and long after the ratification of the Seventh Amendment. Suits by the government for civil penalties were regarded as an action for debt at common law and, thus, the right to a jury trial was protected.

Indeed, one major complaint of the American colonists that helped spark the revolution was that the right to a jury trial was being eroded when the English system began to substitute in the colonies the vice admiralty courts, which did not use jury trials. There is a rich history of federal courts utilizing jury trials in many types of civil penalty actions.

This historical right to a jury trial in a government civil penalty case was abruptly curtailed in 1977, however, in a case in which a roofing company was charged with violating OSHA regulations. In *Atlas Roofing Co., Inc. v Occupational Safety and Health Review Comm'n*, the Supreme Court ruled that Congress could create new "public rights" without a right to jury trial and commit their enforcement to administrative agencies. The Court held for the first time that the "Seventh Amendment does not prohibit Congress from assigning the factfinding function and initial adjudication to an administrative forum with which the jury would be incompatible."

The Court did not explain why juries are incompatible as factfinding in determining whether statutory violations have occurred or, if they have occurred, in determining the proper amount of the penalty. Juries decide such complex cases as antitrust and medical malpractice and assess punitive damages all the time. If the roofer in *Atlas* was expected to understand the Occupational Safety and Health Administration regulations, why can't jurors do so as well?

* * * * *

It is precisely because of the tremendous growth of the modern administrative state that small- to medium-sized businesses find themselves exposed to financial liabilities in the form of civil penalties that risk their very survival. Not only do many federal regulations inhibit the growth of the free enterprise system and of entrepreneurship, but the civil penalties that can be imposed for inadvertently violating them can be staggering. A jury in such cases will be able to temper with some measure of restraint the overzealousness of government enforces and the awesome power of federal judges.

It seems only fair that if a businessman facing criminal penalties were entitled to a jury trial under the Sixth Amendment, he should be afforded one under the Seventh Amendment when the government is seeking the equivalent in civil penalties. From a cost point of view, many a businessman would rather face spending six months in a federal facility than be forced to pay ruinous civil penalties. Yet in one situation, a jury trial is guaranteed; while in the other, such a right is being denied.

Apparently underlying the *Atlas* Court's assault on the Seventh Amendment was its expressed concern about the possibility of overcrowded dockets. Many litigants may choose to forgo their right to a jury trial, however, or the case may be largely disposed of by summary judgment. While many judges may find it more convenient to sit without a jury, the Supreme Court recently warned us in the *Chadha* legislative veto case and again in the Gramm-Rudman decision that "the fact that a given law or procedure is efficient, convenient and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution."

If the right to a jury trial can be denied to Tull under these circumstances, not much will remain of the Seventh Amendment. In *Tull v. United States*, the High Court will have an opportunity to render a decision appropriate for the bicentennial of the Constitution by reaffirming the original intent of the Seventh Amendment's right to a jury trial rather than casting it aside as a curious relic that interferes with the efficient operation of the modern administrative state.

ABDNOR/FARM CREDIT AMENDMENT

Mr. ABDNOR. Mr. President, no one is more aware of nor more concerned with the grave problems facing the Farm Credit System than am I. The Omaha Farm Credit District, of which South Dakota is a part, is perhaps in the most precarious financial position of any of the 12 district banks. The recent management shakeup in the Omaha District is just a symptom of the difficult transitions which are taking place. Aside from having the President of the Omaha Banks resign, the System has just laid off another 50 employees.

There's no question that the Farm Credit System is in dire straits. The need for serious action is imminent. No one would argue that.

Still, the greatest tragedy of the plight of the Farm Credit System is the plight of its member/borrowers. As the System banks continue to rack up unprecedented losses, to stay afloat, they continue to exact an ever-increasing toll on the borrowers.

Good borrowers have fled and located other sources of credit. Of those who are left, the top third who qualify for the best interest rate offered by the System have chosen to continue in the System. The bottom third have no alternative but to stay and may very well already be delinquent on payments of interest, principal, or both. It's the middle third that is being literally choked by the high interest rates they're forced to pay to prop up the marginal borrowers of the bottom third and subsidize the interest rate break given the sound borrowers of the top third.

Mr. President, somewhere along the line we've got to do something to assist the borrower and not just the System itself. We passed sweeping legislation last December hailed by the System banks as a godsend, a solution to all their problems. The net benefit of that effort to the System has been debatable but more importantly, the net benefit to the borrower has been nil.

Mr. President, I've advocated for a long time that any solution to the problems of the Farm Credit System has got to be borrower-oriented. I'm sorry to say that this effort again fails that fundamental test. Until it can be proven to me that the cost savings attributed to any legislative fix will be passed on to the borrower in the form of reduced interest rates, I cannot support a legislative solution.

Mr. President, I must also take issue with the manner in which this legislation has been advanced. I don't believe that waiting to attach a substantive amendment such as this at the 11th hour to a conference report is any way to legislate.

It's for this reason that I must oppose the inclusion of this amendment in the conference report on reconciliation. I traveled for the entire August recess in the State of South Dakota and a recurring theme in those travels was that something has got to be done to get land bank interest rates down. High interest is choking the life right out of hundreds of land bank borrowers in my State. And so I sug-

gest to my colleagues that we attempt to deal with this problem in a responsible fashion, not under the gun of 11th hour pressure, and that we ultimately approve a solution which is in the best interests of the borrower and not just System lenders.

I thank the Chair.

Mr. CHAFEE. Mr. President, the reconciliation conference report before us addresses many troubling health care issues in both the Medicare and Medicaid Programs. The original House and Senate reconciliation packages contained substantial differences in their Medicare and Medicaid provisions. The agreement before us represents compromise by both the Senate and the House, but I believe it represents better health care policy than either of the original bills.

As chairman of the Senate subconferees on Medicare and Medicaid issues, I would like to thank Senators HEINZ, DURENBURGER, MOYNIHAN, and BAUCUS for the time and effort they devoted to achieving this agreement.

I would like to take a few moments to highlight a few of the provisions included in the conference report.

MEDICARE

One of the most troubling problems addressed in the conference report involves the part a deductible—the amount a Medicare beneficiary must pay for the first day in the hospital.

The prospective payment system established a single rate of payment for hospitals based upon the illness to be treated—the DRG rate. This new payment system has created an incentive for hospitals to economize, which in turn has resulted in shorter hospital stays for Medicare beneficiaries. Currently, the part A deductible is based on the national average cost per day in the hospital. However, because we now pay a flat rate per hospital stay and hospital stays on the average are shorter, the average cost per day for Medicare beneficiaries has increased at a tremendous rate.

Because of this the part A deductible increased at about 43 percent over the past 2 years. Last year alone the part A deductible for Medicare increased by an unprecedented 23 percent—from $400 to $492. The projected increase for 1987 is another $80—which would bring the first day deductible to $572. When Congress enacted the prospective payment system, this possibility was not foreseen.

The provision agreed to by the conferees would reduce the increase in the part A deductible in 1987 by more than one-half. Instead of increasing to the projected rate of $572, the deductible will increase to $520. Equally important, the provision will keep increases in subsequent years to a reasonable amount.

Another difficult issue addressed by the conference was physician reimbursement under the Medicare Program. The position originally adopted by the Senate would have lifted the current reimbursement freeze and allowed physicians to increase charges to beneficiaries with no limits. The House provisions would have retained controls on physician charges and imposed an annual cap on the amount a physician could charge a beneficiary. This was one of the most contentious issues in the subconference.

Under the conference agreement, all physicians will be allowed a 3.2-percent increase in their Medicare reimbursement. In addition, the amount a physician can charge a beneficiary over the Medicare reimbursement rate will be limited in the following manner: first, those physicians charging above 115 percent of the prevailing rate will be allowed a 1-percent increase per year; and second, those physicians charging below 115 percent of the prevailing will be allowed to increase up to 115 percent of the prevailing over 4 years. These caps will be removed on December 31, 1990 or 1 year after a study on relative value scales is completed, whichever is earlier.

I believe the agreement we reached with the House is a reasonable compromise and good policy. It will save the Federal Government money, control beneficiary out-of-pocket costs and allow physicians to increase their charges at a reasonable rate. In addition, it will sunset once Congress has received enough information to develop a reasonable and fair system of reimbursement for physicians.

The conference report also allows a 1.15-percent increase in hospital reimbursement rates—this is more generous than the .5-percent increase recommended by the administration. The agreement cuts back on the amount Medicare will pay for capital reimbursement for hospitals by 3.5 percent in 1987 and by larger amounts in 1988 and 1989. Understandably, the hospital industry is not pleased with the capital provision; This provision will give them a strong incentive to work with Congress next year to develop a reform program.

MEDICAID

Mr. President, the conference report before us today also makes a number of critical changes in the Medicaid Program.

First, it would expand coverage to pregnant women and children under the age of 5 who are beneath the Federal poverty level. This provision will address the serious problem of infant mortality and low birth weight among babies. It reflect legislation introduced in the Senate early this year which I cosponsored.

Under current law, States that wish to provide essential health care under Medicaid to poor women and infants, can only provide such services to those who are eligible for cash welfare. As a result, health care services offered through Medicaid reach fewer than one-half of all infants living in poverty. Under the conference agreement, States will have the option of providing prenatal, delivery, and postpartum care to low-income pregnant women and medical assistance to low-income infants and children under 6 years of age in families living below the Federal poverty level without requiring that they also meet the eligibility standards for aid to families with dependent children.

Eleven babies die out of every 1,000 infants born in this country. Few events are as tragic as the death of a baby or the birth of a baby with birth defects—especially when such an outcome could have been prevented with proper prenatal care.

The National Academy of Sciences estimates a cost-benefit ratio of $3.38 saved in the first year of a child's life for $1 spent in prenatal care. The conference agreement recognizes that even in times of fiscal restraint, it is good Federal policy to invest in the health of poor mothers and children.

The conference agreement also allows States to provide Medicaid coverage to elderly and disabled individuals whose familiy income is at or below the Federal poverty level without liking such coverage to eligibility for Federal or State supplemental security income payments.

Another provision makes it clear that a State cannot impose any residence requirement which excludes from Medicaid an otherwise eligible individual who lives in a State regardless of whether or not such residence is a permanent address. This provision ensures that "homeless" individuals are not discriminated against.

Finally, the Senate conferees adopted a provision in the House reconciliation package which would enact a piece of S. 2209, the Disabled Person Act, of which I am a cosponsor. This provision is a great importance to disabled Americans who want the opportunity to be productive members of the work community. By enacting this provision Congress will finally acknowledge that individuals with disabilities should be supported and assisted in their efforts to join the work force rather than discouraged because they cannot afford the high cost of their disability-related health care needs without some help from Federal programs.

I fully support efforts to encourage disabled individuals who wish to join the work force to have the chance to do so. But we must be certain that barriers that discourage their participation, such as the possible loss of SSI or Medicaid benefits, are eliminated. Access to the work community is critical in order to assist disabled persons to pursue full and active lives.

We are in an era of changing technology and experience. Our understanding of the capabilities of those with disabilities is changing quickly. We have made tremendous strides in our ability to help those with disabilities to learn and to participate in many different facets of life. These individuals represents a highly motivated, dependable work force. This provision will give them the opportunity to fulfill their potential.

MATERIAL AND CHILD HEALTH BLOCK GRANT

Mr. President, the final provision I wish to discuss today involves an issue Senator BENTSEN and I have worked on over the past few months—A $75 million increase in the authorization level for the maternal and child health block grant.

Because of my concern about the number of infant deaths each year and the lack of preventive health care services for poor children, I have worked with a variety of interested organizations to develop a special set aside of one third of this increase for primary health care services and children with special needs.

This provision underscores my deep concern about the status of preventive health care services for children in this country. It also enhances the infant mortality initiative included in the Medicaid section fo the conference agreement. We cannot afford to let children suffer and sometimes die from easily prevented diseases and disabling conditions. We cannot afford to have pregnant women who do not see any health care professional until the day they go into labor. In the long run, inaction of this front will cost us much more in human anguish and lost potential than it would cost us to develop comprehensive prevention services today.

I am pleased that our set-aside program was adopted by the House conferees.

In summary, Mr. President, I am pleased with the conference report before us today. I urge its adoption by the Senate.

PREPAYMENT OF FFB LOANS GUARANTEED BY REA

Mr. ABDNOR. Mr. President, I would like to ask the distinguished chairman of the Agriculture Committee for clarification on section 1011 of H.R. 5300 which amends the Rural Electrification Act of 1936 to provide for the prepayment of Federal financing bank loans, repayment of which is guaranteed under section 306 of the Rural Electrification Act. Section 1011 replaces a provision providing for prepayment of certain FFB loans contained in an act entitled "An Act Making Urgent Supplemental Appropriation for the Fiscal Year Ending September 30, 1986, and for Other Purposes" (P.L. 99-349) enacted July 2, 1986.

Under section 1011 the Administrator of the Rural Electrification Administration would establish eligibility criteria for the prepayment program which would permit prepayments in fiscal year 1987 in an amount to realize net proceeds not less than $2,017,500,000. While section 1011 does contain a provision that a borrower will not qualify for prepayment if, in the opinion of the Secretary of Treasury, to prepay in such case would adversely affect the operation of the FFB, that provisions is only effective in fiscal year 1987 for loans the prepayment of which would cause the cumulative prepayments for fiscal year 1987 to exceed the $2,017,500,000.

I would ask for a clarification of those provisions of section 1011 under which the Administrator is to establish eligibility criteria to ensure that any required prepayment activity will be directed to those cooperative borrowers in greatest need of the benefits associated with prepayment, as determined by the Administrator, and such other eligibility criteria as the Administrator determines are necessary. My understanding of section 1011 is that the Administrator is not limited in establishing eligibility criteria to criteria related to the financial hardship of the borrower. While the criteria should ensure that prepayments are directed to those in greatest need of the benefits of prepayments, it would appear that the Administrator has very wide discretion in this area and may consider criteria in addition to improving the borrower's financial strength in cases of financial hardship. I would ask the chairman of the Agriculture Committee if my understanding of that provision is correct.

Mr. HELMS. The Senator is correct. The provision gives wide discretion to the Administrator to establish eligibility criteria based on greatest need as long as in fiscal year 1987 the proceeds of prepayments shall be not less than $2,017,500,000.

Mr. ABDNOR. In establishing eligibility criteria, it is my understanding that the Administrator may consider other factors related to need such as the average customer density of the borrowers. Customer density has long been one of the means for targeting financial assistance available under the Rural Electrification Program to those who need it. When Congress passed the 1973 amendments to the Rural Electrification Act, section 305 provided that those electric borrowers with two or fewer consumers per mile and those telephone borrowers with an average subscriber density of three or fewer per mile would be eligible for loans at the special interest rate of 2 percent. Section 408 of the act similarly creates a preference for low density borrowers. While section 305 of the act has been subsequently amended, it is clear that density is a criteria which has been used historically in targeting financial assistance to need and the Administrator would have the discretion to use density as a criteria for establishing eligibility for the prepayment program.

Mr. HELMS. The Senator again is correct in this intepretation. The Administrator can certainly consider average customer density either by itself or in conjunction with other criteria, in establishing eligibility for the prepayment program.

Mr. ABDNOR. I agree with the Senator and thank the Senator for his clarification. With the explanation and colloquy I can now support section 1011.

Mr. HELMS. Mr. President, the agriculture title in the conference report will reduce budget outlays by nearly $1.8 billion in fiscal year 1987, through sale of $1 billion in loans from the Rural Development Insurance Fund, and just over $2 billion in prepayments of REA loan guarantees to the Federal financing bank.

Also, the bill allows sale or prepayment of direct and insured REA loans from the revolving fund, only if the sale or prepayment is to the borrower, and only during this fiscal year. Advanced deficiency payments mandated in the Senate bill are also preserved in the conference report.

Mr. President, there is an additional provision in the conference report that provides authority to the Farm Credit System, subject to approval by the Farm Credit Administration, to restructure two of its most pressing problems: High-cost debt and non-performing loans.

This provision is an amended form of S. 2770, introduced by Senator COCHRAN with numerous cosponsors.

This provision was added as an amendment to language in the Senate bill which provides the eligibility for the Farm Credit System institutions to purchase notes and other obligations from the Rural Development Insurance Fund.

Very simply, Mr. President, this provision was included to provide authority to the System and its regulator to address the financial difficulties of certain System institutions should a need arise in the coming months. There is no apparent financial emergency currently; on September 17, in hearings in the Senate Agriculture Committee, system representatives said there was no need for Federal assistance at the present time. Indeed, this is not a package of Federal assistance, and no Federal moneys are involved.

However, in past weeks some uncertainty has arisen out of suits brought by varous System institutions, challenging the operation of the Capital Corporation's operation as contemplated in the Farm Credit Amendments Act of 1985. There is every reason to expect that the outcome of

these suits will permit loss sharing and other Capital Corporation functions to continue. However, it is the judgment of the agriculture subconferees that it is prudent to provide this standby authority, subject to approval by the Farm Credit Administration, to ensure that the System has adequate tools to maintain the technical viability of all System institutions.

Mr. President, we are not changing the intent of the Farm Credit Act amendments, nor are we providing a bailout for the Farm Credit System. Indeed, it is hoped that the Capital Corporation will be Allowed to operate in the manner contemplated and provided for in the amendments of last year. Furthermore, this legislation should enhance the reforms begun by last year's amendments. This provision gives the System an additional tool in implementing last year's act, and provides the System another self-help mechanism which may delay, and perhaps avert, the need for Federal assistance. We are providing the System the authority to deal with an emergency that may arise, depending on the rulings in a number of court cases.

I would emphasize that this in no way is intended to halt or reverse the management and operational reforms intended in the Farm Credit Amendments Act of 1985. Those reforms must continue as expeditiously as possible, and the implementation of these provisions should be done in a way to enhance and encourage those reforms.

I hope the Senate will support the agricultural provisions of this reconciliation conference report and, in particular, preserve this standby authority for the Farm Credit System and its regulator.

Mr. President, let me expand briefly on the section of this bill dealing with the prepayment of REA loan guarantees. The bill allows that the loan guarantees, if assigned and transferred, be assigned or transferred to a loan or security that will be grouped with nonguaranteed loans and securities so they are sold in a way not to unreasonably compete with other Treasury obligations.

I urge the Administrator of the Rural Electrification Administration, the Secretary of the Treasury, and the Chairman of the Securities and Exchange Commission, to consult for purposes of ensuring that the groups or pools of loans or securities to be offered for sale under section 306(A) are marketable and that the sale of these groups or pools, or secondary securities issued against the groups or pools, do not unreasonably compete with the marketing of Treasury securities.

I expect the Securities and Exchange Commission to monitor the development of the groups or pools of loans or securities to provide appropriate administrative relief from the provisions of the Investment Company Act if compliance with the act unnecessarily hinders development of the market. Section 6(c) of that act (15 U.S.C. 80a-6(c)) empowers the Commission to grant exemptions to the extent necessary and appropriate in the public interest and consistent with the protection of investors. This authority permits the Commission to deal with any problems that arise under the Investment Company Act in a manner that assures adequate investor protection. I further expect that the Commission will exercise this authority in a way that will encourage a vigorous private secondary market.

Mr. President, I urge that the reconciliation conference report be approved.

Mr. GRASSLEY. Mr. President, I can not say I am excited about the Farm Credit System provisions of this bill or the manner in which they have been brought up. As a matter of fact, I can't even say that I am sure it is going to have any effect on interest rates or in providing for a stronger more stable Farm Credit System. I am extremely suspect of the accounting practices that this bill will allow. I would even go so far as to say that I believe it could cause more long-term problems than it will provide short-term solutions. Another concern of mine is that this bill may allow some financially stable districts to run away from their responsibility to help troubled districts.

I have thought hard about this legislation and can say that I was very tempted to not support this provision. I have introduced a bill, along with Senator SYMMS, called the "Farm Credit System Interest Reduction Act of 1986" which I believe addresses the real issues of the System: stockholder rights, local control, and direct assistance to guarantee lower interest rates to farmers. If this legislation we are considering today has been brought up in any other way I would have offered my bill as an alternative solution to the Farm Credit System's problems.

I must tell my colleagues, however, that I have been contacted by several farm groups and Farm Credit System stockholders and employees who believe that this bill will help them. Staff at the Omaha district have told me that this will allow them to lower interest rates. They have assured me that the board of directors in Omaha will lower interest rates if the provisions of this bill are allowed to be implemented. I have also been told that the Farm Credit Administration and the Treasury Department estimate that this bill will allow the System to lower interest rates.

Hearing all this I was forced to ask myself this question: "What other option do we have at this time?" I must tell my colleagues that we don't have many options, and maybe not any before the end of this Congress. Recognizing this reality, I must say that I will support its retention in the bill. I base this decision on the fact that we don't have any alternatives and that I have been assured that interest rate relief is not only possible but probable if we pass this. Let me be on record, however, as being against the accounting practices in this bill and believing that it can lead in the long-run to some real problems for the System, its stockholders, and the taxpayer, who will end up holding the bag when everything falls apart. Let me also be on record as saying I support a legislation similar to the "The Farm Credit System Interest Reduction Act of 1986" which guarantees stockholders interest relief and reaffirms their rights. Let me also say that I will continue to push for these provisions in the future whenever I have the opportunity.

I reluctantly favor the provision being retained in the bill and would like to encourage my colleagues to support looking into serious long-term solutions as soon as we are back in session for the 100th Congress.

Just one final comment. I am very tired of Farm Credit System legislation coming up in the closing hours of a session and being brought up in such a way as to prevent time for review or amendment to improve the legislation. Again, I would like to encourage my colleagues to start early in the next Congress to address this problem and not let rush legislation overtake us again. I think this is a very bad precedent we are setting and this is the second year in a row this has happened.

Mr. GLENN. Mr. President, I am opposed to this reconciliation bill because it does not address the underlying causes of the most serious public policy problem of the day. We have a Government living beyond its means to the tune of over $200 billion, and this bill proposes no significant permanent reductions in spending or permanent increases in revenue. It accomplishes a $11.7 billion deficit reduction primarily through accounting gimmicks and fiscal flim-flammery.

Painted as a deficit reduction package, this bill violates truth in advertising. In the words of the distinguished chairman of the Budget Committee, most of the bill's savings are one-time, and most of the revenues are nonrecurring. This will not make a permanent dent in the deficit. It is the big lie. Mark Twain once said that:

> One of the most striking differences between a cat and a lie is that a cat has only nine lives.

This bill differs from other lies in one important respect in that it is a lie that has but one life. The deficit reduction measures found in this bill are one shot deals; they arrive at savings for fiscal year 1987 only and once made the Congress will never again be

able to return to the well. Mark Twain would have never tolerated such a poor choice of lies—his contempt for Congress would have only been heightened by our inability to pick a lie that could go at least one better than a cat.

Look what this bill has to offer in the way of deficit reduction. Its primary source of savings comes from the sale of Government assets like Conrail for $2.16 billion and the sale of up to 5 billion dollars' worth of loans. The loans the bill proposes to sell range from rural development and rural housing loans, to Economic Development Administration notes, college housing loans, and Export-Import Bank loans. Now, I believe a good argument can be made for the responsible and timely—I repeat, "responsible and timely"—sale of Government assets to private owners. Maybe a Government-owned Conrail is no way to run a railroad.

But these savings are one shot deals and do absolutely nothing to reduce spending or increase revenue on a permanent basis. Worse yet, the sale of Government loans may create other problems. When the Government sells a performing loan, it turns future income into ready cash, which admittedly helps us reduce the deficit for that particular year. But the Government loses the stream of dollars that the loan would have produced over a great number of years.

The prospect that the Government will be forfeiting substantial future cash flow for instant cash is very troubling to me. This is a serious issue and should be addressed before this body votes on this bill. It is comparable to a spendthrift carpenter who in the face of hard times, sells his tools instead of building more houses or cutting down on his expenses. He may stay out of the poor house for a while, but he won't be building any either.

The most disturbing thing to me about the sale of Government loans is that it may turn into a fire sale. No one knows how much these loans are worth. I am told that many of the loans are not marketable, and that other will be sold at discounted, if not subjunk, prices. Investors will be reluctant to buy loans at face value since they carry low interest rates and were issued with the Government's traditionally lenient terms. Moreover, the sales will be made without Government guarantees that the U.S. Government will step in and pay the private investor should the borrower default. Without this guarantee, the investment carries more risks, and investors will further discount the price.

I am not about to vote for this bill until I hear from the Budget Committee what they expect to get for these loans on the market. Until the Budget Committee produces fair assessments of what these loans will draw on the free market—something I am told is simply impossible to do—we cannot trust the numbers found in this bill. The amount of savings presented are surely exaggerated. They simply won't add up.

Let me stop here and ask, why are we worried about the deficit in the first place? It is my opinion that the deficit poses the greatest danger to our credit markets. Private borrowing has been crowded out of the credit market by Government borrowing, thus increasing interest rates. I will admit that selling assets produces cash which can be used to reduce the deficit. But that merely shifts the debt from the Government to a private party. In other words, someone else has to go out and borrow the money to buy the loans from the Government. So, in this respect, too, it's a wash.

If anything, the reconciliation bill will be a welfare program for investment bankers. Civil servants just don't have the experience in selling nonrecourse loans in the market and as a result will end up relying on investment bankers to handle the transaction.

On top of the loan sales, the bill contains other devices that make even more of a mockery out of the budget process. Instead of taking a knife to duplicative or nonessential programs, it proposes to save $4 billion by taking more steps to make sure more Americans pay the income taxes they are already supposed to pay, and by speeding up some excise and payroll tax collections. Improving tax compliance is a laudable goal. But is it a serious effort at deficit reduction? If we can increase tax collections by $2.355 billion simply by typing the numbers on a chart, why didn't we do this before? Why don't we double the number, type that in, and thereby free up billions more for low income housing or education?

The acceleration of tax collection is such an obvious ruse as to hardly deserve comment, except that it's being done on such a large scale. I ask my colleagues to take a look at what we're doing, and I quote: "Accelerate excise tax collections"—$319 million. "Accelerate State and local deposits"—$388 million. Together, that's more than $700 million. And in a similar ploy, the conference agreement proposes to "score the last quarter fiscal year 1986 revenue sharing payment to fiscal year 1986." So, by a stroke of the pen we have gone back into time and declared that money we are about to spend was actually spent some time ago. Frankly, I marvel at this feat, which the greatest thinkers of mankind have for centuries thought impossible.

When future historians examine how this Nation grappled with the great issues of the day, I can assure you that none of us will be compared to Lincoln or Jefferson. Houdini, maybe, or even Alice in Wonderland.

We are putting off the judgment day when Congress will be forced to make the tough decisions on spending—the day when we will have to take a long hard look at our national priorities and tell our constituents "no." Congress has opted for the easy way out. Fearful of offending powerful constituencies in an election year, we have resorted to myopic gimmicks to fudge this year's numbers at the expense of the next's. This display of political cowardice may pad our margins of victory, but will not grace the pages of our political biographies. This is not the stuff of profiles in courage. In that these are times that try men's souls and this bill is the best we can offer, we must be summer soldiers and sunshine patriots.

Mr. BYRD. Mr. President, the conference report on the reconciliation bill, which is before the body now, represents what is probably the lowest common denominator in deficit reduction this year. Having just completed fiscal year 1986—a year in which this Nation experienced the largest single deficit in its history—$230 billion—I would have hoped that the Congress could do more to reduce these dangerous budget deficits.

These seemingly uncontrollable deficits are sapping our economic vitality today and mortgaging our children's future tomorrow. Since fiscal year 1981, this administration has piled one triple digit deficit on top of another, reaching a new record nearly every year. The result is that the public debt, which was $999 billion when this administration took control of the budget, has now topped $2.1 trillion. And contained in this reconciliation bill is yet a further increase in the debt limit—to $2.3 trillion.

Faced with this mounting flood of red ink, one would think that the administration would be leading the charge for deficit reduction. Certainly its rhetoric over the past years would indicate that. Yet, despite the clear and present danger that these deficits pose to our future security, the White House has spoken loudly, but carried no stick at all. It is this lack of Presidential leadership in reducing the Federal budget deficit, among other things, that fostered the conditions in which a Gramm-Rudman proposal could take root.

The sad fact is that this administration's inability to control one of the greatest threats to the long-term economic security of this Nation will leave a mounting public debt as its fiscal legacy.

Mr. President, the conference report on the reconciliation bill will not achieve any miracles. It will not bring the deficit under control overnight. In fact, it hardly makes a dent in the problem.

The conference agreement would reduce the fiscal year 1987 deficit by some $12 billion. But by relying largely on the one-time savings resulting from the sale of Government assets, ranging from various loan portfolios to Conrail, even this deficit reduction overstates the progress it makes against the deficit.

Of course, it is important to do what can be done to reduce the deficit. So I will support this conference report. But let me be clear on what lies ahead.

The Gramm-Rudman deficit target for fiscal year 1988—the budget on which we will begin to work in a few short months—is $108 billion. Many experts believe that in the absence of further action, the deficit for that year could be upwards of $160 billion, or more. If the difficulty in achieving $12 billion in deficit reduction is any guide, the task confronting us next year—when $50 billion or more in savings may be needed—is formidable, indeed.

That task will not be made any easier if the President remains unwilling to work with the Congress to achieve a credible, effective, responsible deficit reduction package.

This problem will not go away, Mr. President. In fact, it gets worse every day. To finance the $2.1 trillion debt, this administration will incur a net interest cost of $139 billion next year. That is more than $380 million per day in finance charges.

Mr. President, this reconciliation bill may not be all that I, or others, might want. I know it is not all that the senior Senator from Florida, Mr. CHILES, would like the bill to achieve. But with mountainous deficits facing this Nation, every savings is needed. This bill is not the first step in deficit reduction and it certainly is not the last. It is yet another milemarker on the road, hopefully, to a balanced budget some day in the not too distant future.

PHYSICIAN PAYMENT REFORMS

Mr. BAUCUS. Mr. President, the budget reconciliation bill is the way that Congress makes some of its toughest choices, including difficult decisions about the way the Federal Government pays for health care.

On the whole, I believe that the conferees on the reconciliation bill have done a good job. The conference agreement is the result of the hard work by the conferees to reach reasonable compromises on the dozens of Medicare and Medicaid provisions that needed to be resolved.

Reluctantly, I have decided not to support the conference agreement, because it contains yet another increase in the Federal debt limit, added to this bill at the last minute. This is no way to bring Government spending under control. This is just a confirmation of a budget out of control.

In addition, I have serious reservations about certain provisions that I cannot support.

In particular, I am disturbed that the conference agreement places unrealistic limits on physicians who have kept their charges lower than the prevailing fees in their own area and far below comparable national average charges. These physicians, many of whom practice in rural areas, are caught in the grip of a Medicare fee freeze that has gone on for too long.

Unfortunately, I believe that the physician payment provisions will only worsen the already burdensome and needlessly confusing process that Medicare uses to pay for physician services. The additional complication included in this reconciliation bill will make it even more difficult for claims submitted by physicians and their Medicare patients to be paid on time.

I am also concerned that the physician payment provisions contained in the conference report may make it more difficult for physicians to accept assignment of claims for their elderly patients who truly cannot afford high medical costs.

This is one more example of how health policy is being driven by budget pressures. The Medicare Program cannot be immune from budget concerns, but we also must not allow the pressures of a deficit reduction bill to erode the commitments that we have made to provide America's senior citizens the quality of health care that they deserve.

I regret that the conference report does not make more progress toward a rational payment policy for physician services. Instead, there will be a continuation of the indiscriminating and patchwork payment policies of the past.

I urge the administration to move swiftly to complete its work on alternative plans for the payment of physician services so that we can restore confidence in this essential portion of the Medicare Program.

No bill is perfect. And the reconciliation bill is no exception.

I know that this is not the last time that Congress will consider the issue of physician payment reform. But, I hope that next time it will be possible to find solutions that lead to a more rational and fair way to pay for physician services.

RURAL HEALTH CARE

Mr. BAUCUS. Mr. President, all too often rural America is forgotten when decisions are made on national health care programs. Even worse, the way that we pay for health care tends to take on a distinct urban bias.

That's why earlier this year Senator GRASSLEY and I introduced S. 2410, the Rural Health Care Improvement Act.

It just seems that, too often, the special health care concerns of rural communities get lost in the large numbers of national decisions.

Just take a look at the figures: Medicare pays over $40 billion each year for hospital care, of which only about 5 percent goes to small rural hospitals.

Small rural hospitals account for only a tiny fraction of Medicare's costs. But from the perspective of a small rural hospital, Medicare is the largest source of its revenues.

So, changes in Medicare payments can be life and death issues for rural hospitals.

According to the American Hospital Association, about 70 percent of the hospitals that closed last year had fewer than 100 beds. Many more are operating on the edge of solvency or are operating in the red.

We have asked these hospitals to tighten their belts, and they have tightened their belts. They have reduced their staffs, eliminated wasteful costs and deferred discretionary expenses.

But once you get down to bare bones, there is no where else to cut.

Well, for once, there is some good news for rural health care.

The good news comes from a very unlikely source: the budget reconciliation bill, our annual effort to lower the deficit by cutting Federal programs and raising revenues.

As a conferee on this year's budget reconciliation bill, I have been working hard to make sure that rural health concerns were put at the top of the conference agenda.

It was a long, difficult conference for those of us who have been negotiating the Senate's provisions in the budget reconciliation bill. At times, agreement seemed almost impossible to achieve.

But I am proud that every single provision in the Senate reconciliation bill to improve rural health care bill is now part of the final conference agreement and will soon be presented to the President for signature.

Some of these provisions came from my bill, S. 2410. Others were sponsored by other members of the Finance Committee including Senator DOLE, Senator BENTSEN, and Senator DURENBERGER.

But none of these provisions could have been accomplished without the strong support of the Senate conferees for all of the rural health improvement package.

These rural provisions will help to preserve quality health care in rural communities. They are no guarantee that rural hospitals will not fail. There are no such guarantees to give.

But we have increased the margin of financial safety for the hospitals that serve rural Americans. More importantly, the unique concerns of rural communities have moved out from the fringes of health care issues and into

the center of the debate around the bargaining table.

We have made an important statement that the health care needs of 60 million people who live in rural communities can no longer be ignored.

Let me briefly describe the rural provisions contained in the conference agreement of the reconciliation bill.

First, we agreed to exempt sole community hospitals from any reductions in Medicare payments for their capital costs.

Sole community hospitals will continue to be paid 100 percent of Medicare's share for their costs related to land, buildings, and medical technology. These costs are often 10 percent or more of a hospital's total expenses. Continuing to pay Medicare's full share for these costs will help to ensure that sole community hospitals do not have to cut patient services to pay for their fixed expenses.

Second, small rural hospitals will be allowed to continue to receive biweekly payments from Medicare to protect them from sudden disruptions in cashflow.

Regular cash-flow is a particular concern for small rural hospitals because they are more vulnerable to delays in Medicare payments. Maintaining biweekly payments will protect these small rural hospitals from unexpected drops in revenues that cannot be made up from other sources.

Third, the bill directs the Secretary of Health and Human Services to recalculate hospital payments to both urban and rural hospitals.

Starting October 1, 1987, standard Medicare hospital payments will be recalculated based on a method that increases payments to hospitals serving a larger percentage of elderly patients. Since rural hospitals tend to serve higher than average percentages of Medicare patients than urban hospitals, the recalculation is expected to increase rural payments by about 3 to 4 percent. In terms of total dollars, rural hospitals will receive about $150 to $200 million more in payments from Medicare as a result of this change.

Fourth, the bill will change the way that rural hospitals are assessed to cover the costs of unusually high cost cases.

Currently, estimated Medicare DRG payments to hospitals are reduced by 5 percent at the front end to create a pool of funds available to hospitals that treat extremely high cost cases, known as outlier cases. However, since outlier payments to rural hospitals have averaged about 3 percent, rural hospitals have had to pay more than their fair share to the outlier pool.

The reconciliation bill corrects this problem by establishing separate outlier pools for rural and urban hospitals. Rural hospital contributions to the pool will be lowered to about 3 percent of their estimated Medicare payments and future assessments will be no more than the amount Medicare pays to rural hospitals for outlier costs.

Fifth, the bill allows rural referral hospitals to retain their status for 3 more years. Rural referral hospitals are large rural hospitals that provide comprehensive health services to an entire region. Because these hospitals have higher costs related to serving more complex cases, Medicare pays a higher amount for services provided by rural referral hospitals.

Finally, the bill extends the authority of the Secretary of Health and Human Services to make appropriate adjustments in Medicare's payments to sole community hospitals that experience sharp drops in their occupancy.

I believe that the reconciliation bill will send a positive message to rural communities. It says that Congress wants to make sure the Federal Health Policy is fair. And it says that fairness is just as important for a 50-bed hospital in Lewistown, MT, as it is for the 500-bed hospital in Los Angeles, CA.

More importantly, it says that Congress wants to make sure that rural citizens will have access to quality health care.

Are the provisions in the reconciliation bill the complete answer for the problems of rural health care? Of course not. But it was Plato who said, "A good start is half the job." And, we have made a good start.

Mr. President, the budget reconciliation bill is the way Congress makes some of its toughest decisions. It involves dozens of complex—and oftern controversial—choices. But all of those choices do not have to be negative.

I am pleased that the conferees of the reconciliation bill made the right decision to begin to restore more fairness in the way that the Federal Government pays for health care.

I wish that I could have supported the entire conference report without reservation. It includes the results of much honest, hard work and many solid accomplishments.

Reluctantly, I concluded that I could not support the final conference report primarily because of a last minute, major increase in the Federal debt limit. I object to such an enormous expansion of the Government's authority to borrow more and spend more on the very same bill that is supposed to bring Federal spending under control.

Mr. MOYNIHAN. Mr. President, I rise to discuss the conference report on H.R. 5300, the Omnibus Budget Reconciliation Act of 1986.

MIDICARE AND MEDICAID

I was appointed a conferee from the Finance Committee for purposes of considering Medicare and Medicaid issues. And I must say, I believe these issues were resolved in ways that maintain health care for the elderly and poor in the face of ever-present budgetary pressures.

For example, while limiting payments for capital-related costs for inpatient hospital services, the conference report also stresses a congressional commitment to continue cost-based reimbursement of financial obligations incurred, or enforceable agreements entered into, by hospitals. Such a commitment is very important to regions of the country—such as New York—where, old obsolete facilities are clearly inadequate in serving the health care needs of these patients.

During the seventies approximately $25 billion was spent on hospital construction in the United States. Estimates of hospital industry capital requirements for the eighties generally exceed $100 billion for repairs, replacement, or expansion for facilities and services. These projections suggest that capital acquisition stands as one of the most critical issues facing the hospital industry today.

I also note that the continuation of the Periodic Interim Payment [PIP] Program for hospitals serving a disproportionate share of low-income Medicare and Medicaid patients is most helpful. PIP permits hospitals that meet certain Medicare requirements to receive biweekly payments based on estimated annual costs instead of individual bills. These payments are reconciled periodically during the year with actual billing data. This method of reimbursing hospitals is very important to public and urban hospitals that serve a large number of low-income Medicare and Medicaid patients—so-called disproportionate share hospitals. PIP guarantees a certain level of cash flow for these institutions. According to the president of the Greater New York Hospital Association in New York City, without a consistent and stable cash flow many of these hospital would find it impossible to meet their financial obligations to suppliers and staff.

The reconciliation bill also provides for the inclusion of Puerto Rico into the prospective payment system [PPS] for hospitals. This legislation is a result of a report required by the Finance Committee in the Social Security Amendments Act of 1983. That report was finally signed by Secretary Bowen this summer with recommendations as to how Puerto Rico would enter the PPS.

The provision in this bill requires the Secretary to include Puerto Rico in the PPS. The rates would be established at 75 percent Puerto Rico specific standardized rate and 25 percent national standardized rate. There would be a rural/urban distinction for Puerto Rico. The national portion of the standardized rate would be based on urban and rural national standard-

ized rates. An adjustment would be made to reflect costs associated with indirect teaching costs. Disproportionate share adjustment would be applied to eligible hospitals in Puerto Rico. Outliers—payments for expensive cases—would be extended to Puerto Rico on the same basis as for the rest of PPS. The sole-community-hospital provision would not apply to Puerto Rico, and all Puerto Rican hospitals would be brought into the PPS on October 1, 1987.

Mr. President, although several improvements were made in the Medicaid Program, two provisions require special note.

First, coverage for AIDS victims under the Medicaid Home Health Care Program will provide additional services desperately needed by those persons suffering from this disease. Federal Medicaid matching funds will now be used for home, or community-based services for Medicaid-eligible individuals with AIDS or AIDS-related conditions. In a June 1986 Public Health Service report it was recommended that home and community services be made available to AIDS victims. The report clearly stated that by making such services available, the average cost per patient could be reduced from $140,000 per case—for inpatient care—to $46,000—for home-health care.

Second, on the issue of Medicaid payments for the health care of illegal aliens, I had introduced S. 2644, a bill requiring the Federal Government to pay 100 percent of Medicaid costs for illegal aliens. It is altogether unfair that local and State governments should have to assume a large share of the cost of dealing with illegal aliens, whose presence is a manifest evidence of a failure by the Federal Government to enforce its laws. Were the Immigration and Naturalization Service able to police our borders and regulate their movement, as they are required to do under law; if the Federal Government did what it says it must do, there would be no illegal aliens, or if there were, there would be an insignificant number. Clearly stated, since the Federal Government is responsible for the presence of illegal aliens, it ought to be responsible for their medical care. This reconciliation bill, at a minimum, recognizes the importance of providing emergency services and emergency care for pregnant women in active labor.

AFDC-UP

Mr. President, I was also a Finance Committee conferee for two other provisions—AFDC-UP and a provision regarding disinvestment of the Social Security trust funds. Unfortunately, I cannot report that these issues were resolved at all to my satisfaction. In fact, I am extremely troubled and dissatisfied by what was agreed to.

It turned out that one of the primary issues in disagreement between the Senate and House versions of reconciliation was the House provision that would have mandated an extension of the Aid to Families with Dependent Children-Unemployed Parent [AFDC-UP] Program to those 24 States that do not now participate in that program. The Senate had no such provision and some Senate conferees insisted that they would not accept one. Indeed, only a few hours ago, I had some doubts about our ability to find common ground on this bill. The rift between the Senate conferees and the conferees from the other body seemed insurmountable.

I must note, Mr. President, that I find the Senate position very vexing. I have long been a proponent of the AFDC-UP Program. Simply put, poor children, whether they live with one or both parents, ought to receive help. We are not entertaining thoughts of luxurious benefits. We are speaking of the most basic sort of provision. Minimal assistance, in fact, for children.

Along with 25 other States, my own State of New York provides aid to two-parent families with dependent children when the family is poor and the primary earner is unemployed. The 26 States now participating in the Two-Parent Program contain approximately 71 percent of the Nation's total AFDC caseload. During the seventy's, the AFDC-UP Program served, on average, 120,000 families per month. In this decade, the number of AFDC-UP families has risen sharply, from 209,000 families per month, on average, in fiscal year 1981, to a high 288,000 families per month in fiscal year 1984. In 1985, this monthly average is estimated to have dropped to 273,000 families.

Yet, Mr. President, compare the average monthly AFDC-UP caseload with that of the Single-Parent Program—the AFDC Program that serves dependent children who have been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent. In 1985, the average monthly number of AFDC families served is estimated to be nearly 3.7 million; the AFDC-UP caseload just over a quarter of a million.

There are still hundreds of thousands of two-parent families who are poor and in need of economic assistance. However, under current law and regulations, unemployment for purposes of the AFDC-UP Program is defined very narrowly. The primary earner must work fewer than 100 hours per month. Should the head of household work 100 hours or more per month, even if his earnings come to less than the State's standard of need, the household is automatically disqualified from receiving assistance. That, Mr. President, is a significant disincentive to work.

Additionally, to qualify for AFDC-UP assistance, the primary earner must have worked 6 or more quarters in any 13-calendar-quarter period ending within 1 year of the date of application. This so-called workforce-connection requirement further limits eligibility to only those households in which the primary earner has strong ties to the labor force.

The Congressional Budget Office estimated that another 550,000 poor two-parent families would become eligible for AFDC-UP if the workforce-connection and 100-hour rules were eliminated and all States required to operate the program.

That is why, Mr. President, I have labored for many years to extend assistance to working-poor families with dependent children. In 1985, I introduced the Family Economic Security Act. Among other things, that bill would have extended the AFDC-UP Program to all States, basing eligibility on the economic need of recipients, rather than on arbitrary limits on the number of hours worked or previous ties to the labor force. In other words, my bill would have brought eligibility for AFDC-UP into conformity with eligibility requirements in the Single-Parent Program.

In order to alleviate State anxieties concerning the new costs of this program, my legislation would have increased the Federal matching rate for AFDC-UP benefits to equal the higher of 75 percent or the current law matching rate in the Single-Parent Program.

Finally, Mr. President, my initiative would have conditioned AFDC-UP eligibility on the active participation of one parent in: first, job search activities and second, training or a State work program of the State's design.

In short, Mr. President, I proposed a mandated extension of the AFDC-UP Prorgram to all States that would have: Recognized the economic needs of poor children in two-parent families; eliminated capricious limits on eligibility—the workforce connection requirement—and work disincentives—the 100 hour rule; required work or training as a condition of eligibility; and shifted much of the funding burden from States to the Federal Government. In my mind, Mr. President, my legislation was an eminently sensible response to a tragic problem.

And yet, there is enormous resistance among some of my colleagues to accepting a provision that would extend the AFDC-UP Program to the 24 States not now operating it. I am baffled by this response. Here is a program that assists the very sort of family we purport to endorse: The two-parent variety. I have said before and I will say again, now, Mr. President, that the two-parent family is becoming an endangered species.

The statistics are alarming: Recent testimony before the Senate Rules Committee on Senate Resolution 330, my initiative to create a Special Committee on Families, Youth, and Children, revealed that fully 60 percent of the children born in 1985 can expect to live in a one-parent family before reaching their 18th birthdays. Ninety percent of these children will be living in female-headed households and roughly one-third will be living in households receiving AFDC payments.

So there we have it, Mr. President. We speak eloquently of strengthening the family and of putting able-bodied adults to work, but in fact, we withhold assistance from poor children in 24 States because they have the misfortune of having two parents to look after them. Worse, we withhold assistance from poor children whose fathers commit the sin of working 100 hours or more per month. It saddens me, Mr. President, but I am forced to conclude that opponents of the AFDC-UP Program neither wish to strengthen intact families nor encourage work.

And then, in the final hours of the 99th session of Congress, there appeared to be a last glimmer of hope. The other body seemed determined to insist on its provision to mandate the AFDC-UP Program in all States.

The House provision was hardly a radical proposal. Indeed, it was more modest in scope than my own 1985 initiative. Where my bill would have extended AFDC-UP to an additional 550,000 families, the House provision would, according to the CBO, add only about 75,000 two-parent families to the rolls.

The House proposed to retain the 100-hour rule, but would have slightly modified the workforce-connection requirement. States also would have been permitted the option of substituting participation in school or training for quarters of work. The Congressional Budget Office estimated that the House extension of the AFDC-UP Program would have cost the Federal Government $115 millin in fiscal year 1988 and $255 million in 1989. As sensitive as we all are to new spending in this era of Gramm-Rudman-Hollings, dare I say, Mr. President, that those proposed new outlays are a small price to pay for providing minimal assistance to poor children.

Unfortunately, Mr. President, even this modest House proposal is not to be. Unyielding opposition on the part of some Seante conferees has once again doomed the AFDC-UP extension.

I am, in a word, disappointed. But I do not despair. When the 100th Congress convenes, in 1987, I shall again offer legislation to extend assistance to poor two-parent families with children. I shall again do my best to persuade my colleagues in the Senate that there is nothing to be gained by punishing low-income families with both parents in the home. Neither are real savings achieved by discouraging poor fathers from working. Next year, Mr. President, I fervently hope that reason will prevail.

SOCIAL SECURITY DISINVESTMENT

I would also like to comment briefly on an important Social Security provision which had been included in the Senate-passed version of budget reconciliation—but not in the House version. That provision, based on the Social Security Trust Funds Management Act which I had offered with a dozen cosponsors earlier this year, would have placed restrictions on future disinvestment of the old-age, survivors, and disability insurance [OASDI] trust funds by the Department of the Treasury during debt limit crises.

As most of my colleagues will well recall, during the autumn of 1984, and again in 1985, the Secretary of the U.S. Treasury agreed to disinvest—in short, redeem—interest-bearing assets held in the Social Security trust funds. When Congress cannot agree to raise the debt limit, the Federal Government's authority to borrow funds expires. During such borrowing crises, Federal obligations may go unmet. Hence the need for disinvestment of the OASDI trust funds. Disinvestment of these assets provides cash to the Federal Government, keeping it solvent during the hiatus in its borrowing authority.

The Secretary, as managing trustee of the Social Security trust funds, prematurely redeemed more than $25 billion in long-term bonds between September and November 1985. Moreover, some $6 billion in OASDI bonds were prematurely cashed in between September and October 1984. The Social Security actuary estimates that $382 million in interest would have been lost as a result of the premature disinvestment in 1984. And the 1985 disinvestment would have lost another $875 million.

Legislation has since been enacted to restore all lost interest to the trust funds as a result of the 1984 and 1985 actions. Nonetheless, Mr. President, Congress has not yet passed legislation to regulate future disinvestments or to ensure the immediate restoration of any interest lost if such actions must again be taken.

It isn't that we haven't tried to resolve this problem. My colleagues in the Senate have adopted this legislation twice in the past few months. And the issue, we thought, was resolved. In July, the Finance Committee offered the provisions of the Social Security Trust Funds Management Act as a committee amendment to the debt limit resolution, House Joint Resolution 668. This amendment was modified, with technical improvements, a number of times during the consideration of the debt limit bill.

However, after Senate passage of the debt limit bill, the measure never reached conference. And when we took up and passed a short-term debt limit extension, the disinvestment language was not included.

Later in September, during floor consideration of this omnibus budget reconciliation measure, Senator GORTON and a number of our colleagues offered an amendment providing protections under the Gramm-Rudman law for certain retirement benefits. In addition, the Senate accepted my disinvestment language, in its entirety, as a modification of the Gorton measure. This, the reconciliation bill, as passed by the Senate in the early hours of September 20, included the language restricting future disinvestment practices.

More precisely, our language would have restricted future disinvestment of the OASDI trust funds—when the debt ceiling is reached—for the exclusive purpose of paying Social Security benefits and administrative expenses. Additionally, it would have required that any interest lost as a result of premature disinvestment be automatically restored to the trust funds, as soon as the debt ceiling is raised. Finally, the Social Security trust funds management language would have made other technical revisions and improvements in current trust funds investment practices.

I say "would have," Mr. President, with deep regret. For as you know, the disinvestment language described above was not included in the final conference report on the reconciliation bill. In spite of unanimous support for our language by Senate conferees, Members of the House disagreed, and thus, an opportunity to provide greater certainty and to quiet fears has been lost.

I am convinced that disinvestment is a problem which, absent correction, will threaten public confidence in the solvency of the Social Security trust funds. Indeed, I'm afraid it has already done so. We can ill afford to lose the trust of the millions of Social Security beneficiaries in this Nation who depend on the Social Security System.

While I am disappointed that the reconciliation conferees did not reach agreement on this important and needed disinvestment language, I am determined to see Congress pass such legislation in the next session. I urge my colleagues to join me in pursuit of that end.

DEFICIT REDUCTION

The purpose of the reconciliation bill is, of course, to create a package of revenue increases and spending reductions to reduce the deficit. This year, for the first time, we are attempting to

use the reconcilation process to reach a specific deficit target: $144 billion.

The bill proposes to save $11.7 billion in outlays, although some of the savings result from budget gimickry.

The bill claims to reduce the fiscal year 1987 deficit by $680 million by advancing the final general revenue-sharing payment from fiscal year 1987 to fiscal year 1986—something the Treasury Department did on its own on September 30. A not so sleight of hand.

The bill also claims to reduce the deficit some $3.4 billion through increased compliance with the Tax Code, and increased IRS penalties. On its face, this seems somewhat unrealistic. To increase revenues from compliance in this fiscal year, new auditors will have to be hired and trained. It takes several months to train auditors under the best of circumstances. We are already 16 days into the fiscal year. We will have a new Tax Code next calendar year. New auditors will have to be trained in both the new and the old Tax Code if they are to increase collections in this fiscal year for the simple reason that most of the audits this fiscal year will be performed on tax payments made under the old law.

Finally, $7.8 billion in savings is derived from loan asset sales—a notion I first proposed in the spring of 1985. This approach could work well and would not even require the Government to sell the loans below their face value if it minimized the danger to potential buyers which could result from a default on repayment of these loans. Last year, I suggested such an approach: The overcollateralized sale of loans.

Simply put, we ought to set aside a pool of loans from the Government's $257 billion portfolio. If any loans which are sold should default, the Government would take back the defaulted loan from the buyer and replace that loan with another performing loan. If potential buyers knew that any loan they buy which defaults would be replaced with a performing loan, they would require little, if any discount, in the sale price of the loan.

Despite the reservations and disappointment which I have outlined, I will vote for this bill. Although we may not achieve all the deficit reduction necessary to reach the Gramm-Rudman-Hollings deficit target, we ought to approve that on which the House, the Senate, and the administration could agree.

FARM CREDIT

Mr. DOLE. Mr. President, earlier this session, Senator COCHRAN introduced S. 2770, the Farm Credit System Borrower Interest Rate Relief Act of 1986. A modified version of that language has been incorporated into the House and Senate agriculture reconciliation conference's report provisions.

The Senator from Kansas is not an advocate of using the reconciliation process to accomplish nonbudgetary legislative objectives. However, this may be one of the few times that such procedure is necessary.

1985 LEGISLATION

Mr. President, last December, Congress enacted legislation aimed at providing tighter regulation of the Farm Credit System [FCS] to protect the System's investors, and help farmers by enabling the System to provide steady, reasonably priced credit.

The legislation provided: First, more enforcement authorities for the Farm Credit Administration [FCA] to help maintain sound institutions; second, better mechanisms for the Farm Credit System [FCS] to use its own capital in dealing with financial stress; third, a means of Federal assistance through the Secretary of the Treasury, subject to a specific appropriation of funds by Congress; and fourth, a legal basis for the rights of borrowers and stockholders.

It was recognized then that Congress might later be called upon for an infusion of Federal funds to ensure the soundness of the System. By addressing this legislation today, we are attempting to provide the System more flexibility in setting interest rates and reducing the costs of its borrowings and loan losses. We are attempting to delay, or perhaps avoid altogether, the need to invest taxpayers' money into the system, while at the same time preserve the intent and direction of the legislation passed last December.

A TIME OF TRANSITION

Although the difficult process of restructuring and reform has begun to take place within the System, the System continues to struggle with serious problems. As farm real estate values have declined dramatically in recent years, the System finds itself carrying a large volume of nonaccrual and high-risk loans.

The system is also locked into over $30 billion of relatively long maturity obligations with an average cost of funds at approximately 10.6 percent—much higher than other commercial lenders. With these high costs restricting its institutions, the System has experienced a steady erosion of quality borrowers to competing lenders.

RECENT DEVELOPMENTS

The Capital Corporation established in the 1985 legislation has recently encountered lawsuits by several System institutions challenging the constitutionality and regulations by which the Capital Corporation can assess stronger FCS institutions to assist other System banks. I have been advised that three court decisions have rejected those lawsuits in preliminary decisions, while two other court decisions have resulted in preliminary injunctions against the Capital Corporation's assessments.

Adverse rulings in such cases could threaten the System's financial condition and impair borrower stock. This legislation is designed to enable the System and its regulator to effectively address such financial difficulties while at the same time continuing the function and authorities of the Capital Corporation. It is intended to require FCS to provide full and accurate disclosure of its financial condition to ensure that the system will continue to meet its self-help responsibilities as set forth in the 1985 legislation.

PROVISIONS

Mr. President, the legislation deletes requirements for prior approval by the FCA in setting interest rates so that boards of directors of System institutions can set rates in a timely, yet responsible and businesslike manner. The FCA will continue to monitor interest rates and loan terms to ensure that System banks are following appropriate management practices, but will not be involved in the day-to-day judgments of System boards in fixing rates.

The System, subject to prior approval and conditions set by the FCA, for the period July 1, 1986, through December 31, 1988, would be able to capitalize the excess portion of its costs of borrowing and its loan losses, and amortize these amounts over a period of up to 20 years. The excess costs of the System's high-interest-bearing securities, in conjunction with the System's loan losses, pose a very serious financial dilemma for System institutions and borrower members.

While the legislation allows the System to operate without the constraints of generally accepted accounting principles [GAAP] with respect to the extended amortization periods, it is expected the System will make every effort to fully disclose its financial condition. It is intended that the FCA will strictly regulate the fiscal practices of the FCS through its prior-approval authorities and such terms and conditions as established by the FCA.

CONCLUSION

Mr. President, the legislation will not cure the system's fundamental problems. However, it does present a reasonable response to some of the immediate problems faced by the system and its borrowers.

The plan proposed could allow the Farm Credit System to delay indefinitely any anticipated request for Federal financial assistance, and, although not specifically mandated in the legislation, would hopefully allow the FCS latitude in lowering interest rates to its farmer borrowers.

Mr. President, these provisions in the reconciliation bill are timely, practical, and workable. This approach

does not require Federal funding and gives the system additional tools to manage its high funding costs and loan losses responsibly over time, while providing full and frank disclosure.

Mr. President, I ask unanimous consent that an article from the Washington Post be printed in the RECORD at this point.

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

FARM CREDIT SYSTEM READY TO PAPER

(By John M. Berry)

With the quiet acquiescence of the Reagan administration, Congress is on the verge of authorizing the Farm Credit System to pretend that it is making money instead of chalking up the largest losses of any financial institution in history.

The Farm Credit System, or FCS, comprises 37 banks and hundreds of local "associations." Last year the system lost a staggering $2.7 billion, and there was another $1 billion loss in the first half of this year.

Many farmers continue to be unable to make payments on the $65 billion worth of loans the system has outstanding and losses are still mounting. In a gamble to hold onto more creditworthy borrowers who could get loans elswhere, FCS last summer began cutting the variable interest rates it charges to more competitive levels, and in the process added roughly $200 million to this year's losses, which FCS officials expect to hit at least $1.7 billion. The General Accounting Office has warned that the system is in such bad shape that the final 1986 figure could be as much as $2.9 billion.

In a two-year period this borrower-owned cooperative system will have lost, by these estimates, upward of $4.4 billion, with more to come. Remarkably, the system in previous years had accumulated a large enough surplus to cover these losses without dipping into its basic capital, virtually all of which has been provided by borrowers, who are required to buy stock in the system when they get a loan.

To protect the farmers and other rural residents who own that stock, Congress last year gave the system authority to borrow money directly from the U.S. Treasury if needed.

In return for honoring what had long been regarded as an implicit federal guarantee of FCS liabilities, Congress directed the system to clean up its lax management and accounting practices and to submit to serious, arms-length regulation by a revamped Farm Credit Administration. In prior years, the FCA had operated more like a part of the system than a regulator of it, critics said last year.

Congress' concern is more for the borrowers, mostly farmers, than for the Farm Credit System itself.

Thus, last year's legislation protected the value of the cooperative banks' stock owned by the borrowers. And this election year, as the losses mounted and it seemed that FCS would soon be knocking on the Treasury's door, the legislators are again moving swiftly to aid the borrowers.

With federal budget deficits so high and the Gramm-Rudman-Hollings deficit reduction law setting ever smaller targets for federal red ink, representatives of FCS proposed some creative accounting changes to postpone the day of reckoning for the system. Reversing some strict provisions of last year's law, including one that FCS must use generally accepted accounting practices, the House last week approved the changes.

The Senate is expected to attach them as an amendment to a pending budget reconciliation bill that likely will pass this week.

Without spending a dime that will show up in the budget, FCS losses likely will be turned into reported profits.

Meanwhile, Congress has made it clear that to the maximum extent possible, the resulting savings are supposed to be passed on to FCS borrowers through lower interest rates.

The theory behind it all is one of postponing recognition of actual losses until American agriculture and the Farm Credit System are in better shape to bear them.

The accounting changes will allow FCS to show much lower current-year costs and thus charge their borrowers lower interest rates.

The system is losing money for several reasons, including:

Depressed commodity prices and plunging farmland values which have left many borrowers without either the current income out of which to make loan payments or valuable assets that can be sold to reduce or pay off the loans.

A very high cost of acquiring funds to relend to borrowers, a cost that is much higher for FCS than its competitors, including commercial banks and some insurance companies.

Unusually high overhead that, according to Frank Naylor, head of the Farm Credit Administration, is partly the result of the system's traditionally decentralized operations through many small local offices.

After a $762 million second-quarter loss, FCS had a little more than $2 billion left in the surplus account built up from prior profits, but the surplus is expected to dwindle fast.

Losses are likely to continue since FCS at mid-year still had $7.6 billion worth of so-called nonaccrual loans—loans on which payments were not being made and on which the value of the land or other collateral was so doubtful that the system was no longer bothering to add overdue interest to the amount that was due. In addition, FCS labeled another $4.7 billion worth of loans "high risk."

At the same time, the system's current cost of funds—about 10.6 percent—is so high, Naylor says, that FCS has a negative interest rate spread. That is, the system is paying more to borrow money than it is receiving on its loans. That means FCS has no cushion at all out of which to absorb provision for loan losses, which are normally treated as a current cost, or even to cover normal operating overhead.

The system's current cost of funds is so high because it has outstanding more than $38 billion worth of securities on which it is paying interest rates in excess of 9 percent. These securities were issued several years ago when interest rates were generally much higher than they are today, and they do not have any provision under which they can be retired early. Another roughly $25 billion worth of FCS securities carry lower interest rates.

At the time the high-yielding bonds were issued, the Farm Credit System set rates on its loan according to its average cost of funds, which in those days was still being held down by a preponderance of older, lower-yielding securities. Now many of those older bonds have matured but they have not been replaced with a new set of lower-yielding bonds of the same magnitude. The reason is that the size of FCS, and therefore its need for new money, has been shrinking rapidly.

Total outstanding loans, for instance, have dropped by nearly $15 billion in the past year and a half. And because of greatly increased provisions for loan losses, the net amount of loans outstanding has dropped by an even larger $17 billion.

One major feature of the proposed creative accounting that the new legislation would allow is, in effect, pretending that the FCS's $38 billion worth of high-yielding securities are paid off by issuing new bonds. The system would have to incur a one-time loss estimated by system officials at $2.8 billion to buy and retire the high-yielding bonds, if it were possible to do so. Naylor believes the actual market premium would be much higher. But instead of recording that loss all at once, the system would be allowed to write it off over a 20-year period—that is, at the rate of $140 million a year. The difference to the system's income statement would be much greater, however. According to Naylor, the maneuver would reduce the FCS cost of funds by enough to allow it to reduce the interest rates its borrowers are paying by between 1½ and 2 percentage points.

A 2 percentage point reduction in rates on the roughly $50 billion worth of FCS loans that are still in the "performing" category would reduce actual system income by $1 billion a year. But the new accounting procedure would reduce the system's reported interest expense by even more, only the latter reduction is only on paper.

The accounting gimmickry does not stop there, however. The legislation also would allow the system a similar 20-year writeoff period for any loan losses incurred between last June 30 and the end of next year in excess of one-half of 1 percent of total outstanding loans.

Here is how that would work. System officials currently estimate that FCS will lose an additional $1.8 billion over that 18-month period, with much of it due to provisions for loan losses.

Suppose outstanding FCS loans remained at $65 billion. Half of 1 percent of that figure would be $325 million.

If loan losses were, say, $1.325 billion over the period, then the system would report loan losses during the six quarters of only $325 million. The remaining $1 billion would be written off at the rate of $50 million a year.

In this example, this accounting device would reduce reported FCS losses by nearly $700 million in 1987. The losses would still be there, of course.

The resulting better-looking balance sheets for the banks in the 12 FCS regions around the country would also temporarily relieve another major source of strain within the system. The healthier regions, such as those served by the Farm Credit Banks in Maryland, Massachusetts and Texas, would no longer be sending cash to Omaha, Wichita, Kan., and Spokane, Wash., among others, to keep them afloat.

A number of suits have been filed challenging the 1985 law, which required the sysem to transfer resources from healthy banks to those in deep trouble before seeking Treasury assistance. While the law itself and various regulations issued by the Farm Credit Administration to implement it generally have been upheld by the courts, the whole idea of transfers remains under fire.

The legislation would bar the FCA from requiring that FCS banks get its permission before lowering interest rates, as is now the case.

The legislation, if it becomes law, won't solve the Farm Credit System's fundamental problems, which are rooted in its past mismanagement and the current depression on America's farms.

As one member put it on the floor of the House, the legislation is intended to place FCS on "more or less of a holding pattern until we can confront this issue head-on next year. . . ."

The administration, no more anxious than anyone else to add cash to FCS right now, passed the word that it has no objection to the new legislation.

Reagan officials want nothing to increase the already huge budget deficit, and as one noted last week, "It was hard to say no when we have already let the savings and loans do it."

THE DETERIORATING FINANCE OF THE FARM CREDIT SYSTEM

[In billions of dollars]

Operations	1984	1985	1986 [1]
Interest income	$9.9	$9.0	$3.8
Interest expense	8.4	7.7	3.4
Net interest income	1.5	1.3	.5
Provision for loan losses	.3	3.0	1.0
Other expenses	.7	1.0	.4
Net income (loss)	.4	(2.7)	(1.0)
Condition	Dec. 31, 1984	Dec. 31, 1985	Dec. 31, 1986
Loans	$79.8	$69.8	$65.0
Allowance for loan losses	1.3	3.2	3.5
Net loans	78.5	66.6	61.5
Investments and other assets	8.5	13.2	11.2
Total assets	87.0	79.8	72.7
Total liabilities	75.2	71.5	65.7
Total capital	11.8	8.4	7.0
Capital stock and participation certificates	5.6	5.0	4.6
Surplus and other	6.2	3.4	2.4

[1] First half figures only.

Note. Totals may not add due to rouding.
Source of data. Farm Credit Corp. of America.

Mr. BENTSEN. Mr. President, the reconciliation bill now before the Senate is a good-faith effort to address the Federal deficit. If Congressional Budget Office estimates are correct, enactment of this measure will bring us $11 billion closer to balancing the budget in fiscal year 1987 and generate $17 billion in new savings over the next 3 years.

Moreover, H.R. 5300 contains a number of significant policy changes that will have a profound impact on access to health services. Some of the changes are very good. For example, we have made major progress in our efforts to narrow the gap between rural and urban hospital payment rates. We have recognized the growing importance of ambulatory surgery by approving Medicare support of residency training in outpatient settings. And we have made a permanent correction in the index used to calculate the hospital deductible, thereby assuring the elderly and disabled who require hospitalization that they will be protected from unwarranted cost increases in future years.

As principal architect of the child health initiatives, I am especially pleased that the conference agreement includes several Medicaid provisions relating to greater flexibility in coverage for pregnant women, infants, and young children. States will now have the authority to target cost-effective health services to some of our most vulnerable citizens. In addition, the conference agreement authorizes an increase of $75 million in maternal and child health block grant programs. Since 1935 MCH has been an important tool in the national effort to reduce infant mortality rates and to promote comprehensive community based care for children with special health care needs.

I am deeply disappointed, however, with the conference agreement on provisions pertaining to Medicare reimbursement of physician services. A brief review of the historical records on this issue may be useful.

At the President's request, a freeze on physician fees has been in effect for 2½ years. The freeze has affected all physicians—those who, out of sensitivity to their patients' economic circumstances, had kept their fees as low as possible, and others who, for similar procedures, had charged excessive rates compared to their colleagues. Currently, I am advised that the prevailing rate for a cataract procedure in the District of Columbia is $2,400, while the prevailing rate for the same procedure in the adjacent State of Maryland is $1,678. In Texas, the prevailing rate for cataract surgery is $1,839—or nearly $300 less than the amount charged by California ophthalmologists. The freeze expires on December 31, 1986, which has prompted the development of various proposals to reform the Medicare physician payment system.

As our colleagues may recall, the Senate reconciliation measure included the text of the Medicare Physician Payment Reform Act of 1986, (S. 2368) a bill which I introduced with Senators DOLE and DURENBERGER in March of this year. S. 2368 permits reduction of reimbursement rates when advances in the field of medicine—such as technological innovations—alter the cost of providing a service. However, the bill also requires the Secretary of Health and Human Services to consult with health care experts when recalculating reimbursement rates. This statutory language was included in our bill out of concern that, in its zeal to obtain budget savings, the Office of Management and Budget would direct the Health Care Financing Administration to cut payment rates so deeply that physicians would be reluctant to accept Medicare patients.

I had been hopeful that when Senate and House Members met to resolve the differences between the two reconciliation bills, a compromise could be struck so that any necessary budget cuts in physician payments would be targeted at the higher charging doctors. Regrettably, the House-approved measure, which formed the basis of the final conference agreement, makes no distinction between charge differences such as the ones described earlier.

Specifically, 1987 fee screen adjustments for all physicians will be held to 3.2 percent. This increase is nearly 4 percentage points below the Medical Economic Index, which is the indicator used to set medical fees. A 1-percent limit on fee increases will be applied to those doctors whose charges have been exceeding 115 percent of the local prevailing rate.

With respect to physician reimbursement for cataract surgery, a cut of 10 percent will go into effect immediately, and a 2-percent cut will be applied in 1988. If an ophthalmologist's charges exceed 125 percent of the local prevailing rate his or her actual charge level will be adjusted downward to the 125 percent mark. Cuts in physician fees cannot be offset by increasing costs to the patient.

Fortunately, during conference deliberations, we were able to obtain some modification of the original House-approved provisions. For example, the conference agreement permits doctors whose fees are below 115 percent of the prevailing charge to close that gap at an accelerated rate. In the case of cataract surgery, reimbursement will not be reduced below 75 percent of the national prevailing rate. In addition, the impact of the cut in reimbursement for cataract surgery will be mitigated by reducing the rates over a 2-year transition period.

Mr. President, on the whole, I am pleased with the reconciliation conference agreements on health related provisions. However, I believe we have made a grievous error on the question of physician payment reform. Failure to target necessary cuts in reimbursement will perpetuate a system that allows physicians in some areas to continue the practice of charging much more than their colleagues in other regions. Continuation of a reimbursement policy that sanctions these inequities is especially injurious to physicians who have made a conscious effort to keep their fees as low as possible.

Through this year's reconciliation measure, we had an opportunity to begin the transition toward a more fair system of payment under Medicare. Yet we failed to seize that opportunity—in fact, we may have made our goal more difficult to reach by further complicating an already cumbersome and inequitable payment structure. I regret that the most charitable comment I can make about these provisions is that they will expire in 4

years. When that occurs, we may again have a chance to initiate real reform in physician payment under Medicare.

Mr. JOHNSTON. Mr. President, I am in strong support of the provisions of the reconciliation bill covering the jurisdiction of the Committee on Energy and Natural Resources.

In this bill, we have provided for an accelerated fill of the strategic petroleum reserve that will take advantage of lowered world oil prices to increase our independence from oil suppliers in the Persian Gulf.

We have provided for the distribution of money collected by the Federal Government for petroleum overcharges to the States, to the Federal Treasury and to energy conservation programs.

We have established authority for the Federal Energy Regulatory Commission to recover the costs of operating the Commission in fees and charges.

We have revised data collection by the Department of Energy on energy consumption in manufacturing that will reduce costs and regulatory burden while increasing the value for energy policy analysis of the information collected from industry.

We have made changes in the rules under which the Department of Energy analyzes energy conservation investments that will make for a more cost-effective program.

We have, years and years after the fact, finally established a definite statute of limitations for overcharge cases based on the regulations under the Emergency Petroleum Allocation Act of 1973.

I am pleased that the administration, whatever its views are of the other provisions of the bill, has pledged to meet and in fact exceed the requirements of the statute of limitations provision by agreeing to closeout all prelitigation activities of the Economic Regulatory Administration by December 31, 1986, 1 full year and 9 months before the requirements of the statute. I ask unanimous consent that the letter of the Secretary of Energy in which this pledge is made be printed in the RECORD at this point.

Mr. President, the conference agreement also permits the Department of Energy to use average fuel costs instead of marginal fuel costs in calculations of the energy cost savings of energy conservation investments in Federal buildings. This change would make such calculations simpler, more accurate, and less costly. This change would also result in more cost-effective program of investments in Federal building conservation projects.

The conferees were concerned that basing on energy-conservation decisions on marginal energy costs that are speculative and highly dependent on the methodology of calculation and on assumptions about the future may lead to unintended effects that burden a very important program that has limited resources.

The conferees were also concerned that a gap may develop between calculations made under the Federal Energy Management Program and reality if theoretical marginal costs are used throughout the program while fuel and electricity suppliers in fact are charging average prices.

In a report entitled "The Impact of Energy Prices and Discount Rate Policies on Energy Conservation in Federal Buildings" issued by the National Bureau of Standards in November 1985, the NBS concluded that, under current law:

Marginal-cost pricing will tend to increase the size of electricity projects or favor more costly designs. Additionally, marginal-cost pricing will tend to increase the priority of electricity-saving projects relative to projects that conserve other types of energy. With a limited budget, marginal-cost pricing of electricity will tend to drive out distillate-saving projects. In regions where the average price of electricity is considerably higher than the average price of other fuels, a change to marginal-cost pricing will increase the existing tendency to favor electricity-saving projects over distillate-saving projects.

The conferees were concerned that with the availability of limited funds for energy conservation investments in Federal buildings, bias in favor of electricity projects will unbalance the program at a time when excess electric generation capacity in the United States is large on one hand while oil imports are rising on the other.

Finally, the conferees were also concerned that the Shared Energy Savings Program enacted earlier this year—title 42, United States Code, section 8287—may encounter implementation difficulties if estimates of energy cost savings under the program are made based on marginal prices while the fuel bills are paid under the program—as they inevitably will be—on an average-cost basis.

Mr. President, I urge my colleagues to vote to approve the conference report and send the bill to the President.

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

THE SECRETARY OF ENERGY,
Washington, DC, October 2, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to you in your capacity as Chairman of the Committee of Conference on H,R, 5300, the "Omnibus Budget Reconciliation Act of 1986." It is my understanding that the conferees have agreed to amend the Emergency Petroleum Allocation Act (EPAA) to apply a statute of limitations to the government's cases regarding oil pricing overcharges committed by petroleum sellers. It is my understanding that the amendment would bar the Department's initiation of any action after September 30, 1988, or six years after the violation, whichever is later. The conferees, however, would have Congress express the intent that the Department will convence all actions sooner. I can assure you we will.

This Administration supports vigorous and timely enforcement of all the laws of this nation, including enforcement actions under the now-expired EPAA, even though we believe, for example, that the petroleum pricing laws have resulted in undue governmental interference with free market forces. Consistent with our convictions, the Department is now in a position to bring all prelitigation matters to a conclusion. By December 31, 1986, the Economic Regulatory Administration (ERA) will have initiated litigation, settled, decided to close out on the merits, or entered into a tolling agreement on all pre-litigation matters. Even absent this legislation, I would have allowed no ERA staff reduction which would have impeded this effort.

I hope this will allay any concerns that the enforcement program will be extended unnecessarily.

Yours truly,

JOHN S. HERRINGTON.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. BROYHILL], the Senator from Washington [Mr. EVANS], the Senator from Arizona [Mr. GOLDWATER], the Senator from Washington [Mr. GORTON], the Senator from Nevada [Mr. LAXALT], the Senator from Maryland [Mr. MATHIAS], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Idaho [Mr. SYMMS], and the Senator from Connecticut [Mr. WEICKER] are necesarily absent.

I further announce that, if present and voting, the Senator from North Carolina [Mr. BROYHILL], the Senator from Washington [Mr. GORTON], and the Senator from Alaska [Mr. MURKOWSKI] would each vote "yea."

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Arizona [Mr. DECONCINI], the Senator from Vermont [Mr. LEAHY], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

The PRESIDING OFFICER (Mrs. KASSEBAUM). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 25, as follows:

[Rollcall Vote No. 358 Leg.]

YEAS—61

Abdnor	Cohen	Garn
Andrews	D'Amato	Gore
Bentsen	Danforth	Gramm
Biden	Denton	Hart
Boschwitz	Dixon	Hatfield
Bradley	Dodd	Hawkins
Burdick	Dole	Hecht
Byrd	Domenici	Heinz
Chafee	Durenberger	Hollings
Chiles	Eagleton	Inouye
Cochran	Ford	Johnston

Kassebaum	Moynihan	Simon
Kennedy	Nunn	Simpson
Lautenberg	Packwood	Stafford
Levin	Pell	Stevens
Long	Quayle	Thurmond
Lugar	Rockefeller	Trible
Matsunaga	Roth	Wallop
Mattingly	Rudman	Wilson
McConnell	Sarbanes	
Mitchell	Sasser	

NAYS—25

Armstrong	Hatch	Nickles
Baucus	Heflin	Pressler
Bingaman	Helms	Proxmire
Bumpers	Humphrey	Pryor
Cranston	Kasten	Riegle
Exon	Kerry	Warner
Glenn	McClure	Zorinsky
Grassley	Melcher	
Harkin	Metzenbaum	

NOT VOTING—14

Boren	Gorton	Specter
Broyhill	Laxalt	Stennis
DeConcini	Leahy	Symms
Evans	Mathias	Weicker
Goldwater	Murkowski	

So the conference report was agreed to.

□ 2210

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

WATER RESOURCES DEVELOPMENT ACT—CONFERENCE REPORT

Mr. STAFFORD. Madam President, I submit a report of the committee of conference on H.R. 6 and ask for its immediate consideration, under a 20-minute time limitation, to be equally divided, in the usual form.

Mr. METZENBAUM. Madam President, reserving the right to object—and I do not intent to object—will the Senator take 30 seconds to tell us what this bill is?

Mr. BYRD. Madam President, may we have order?

Mr. STAFFORD. It is the regular water resources bill.

The PRESIDING OFFICER. The Senate is not in order. The Senator from Vermont will suspend until he can be heard.

The Senator from Vermont is recognized.

Mr. METZENBAUM. I have no objection.

The PRESIDING OFFICER. The report will be stated.

The assistent legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6) to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure, 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 October 17, 1986.)

□ 2020

Mr. STAFFORD. Madam President, let me announce that there will be a rollcall on final passage.

Mr. MOYNIHAN. Madam President, may we have order? The chairman of the Committee on Environment and Public Works is addressing the Senate on a major piece of legislation.

The PRESIDING OFFICER. The Senator from New York is correct. It is very difficult for the speaker and the Presiding Officer to hear. Those who wish to talk should go outside the Chamber.

The Senator from Vermont.

Mr. STAFFORD. Madam President, I ask for the yeas and nays on the matter of adoption of the conference report.

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

The yeas and nays were ordered.

Mr. STAFFORD. Madam President, the conference report is important legislation. It is legislation that shifts dramatically the relationship between the Federal Government and the non-Federal beneficiaries of water resources projects.

This provides a giant stride forward, probably several strides in the effort to renew the infrastructure of this Nation.

And it is a shining tribute to the leadership of the chairman of our Subcommittee on Water Resources, Mr. ABDNOR.

In order to give my colleagues a sense of the scope of this bill, Madam President, I would like to point out the interrelationship of many of the provisions in the bill, and to discuss my views on the conference report.

1. COST SHARING

The key to this bill—possibly the single most important reform ever crafted onto the Nation's water resources development policy—is cost sharing.

This legislation shifts the manner by which projects are financed. Thus, this bill will shift the manner in which the public looks at water projects, and in what manner the public uses to seek new projects.

The Reagan administration, the Nation's environmental groups, and a wide variety of user groups generally support new cost-sharing formulas for water development.

It is a simple concept: Those who benefit from a Federal water project must carry a greater share of the project's costs.

The cost sharing is probably most significant on new harbor projects. On the date this bill becomes the law of the land, we will begin to weave the tests of the marketplace into decisions that are essentially commercial ones.

A harbor-deepening project involves the way international commercial traffic is routed and where new industrial plants locate. These projects draw the routes by which trade moves through the American economy.

Thus, a decision to deepen a particular harbor is essentially a commercial decision.

Under this bill, the sponsor of every future harbor project—remember, each is a commercial decision—will be required to contribute cash toward any Army Corps of Engineers expenditure on the project.

Specifically, the conference report calls for cost sharing of 10 percent on projects with depths of less than 20 feet—these are very often projects on the Nation's inland waterways; 25 percent on harbor projects with depths of between 20 and 45 feet, and 50 percent for harbor projects with depths greater than 45 feet.

In each case, the non-Federal sponsor is also required to pay an additional 10 percent over a 30-year period, with interest.

A significant issue before the conferees was how to handle expenditures for several special items, such as protection of tunnels in San Francisco Bay and at the entrance to Norfolk Harbor when the channels above them are deepened.

While we have dropped all specific cost offsets in the House bill, we do allow this special work when it is an integral component of the project to count toward that 10 percent payback due over time.

It must be emphasized that there is no cost offset against the basic 10 percent, or 25 percent, or 50 percent. Those percentages of the cost of each project are due during construction, and they are due in cash from the non-Federal sponsor to the Federal Treasury.

2. VESSEL FEES

A major aspect of the issue of port cost sharing is how the port will finance their share of these projects.

A number of ports can be expected to finance the local share out of local tax revenues. This certainly appears true of the smaller projects, where the local share will be tiny in relation to the current income from dockage and other charges.

Other jurisdictions are likely to turn to general obligation bonds.

The conferees assume that some port authorities will seek to finance their share with revenue bonds. This should be encouraged.

But these ports will need an assured revenue source. The conference report

allows non-Federal authorities to charge port use fees under certain, controlled conditions.

The Senate-passed bill offered the ports broad authority on user fees. I still believe that is the best approach. The ports of America are not in the business of driving business away from their harbors with excessive fees.

In the Senate, we passed legislation that gave the ports the flexibility they need. The language we have agreed upon in this conference report is somewhat more restrictive. Nevertheless, I trust that it will be sufficient flexibility to allow the ports to meet their cost-sharing obligations.

If the ports are unable to raise their share of new projects, work must simply be scaled back to what is more realistic, or it will not take place at all. Ports must not come back to the Congress with complaints that they are unable to meet these financial requirements.

Any such plea will not prove any flaw in the basic approach of the bill; it will prove the flaw due to excess restrictions on the implementation of use fees. It may also be an indication that the project cannot meet the test of the marketplace.

The shipping industry has done everything it could to shift these costs onto the shoulders of local taxpayers and off the ledgers of the shipping companies and their customers. Such a shift is clearly inappropriate to the thrust of this bill. The corps and the ports of this Nation are urged to do all they can to implement the user-pays concept.

It is important to emphasize the user-pays concept in this provision, as well as in other sections in this bill.

This is the basis under which the water resources program must go forward in the future, if it is to move forward at all.

In its House-passed form, the bill contained a program for up to $1 billion in bond guarantees, permitting port authorities to obtain Federal support for their projects, even if they had no realistic expectation that they could payoff the bonds with user fees.

The conferees agreed to drop those guarantees, thus making whatever bonds are issued hold their own on the market. This was a major step forward. If those guarantees had been incorporated into the final bill, the entire cost-sharing provision on harbor development would have been unworkable.

3. FLOOD CONTROL COST SHARING

If the port-cost-sharing provisions in the bill are the single most significant concept in this legislation, the flood control cost sharing must be second.

We hav established a standard with this legislation that every flood control project, or component, built in the future must carry a non-Federal contribution of at least 25 percent.

The new standard in this bill affects all flood control work, whether a local protection levee or a large reservoir.

Under current law, non-Federal sponsors of project for local flood protection must contribute the lands, easements, rights-of-way, and relocations necessary for the projects.

In most cases, the Federal Government picks up the entire tab on the cost of flood control reservoirs with more widespread effects.

Under the conference report, the non-Federal sponsor must still provide the package of lands and easements, and so forth, with a minimum share of 25 percent. But there is a caveat. That caveat requires the non-Federal sponsor, in every case, to provide, atop the lands, easements, and rights-of-way, a minimum of 5 percent of the project's cost in cash during the period of the project's construction.

This means that even if the lands, easements, rights-of-way, and relocations exceed 25 percent, the non-Federal sponsor still owes that 5 percent in cash. If the total exceeds 30 percent, the non-Federal sponsor still owes the sum over 30 percent, but may, at its discretion, pay the differential above 30 percent over a 15-year period, with interest.

When the non-Federal share reaches 50-percent, the non-Federal contribution stops, but at least 5 percent must still be contributed in cash during construction.

The application of this principle will be universal. We have stricken from the bill virtually all of the many House provisions that permitted various projects to move forward at full Federal expense.

And we have expanded that 25 percent standard to other areas.

Thus—and this is a critical point—essentially every project in this bill carries with it the requirements for at least 25 percent non-Federal share.

The only exceptions would be shallow ports, where the total non-Federal cost share would be 20—10 percent immediately, plus 10 percent over time.

I hope my colleagues recognize the significance of this achievement: Every project will move forward under the same new, tougher rules.

4. ABILITY TO PAY

Yet, Mr. President, such a standard may sound harsh to some of my colleagues. What about poorer communities? What about small towns lacking a tax base from which to pay their share? Does this bill price them out of flood control projects? Will flood control simply become a convenience of the rich?

The answer is no, no, and, again, no.

First, it must be remembered that if a project is to go forward, we must assume that it has a benefit-to-cost ratio of higher than 1 to 1.

In other words, it produces more than $1 in benefits for every $1 invested.

This bill now says local communities must, in general, pay 25 cents to get at least $1 in benefits, sometimes much more than $1 in benefits.

Even the poorest communities should be able to find a quarter to invest in order to get $1 or more in return.

The States should be able to help poorer local jurisdictions pay these upfront costs. In fact, nothing in the bill requires that affected communities contribute any or all of the local share toward flood control. States are eligible and encouraged to assist communities in need.

But let us assume they can't. Let us assume the community truly cannot raise its full local share on a project, which otherwise is sound.

This conference report meets that need.

We have included a provisions from the Senate bill—section 103(m) that was written by our distinguished subcommittee chairman Mr. ABDNOR. This is the so-called ability-to-pay test. Under this provision, the Secretary of the Army could modify standard cost-sharing requirements in cases of great financial need.

There are several points to make:

This applies only to projects for controlling floods and improving agricultural water supplies. It does not apply to ports or municipal water supply, or to any of the other numerous responsibilities of the Corps of Engineers.

It is anticipated that the Secretary will only rarely invoke this authority.

And this provision can never be used to eliminate the non-Federal share. Even the very poorest jurisdictions can and should make some contribution to the improvement of the community. The Secretary might offer help by adjusting the timing of such payments to ease the cost burden on the local community.

5. SEPARABLE ELEMENTS

A key issue affecting harbor development, as well as other types of water projects, is what is known as separable elements.

Many, many corps projects contain an overall plan for improvements to a harbor or for controlling floods—a plan with several components. Practically every one of these projects will have componets that can be evaluated and can be built on their own.

Among the hundreds and hundreds of authorized Corps of Engineers projects, a great many contain separate components that have never been initiated. This may involve a recreational component, and upstream levee that protects one town in a valley of several towns, a flood control or drainage work on a minor tributary,

or a side channel within a major harbor.

The House-passed bill grandfathered—at the old, out-of-date cost sharing—several billion dollars' worth of those so-called separable elements.

The Senate bill, by contrast, imposed cost sharing on this unstarted list of work.

In conference, we agreed to take the Senate's approach, to treat separable elements as new projects from the point of view of cost sharing. To do otherwise would have endangered the bill at the White House. To do otherwise would surely have been unfair to communities all across the Nation, and would have allowed unnecessary and avoidable environmental damage to occur.

Thus, we agreed to treat all unstarted work alike, whether it was a new project, or a new aspect of an older project.

That is fair to project sponsors; it is fair to the American taxpayer.

Under the terms of the conference report, the term separable elements assures that any construction that began after April 30, 1986, will come under new cost sharing.

Initiation of physical construction means an act that physically alters the environment, such as moving earth, removing an existing structure, or pouring a foundation; it is to be distinguished from the acquisition of land, the award of a construction contract, and the subsequent mobilization of contractor's equipment, all of which must be accomplished before physical construction can begin.

As one example, this means that a large drainage project known as the Yazoo pumping plant in Mississippi will be covered by cost sharing.

6. STUDY COST SHARING

Once we have reshaped the manner by which projects are financed, how do we reach back to reshape the foundations of this program, to make it more responsive to public need?

Under this bill, that is achieved by instituting a system for cost sharing on studies. These are the studies that lead to the development of water projects.

Section 105 and 905 require 50-50 cost sharing on all future studies the corps undertakes following its initial "reconnaissance."

One of the important studies in the conference report is contained in section 703 of the bill, language very similar to a provision I offered initially several years ago. This authorizes the corps to help small communities redevelop old industrial sites for new hydropower.

This is not a program for new Federal construction; it simply allows the corps to assist smaller communities by providing special technical assistance.

Section 731 authorizes a study of the impact of the potential rise in the world's ocean levels, a rise that seems certain to come about due to the warming trend in the Earth's atmosphere.

The corps should study the effect on its present programs, and what the impact will be on coastal cities, barrier islands, and Federal policies.

Another section that should be of interest to many Members is section 732. This provision authorizes the corps to review the controls over Lake Superior to see if indemnification is justified to local landowners suffering high water. The corps is expected to make a recommendation for indemnification only, and I stress that word "only," if it can be demonstrated clearly that joint Federal and Canadian actions caused the damages.

7. INLAND WATERWAYS

There are several items that deserve careful attention in regard to the manner in which this legislation affects our commercial inland waterways.

First, of course, is the authorization of eight new projects that have great significance of the inland barge industry. This list includes six projects in title 3, plus a second lock at locks and dam 26 on the Mississippi River, authorized in section 1103, and the so-called New Orleans Industrial lock, affected by the language in section 844.

To pay a small portion of the costs of the commercial inland system, the bill increases the barge fuel tax, which has been in existence since 1980. The bill takes the current 10 cents a gallon tax charged on about 10,000 miles of inland waterways, and doubles that tax over the next decade.

While many argue that this imposes on the barge industry a considerable cost, I would simply point out that it probably no more than keeps the tax even with the anticipated level of inflation that is likely to occur over those 10 years.

The revenues from the barge fuel tax will go into the existing inland waterways trust fund. In turn, this will be used to pay half the costs of the seven new lock and dam projects, plus a portion of the cost of the New Orleans Industrial lock.

With current funds and the anticipated rate of spending, a large surplus in the trust fund could develop by within a few years. Such a surplus should not become the excuse for tampering with the level of the tax in this bill, or eliminating that tax.

Such a backoff from the policy of this bill is clearly unacceptable.

Frankly, I believe we should have expanded the use of the tax to other purposes, such as maintenance, and I shall continue to so argue.

In line with the intent of this bill and rational oversight of the program of the corps, we dropped an automatic authorization for new navigation projects contained in the House version of the bill. This provision would have permitted an expenditure of billions and billions on the inland waterways with no scrutiny by the congressional authorizing committees.

There is one final point to be made on this issue. This bill authorizes development of five big commercial inland harbor projects. The conferees agreed to include the five projects with the understanding that any work taking the harbors below 9 feet—the depth of the Mississippi River channel—will go forward only after the Secretary of the Army determines that such work is economically justified and environmentally acceptable.

8. UPPER MISSISSIPPI RIVER MASTER PLAN

In 1978, following a long period of debate and dispute, Congress authorized construction of a new lock and dam 26 on the Mississippi River at Alton, IL. The new lock is now under construction, and will have a length of 1,200 feet.

As a part of that authorization, Congress directed that the Upper Mississippi River States, together with the appropriate Federal agencies, study the need for a second lock, as well as methods for enhancing the environment of the Upper Mississippi River.

The result of that study was the recommendation for a second lock, as well as the recommendation for a large number of remedial environmental activities to be undertaken by the Department of the Interior.

Such a compromise holds great importance to transportation as well as the environment. This portion of the Mississippi Valley consists of heavily forested floodplain and islands, with diverse aquatic areas.

It is an ecosystem of national significance.

Section 1103 authorizes that compromise: The enviromental work, plus a second lock at Alton, this one to be 600 feet long. The environmental measures are essential to mitigate for past damage caused by navigation development on the Upper Mississippi River. The Upper Mississippi River system must be managed to balance navigational and environmental needs.

I must note that these two issues—the locks and the environmental work—have been linked by Congress since 1978. There is, however, no legal linkage in this bill. Nevertheless, the Secretary is expected to move these two important programs forward in a unified manner.

I should also note that damage to fish and wildlife resulting from increased tow traffic attributable to this second lock are to be mitigated separately and fully under this bill.

9. OPERATIONS AND MAINTENANCE

Another major step forward in this bill is the requirement that non-Federal sponsors assume the responsibility

for operations and maintenance at projects constructed by the corps.

Local sponsors have that responsibility for many types of work now. This bill clarifies that non-Federal responsibility for operations and maintenance covers practically everything except commercial navigation.

10. COST CONTROLS

As this conference report stiffens cost sharing requirements, it also imposes new cost controls on the work of the corps, effective cost controls.

These cost controls have two basic components. The first involves section 902, where we set specific cost limitations on each and every project authorized in this bill.

In the past, projects have been authorized by Congress at an estimated cost. This practice imposed practically no control over how much costs might increase. Costs did grow, often by quite a lot.

But no more. Under the provisions of this bill, project costs will be limited strictly to the price listed in the bill, with three variables:

Costs can go up by as much as 20 percent of the project's base price.

Costs can also rise to accommodate the rate of inflation on construction costs and land values during the period of construction.

Finally, costs can go up—or down—based on other laws passed by the Congress subsequent to the authorization of the project.

Elimination of the word "estimated," as it applies to the overall costs of a corps project, means the American people can expect more accurate calculations on the costs of future projects. A $200 million project can no longer balloon into a $2 billion project.

This new approach affects the total cost of a project. The conferees have used the word "estimated" in describing the numbers that also appear in the bill on the initial Federal and initial non-Federal costs of a project. In this case, the word "estimated" is justified and necessary. The actual breakdown between the Federal and non-Federal shares may vary, for example, if the types of benefits change.

It also must be noted that the figures for the Federal costs is an initial cost, the money required for an appropriation of Federal funds to build the project. In some cases, much of that money will later be repaid. One example is the sale of hydropower.

This bill also imposes, for the first time, an annual obligation limitation on the money the corps can spend on construction of civil works projects.

This important provision appears in section 901 of the bill.

Until now, the corps Civil Works Program was a hodgepodge of projects limited only by the controls worked out between the White House and the Appropriations Committees.

Under the approach in this bill, an annual obligations ceiling is imposed on construction work on the corps' basic construction program, as well as its mammoth Mississippi River and Tributaries project.

While this covers all spending out of the Inland Waterways Trust Fund, it does not cover non-Federal contributions during construction, such as the local share of a harbor deepening project.

Thus the dollar ceilings provided—$1.4 billion in fiscal 1987 rising to $1.8 billion by the fifth year—should be more than sufficient to meet even the most ambitious construction effort.

But the principle is essential. It must be one that is carried forward into all future corps efforts.

11. NEPA AND OTHER ENVIRONMENTAL ASPECTS OF THE BILL

Madam President, water resources bills are not normally a font of environmental betterment. I can say with assurance that it is rather unusual for a water resources bill to contain provisions that protect the environment, provisions that are favored by the environmental community.

This bill bears that unusual character.

In reviewing the projects in the House bill, we have accepted many specific environmental requirements that were in the House bill.

We have accepted provisions that protect the environment effectively in connection with a number of projects in this bill.

As a few examples, the conferees agreed to special language protecting oyster beds at New Haven, CT, the shallow bay bottom in Mobile Bay, AL, reefs off Dade County, FL, turtle areas at Indian River, FL, plus special environmental efforts at Monroe Harbor, MI, Lower Saddle River, NJ, and Albuquerque, NM.

These provisions are just a few among many sound environmental efforts.

I applaud the House for taking the leadership in developing so many of these important environmental protection provisions.

Another important environmental provision appears in section 907. This requires the corps to count the benefits of work for environment improvement as equaling the costs of that work. Such a provision is necessary because of the corps' procedures which frequently exclude assigning any economic value to many environmentally related activities.

We also adopted, in section 924, a House proposal to establish an Office of Environmental Policy within the corps. This is a sound idea. Yet, such an office will only prove successful if it has independence and holds the ear of the Secretary.

This bill charges this new office with substantive responsiblities, including the development of environmental quality procedures to be used in planning and evaluating corps projects.

I urge the Secretary to take this requirement seriously.

Possibly most significant for the purposes of protecting the environment is this fact: Nothing in this bill alters or circumvents NEPA, the National Environmental Policy Act. This point is critical.

We have included a number of provisions where work that has never been subject to a corps study will nevertheless, be constructed. I must stress this fact: Such work will be moved forward only within the requirements of the National Environmental Policy Act, as well as other provisions protecting America's environment.

12. THE SECRETARY

In the past, Madam President, omnibus water resources bills have directed that water resources projects be undertaken by the "Secretary of the Army, acting through the Chief of Engineers." Thus, the real authority, the real responsibility, rested with the general in charge of the corps.

This responsibility did not rest with the appropriate official of the administration, an official confirmed by the Senate.

Under the terms of the conference report, the authorizations and directives in this bill—whether to construct a project or impose cost sharing—operate through the Secretary of the Army.

This change from past practice authority and responsibility where it belongs, with the appropriate appointee of the President.

13. SECRETARIAL REVIEW

As part of our effort to bring the entire water resources development effort under tighter controls, this conference report requires in section 903(a) and (b) that the Secretary of the Army review virtually every project in this bill it can go foward.

When this bill left the Senate, it carried close to 150 projects, each of which had been reviewed favorably by the Chief of Engineers. We also included a provision stating that for any work that lacked such review, construction could only begin after the Chief of Engineers had made his analysis, and the project had passed all the appropriate levels of environmental review.

The House bill carried no such restriction.

The conference report includes a construction authorization of one sort or another for well over 100 projects that lack a Chief of Engineers report. Most of these projects were taken from the House bill.

The Administration believes—and I share its concern—that such projects must have a thorough examination at the Washington level on their econom-

ic soundness and environmental acceptability before any construction can be initiated.

The language in section 1103 assures the administration that it will have that responsibility.

14. REIMBURSEMENT AND CREDITS

The House bill, as it came to conference, contained a large number of items where past work by non-Federal interests was eligible for a direct Federal reimbursement.

We have dropped all those direct reimbursements.

The House bill also included a number of provisions where non-Federal sponsors were to receive a special dollar-for-dollar credit on future flood control projects for compatible work that was undertaken before the project was authorized.

Those special credits, too, have largely been washed out of the bill.

Instead, we have crafted, in section 104, a general program where non-Federal sponsors will have the opportunity to make their case to the Secretary for credits on future flood control projects.

Under the approach the conference report, the Secretary of the Army is given a year to develop guidelines for considering what kind of compatible work should be credited.

These need to be tough guidelines.

If they are not, the issue of credits could become a subterfuge through which local sponsors escape their responsibilities for cost sharing.

The Secretary must come up with a system to determine fairly that work was undertaken solely in anticipation of the Federal prospect, and if such work would have been an integral part of the project. Only then should the local interests be able to obtain credits.

To repeat, the Secretary must be quite parsimonious in granting credits under the terms of this section.

Locals can go forward on their own, or be eligible for Federal maintenance, only if the Secretary finds the work economically and environmentally acceptable. It is very important that the Secretary undertake that responsibility with care.

Again, of course, there is to be no NEPA override.

15. B–C RATIO OVERRIDE

Another issue facing the conferees was how to handle projects lacking a positive benefit-to-cost ratio. In other words, how to deal with projects that cost more than the benefits produced.

In response, we wrote, in section 903(c), a new approach for handling such projects, a scheme that allows non-Federal interests to, in effect, buy up the non economical portion of a potential flood control project.

While I am not happy with the method we have agreed upon, I believe it is the best we could obtain. But I must urge that the waiver be used only in very unusual situations.

Possibly most beneficial, the waiver I will describe should eliminate any compulsion the corps may feel to fabricate benefits so they can edge it over the point where it has a positive benefit-to-cost ratio.

The provision we have included will work this way:

If a project has a B–C ratio of 0.8-to-1, that means it produces 80 cents in benefits for every $1 invested. To assure that such a project can still go forward, the provision in section 903(c) permits the non-Federal sponsor to pay that entire extra 20 cents—the noneconomic component of the project—as well as the standard cost sharing on the project.

It must be pointed out that this applies only to flood control projects.

To help assure that the benefit-to-cost test is realistic and fair, I am gratified that the conferees dropped any special treatment for so-called regional benefits. This is an important change, as regional benefits are simply transfers from one region of the Nation to another.

While the bill in section 904 reaffirms the longstanding commitment of Congress to the quality of the environment and national economic development and the display of other factors, these displays do not affect the way benefits and costs of a project are calculated.

This bill contains no general interest waviers; it contains no special grandfathering provisons. It contains no special treatment for so-called poor areas, although such areas may qualify under circumstances to be determined by the Secretary for the ability-to-pay provision, which is section 103(m).

A related item of considerable concern was the provision in the House bill that shifted dramatically the benefit-to-cost studies on the Alabama-Coosa River project, an inland navigation project. The House bill overrode the benefit-cost ratio by imposing an old, unrealistic interest rate to be used in calculating the effects of the project.

Madam President, the House language basically was designed to take a $1.3 billion project that produced about 30 cents in benefits for every $1 invested, and magically declare it as justified.

The House dropped the use of the old interest rate, and limited the authority in the section to the development of plans on the project, plans that would have to be authorized for construction by the Congress in the future, should the investment appear sound.

16. FISH AND WILDLIFE MITIGATION

One of the more important provisions in this bill is section 906, which strengthens the fish and wildlife mitigation program of the Corps.

Until now, mitigation for land turned over to water development projects came about on a hit-or-miss basis.

Often, in the view of many, the corps failed to recommend adequate fish and wildlife mitigation programs. The corps simply refused to own up to the environmental dislocation produced by its projects.

On other occasions, the mitigation work was often proposed after the project was completed. In such instances, the mitigation—often involved land purchases for providing wildlife cover—ran into opposition from local developers.

The retort: We have our project, why give those bird-and-bunny people anything?

This conference report shifts that thinking, and shifts it significantly.

For the first time, mitigation will have to go forward with the project requiring the mitigation, not afterward. This bill requires that the corps develop mitigation plans for each and every new project, or tell the American people why such work is not justified.

In addition, this section establishes a new, continuing authority, funded at $30 million a year. This authority will allow the corps to go back and repair the fish and wildlife damage that its existing projects have produced.

Activities under this authority may include such elements as wetlands restoration or provision for upstream and downstream migration of fish at Corps of Engineers dams.

In addition, we have included several important mitigation measures, most specifically the effort to mitigate the damages caused by the construction of the Tennessee-Tombigbee Waterway, which slices across Mississippi and Alabama.

The conferees accepted the basic thrust of the Senate version of the Tenn-Tom mitigation, which involves two essential components:

Acquisition of 88,000 acres of land, the amount recommended as appropriate by the President's Council on Environmental Quality, plus

In-kind replacement of bottomland hardwoods destroyed for the Tenn-Tom project.

In-kind replacement is absolutely essential to this project. What it means is that the environmental values of some 30,000 acres of bottomland hardwoods lost to the project must be replaced, and replaced fully. Many more acres of bottomland hardwoods will have to be acquired to assure the same degree of environmental protection.

The conference report also authorizes construction of several projects that will require the most careful environmental sensitivity and protection. One is the White River navigation

project. This controversial project is opposed strongly by the environmental community, as it could affect adversely a national wildlife refuge.

The conferees approved language that reaffirms the authority of the Fish and Wildlife Service under Public Law 89-669. The Corps must obtain a right-of-way from the Service prior to conducting any work in the White River National Wildlife Refuge.

Issuance of a permit is to be contingent upon a determination by the Service's regional director that the proposed work will be compatible with the purposes for which the refuge was established.

In instances where damages to the refuge will result, the regional director may require mitigation measures within the right-of-way or on adjacent Service land. If the proposed use can not be made compatible, then no right-of-way will be granted.

Another example involves Devil's Kitchen Lake in Illinois. The House bill would have allowed the city of Marion, II, to tap the lake, a national wildlife refuge, for local drinking water.

The House language was opposed strongly by the State of Illinois, the Department of the Interior, and environmental groups.

What we produced as a substitute allows Marion to use the lake for water—but only surplus water that has spilled out of the lake, and only within the approval of the Secretary of the Interior. The Secretary of the Interior must determine that a catch basin downstream will impose no adverse impact on the existing wildlife refuge.

This test is essential. I urge the Secretary of the Interior to examine very carefully any plans to make absolutely certain that the interest of the refuge are protected fully.

17. DEAUTHORIZATION

The conference report contains several important provisions to deauthorize unneeded work, cleaning out the deadwood of old, outdated projects and studies.

In section 1001, we have included a provision that strengthens the present program to delete outdated and unneeded projects. While this provison is not as effective as the Senate version would have proved, it should provide the Congress and the Corps with a rational method for cutting back unneeded work.

By doing this, we allow resources to be focused on work that is readily needed.

Possibly the most significant single deauthorization in this bill, or any recent water resources bill, appears in section 114. This section eliminates any authority for construction of the Cross-Florida Barge Canal.

This project was halted by President Nixon 15 years ago, after it became clear that the project would prove an environmental disaster. Further, its high costs produced benefits that were marginal at best.

The provision in this bill eliminates that authorization once and for all. It drives a stake into the heart of a bad idea. While this bill saves the stub ends of the project for recreational navigation, this proposal transfers the center section to conservation management.

18. DAM SAFETY.

In Title 12, the conference report includes the language of the Senate's dam safety provisions. This program was brainchild of the distinguished senior Senator from Idaho [Mr. MCCLURE] at a time when he served on the Committee on Environment and Public Works.

Specifically, we have created a new program, with an annual costs of $16 million, to encourage States to establish and augment programs for dam safety.

The title calls for 5 years of matching grants to those states that develop dam safety programs with inspections and other necessary activities, plus technical assistance and research.

This dam safety title also establishes a new policy governing safety-related improvements at Federal dams built by the corps. Fifteen percent of the costs of such improvements that are necessary as a result of new seismic or hydrologic data, or changes in state-of-the-art design or construction criteria, will be reimbursable.

Safety-related improvements that are necessary as a result of age and normal deterioration of the structure shall continue to be considered a project cost, and be fully reimbursable in accordance with current cost allocation procedures and the cost sharing formula in this bill.

The House bill provided no authority for program grants. But it did contain a provision authorizing repairs to non-Federal, even private, dams.

That program has been rejected by the conferees, with two very narrow exceptions: technical assistance of $50,000 for each of two non-Federal dams. In no way is this a precedent for a general program on support for non-Federal dam repairs.

I would like to underscore this point: The owners of existing non-Federal dams should have no expectation that the authorities and policies contained in this bill will lead to a general program of Federal assistance for the repair of non-Federal dams.

For fiscal reasons, it simply won't happen. Furthermore, the policy directions in this bill, by seeking to strengthen the ability of the states to police the safety of non-Federal structures within their jurisdiction, move in the exact opposite direction.

19. FEDERAL PERMITS.

The conference report also includes a provision that seeks to overcome the tedious delays that often occur in the preparation of permits for new harbor projects.

This provision deals with situations when non-Federal authorities wish to go forward on their own, with no Federal involvement. In those cases, the Federal Government is expected to do everything that it reasonably can to expedite the process, including the consolidation of Federal permits.

There are several items to note. This is a neutral provision. This is not intended to take away any existing Federal agency authority.

Nor is this provision intended to force non-Federal agencies to become involved in the consolidation process. It is to be hoped they will, but this in no way forces that consolidation.

20. PROJECTS.

Mr. President, as this bill passed the Senate, it contained some 150 projects costing about $12 billion. As it passed the House, the bill had about twice as many projects, with a cost nearly double the Senate's total.

In developing our bill, Chairman ABDNOR had insisted on a standard that a project had to undergo extensive corps review before it was eligible for inclusion in the bill.

After all, $12 billion in work will carry the corps along for nearly a decade, not counting any work on its existing backlog that ranges into the tens of billions of dollars.

The compromises necessary to obtain the important policy changes in this bill brought the conferees to a decision to add, in one form or another, nearly every project from the House list. Fortunately, the House was willing to scale back many of its projects to authorize, at this time, only the planning, engineering, and design work; construction authorization must come later.

Thus the cost of this bill runs somewhere around $16 billion, with an estimated first Federal cost of $12 billion, and an estimated first non-Federal cost of $4 billion.

21. SMALL FLOOD CONTROL PROJECTS

While we have made great steps forward in cost sharing in general on flood control projects, this bill does take some steps backward in regard to such projects.

For example, current administration policy sets a size limit on flooding necessary to justify Federal involvement. That is a standard termed "800 cubic-feet-per-second." A flood must be that large to qualify for Federal participation.

A flood of 800 cubic feet per second is not a particularly large flood, at least by the standards we often think of. For example, when Rock Creek here in Washington, DC, floods every

2 or 3 years, it carries at least three times as much water as an 800-cubic-feet-per-second-flood.

The House insisted on overturning that limit, and said we should set no standard for determining where the Federal interest lies and where it doesn't.

We have included language in the conference report that relates to the corps' determination on whether certain flood events are eligible for consideration and treatment in a federally assisted water resources project. The language does not mean that we are modifying or affecting the evaluation procedures of the corps, which necessarily depends on data regarding flood frequency to establish economic benefits for flood damage reduction measures.

22. LAKES CLEANUP

The Senate bill contained a number of provisions for cleaning up small lakes clogged with silt and other debris. The House bill contained those provisions, plus several more.

Rather than authorize each separately, we have combined the projects into a unified program. Specifically, we have authorized $40 million to be allocated among the various projects, requiring that a 25 percent non-Federal contribution on any such work.

23. STREAMBANK EROSION

Similarly, the conference report includes a new program designed to deal with streambank erosion. The House bill had contained a large number of new projects to control streambank erosion; the Senate bill contained a small, general program.

We have taken that small Senate program, increased it to $30 million a year for each of 5 years, then listed each of the House projects as eligible, as well as important work on the Upper Missouri River, a focus of the original Senate version and a particular interest of Senator ABDNOR's.

24. WATER SUPPLY LOANS

Before discussing some of the other issues in the bill, I would point out some of the things that we did not do.

The House bill, as it came to us, contained a major program authorizing a large number of water supply loans.

Such a program was opposed strongly by the administration, and could have, on its own, attracted a veto to this important bill.

While the conferees agreed to drop entirely the House loan program, the House agreed to accepted our provision modifying the existing Water Supply Act. This modification will bring that Act into line with the intent of the cost sharing provisions in this bill.

Specifically, the Senate and conference language in section 932 shortens the repayment period on water supply loans to 30 years, and requires local interests to be fully responsible for maintenance costs. The intent of these changes is to protect against the construction of reservoirs that are too large, and under-utilized.

25. NATIONAL WATER POLICY BOARD

Another major item from the House bill that was not included in the conference report is the National Water Policy Board.

In a differing form, such a board has been approved in the past by the Senate Committee on Environment and Public Works. I have supported strongly that action, and continue to believe that the concept is a wise one.

Nevertheless, such a board was opposed strongly by the administration. Therefore, I have favored dropping the board as its inclusion would have made it far more difficult to obtain the President's signature on this bill.

The key issue has been the replacement of firm principles and standards for the development of projects with more flexible principles and guidelines.

Our action does not endorse the principles and guidelines over the principles and standards. Rather, it allows pending litigation that challenges the repeal of the principles and standards to go forth, rather than affecting it in any way in this bill.

26. SHORELINE PROTECTION

The bill contains a number of project authorizations for coastal beach protection projects. It is important to emphasize that such work can only go forward to the extent that it will be harmony with the Coastal Barriers Act.

It must be noted that some authorizations in this bill, in particular for an area called Figure Eight Island in North Carolina, involve work on shorelines that are privately owned, and where the uses of the beach is restricted to the owners.

Under such circumstances, the Federal Government can and will only do the work on a fully, 100 percent reimbursable basis.

The owners of the shoreline can shift a portion of that cost burden only if they provide realistic, full, and open public access to their beach. That does not mean the owners simply have to say their beach is open to the public. Rather, it means that they must actually provide free public parking to a reasonable degree, and restrict in no way whatsoever the public use of this beach.

To do otherwise would simply mock the use of public funds.

In cases where the public does have regular access, the cost sharing would be 50–50, with the non-Federal sponsors expected to pay their share during construction.

27. REPAYMENT DISTRICTS AND SUNSET HARBOR

The conference report includes a provision taken from the Senate bill that authorizes the establishment of something we have called Federal repayment districts. These districts could be established as a way to raise the money needed to finance the costs of a project.

This provision is strictly discretionary. We are trying to help non-Federal interests meet their obligations; we are not forcing this scheme on anyone.

This scheme can be used only as a way to meet cost sharing requirements as otherwise laid out by this bill. In no instance can this approach be used in lieu of up-front cost sharing.

To demonstrate the potential of this approach, the conference report also authorizes a project at Sunset Harbor, CA. In this instance, local interests may, at their discretion, establish a repayment district.

Such a district would be used to raise the fund that would repay the Federal Government and moneys the non-Federal sponsors may wish to pay to the Federal Government over and above all up-front money, which in this case is at least 50 percent. That percentage assumes that the bulk of the project will be considered a recreational boat harbor.

It is understood by this Senator that the potential non-Federal sponsors of the project have promised to pay that 50 percent or so up-front, then also pay the remaining costs of the project over time.

28. NAMINGS

Title 13 of the bill contains a number of namings for various water resources projects.

The Committee on Environment and Public Works has long had what I consider to be a very sound rule. This rule states that public facilities can only be named for persons who have died, with two exceptions: former Members of Congress over the age of 70 or living ex-Presidents and ex-Vice Presidents.

That is a sound rule. As we bring the bill back to the Senate, we have held close to that rule. More significantly, the House has agreed to a provision honoring one of our most beloved former members, Jennings Randolph.

We have named a lake on the Potomac River between West Virginia and Maryland as Jennings Randolph Lake. I believe that is one of the finest tributes we, as a body, can bestow upon the man who served as chairman of the Committee on Environment and Public Works for about 15 years.

29. MIAMI RIVER AND SECTION 404

Few Federal programs carry the importance to this Section of the requrements of what we know as section 404 of the Clean Water Act. This is the provision designed to protect America's wetlands.

As H.R. 6 passed the House, it contained an exemption under section 404 for the Miami River in Ohio. Such an exemption was wholly unacceptable to me, and to my fellow Senate conferees.

As a result, section 1133, as we have written it into the conference report, exempts the Miami River from certain permit procedures of the corps, but not from the 404 Program.

This decision is wise, and I commend the conferees.

30. CABIN LEASES

Section 1134 of the conference report provides that certain lease and permit holders at corps reservoirs and other sites may obtain an automatic extension on their permit or lease.

While I believe that is unwise, I agreed to go along with the modified House language on the understanding that any such leases and permits would only be extended beyond 1989 if the corps implemented its authority to charge market rental rates. To do otherwise would be grossly unfair to those not so fortunate as to hold such leases.

31. VERMONT CONCERNS

Madam President, I have talked at some length about the national aspects of this bill, and the bill's impact on new project development, as well as the operation of existing projects. But I am pleased to report that this bill also contains several provisions that hold great interest for the citizens of Vermont.

I am compelled to note the rather tiny price tags on each of these items, at least in comparision with most projects in the bill.

But each holds importance to the State of Vermont.

Section 1101, for example, will carry great importance for many smaller communities in Vermont as well as towns throughout the northern regions of the Nation. This section authorizes a program of $5 million per year to assist these communities in reducing flooding associated with the ice buildup that often occurs in wintertime.

The section specifically lays out a program of assistance for the community of Hardwick, VT, which has been struggling with ice-flooding problems for many years. The bill makes $900,000 available to Hardwick, with cost sharing and any ability to pay tests based on flood control.

I would also congratulate the distinguished Senator from Idaho [Mr. SYMMS] for his leadership in developing a provision in this section that will reduce ice flooding along the Salmon River at Salmon, ID.

Another small, but important provision in this bill is section 872, which affects the return of the salmon to the Connecticut River valley.

This section, taken from the Senate bill, authorizes up to $1 million for work at two dams in Vermont. This work will assure that the salmon can safely pass by the dam in their migrations from fresh water to salt, and back again.

Section 870 authorizes certain, limited repairs at Waterbury Dam in Vermont. The Corps of Engineers has recently repaired the dam to eliminate a leakage problem.

This section directs that the corps also repair the dam's spillway. As with other flood control related repair works in this bill, a non-Federal sponsor will be expected to furnish 25 percent of these costs.

In conference with the House, we also agreed to rectify a minor problem affecting navigation at Shelburne Bay, VT. There is a need to dredge a sandbar in the bay, and the State of Vermont has been more than willing to pay its share.

Unfortunately, the Corps of Engineers has dragged its feet on this project. Therefore, this bill directs that the corps go forward with this work under its small projects authorities. While there is a figure of $250,000 listed in the bill, it is very likely that the work will cost less than $100,000.

I would pay a particular word of praise to Representative BRONSON, who represents the area in the State legislature, for here effective leadership is helping to resolve this problem.

32. REVENUE PROVISIONS

For the last, I have saved a discussion of those provisions in the conference report that are basically within the jurisdiction of the Committee on Finance. This tax material appears in title 14 of the conference report.

First, the title imposes a new ad valorem tax on the value of goods moving through America's ports. This money will be used to help pay a portion of the costs of maintaining our harbors.

Second, this bill implements an increase, a very modest increase, in the existing fuel tax on barges using a portion of our commercial inland waterway system.

I would note that each of these taxes is quite modest, and each produces far less than the Government spends annually on these programs.

In my view it will be almost certain that we will have to obtain greater increases in each of these taxes at some later date.

Madam President, before I close I would like to express several words of thanks to key members of the Committee on Public Works for their distinguished leadership on this issue.

The most fulsome words of praise must go to our good friend and distinguished colleague, the Senator from South Dakota [Mr. ABDNOR], who is chairman of our Subcommittee on Water Reserves. Senator ABDNOR served as chairman of the conference on this bill.

But those facts in no way describe the hard work and the great leadership JIM ABDNOR has given to this bill. He has worked on it when everyone said it couldn't fly. He worked on it when people said it was sure to be vetoed. He worked on it when others would have lost heart.

He continued to work and to struggle with this bill, and today's action is vindication of his struggle and his vision that this was a necessary bill.

This is JIM ABDNOR's bill and it is his moment to triumph.

By mentioning JIM ABDNOR, I do not mean to slight the fine contribution of other members of our committee. Senator MOYNIHAN worked hard on the bill, bringing to it his experience and views on the need for infrastructural renewal.

Senator DOMENICI, who has served on the Water Resources Subcommittee since he arrived in the Senate in 1973, has given him imprint to many of the reforms and initiatives in this bill. PETE DOMENICI believes it is a strong and effective water resources program, and this bill will give such a program back to the Nation.

The ranking member of the full committee [Mr. BENTSEN] has been particularly effective in developing ideas and working out the necessary compromises on such issues as vessel fees. We on the Committee on Environment and Public Works will miss him greatly next year when he moves to the Committee on Commerce.

Before closing, I believe it is necessary that I mention two persons from the Reagan administration who have been so instrumental to the development and ultimate passage of this bill.

The first is the former Director of the Office of Management and Budget, David Stockman. It was Dave Stockman who spent hours in the majority leader's office some 15 months ago working out the details of the compromise on cost sharing that made this bill possible.

Then it was the Assistant Secretary of the Army, Robert K. Dawson, who worked tirelessly with the Congress to push, push, and push again until we were able to reach agreement.

I thank each of you. America thanks you.

Madam President, I ask unanimous consent that an additional 500 copies of the report of the Committee on Environment and Public Works on this legislation, Senate Report 99-126, be printed for the use of the Committee on Environment and Public Works

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

Mr. STAFFORD. Madam President, I also send to the desk two items, and ask unanimous consent to have them printed in the RECORD.

I ask that a copy of an editorial from the Washington Post be printed. I also ask permission to print in the RECORD a letter in support of water resources reform written by various environmental organizations.

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

[From the Washington Post, Oct. 7, 1986]

WATER WAYS

Last November the House passed a bill to transform the way the government builds and maintains the nation's commercial waterways. The forbiddingly titled Water Resources Conservation, Development, and Infrastructure Improvement Act of 1985 authorized the first new rivers and harbors, flood control and other such water projects since 1976. Members and interested groups—shippers, state and local governments, farmers, developers—badly wanted these. The price on which the administration insisted and for which environmental groups pressed as well was a new way of paying for the projects. For the first time, beneficiaries would bear part of the cost.

The Senate passed its better version of the bill—fewer new projects, more cost-sharing—in March. Conferees have been at work since June. Now they have apparently reached agreement. A lot of the House projects remain in the bill, but so do most of the Senate cost-sharing requirements. It is a good combination; the cost-sharing rules will serve over time to winnow the projects list. Congress should pass the bill.

Jimmy Carter should be invited to the signing ceremony. He began the fight that ends here. One of his first acts in office was to publish a hit list of water projects he felt should be dropped from the budget. The list was intended as a symbol of the new president's independence from traditional politics and his determination to guard both the public purse and the environment. The list backfired; it became a symbol instead of ineptness in dealing with the press and Congress. The arguments against the projects—as large expenditures of public funds that often end up helping the already rich at enormous environmental cost—were poorly made.

President Reagan has now achieved what Mr. Carter could not with the trade of further projects for structural reform. The theory is that seekers after projects will think twice when they have to pay. Localities will have to pay part of the cost of digging harbors, depending on depth; a cargo tax will also be imposed to help with maintenance costs. Barge owners will pay half the cost of locks and dams through an increased fuel tax. Localities will have to share in flood control costs.

In 1982 Congress rewrote the law on those (mostly western) water projects that have to do with irrigation and other water supply. The waterways bill would be companion to that. It is one of several important environmental bills to have moved in recent months. Legislation expanding the federal role in safeguarding the drinking water supply has passed. Last winter's farm bill provided for a conservation reserve to take highly erodible land out of production. Agreement has finally been reached (though not yet with the president) on extension and expansion of the Superfund program to clean up industrial dumps. The two houses seem close to agreement on a long overdue bill to speed up testing of pesticides. Though its prospects are less clear, a clean-water bill is also in conference. This could be the most important environmental Congress in years.

WASHINGTON, DC, *July 21, 1986.*

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The remaining days of the 99th Congress will be critical for shaping the water resources development activities of the Army Corps of Engineers for the rest of the century. We share your conviction that fundamental reform of this program is long overdue.

America's wetlands, bays, and bottomland forests are some of our most productive wildlife habitat. Thus, federal projects to dam, drain, dredge, and divert our waterways are among the most environmentally damaging activities undertaken directly by the federal government. For this reason, conservationists have repeatedly opposed unneeded or wasteful water projects and have actively sought basic reforms in this program.

As Congress completes its work on the proposed Water Resources Development Act, we want to reaffirm our support for the key improvements in this program that have been repeatedly sought by your Administration: greater cost-sharing by non-federal interests, and increased user fees to be paid by commercial navigation. Such reforms will not eliminate the need for strict environmental standards and statutes. However, we are convinced that, by increasing the local financial responsibility for Corps projects, the environmental damages resulting from unneeded or oversized projects can be greatly reduced.

Although both the House and Senate versions of the legislation contain important advances over existing law, significant shortcomings exist in each. We strongly believe that a bill emergency from conference without substantially increased cost-sharing, applicable to all regions of the country, and reasonable increases in user fees for commercial navigation, should be vetoed.

Conservations from around the country would welcome such actions, should it become necessary. The nation has waited for ten years for the Congress to reform federal water development policy. With your continuing leadership, remaining obstacles can be overcome and a new course chartered for the conservation and development of America's water resources.

Sincerely,

PETER A. A. BERLE,
President, National Audubon Society,
JAY D. HAIR,
Executive Vice President National Wildlife Federation.
DOUGLAS P. WHEELER,
Executive Director, Sierra Club.

Mr. STAFFORD. In addition, I wish to make several further comments on the bill:

As I mentioned in my statement, the question of private gain from public expenditure is an issue that needs to be confronted by the Corps of Engineers. I believe the policy must be updated. But, until it is, the corps must at the very least carry out the policy it has to charge non-Federal interests the full costs of land enhancement work.

For example, the corps must charge non-Federal interests the full cost associated with creation of 800 acres of land in the Los Angeles-Long Beach Harbor project.

As I have mentioned, the bill includes an important provision involving salmon passage at two dams in Vermont. I would suggest that the corps will probably wish to contract with the Vermont fish and wildlife agencies to undertake some of this work, even though the work is at full Federal expense.

Another question that has come up has been how to handle interest costs when payments are delayed and would begin only following construction of a separable element of a project. In line with other aspects of the bill, interest is to accumulate during the construction period, even though a portion of the project cost will not be due until after construction. This would happen, for example, on a flood control project where locals delay their payments that are due over and above the initial 30 percent.

Another issue of real significance involves a provision that was contained in the Senate bill involving a study of navigation on the Wabash River.

While we dropped that provision in conference, the Senate conferees remain greatly concerned over the environmental impact, economic justification, and technical viability of potential navigation improvements on the Wabash River between Indiana and Illinois.

Currently, the corps is conducting a reconnaissance investigation of potential navigation works on the Wabash. The conferees expect that the Secretary will obligate no money for a detailed feasibility study of navigation improvements on the Wabash unless the reconnaissance report indicates clearly that any navigation project that would likely be recommended will be economically justified and that the project will have acceptable environmental and technical impacts. Only then will any additional study be clearly warranted.

Another issue I have discussed is the question of cabin sites and rentals to be charged. It is clear that the Secretary has the authority to charge market rate rentals of such cabin leases. The Secretary is expected to do so.

In several cases, the phrase "necessary and appropriate" is used in the bill to describe the test the Secretary will use to determine whether certain environmental work is to be undertaken following special studies outlined in the bill. What is meant by that phrase is essentially the same thing as the phrase "practicable." If the Secretary finds the environmental work is practicable, he is urged and expected to undertake it.

There is an important dam safety title in the bill. I have discussed most

of the provisions, but I failed to discuss language that was intended to track cost sharing on dam safety work undertaken by the Bureau of Reclamation. It should be noted that under this section, work due to general wear and tear is expected to be undertaken at full non-Federal expense, unless specified to the contrary by Congress.

I will at this point reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

WATER RESOURCES DEVELOPMENT ACT OF 1986

Mr. BENTSEN. Madam President, this is truly an historic occasion. Passage of the conference report on H.R. 6, the Water Resources Development Act of 1985, will result in the first water project authorization bill in a decade. Because the last bill containing major policy changes was enacted in 1970, this is the first major legislative initiative in water resources policy in 16 years. I am pleased to have played an active role in the development of this legislation.

The Committee on Environment and Public Works has labored long and hard over the development of this legislation. As ranking minority member on the full committee for the past 2 years and a member of the committee since 1971, I know the hard work and the dedication which has been expended on this bill.

From a parochial viewpoint, I wish to observe that of the $15.3 billion in projects and programs authorized in H.R. 6, $885.2 million is for construction and/or modifications to projects in the State of Texas. I will address these and their importance later in this statement. For the present I will briefly discuss the important policy issues in this legislation.

Through the civil works program, the Army Corps of Engineers has played an essential role in the development of water resources facilities in this Nation. The inland waterway system and our coastal ports, both so essential to interstate and international commerce, have been a corps responsibility since the early years of the 19th century. Flood control dams and reservoirs have been implemented on a large scale by the corps since 1936, when unprecedented floods in the Ohio River basin led the Congress to establish in law the principle that flood control benefits were national in scope and therefore a Federal responsibility. The hydropower program of the corps dates from the 1930's.

In the last few decades the Congress has authorized the Corps of Engineers to become more involved with water supply, fish and wildlife mitigation, and recreation.

All of these activities have brought significant benefits to citizens in all 50 States as well as in U.S. territories and other possessions. Corps of Engineers projects have served to save lives, facilitate transportation, and otherwise improve the quality of life for many years.

In recent years, critics have charged that the civil works program of the Corps of Engineers has outlived its usefulness. They believe that the majority of the most needed water resources projects have been built, and the need for a significant Federal role in this area is questionable. They also believe that many unnecessary projects have been authorized by the Congress and constructed by the Corps. Today's budgetary climate has contributed to this negative dialog. The last three administrations have advocated serious changes in the way water projects are implemented. Republican and Democratic presidents alike have urged that the beneficiaries of projects providing flood control, navigation, recreation, and other benefits should bear a greater portion of their costs. Unnecessary, expensive projects will not be built, these critics maintain, if local sponsors are made to contribute a more significant share.

After years of hearings and dialog and consideration, the Congress will now speak. This bill contains major new initiatives in the procedures under which water resources projects are planned, constructed, operated, and maintained. Local governments and other public bodies will be participating in the development of projects from the very beginning of the survey process.

H.R. 6 contains authorizations for 377 projects, studies and programs at a total estimated cost of $15.3 billion. The total first Federal cost is $11.2 billion, a great deal of which will be repaid over time. The total first non-Federal cost, money to be paid up front or during project construction, is $4.1 billion. The new cost-sharing formulas will apply to projects authorized in this bill as well as to already authorized projects and separable elements thereof not under construction as of April 30, 1986.

I will not attempt to describe the cost-sharing changes for all types of projects. I do want to address the new policy as it affects commercial ports and habors, which are so important to the economy of coastal States such as Texas. In a larger sense, these ports and harbors are the gateways of commerce for this country. Developing an appropriate, yet sound, cost-sharing policy in this area is essential to the future international competitiveness of the United States. I believe that we have achieved this objective, but Congress and the administration must continue to diligently review these policies to assure that they are not limiting the trade of the Nation.

For the first time, non-Federal sponsors will be required to bear a significant portion of the cost of harbor improvement projects. The local share will range from 10 percent to 25 percent to 50 percent, depending on the depth of the channel. Regardless of channel depth, an additional 10 percent of the total project cost is to be repaid by project sponsors, with interest, over a period of up to 30 years following project completion.

Under certain conditions, non-Federal interests will be able to undertake their own port feasibility studies, in compliance with guidelines promulgated by the Secretary of the Army. Procedures are established enabling local sponsors to construct their own harbor improvements, either in whole or as a part of a Federal project. In the latter case, the cost of non-Federal improvements can be credited toward a sponsor's share. If the entire harbor improvement is authorized by the Federal Government but constructed by a non-Federal sponsor, the Federal Government is authorized under this legislation to reimburse what would have been the Federal share of the project to that sponsor. Finally, if the non-Federal sponsor constructs a project that has not been authorized and the Federal Government determines that the project is environmentally and economically sound, the non-Federal sponsor can receive the Federal operation and maintenance payments that it would have received if the project had been an authorized project.

Madam President, both the House and Senate versions of this legislation contained a port or harbor dues authority, meant to assist local sponsors in raising sufficient revenues to finance their share of harbor improvements. The Senate provision, requiring dues to reflect "to a reasonable degree" the benefits provided by a project to various types of vessels, gave ports considerable leeway in assessing vessel fees. The House measure contained a direct beneficiary clause which permitted ports to levy fees only on those vessels benefiting from channel deepening. Under the House language, vessels which benefited from other improvements such as channel widening and jetty construction could not be charged. I considered this to be unduly restrictive and inequitable.

I am gratified that, with the help of the Finance Committee, we were able to reach agreement on a compromise approach to this issue (sec. 208) which retains much of the key concepts of the Senate bill. The harbor dues authority language contained in the conference report is far more workable and fair than what was suggested by the House. It continues to permit fees to be collected from vessels benefiting from a deeper channel. But it also allows fees to be collected from comparably sized vessels benefiting from channel widenings; new or enlarged bend easings, turning basins, anchorage areas, and protected areas; and re-

moval of navigation obstructions. The provision also stipulates other criteria which may be considered by non-Federal sponsors in developing harbor dues, including: elapsed time and safety of passage, vessel economy of scale, and under keel clearance.

The conference substitute should assure that vessels which substantially benefit from harbor improvements will be assessed fees. Vessels of design dimensions not comparable to those used to justify the project during its formulation would not be subject to dues under section 208.

In view of the lack of legislative history on the harbor dues provision, Madam President, I think it advisable to expand my remarks. The reference to "utilized the project at mean low water" in this section is intended to describe situations such as vessels awaiting high tide to enter the channel in order to avoid running aground due to a draft which would be too great to enter the channel at any other time. Similarly, the reference to design draft is included to assure that the fee structure is based on the draft a vessel would be drawing under its normal design conditions, not some light-loaded situation. For example, if the design draft of the vessel was 40 feet, this draft would be used in determining its responsibility for dues, not whether on this voyage it was drawing 38 feet of draft.

The use of the term "at least comparable in size" is intended to address a situation in which a vessel may not be identical to the design vessel, but is so similar that it would require essentially the same features. For example, if a project feature was justified for a design vessel 1,000 feet long and 160 feet wide, a vessel 1,000 feet long and 150 feet wide would be comparable.

I want to briefly mention some of the projects in H.R. 6 which benefit the State of Texas. Full construction authorization is contained for two navigation projects, six flood control projects, and one fish and wildlife mitigation project, at an estimated total cost of $742.9 million. An additional $142.3 million is authorized in project modifications.

Every one of these projects is important to the economy of Texas. I will not list all of them, but I am particularly pleased at the construction authorization of the Lower Rio Grande project, which will provide much-needed flood protection for the Lower Rio Grande Valley, where I grew up. I have worked for the authorization of this project since I came to the Senate. While the battle is not over because significant portions of the overall project must be funded through the Soil Conservation Service, the authorization contained in this bill is a critical step.

Equally important are the other flood control projects authorized for construction, which include Lake Wichita at Holliday Creek, near Wichita Falls; Boggy Creek in the vicinity of Austin; Sims Bayou and Buffalo Bayou, both near Houston, and the stockyard area of Fort Worth.

H.R. 6 also includes a clarification that the $126 million of remaining work on the Red River chloride project will be built at full Federal expense in accordance with its authorization 20 years ago, subject to a determination that the completed protion of the project known as Area VIII provides water quality consistent with that assumed in the development of project benefits.

The previously authorized Mouth of the Colorado project is also modified to assure that the diversion channel component of the project will be constructed at full Federal expense because of the national benefits derived from the fish and wildlife to be protected.

Madam President, these are only a few of the projects which will provide widespread benefits to the State of Texas. At this time I would like to compliment the other members of the Committee on Environment and Public Works, particularly full committee Chairman BOB STAFFORD and Water Resources Subcommittee chairman and ranking member JIM ABDNOR and DANIEL PATRICK MOYNIHAN.

Tribute should be paid also to members of the Finance and Ways and Means Committees, especially Chairmen BOB PACKWOOD and DAN ROSTENKOWSKI. These committees had jurisdiction over title XIV, dealing with the port ad valorem charge on cargo and the raising of the existing fuel taxes for barges. Senator PACKWOOD also was especially helpful in resolving the vessel fee issue in title II which I described earlier.

Madam President, I am proud to have played a part in the development of this important legislation. I urge speedy Senate approval of the conference report on H.R. 6.

Mr. ABDNOR. Madam President, I don't know how many times I have stood before the Senate and pointed out that it has been over a decade since the last major water resources development bill, but I hope that this is the last time.

Madam President, the conference report on H.R. 6 which is now before the Senate is without a doubt the most significant water resources development bill in over 50 years. It is the product of more work on the part of Members of Congress than any other water development bill in history.

There are two major reasons why this bill is so historically significant. First, because it has been so long since there has been a water resources bill, a large blacklog of projects is being authorized.

In fact, the conference report on H.R. 6 authorizes a total of 377 Corps of Engineers water resources projects, project modifications, and studies. If, and I emphasize "if," all of these were carried out, they would cost a total of approximately $15.3 billion. The first Federal share of this cost would be about $11.2 billion, and the ultimate Federal cost would be $8.5 billion.

The second and more important reason that this bill is so significant is that it makes sweeping reforms to the relationship between the Federal Government and the non-Federal sponsors of water projects.

This bill will insure that from this point on, a non-Federal sponsor will bear a greater share of the costs of Corps of Engineers water projects. Along with this new responsibility, the non-Federal sponsor will have a greater input into the planning, design, and construction process. These changes are absolutely fundamental to invigorating and reestablishing a productive Federal water resources development program.

The reforms in this bill that have received the most attention are of course the cost-sharing reforms. I am very pleased to report that the cost-sharing provisions contained in the conference report are, with only very minor differences, the Senate-passed formulas.

Since cost sharing is described more fully in the statement of managers, language which will be reproduced in the RECORD, I will not review it here.

It should be emphasized, however, that these new cost-sharing requirements not only apply to all new project authorizations, but they also apply to unconstructed elements of already authorized projects.

When you consider that in the past, non-Federal sponsors of Corps of Engineers project were, for most types of projects, responsible only for providing the lands, easements, and rights of way for project construction, the reforms contained in this bill seem all the more significant.

Madam President, in the past, I have heard some Members say that requiring significant new cost sharing will present many communities with an unfair and unbearable burden.

To these Members I say that the Committee on Environment and Public Work has worked on cost-sharing formulas for the past several years. During that time it has become clear that cost-sharing requirements such as the ones in this bill will not prove to be an undue burden on local project sponsors.

In the rare event that a local sponsor is unable to provide the required share of the cost of an economically sound project, H.R. 6 provides that the Secretary may consider the ability of that sponsor to pay when fixing the local share.

On the issue of the cost of the bill, Madam President, it is virtually certain that there are those that will claim that this is a budget busting bill because of the large number of projects that are authorized. In righteous tones they will ask: "How can we, in such fiscally distressed times, be approving a bill that has a price tag of over $15 billion?"

To these people I say this: "Read the bill."

First of all, this is only authorizing legislation and does not appropriate 1 penny.

Second, a careful examination will reveal that budgetary considerations permeate H.R. 6.

For example, the conference report retains the Senate cap on Corps of Engineers civil works construction spending. These annual caps correlate very closely with CBO and OMB projections of future Corps of Engineers spending.

Therefore, even if there were trillions of dollars worth of project authorization in this bill, the corps ability to obligate money in any 1 year is strictly limited.

Further, there are limits placed on cost increases for the individual projects authorized in H.R. 6. The bill ensures that the corps must come back to Congress for further authorization if a project's cost escalates beyond a certain point.

This protection will prevent a situation where the corps is authorized to perform a rather modest project and, through the years, that rather modest project becomes a huge, not so modest project.

A further protection in this bill is the automatic deauthorization provision. Title X of this bill provides for automatic deauthorization of those projects which receive no appropriation within 5 years of their authorization.

Further, title X of this bill also specifically deauthorizes over $11 billion worth of sorely outdated corps projects.

In addition to the numerous budgetary protections in H.R. 6, there are also numerous environmental protections.

First, this bill requires that mitigation work is to proceed along with the construction of Corps of Engineers water projects.

In addition, H.R. 6 requires that all future water project plans that the corps sends to the Congress contain specific environmental mitigation plans.

Further, this bill creates an environmental mitigation revolving fund which can be used to provide migitation for any Corps of Engineers project, including those already constructed.

And finally, every project in this bill either has or will be subject to a full review under the National Environmental Policy Act.

Madam President, if you were to take the cost-sharing reforms, the project authorizations, and the environmental provisions out of H.R. 6, you would still be left with a very substantial piece of legislation.

There are numerous studies and programs in this bill that I believe are of great value.

I will mention only one of these and that is the Dam Safety Program that is authorized in title XII. This program which it taken from the Senate bill, establishes a modest matching grant program to encourage the creation and maintenance of adequate State dam safety programs.

Since the safety of non-Federal dams is the responsibility of the States, and since the dam safety programs of half the States in this Nation are woefully inadequate, the program in title XII is sorely needed to help protect our citizens from the very real danger of unsafe dams.

Madam President, this legislation has had a long and arduous history. As many Members are aware, one of the landmarks of that history was an agreement that was worked out with the administration last year over the funding of certain projects on a supplemental appropriations bill.

Among other things, that agreement spelled out the level of cost sharing and user fees necessary to make an omnibus water resources development bill acceptable to the administration.

The Senate-passed version of H.R. 6 reflected this agreement, and by essentially adopting the Senate's cost-sharing provisions, the conferees have kept a critical part of the agreement that was made with the administration 1½ years ago.

Further, the administration has been kept abreast all during the conference negotiations on H.R. 6. From every indication I have had, this bill will be signed by President Reagan.

Madam President, the role of water resources development in economic growth is all too frequently overlooked. The founders of this country had a profound understanding of this truth and laid the groundwork for the vast system of water resources projects that form an indispensable part of our national infrastructure.

H.R. 6. extends and modernizes this tradition

By authorizing improvements to many of our most important ports and to our inland wateway system, this bill helps pave the way for new industrial and commercial growth.

By authorizing flood control works for many of our cities, and shoreline erosion work for many coastal communities, this bill provides for the protection of health that we have already developed.

In spite of many cynical remarks about the pork barrel and the wasting of the taxpayers dollars for projects of dubious merit, the types of projects which are authorized by this bill form an essential part of our economy. They are an indispensable basis of future economic growth.

Indeed, it is no exaggeration to say that the Federal role in the development of this country's water resources has been a cornerstone of our economic success.

Madam President, I would never imply that the projects authorized in this bill can be bought at no cost to the taxpayers—they will cost money. However, it is safe to say that the lost opportunities and the consequences such as flood damages we would suffer for not building them would cost the public far more.

Before I close my remarks, I would like to express my thanks to Chairman STAFFORD, Senators BENTSEN, PAT MOYNIHAN, and my other colleagues on the Committee on Environmental and Public Works Committee for all of their work on this legislation. I would also like to thank Senators PACKWOOD and LONG and the other members of the Finance Committee who put together the tax related portions of H.R. 6.

Finally, I would also like to thank Bob Dawson, the assistant secretary of the Army for civil works, for all of the support and assistance he has provided throughout this process. Mr. Dawson has been well served by Mike Strachn, Ed Dickey, and Myron Yushishin, who have provided invaluable technical assistance and advice throughout this process.

Madam President, H.R, 6 is a bill that enjoys a very broad base of support. With few exceptions it is supported by the States, the cities, the ports, the shippers, many environmental groups, the construction industry, and a host of other interest groups.

The conference report on H.R. 6 is a long overdue opportunity to both reform and revitalized a critically important aspect of government. This bill helps lay the groundwork for the future and I urge my colleagues to support its passage.

Madam President, I ask unanimous consent that a letter from the National Wildlife Federation supporting the conference report on H.R. 6 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 WILDLIFE FEDERATION,
Washington, DC, October 16, 1986.

Hon. JAMES ABDNOR,
Chairman, Subcommittee on Water Resources, Committee on Environmental and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I want to convey our support for the conference agreement on

H.R. 6, the Water Resources Development Act of 1986. In our opinion, H.R. 6 is the most significant water resources development legislation since the New Deal, and the most environmentally responsible water projects bill to date.

Enactment of H.R. 6 would go a long way toward the implementation of reforms that have been sought by successive Administrations, Republican and Democratic alike, laid out by the landmark report of the National Water Commission in 1973. Most notably, the bill contains significant new requirements for greater non-Federal participation in the financing of most types of new water resources projects. These cost-sharing and user fee provisions will enfranchise thousands of new participants in the process of planning and constructing Federal water projects. These new requirements will not only save the Treasury money, but they also will spare the environment from damage by the construction of unneeded or oversized projects.

In addition to these fundamental financial reforms, the bill contains an important provision requiring timely implementation of measures to mitigate damages to the environment that result from project development. The bill also includes needed general authority for the Corps of Engineers to restore previously damaged fish and wildlife habitat, undertake improvements at existing projects to improve their environmental performance, and protect wetlands in the Lower Mississippi Valley.

H.R. 6 contains numerous provisions and projects to enhance natural values or restore previously damaged resources. The most significant of these include the protection of the Atchafalaya River Basin in Louisiana, the mitigation of damages to fish and wildlife habitat resulting from construction of the Tennessee-Tombigbee Waterway in Alabama and Mississippi, and the initial stage of a major mitigation effort for the lower Missouri River, in Iowa, Nebraska, Kansas, and Missouri.

Several hundred unbuilt projects would be deauthorized by H.R. 6, and a new process will be set up to automatically cull the "dead wood" from the Corps' construction backlog in the future. Notably, the Cross-Florida Barge Canal would be deauthorized, with previously acquired lands to be managed for their natural and recreational value.

Among the many studies authorized by the bill is a study of the Corps' capability to create or improve fish and wildlife habitat, along with limited authority to demonstrate such capabilities. Also, in one of the first undertakings of its kind, the bill authorizes a three-year study of the implications of rising sea levels on coastal communities and related policies and programs of the Corps. This study is to include an appraisal of various strategies for managing relocation, disinvestment, and reinvestment in coastal communities exposed to coastal flooding and erosion.

To be sure, H.R. 6 also includes among its 400-plus pages several projects and provisions which we believe to be unjustified or unwise. Nevertheless, these shortcomings do not, on balance, detract from the significance of the reminder of the bill.

I urge the Senate to approve the conference agreement on H.R. 6. Your support for the restructuring of the Army's water resources development program as embodied in this legislation is greatly appreciated.

Sincerely,

JAY D. HAIR.

Mr. ABDNOR. Madam President, I think we are all familiar with the bill. It has been a long time in the making and we consulted probably everyone on this floor at one time or another trying to reach agreement.

But before I close my remarks, I particularly want to express my thanks to my chairman, Chairman STAFFORD, and Senator BENTSEN. They always were there and they were the force that helped really bring this together.

I do not mind saying that without Senator MOYNIHAN, it would have been really difficult to get this through. I think he would be the first to admit it was a real bipartisan effort on our part.

I thank the other colleagues on the Committee on Environment and Public Works for all their work on this legislation. I also wish to thank Senators PACKWOOD and LONG and other members of the Finance Committee who put together the tax-related portion of H.R. 6. Their work was crucial. It has not been easy to deal with taxes and fees in this area. But they were very helpful, very effective, and more than willing to do their part.

Of course, I would really be remiss in my remarks if I did not thank the staff who labored so long and hard to see this legislation through: Hal Brayman, Tom Skirbunt, Mark Haynes, Nan Stockholm, Ann Garrabrant, and Lee Fuller. They spent enormous amounts of time trying to see this legislation through.

Probably for every few minutes I put in, the staff worked for an hour helping us put this thing together and work out our differences with the House.

We are very proud of this piece of legislation and think it is an excellent piece. I am sure everyone will want to support it.

Mr. MOYNIHAN. Mr. President, I yield 1 minute to the distinguished Senator from Hawaii.

Mr. MATSUNAGA. I thank the Senator for yielding.

Mr. President, as a member of the conference committee I rise in support of the conference report on the Water Resources Development Act (H.R. 6). I am particularly pleased that the conference agreement contains a provision which I proposed in the Finance Committee relating to the tax treatment of Hawaii and the insular possessions of the United States.

Mr. President, the underlying legislation imposes a 0.04 percent ad valorem charge on cargo loaded onto, or unloaded from, commercial vessels in waterports of the United States. The conference committee considered at length and in depth the unique circumstances pertaining to Hawaii and the insular possessions of the United States, which are almost completely dependent on waterborne commerce. Under an amendment approved by the conference committee, the proposed port use charge would not apply to either the loading or subsequent unloading of cargo that is loaded in Hawaii or in any U.S. possession and shipped to the U.S. mainland or Alaska for ultimate use or consumption in the U.S. mainland or Alaska. Similarly, the port use charge would not apply to either the loading or subsequently unloading of cargo that is loaded at a port in the U.S. mainland or Alaska for transportation to Hawaii or a U.S. possession for ultimate use or consumption in Hawaii or a U.S. possession. Finally, the port use tax would not be imposed on cargo shipped from one port in Hawaii to another port within the State. The tax would apply to the loading or unloading in Hawaii or in the U.S. possessions of cargo shipped to or from a foreign country.

Mr. President, in my view these provisions which were drafted with the understanding, cooperation and able assistance of the distinguished chairman of the Finance Committee, Mr. PACKWOOD, are an adequate and appropriate response to the concerns which I raised in September 1985, during the Finance Committee hearing on the pending legislation.

Mr. President, in concluding my remarks, I wish to thank Senator PACKWOOD, along with the ranking Democrat of the Finance Committee, Senator LONG, without whose assistance the economies of Hawaii and the U.S. possessions would have been subjected to undue burden. Mahalo!

Mr. BRADLEY. Mr. President, as the 99th Congress comes to a close, it is fitting that the Senate acts on the conference report to the Omnibus Water Resources Development Act. The passage of this bill breaks a decade-long stalemate which was caused by the debate over how to finance these projects. The compromise on the cost sharing schedules and port user fees reestablishes the Federal Government's traditional role in the development and maintenance of our Nation's water resources infrastructure.

This infrastructure cannot be left for some other day. Our reservoirs, waterways, harbors, and coastal areas are in serious disrepair. Authorization and funding of these projects will improve our ability to provide water to our cities and farms, protect our people and their homes from floods, improve ports for commercial shipping and fishing, and provide safe recreational areas for all Americans.

The problems that have held this authorization bill up for so many years were noticeable this past summer when the Office of Management and Budget considered rejecting the cost sharing agreement for the Liberty State Park seawall and levee

project for Jersey City, NJ. OMB officials argued that the seawall project would be used primarily for recreational purposes. Designed to prevent flooding and to ensure that erosion does not occur at Liberty State Park, the project has additional benefits as well. It will provide the millions of people who visit Liberty State Park with an unparalleled view of the Statue of Liberty and Ellis Island. OMB's suggestion that the project should not go forward was shortsighted at best. If, decades ago, officials had blocked funding because of the potential recreational nature of the many dams, levees, waterways, harbors, and coastal areas designated as "flood control" or "navigation" projects, Americans would have suffered serious economic and environmental hardships as well as lost invaluable recreational opportunities which we still enjoy to this day.

The continued maintenance of our Nation's coastline and waterways is vitally important for safety and for economic reasons. Commercial fishermen and recreational boaters throughout the country need to know with confidence that our waters are navigable and safe. Shore and lake communities across the country depend on their ability to attract vacationers in order to sustain economic growth. Without properly maintained beaches, this opportunity will be lost.

Mr. President, it has been nearly 10 years since a water projects bill of this magnitude was passed. Further inaction will only increase the costs of these projects in the future, and because so many of these projects are designed to correct treacherous waterways and recurrent flooding problems, failure to act could result in further loss of life. Again, I would like to commend the members of the committees who drafted this legislation, and I ask my colleagues to support this authorization bill.

Mr. GORE. Madam President, I rise to express my concerns over this legislation, especially as it relates to the Mississippi River and tributaries [MR&T] project. Unfortunately, this bill will saddle many local governments and levee districts throughout the lower Mississippi Valley region with the burden of paying for national flood-control problems. It will do so by requiring cost sharing on separable elements of the MR&T.

Along with six of my colleagues—Senators SASSER, FORD, SIMON, LONG, STENNIS, and PRYOR—I asked members of the conference committee to address this issue of cost sharing for separable elements. We found the term "separable elements" to be vague, and thus open to misinterpretation. It is my understanding that a definition has been applied to the term: It specifically means features that are physically separate from other portions of a project and produce entirely separate hydrological and economic benefits.

This language is helpful, but there are still many portions of the MR&T which I fear will be delayed and perhaps not built because of this cost-sharing requirement. And even if portions of the MR&T which are already under construction—such as the west Tennessee tributaries project in my State—are grandfathered and not subject to cost sharing, I am concerned that future elements of this major project will be affected in a negative way.

First authorized by Congress in 1928 as a single project, the MR&T program is a vast system of flood protection dams, levees, drains and channels spread over Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee. The flooding programs addressed by MR&T are really national problems, as the Mississippi River drains 41 percent of the continental United States—nearly 30 States from Delaware to Idaho. This program, then, cannot be divided and considered as a series of local projects addressing only local problems. The Mississippi River is a natural resource and controlling it is a national responsibility.

Despite the scope of the problem, there are still some who insist that this is a localized project benefiting only those counties, towns, and levee districts bordering the river. They contend that localities should bear the expense of flood-control projects on the Mississippi. The vast majority of the localities in these seven States cannot bear such an expense. Even if they could, however, it is unfair to ask them to pay to manage water which entered the system hundreds or even thousands of miles away. Localities do not have the resources to solve national problems, and they should not be required to make the attempt.

The Lower Mississippi Valley Flood Control Association has been very concerned with this matter, and officers of that organization have submitted a list of some of the MR&T work which they believe will be adversely affected by this legislation:

In Illinois, the Cache River Pumping Plant.

In Kentucky, the western Kentucky tributaries project; and the Lake Number Nine project.

In Missouri, St. John's Bayou-New Madrid Floodway.

In Tennessee, the Mud Lake Pumping Plant; and the Harris Fork Creek project which also has an effect in Kentucky.

In Arkansas, the White River-Big Creek and tributaries project; the Cache River basin; the L'Anguille River basin; Eight Mile Creek-Paragould tributaries project to the St. Francis River; Helena flood-control work; and West Memphis flood-control work.

In Mississippi, Horn Lake Creek tributaries project.

In Louisiana, Boeuf Tensas River basin project; the Bayou Cocodrie tributaries basin; Mississippi Delta region project; Eastern Rapides-South Central Avoyelles work; Bushley Bayou; and the Louisiana State Penitentiary levy.

It is not now my intention to stand in the way of the bill. I realize that it has been many years since a comprehensive water projects bill has been enacted, and there are many other provisions of interest to Members of this body. However, I want these concerns about cost sharing to be fully understood. The precedent we establish with this legislation will be a lasting one. The effects of cost sharing must be watched closely; and if portions of the MR&T are in fact not built because of these provisions, the Nation may well pay much more for repair of flood damages in the lower Mississippi Valley than we will save by requiring cost sharing. If so, some future Congress will need to remedy what has been done here.

In closing, I ask unanimous consent to include in the RECORD the statement of Mr. George C. Grugett, executive vice president of the Lower Mississippi Valley Flood Control Association, who made a presentation of that organization's concerns in a breakfast meeting on September 17 here in Washington. This statement expresses the concerns of that organization:

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

STATEMENT OF GEORGE C. GRUGETT, EXECUTIVE VICE PRESIDENT, LOWER MISSISSIPPI VALLEY FLOOD CONTROL ASSOCIATION, SEPTEMBER 17, 1986

Ladies and gentlemen, speaking on behalf of the 110 water-related organizations that make up the membership of the Lower Mississippi Valley Flood Control Association and especially on behalf of the 10 gentlemen who are elected by their neighbors to serve on the executive committee that manages and directs the policy established by the association, let me say thanks to each of you who have taken the time from your all too busy schedule this morning to join with us for our seventh annual breakfast.

When I say our seventh annual breakfast there may be some who would think that this is a relatively new "kid on the block" or as we in the South might say, "a comelately." Not so, the Lower Mississippi Valley Flood Control Association held its 50th annual meeting this past December and was in fact first organized in 1922. Our 110-member organizations include levee boards, drainage districts, port authorities, harbor commissions, State agencies, municipalities, and also just individuals that share our problems and concerns. Those problems address themself to flood control, navigation, channel improvements, and major drainage in the seven States of the Alluvial Valley of the lower Mississippi River and I think more importantly our concerns are for the

welfare and prosperity of this great Nation of ours.

Our association is comprised of a very large group of individuals who are businessmen, property owners, conservationists, farmers, attorneys, doctors, wildlife enthusiasts, engineers, accountants, environmentalists, civil servants, and elected officials from all political parties. We are indeed fortunate that for the past 50 years our officers, that are elected annually by the membership, have been distinguished Members of the Congress of these United States.

I feel that it is important that I give you this very brief amount of background information on the Lower Mississippi Valley Flood Control Association in order that you might clearly see that when we again today discuss with you our problems and concerns with pending water resources legislation that we are not being parochial, regional, or unfair in our approach or requests but that we do in fact represent a unique and different situation because the principal objective of this association is the support and sponsorship of a single, comprehensive, multi-State project that was established by law to solve a national problem and one that the Congress in its wisdom, by almost unanimous consent, agreed should be a complete Federal responsibility.

I sincerely hope that I might be successful in this attempt and in order to gain some advantage I will be quoting from several highly respected individuals and from facts and records of others. In all probability I will quote some that are present, certainly with no intent other than to emphasize what you have already stated.

I feel that some explanation and a little history of the Mississippi River and tributaries project is required even if it may be repetitious to most of those present.

The Mississippi River has the third largest drainage basin in the world. It drains 41 percent of the lower 48 States and two Provinces of Canada. The River renders vital service to over 40 percent of the area of the country but at the same time it poses a significant and continuing flood threat to the inhabitants of the lower Mississippi Valley.

Prior to 1926, the inhabitants of the valley had spent about $300,000,000 for flood control. In spite of this huge outlay of money they suffered direct damages from the 1927 flood in excess of $236,000,000. In addition as many as 500 lives were lost, 162,000 homes were inundated and there were approximately 325,000 refugees to be cared for.

In 1928, the Congress passed the Flood Control Act of May 15 that established the Mississippi River and tributaries project as a single project to solve a national problem. It is a complete authorization within itself adopted to prevent the misery, suffering and loss occasioned by floods on the Lower Mississippi River. Section 2 of the Act expressed legislative intent and emphasized that the project is a Federal project. No doubt should remain on that score in light of the concluding cause—"no local contribution to the project herein adopted is required."

Now let's look at what has happened since passage of the 1928 act.

On June the 22d of this year the Corps of Engineers celebrated the 50th anniversary of the signing of the Flood Control Act of 1936. The one that is sometimes called the General Flood Control Act or the Copeland Act in honor of Royal Copeland then the distinguished Senator from New York. The Corps could have also celebrated on June the 15th the 50th anniversary of the other Flood Control Act of 1936, the one that is sometimes called the Mississippi River and Tributaries Act or the Overton Act in honor of John Overton the then distinguished Senator from Louisiana who was at that time serving as the first president of the Lower Mississippi Valley Flood Control Association.

Of course, the Overton Act was an amendment to the 1928 act and applied only to the Mississippi River and Tributaries project. Let's look at the other 1936 act, the Copeland Act, this Act by section 8 specifically provided that "nothing in this act shall be construed as repealing or amending any provision of the 1928 Flood Control Act." In all subsequent flood control legislation this division of law between the projects for the Lower Mississippi River and Tributaries and for general flood control has been continued by specific language and all subsequent flood control acts have included the language "the project for flood control of the Lower Mississippi River adopted by act of May 15, 1928, as amended is hereby modified, etc." Consequently, the act of May 15, 1928, and its amendments is the controlling legislation for the Lower Mississippi River and Tributaries Project and the General Flood Control Acts have no application thereto, a construction that has been accepted for over 50 years and one that should not be changed at this time.

Let me quote only a very few individuals in order to give you their thoughts on this premise.

Congressman Tom Bevill of Alabama—Chairman of the Subcommittee on Energy and Water Development:

"The Mississippi River and tributaries project is one project addressing the flood problems of the seven States—failure to complete this project as a complete unit will totally cripple the project. It is totally unrealistic to expect the citizens of the lower Mississippi Valley to pay new or additional costs to protect themselves from devastating floods coming down on them from over 40 percent of the land area of the United States."

Congressman Gene Snyder of Kentucky—ranking minority member, Committee on Public Works and Transportation:

"The Mississippi River and tributaries is a single project, albeit a large one, with many parts, and to apply a new cost-sharing formula to these parts by considering each as a separate project is unrealistic, unfeasible and unfair. The people in the lower Mississippi River Valley have been fighting the floodwaters of that great river and its tributaries for years, and they have contributed substantially to flood control efforts. It is not their water which floods their land and their homes, it is water brought down to them from the upper reaches of the Mississippi."

Congressman Arlan Stangeland of Minnesota—ranking minority member, Subcommittee on Water Resources:

"Given the history and unique nature of the Mississippi River and tributaries project, to treat each element as a separate project would in my judgment, be most unfair to the MR&T project. There are, in fact, not new projects; they are elements and features of a single comprehensive overall project."

Let me next give you just one example of how the Congress of the United States, as well as the Administration, has considered the Mississippi River and tributaries project in the past and I quote from section 201 of the Flood Control Act of 1962.

"The project for flood control and improvement of the lower Mississippi River adopted by the act approved May 15, 1928, as amended by subsequent acts, is hereby modified and expanded to include the following items: (A) Monetary authorizations heretofore and hereafter made available to the project or any portion thereof shall be combined into a single sum and be available for application to any portion of the project."

This appears to be clear indication that the Mississippi River and tributaries project was considered by one and all to be a single project not to be broken into "separable elements" or what have you.

Just one more from a statement by the past distinguished Senator from Arkansas, made on December 2, 1955, in New Orleans, Louisiana. Quoting from Senator John C. McClellan:

"The physical geography of the Mississippi River is such that flood control interests do not stop at the main river but extend upstream along the adjacent tributary streams and valleys. The flood control plan on the lower Mississippi River therefore cannot be considered adequate or complete until the flood control plans for these valleys, authorized as a part of the Mississippi River and tributaries project, are completed."

I would like at this time to point out to you an example of what the Mississippi River and tributaries project has done for this Nation and to show you what an excellent Federal investment has been made.

I mentioned earlier that the Corps of Engineers celebrated the 50th anniversary of the signing of the General Flood Control Act of 1936, during that time they published information that states that:

"Appropriations from Congress have enabled the corps to invest $23 billion in flood control projects throughout the Nation over the past 50 years. More than $150 billion worth of flood damages have been prevented by more than 300 projects currently operated by the corps. This represents more than seven times the original investment."

Now this is something to be proud of.

Included in those figures of course is the Mississippi River and tributaries project and I would like to separate them for you. Out of the total of $23 billion invested less than $4 billion has been spent for the Mississippi River and tributaries project or about 17 percent of the total. Out of the $150 billion in flood damages prevented about $107½ billion is attributed to the Mississippi River and tributaries project or about 72 percent of the total. The Mississippi River and tributaries project represents more than 27 times its original investment. Now there's something to really brag about.

Even with that fantastic track record, the Mississippi River and tributaries project is not completed and we are still unable to pass the project flood to the Gulf of Mexico. We need to complete the work that is required to make this great project and wonderful investment function properly.

This association has long recognized the need for passage of a water resources authorization bill and I quote from a statement made on September 30, 1980, by a member of our executive committee at the occasion of our first annual breakfast meeting here in the Rayburn Building:

"The Lower Mississippi Valley Flood Control Association is concerned over the fact that it has been over four years since the Congress has passed a Water Resources Authorization Bill. We see this as a very seri-

ous problem and one that needs to be solved.

"We are all aware that the problem of flood control in the Lower Mississippi Valley is far from being solved and we are also aware that additional authorizations are needed from the Congress before all the problems can be solved."

We still support passage of a water resources authorization bill but we cannot in good conscience support a bill that will deauthorize all projects, or separable elements of projects where construction has not commenced within ten years of authorization. In the Mississippi River and tributaries project alone this could mean the deauthorization of close to $1 billion worth of work that the Congress has authorized as needed to complete this project. I say could because at this point in time we are not sure what definition of several in the record we should use for separable elements. We do know we have strong concerns for legislation that will have such an impact on the people of the lower Mississippi Valley and the Nation which contains a term throughout the bill that has not been properly defined by the Congress.

We also find it totally uneconomical to deauthorize any projects or separable elements of projects without first investigating their merits especially where the Federal Government has already invested millions of dollars. It would appear that the local taxpayer is being unduly penalized for the length of time required for the Corps of Engineers to bring an authorized project to construction.

In our opinion we find the language in the Senate version of H.R. 6 dealing with mitigation of fish and wildlife losses on completed and under construction projects to be expensive, expansive, and unreasonable and we wonder why the Congress would now give up their long-held policy that only they should authorize the acquisition of lands for mitigation purposes. We foresee the authorization to the Secretary of the Army for this unknown expenditure of moneys to be one that could certainly be devastating to the economy of this Nation and could take millions of acres of land out of private ownership. The Senate version of H.R. 6 does limit the obligation to no more than $30 million in any fiscal year but it does not limit the number of years.

Ladies and gentleman for the sake of time I will not go into all the details concerning cost sharing for the Mississippi River and tributaries project. We have addressed that problem with all who would listen certainly over the past four years. You have heard or read statements opposing new or additional cost sharing for the Mississippi River and tributaries project that have been made by every Senator and Congressman in the seven States of the lower Mississippi Valley as well as several distinguished Members outside the valley. Both Houses of the Congress voted for and the President signed the recent supplemental appropriations bill that contained language that would exempt the Mississippi River and tributaries or any other comprehensive, multi-State flood control project from new or additional cost sharing. We desire and must have a bill that will continue this policy.

We and you have been assured on several occasions that only unscheduled portions of the Mississippi River and tributaries project, or according to the last schedule we saw, something over $700 million worth of unfinished authorizations will have to be cost-shared.

We in the lower Mississippi Valley have two big problems with this theory of scheduled versus unscheduled work, first we can ill afford to give up this so-called unscheduled work and give it up we must because of a financial inability to provide the required cost sharing. The other real problem we have is that no one can assure us that this interpretation will remain in future administration until we complete the Mississippi River and tributaries project and can safely pass the project design flood that's coming from over 40 percent of the country.

We note that the executive department has stated in correspondence that although certain items are already under construction, the remaining features of the work will have to be cost shared under the concepts agreed to by the administration and the Senate majority leadership.

Let me try to wind-down by quoting Mr. Ron Besson in his statement at this meeting last year.

"The most pressing point that we wish to make to you ladies and gentlemen is that the comprehensive project that was authorized in the flood control act of 1928 is not completed and each element and feature of this project is an integral part of the overall project and each is interdependent, the remaining work is not new but are merely steps toward completing an existing project and no new or additional cost-sharing should be required for any part of such a comprehensive project."

One other point I wish to make, this association has been accused of being anti-water resources bill. Nothing could be further from the truth, this association has always supported every water resources authorization bill since 1922. Today we would be very pleased to see the House version of H.R. 6 signed into law. We have to believe that we are being called anti simply because we do not totally agree with the Administration's position that the Senate version of H.R. 6 is the only game in town. We cannot blindly and with no changes or compromises accept a bill, that will deauthorize almost $1 billion worth of vitally needed Mississippi River and tributaries work that we have worked so hard to achieve. We cannot say yes to a bill that will impose unreasonable and unpayable new and additional cost sharing to the unfinished part of the Mississippi River and tributaries project when we know all too well that we must complete the entire project before the people in the valley can be safe from the devastating flood waters coming down from over 40 percent of this Nation. As taxpayers we cannot in good conscience support legislation that will authorize unlimited mitigation for completed projects. We feel we must know the amounts of dollars and land that this obligates us and the future to.

We feel now as we have always felt that any major decisions, be it water resources or whatever, should be made in the open forum of the Congress. This arrangement has served this country well over the years and we do not feel that it should change now or ever.

Secretary Dawson has been quoted in the newspapers as saying that if cost sharing is enacted then "projects will be smaller but we'll have the best ones." If it works for projects maybe it will work for authorization bills. Perhaps we need smaller bills and maybe we should have separate bills for the Mississippi River and tributaries project and other flood control as we did in 1936 and as I've stated earlier the Mississippi River and tributaries has always been separate legislation. I will go back to our first breakfast meeting in 1980 and quote one of our spokesman who said:

"The Bills that have been acted on but not passed by the Congress in recent years have contained several vitally needed projects. They have also contained a lot of items. Maybe we should work together to establish priorities in order to limit what's in the Bill which may make it easier to get passed and signed into law."

One thing I do know for certain. Our Federal program of river development and improvement must go on. The long history of the world proves that when a nation hesitates in its internal betterment it begins to slip backward.

America's destiny I hope is not ready to go into reverse.

Thank you for this opportunity and special thanks for your kind attention.

Mr. SASSER. Madam President, I rise to express my reservations about this conference report. I certainly commend my colleagues on the conference committee for having reached agreement with the House on this sweeping legislation, and for succeeding in bringing this bill to the floor before the end of this session. This legislation contains many fine provisions, including language I offered on section 211. However, I have grave concerns about the impact of the cost-sharing provisions contained in this legislation on communities throughout Tennessee and the lower Mississippi Valley.

The legislation before us today is very important to the continuation of work on the Mississippi River and tributaries project. While many believe this is simply a regional project, the MR&T project is certainly national in scope and benefits.

The Mississippi River and its tributaries is the third largest drainage basin in the world. The system drains 41 percent of the continental United States—nearly 30 States from Idaho to Delaware. The river systems of the MR&T are vital to interstate and international commerce, and provide water, power and recreational opportunities for millions of Americans. It is certainly safe to say that the Mississippi River is a national resource.

Controlling it should thus be a national responsibility. The flooding problems addressed by the MR&T project are really national problems. The project, authorized by Congress in 1928 as a single project, cannot be divided and considered as a series of local projects addressing only local problems.

Unfortunately, this legislation takes the attitude that the MR&T project is a localized project benefiting only those counties, towns, and levee districts bordering the river. This legislation will force localities to bear the expense of flood control projects on the Mississippi. However, the vast majority of the localities in the seven States within the MR&T project cannot bear

such an expense. Even if they could, it is unfair to ask them to pay to manage water which entered the Mississippi River system hundreds, or even thousands, of miles away. Localities simply do not have the resources to solve national problems, nor should they be required to do so.

The House version of H.R. 6 did not require local cost-sharing on the MR&T. I, along with several of my colleagues, urged the Senate conferees to retain the House cost-sharing provisions for the MR&T. These provisions are not only consistent with the supplemental appropriations bill passed last year, but would enhance, rather than hinder, the development of MR&T flood control projects.

I believe that the cost-sharing requirements of H.R. 6 place a disproportionate burden on those residents at the southern end of the Mississippi River watershed. I simply am not convinced that Tennessee localities will be able, or should be required, to pay for these flood control projects.

Therefore, while I believe this legislation is necessary to continuing vital construction work on the MR&T project—a project essential to the economic well-being of millions of Americans—I cannot support these inequitable cost-sharing provisions.

Mr. BYRD. Mr. President, I am pleased that we have here before us the conference report on H.R. 6, the water resources development bill. It has been 10 years since the Congress last enacted an omnibus water resources authorization bill, and this legislation is long overdue.

The improvement and modernization of the inland waterway system are vitally important to many of West Virginia's industries, including coal and chemicals. Included in this bill is the authorization for several water projects that are located on West Virginia waterways: $128 million for the Winfield locks and dam on the Kanawha River, and $163.1 million for locks and dam 7 and 8 on the Monongahela River, as well as the Gallipolis locks and dam replacement, which had been authorized through the appropriation process. Under this legislation, these projects will require increased cost sharing; however, I am pleased that the barge industry has shown its willingness to cost share the construction of such projects through the inland waterway trust fund.

This legislation will also provide for new harbor improvement projects, such as the deepening of the Hampton Roads channel. That will increase the West Virginia coal industry's ability to effectively compete in the world market.

This is a major piece of legislation that addresses the serious problems that are present in our waterway infrastructure. It is not perfect, but it breaks the decade-long impasse on Army Corps of Engineers projects that will be of benefit to the economies of our States and to the Nation.

Mr. President, I support the adoption of this conference report.

Mr. FORD. Madam President, I am delighted that H.R. 6 is before us in conference report form. Far too many years have elapsed since the Congress passed an omnibus water projects bill, and I am sure that all my colleagues are equally as pleased that one will soon be sent to the President for his signature.

For one provision in particular I am profoundly grateful to the members of the conference committee. That is the exemption of three Kentucky flood control projects from the cost-sharing provisions in the bill.

These three, the nonstructural relocation efforts at Barbourville and the entire project at Harlan and South Williamson, are so close to the beginning of construction that you can almost touch them. It was heartbreaking to think that they might never have been able to proceed any further.

The communities on the Upper Cumberland and Big Sandy Rivers desperately need flood walls and relocation efforts to protect them from devastating cyclical floods. But such measures are expensive and local governments simply do not have the ability to pay for them, primarily because the numerous and major floods that have occurred in this century have severely hampered economic developments in the area.

In Harlan County, 26 percent of the people live below the poverty line; in Knox County, it is 37 percent. Pike County has suffered double-digit unemployment for years. They are caught up in a vicious cycle—they are too poor to afford to participate in cost-sharing, yet they will never, ever escape that poverty without flood protection.

On behalf of the people of eastern Kentucky, who now have that chance, I deeply thank my colleagues.

At the risk of sounding ungrateful—and I am not, I would wistfully add that I wish all of the so-called section 202 flood control projects could have been exempted from the cost-sharing provisions of this legislation. Of the many potential projects on the Tug and Levisa Forks of the Big Sandy River and on the Upper Cumberland River, only the aforementioned have been excepted. Given current budgetary restraints, the conferees had to be selective and I understand that. However, we will revisit this issue at another time.

This important piece of legislation also contains authorization for the construction of six new inland waterway projects. In April 1983, as cochairmen of the Senate Coal Caucus, Senator HEINZ and I introduced a bill to authorize the improvement of seven existing locks and dams. The Nation's inland waterway system is in a desperate state of neglect; our initiative was designed to facilitate the flow of traffic on these waterways. Obsolete and undersized locks and serious congestion hamper our commerce generally, and the use and development of coal in particular.

Finally our effort has borne fruit, as evidenced by the conference report before us. The Gallipolis locks and dam on the Ohio River in Ohio and West Virginia will be replaced; existing locks at Locks and Dams 7 and 8 on the Monongahela River in Pennsylvania also will be replaced. The William Bacon Oliver lock and dam on the Black Warrior River in Alabama, another high priority of the Corps of Engineers, will have a replacement. A new lock plus entrance channels will be constructed at the Bonneville lock and dam on the Columbia River. Last, but certainly not least, a second lock will be built at Locks and Dam 26 on the Mississippi River at Alton, IL.

Our inland waterways are important to industry and commerce, but agricultural commodities and other raw materials are equally as dependent upon the system. I would point out that these facilities also serve purposes other than commerce. The pools assure water supply for local communities and industry, while the locks and dams provide an essential degree of flood control along the rivers.

Four years ago the Congress passed major legislation designed to rebuild America's highways. Time is long overdue for us to turn to our other major infrastructure system—our inland waterways. At last, the time is now.

Another important provision of H.R. 6 is the removal of funding for the mitigation requirement of the Obion Creek project, long a subject of great controversy in western Kentucky. The project was authorized by the Flood Control Act of 1965 and funds were appropriated in 1971, but work on the project has been unable to start due to intense disagreement over environmental matters.

Because original efforts to combat the flooding of agricultural lands entailed channel enlargement and diversions, 6,000 acres of mitigation land was required. To say that the latter part of the plan met with local opposition would be to grossly understate the case. A scaling back of the project, agreed upon by both the Corps of Engineers and local sponsors, would require only snagging and clearing of the creek with no land offset.

The reduction in the scope of the Obion Creek project obviates the need for the $4.9 million requested in the bill as originally reported from committee. Language clarifying this point was adopted during Senate consideration of H.R. 6, and I am pleased that

the provision has been retained in conference.

Finally, the authorized money limit for the Big South Fork National River and Recreation Area in Kentucky and Tennessee is increased in this conference report by nearly $53 million.

When the Corps of Engineers completes work within the cap now permitted, this beautiful recreation area will be able to accommodate only 30 percent of its potential visitors. The additional funding will provide for visitor use up to one half of the original potential of the project by authorizing the construction of lodges in both States plus the construction of Bear Creek Road, recreation areas, ranger stations and the Rugby Recreation Area.

This may mean little to my Senate colleagues, but it means a great deal to the people of the Big South Fork Area of Kentucky. With the development of this national park comes an opportunity for the economic awakening of the area. I invite you all to come down and visit one of the most scenic parts of the country and enjoy some good old Kentucky hospitality.

Mr. MOYNIHAN. Madam President, as our time is brief I would ask once more for your great courtesy in bringing this Senate to order.

The PRESIDING OFFICER. Will the Senate please be in order? It will help us to proceed with expeditious behavior and decorum at this late hour if everyone would take their seat and visit outside the Chamber door.

The Senator from New York.

Mr. MOYNIHAN. Madam President, the Presiding Officer has an intimidating glance.

I yield 1 minute to our treasured senior member of our committee, the senior Senator from North Dakota.

Mr. BURDICK. Madam President, I rise in support of this legislation. This is indeed a red-letter day for the developing of our water resources. Ten years have elapsed since legislation in this area has been enacted. This bill will meet the needs of this Nation long overdue. I am particularly pleased that the Souris River project that involves Canada and North Dakota in a joint venture has been approved, to the benefit of both nations.

Mr. MOYNIHAN. Madam President, I had the pleasure to yield a minute to the distinguished junior Senator from Maryland whose great harbor of Baltimore is so much involved in this legislation.

Mr. SARBANES. Mr. President, I commend the committee on a very impressive legislative achievement. This is the first water resources bill in over a decade that has been enacted by Congress. It is a great step forward.

It is of great significance to us in Maryland because it will enable the Port of Baltimore to move forward with dredging a 50-foot depth and ensuring that we continue as a world class port. It has important provisions dealing with beach erosion control and hurricane protection at Ocean City and Assateague Island, and contains important provisions for improving and cleaning up the Chesapeake Bay. All of these projects have been held back by the fact that we have not been able to enact a major water resource legislation. The committee has done that. I commend the committee and those who have worked so hard for it.

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Mr. President, I rise in strong support of the conference report on H.R. 6, the Water Resources Development Act. Passage of this bill will ensure that we can proceed with the deepening of the Port of Baltimore, the protection and restoration of the beach at Ocean City and several other important projects in the State of Maryland and throughout the country.

With the final approval of the water resources legislation and passage of the continuing resolution, the Corps of Engineers will be able to begin deepening the Baltimore Harbor and Channel from 42 feet to its authorized depth of 50 feet. Funding of $54 million, included in the continuing resolution, will now be available in addition to approximately $8 million contained in the fiscal 1985 supplemental appropriations bill for the project. Together with the deepening of the Brewerton connecting channel already underway with over $15 million made available in the fiscal 1986 and 1987 appropriations bills and the recent agreement by the Army Corps of Engineers to provide $18 million to accelerate maintenance dredging of the C&D Canal, the Port of Baltimore will continue to be one of the great ports of the world and on the competitive edge with other east coast ports.

Deepening of the Baltimore Harbor and its channels is, of course, of great importance to the economic health of the port and the State. The Port of Baltimore is Maryland's most important economic asset. An estimated 79,000 jobs are related to the port and its operation. Fully one-tenth of the gross State product is related to the port. The port also generates more than $300 million in State and local taxes each year. The impact of the port is felt throughout the State.

The harbor dredging project would open up the port to large ships that cannot now navigate the shallow part of the channel. Bigger ships mean bigger cargos, lower transportation costs for coal and grain exporters, and greater foreign trade. It would also mean more private port development, extra State and local revenue and an improved image for Baltimore as a world class port.

Mr. President, I am pleased that the conference agreement incorporates the Ocean City and Assateague Island beach erosion control and hurricane protection project. Specifically the bill authorizes $35,200,000 to be cost shared with the State of Maryland and the town of Ocean City for widening and raising the beach and constructing a dune line and sheet pile bulkhead for 100-year storm protection.

The damage caused to Ocean City beaches and public and private property by Hurricane Gloria last October underscores the need to provide more protection for the area from hurricanes and major storms. Hurricane Gloria swept away over 4 feet of protective beachfront, and caused $15 million in damages to public properties, hotels, residences, and businesses. The hurricane, in addition to erosion of the beach which has averaged over 2 feet per year at Ocean City and over 30 feet per year on the northern portion of Assateague Island, has left the area increasingly vulnerable to destruction from the sea. A recent Environmental Protection Agency study projects that in the next 40 years, a rising sea level could double the rate of shore erosion. Unless swift action is taken to restore the beach, Maryland's principal beach resort area could be heavily damaged by future storms due to the lack of a natural sand buffer from the ocean. The authorization contained in the water resources bill will ensure that this project can get underway shortly.

It should be emphasized that this authorization for construction of the Ocean City beach erosion control and hurricane protection project is the result of a detailed study by the Army Corps of Engineers completed in February 1981. After careful deliberation, the corps rejected an alternative "groin" plan and in cooperation with the State of Maryland and the town of Ocean City recommended the plan that is authorized in this bill. The corps has concluded that the recommended plan is economically justifiable and environmentally acceptable.

The conference agreement also contains two items of importance to the Chesapeake Bay cleanup effort—erosion control and fish habitat demonstration projects. The agreement authorizes funding for the Army Corps of Engineers to construct low-cost streambank and shoreline erosion control projects along the shore of the Chesapeake Bay and its tributaries. The corps is directed to select an equal number of projects in each of the States of Maryland, Pennsylvania, and Virginia. It also authorizes up to $10 million for the corps to construct demonstration projects for fish enhancement, including artificial reefs for fish habitat, in the Chesapeake Bay, among other areas.

Let me point out that the two projects are in keeping with the goals

and objectives established in the Chesapeake Bay Restoration and Protection Plan and approved by the EPA, in cooperation with Maryland, Virginia, Pennsylvania, and the District of Columbia. They would be an important part of our effort to improve and protect the water quality and living resources of the Chesapeake Bay estuarine system and I am pleased that they were included in the agreement.

Mr. President, the conference agreement on H.R. 6 is an important measure which addresses the water resource needs of many States, including Maryland, and I urge its adoption.

Mr. STAFFORD. Madam President, I now yield 2 minutes to the able Senator from New Mexico, Senator DOMENICI, who has been in this vineyard ever since we first started plowing it.

Mr. DOMENICI. I thank my chairman.

About 10 years ago, the distinguished Senator from New York and I started down this path of trying to find some way to balance a little better the approach of water projects between the States and the Federal Government. Tonight is the culmination of that effort, landmark legislation on water resources, perhaps the most significant in 50 years.

There are some people that stayed on this issue for so long that it is difficult to compliment them all. But let me say to the distinguished Senator from South Dakota, Senator ABDNOR, who chairs the subcommittee, he has been here at least three times that I can recall, ready to invite this U.S. Senate to pass a new water resource bill. One way or another, his efforts were thwarted. Now we have a conference report. In a week or so, the President will sign this bill, and my hat is off to him.

This bill does a lot of things. It establishes user fees where they were not. It says one way to make sure you do not have water boondoggle projects is to let those that benefit pay a little bit of the cost even right up front on doing the studies. Unless you are too poor a jurisdiction, you will have to start right at the beginning. If you are going to be the beneficiaries, you are going to have to pay something. And that means they are only going to ask for things that are good. They are going to have to cost share in many areas and even our harbors, those who use them are going to have to pay a little bit of the cost. This means we will have more water projects, more States will have them. They will be better diffused across this land. And that is what water policy is all about.

Madam President, the conference report before the Senate is probably the most significant water resources development bill to be considered in the Congress in recent years, possibly in this century.

This is truly landmark legislation. It is legislation that makes a dramatic shift in the relationship between the Federal Government and the non-Federal beneficiaries of new water resources projects.

It brings to an end the era when water projects were simply a gift from Washington; and it transforms them into projects that provide an opportunity for the Federal Government and the non-Federal sponsor to work together for progress.

Madam President, this legislation is a tribute to the work of the distinguished Senator from South Dakota [Mr. ABDNOR], who serves as chairman of the Senate's Subcommittee on Water Resources.

For more than two decades, the Federal Water Resources Program has been in decline. Spending has declined by nearly 80 percent in real dollars. New starts are rare. Public confidence in the program has slipped.

Very simply, while our Nation confronted vast, unmet needs in the area of water resources development, the Corps of Engineers withered.

Since it takes nearly 30 years to get a typical project under construction, we were working on projects designed to meet problems left over from the days of our parents and grandparents.

This was a problem many of us recognized, yet few had the courage to confront. Mr. President, when Americans look back a decade or two hence and wonders how we put ourselves back into the water business, all they need do is look at the work of JIM ABDNOR and the achievements contained in this legislation.

For nearly 6 years since he came to the Senate, JIM ABDNOR has worked for this day when Congress will send to the President a water resources bill that contains realistic projects and rational reforms.

That is the balance that this bill achieves.

Madam President, this is good legislation. This is progressive legislation. I do not pretend that it is perfect in every way. It is not. It does not contain all the reforms I would have liked. Nor does it weed out all the marginal projects that are not needed at this time.

But that fact cannot subtract from the achievements of this bill.

This bill provides a number of important items for the people of New Mexico—the project for the Albuquerque levees; an acequias renovation effort; flood protection for Gallup and Truth or Consequences; Ogallala Aquifer research. And more.

But, Madam President, before I discuss those issues in some detail, I would like to give my colleagues some sense of this bill, its pluses and minuses, the good and the bad.

In case there is any doubt, the pluses far outweigh the minuses.

The key element in this bill—possibly the single most important reform ever crafted onto water resources development policy—is realistic cost sharing.

The Reagan administration, the Nation's environmental groups, and a wide variety of user groups generally support the new cost-sharing formulas in this bill.

I have long been an advocate of reforms in water policy, particularly reforms in cost sharing. That is true for flood control work; it is true for navigation; it is true for reclamation, even though reclamation policy is not affected by this legislation.

The simple concept that those who benefit from a Federal water project must carry a greater share of the project's costs will fulfill several important objectives:

It will spread very limited Federal funds among more projects;

It will weed out projects lacking the broad local support needed to support local funding;

It will scale back large projects to more accurately reflect true economic need; and

It will reduce the environmental damages that result from unneeded and oversized projects.

This new policy of across-the-boards cost sharing is probably most significant in relation to new harbor projects. On the date this bill becomes the law of the land, we will for the first time begin to weave the tests of the marketplace into decisions that are essentially commercial ones.

Until now, harbor deepening projects have been free. The Army Corps of Engineers provided deeper channels and wider turning basins, doling them out to whatever community had the political muscle to obtain them.

Yet a harbor deepening project involves the way international commercial traffic is routed and where new industrial plants locate.

Thus, any decision on which of America's harbors to deepen is essentially a commercial decision.

Under this bill, the sponsor of every future harbor project—remember, each is a commercial decision—will be required to contribute cash toward the Army Corps of Engineers expenditure on the project.

Specifically, the conference report calls for cost sharing of 10 percent on projects with depths of less than 20 feet, 25 percent on harbor projects with depths of between 20 and 45 feet, and 50 percent for harbor projects with depths greater than 45 feet.

That is cash to be paid during construction. No ifs, ands, or buts.

In each case, the non-Federal sponsor is also required to pay an additional 10 percent over a 30-year period, with interest.

I reiterate: There is no cost offset against the basic 10 percent, or 25 percent, or 50 percent. Those percentages are due during construction, and they are due in cash from the non-Federal sponsor to the Federal Treasury.

It is important to emphasize the user-pays concept in this provision, as well as in other sections in this bill. This is the basis under which the water resources program must go forward in the future, if it is to go forward.

Both bills contained provisions altering somewhat the existing policy on utility relocations required in a harbor deepening project.

Under current law, these relocations are essentially the responsibility of the non-Federal interest, which, in turn, requires the utility owner, under permits, to pay for the relocations.

The Senate bill recognized that it was impossible for utility owners to have foreseen the superport era. When they buried their cables or pipelines at a time when a harbor channel was dredged to 40 or 45 feet, the utilities could not have been expected to anticipate the move to 55-foot channels. Nor did they have the technology to achieve those depths. So they failed to bury their cables at depths that would enable them to avoid relocation costs now.

The Senate bill adopted a very limited exception to the current law. This change affected utilities only when the harbor project went deeper than 45 feet, or when the project was entirely a non-Federal project. In that limited set of cases, the Senate bill required the port and the utility to share relocation costs equally.

The House bill affected all relocations at whatever depth, then imposed half of the costs for relocations on the Federal taxpayers.

The conferees adopted the basic Senate approach, affecting only those projects deeper than 45 feet, with costs to be shared between the utilities and the local authorities. The Federal Government will not be involved in the cost of relocations.

If the port cost-sharing provisions in the bill are the single most significant concept in this legislation, the flood control cost sharing must be the second.

In this legislation, we have established a standard that every flood control project, or component, built in the future must carry a non-Federal contribution of at least 25 percent.

The new standard in this bill affects all flood control work, whether it involves what is called local protection, or whether it involves a major reservoir.

Under current law, non-Federal sponsors of projects for local flood protection must contribute the lands, easements, rights-of-way, and relocations necessary for the project.

In most cases, the Federal Government picks up the entire tab on the cost of flood control reservoirs with more widespread effects.

Under this conference report, the non-Federal sponsor must provide the package of lands and easements, and so forth, up to that minimum share of 25 percent.

But there is a caveat. That caveat requires that the non-Federal sponsor, in every case, provide, atop the lands, easements, and rights-of-way, a minimum of 5 percent of the project's cost in cash during the period of the project's construction.

This means that even if the lands, easements, rights-of-way, and relocations exceed 25 percent—which happens in possibly 20 percent of the cases—the non-Federal sponsor still owe's that 5 percent in cash.

If that total of lands and 5 percent in cash exceeds 30 percent, the non-Federal sponsor continues to owe the sum over 30 percent, but may, at its discretion, pay the differential above 30 percent over a 15-year period, with interest.

When the non-Federal share reaches 50 percent, the non-Federal contribution stops, but at least 5 percent must still be contributed in cash during construction.

The application of this principle will be universal. We have striken from the bill virtually all of the many House provisions that permitted various projects to move forward at full Federal expense.

And we have extended that 25 percent standard to other types of work under the responsibility of the corps.

Thus—and this is a critical point—essentially every project in this bill carries with it the requirement for at least 25 percent non-Federal share.

I hope my colleagues recognize the significance of this achievement: Every project will move forward under the same new, tougher rules.

Once we have reshaped the manner by which projects are financed, we also sought to make the corps study process more responsive to real need, not wishful thinking.

Sections 105 and 905 require 50/50 cost sharing on future project related studies the corps undertakes. All new feasibility studies, except inland waterways studies, are subject to this requirement.

And it would be my expectation that this omission of inland waterway studies can be corrected in the not too distant future.

This approach seems certain to assure there will be true local interest and need before the Federal Government cranks up a future study to examine a flooding or water supply problem.

This means that real priority work is likely to get the Federal dollars.

This bill also contains a large number of special studies on water resources problems and issues. One is an examination of water project needs.

My initial reaction to this study was quite negative. It is the kind of study that could lead to a giant wish list, a long chart of projects we could build if only America faced no fiscal constraints.

Such a study would prove wasteful at best, damaging at worst.

To prevent that, we added a requirement in paragraph (6) that the study include an evaluation of the impact of user charges and cost sharing on the "need" for new water projects. Such balancing is critical.

The "need" for free projects is unlimited. The "need" for cost-shared projects where the user shares the cost is certain to be far less.

This bill also contains several items that deserve careful examination in regard to our commercial inland waterways.

To pay a small portion of the costs of the system, this bill increases the barge fuel tax, which has been in existence since 1980. The bill takes the current 10-cents-a-gallon fee charged on about 10,000 miles of inland waterways, and doubles that tax over the next decade.

While many argue that this imposes on the barge industry a considerable cost, I would simply note that it actually just keeps the tax up with the anticipated level of inflation that is likely to occur over the next decade.

The revenues from the barge fuel tax will go into the existing Inland Waterways Trust Fund. In turn, this will be used to pay for half the costs of the seven new lock and dam projects, plus a portion of the cost of the New Orleans industrial lock.

With current funds and the anticipated rate of spending, a large surplus in the trust fund could develop by the early 1990's. Such a surplus must never be used as an excuse for reducing this modest tax. Rather, we need to consider an expansion of the use of the fund to the full cost of new projects, plus its possible use on a portion of inland waterways maintenance.

The bill also contains a provision considered by neither the Senate nor the House. This is an Inland Waterways Users Board, authorized in section 302 of the bill.

Such a board was first recommended a number of years ago by Senator ABDNOR as a way to help the Congress determine an adequate level of Federal spending for our Nation's waterways. Federal spending and non-Federal cost sharing were then to be based on those recommendations.

I continue to believe that would have proved a sound approach.

However, such a linkage between Federal and non-Federal spending

based on the requests of the users does not exist in this bill.

Nevertheless, after the bill passed both bodies, the waterways industry came to the conferees to request authorization for such a board. While I am not convinced it will prove to be much more than a cheering section, without any responsibilities, I favor its creation.

I would urge the Secretary of the Army and the persons who serve on the Board to act responsibly to help the administration and the Congress identify real priorities. The Board will serve no useful purpose if it simply develops another wish list of those items the waterways industry would like Uncle Sam to build.

America can no longer afford a wish-list development mentality if we expect to remain competitive in world markets.

We must begin to focus resources on constructing what we identify as priorities.

As another example, we dropped an automatic authorization for the construction of new lock and dam projects, which was contained in the House version of the bill.

Such a provision would have permitted the expenditure of billions and billions of dollars on the inland waterways with no scrutiny by the congressional authorizing committees.

Another item of great concern was the provision in the House bill that shifted the benefit-to-cost studies on the Alabama-Coosa River project. The House bill provided an override of the benefit-cost ratio by imposing an old, unrealistic interest rate.

Madam President, the House language basically was designed to take a $1.3 billion project that produced about 30 cents in benefits for every $1 invested, and magically declare it as justified.

Fortunately, we were able to have the House drop the use of the old interest rate and limit the authority to the development of plans on the project, plans that would have to be authorized for construction by the Congress in the future, should the investment appear sound.

As this bill imposes new cost-sharing requirements on the beneficiaries of water projects, and as it imposes tighter restraints on what visions the corps may develop for our future, this bill also sets some reasonable spending limits.

For the first time, Congress sets an annual obligation limitation on the money the corps can spend on construction of civil works projects. This important provision appears in section 901 of the bill.

Until now, the corps civil works program was a hodgepodge of projects limited only by the controls worked out between the White House and the Appropriations Committees.

Under the approach in this bill, an annual obligations ceiling is imposed on construction work on the basic construction program of the corps, as well as its mammoth Mississippi River and tributaries project.

This also covers all spending out of the inland waterways trust fund that I mentioned earlier, but it does not cover non-Federal contributions during construction, such as the local share of a harbor deepening project.

Thus the dollar figures provided—$1.4 billion in fiscal 1987 rising to $1.8 billion by the fifth year—should be more than sufficient to meet even the most ambitious construction effort.

But what is essential is the principle of budgetary controls, and it is a principle that must be carried forward once that 5-year period has expired.

There is a continual concern on the part of this Senator regarding windfall benefits that can result from Federal spending on a Corps of Engineers project.

In an effort to confront that problem, the Senate passed section 201 of our version of H.R. 6. That section addressed a situation that, while unusual, is not unique: Flood control projects where at least 10 percent of the benefits go to a single person or corporation. Section 201 required this special beneficiary, or the non-Federal project sponsor, to contribute an extra amount toward the project, based on the amount of those special, windfall benefits.

The House resisted that requirement. The conference report includes a study of the problem, but expands it to encompass the issue of land enhancement on port and harbor development projects.

The corps will examine and recommend ways the value of new land created as a result of in such projects can be shared fairly.

A number of examples exist in this bill. These include several of the inland harbor projects, as well as the Los Angeles-Long Beach harbor project. A need exists for the corps to examine the equities and issues involved, and to find methods where the taxpayers of America share more effectively in this development.

But as we add billions of dollars in work to the stockpile of work for the Army Corps of Engineers, the conference report also contains several important provisions to deauthorize unneeded work, cleaning out the deadwood in old, outdated projects and studies.

Section 1001 is not as effective as the Senate version, but it should provide the Congress and that corps with a rational method for cutting back on unnecessary work, thus allowing resources to be focused on the needed projects.

The conference report also kills the authorization for several hundred old, out-of-date projects. That is wise.

Section 1149 authorizes the construction of a new lock at Sault Ste. Marie, MI. The conference language recognizes that the cost-sharing standards in this bill require that the new lock also carry cost sharing. But, frankly, we are not certain of the best and fairest method to achieve this goal.

As a result, the language requires that the Chief of Engineers, in his report to the Congress on the lock, include a cost-sharing proposal based on the concepts in the port title. There must be an agreed-upon cost-sharing mechanism before construction can be initiated.

Section 1134 of the conference report provides that certain lease and permit holders at corps reservoirs and other sites may obtain automatic extensions on their permits or leases.

This provision was accepted with the understanding that leases and permits about 1989 would be extended only at fair-market rental rates. That is within the spirit of this bill. And to do otherwise would be grossly unfair to those not so fortunate in holding such leases.

Current law, and this rewrite of that law, permits the corps to charge fair market rentals for such leases. Because of the windfall nature of what we have provided, it is important that the corps charge fair prices.

Before talking of the important things this bill does for New Mexico, I would like to mention one other item of national scope. This is section 929, which represents an effort to return the Soil Conservation Service soil conservation program to its agricultural roots. I am pleased the conferees adopted this provision from the Senate bill. Section 929 requires on any future Soil Conservation Service water resources projects that at least 20 percent of the project's benefits must be related directly to agriculture.

As I have mentioned, this bill contains many important projects and programs to benefit the water resources development of New Mexico.

Each and every one of these items carries cost sharing. There are no exceptions.

New Mexico is willing to carry its fair share of project costs, because we know this will accelerate the development of needed work.

Among the most important projects in this conference report is what we know in New Mexico as the Albuquerque levee project. This project appears in title 4 of the bill as the Middle Rio Grande, from Bernalillo to Belen.

This $44.9 million project will extend the present levee system to the north and to the south of Albuquerque, providing far more effective flood

protection for the citizens of the Middle Rio Grande Valley.

I applaud the conferees for approving this vital project. I applaud the conferees also for including a Senate provision for dredging, if justified, the river bed to a level below the existing level of the bed of the Rio Grande. This authority is strictly discretionary, but potentially useful, as a way to increase flood protection and lessen seepage problems that affect some areas near the river.

Another important project authorization in the bill is the authority for the Rio Puerco and tributaries flood control project in the area of Gallup, NM. This $3,810,000 project should provide numerous benefits to the people of Gallup.

Section 871 authorizes changes at the Truth or Consequences, NM, flood control project. Instead of the floodway project now authorized, this bill directs the Corps of Engineers to construct a dam on the Cuchillo Negro Creek. This dam will provide the needed level of flood protection without disrupting the community.

One of the most significant items in the bill is contained in section 1113, which authorizes a new effort to renovate acequia water diversion structures and systems in New Mexico.

This provision is nearly identical to the provision that I developed several years ago, and which was included in the Senate's version of the water bill. These historic structures have been utilized by family farmers in New Mexico since the 18th century.

The bill establishes a program to match $40 million in Federal funds with $13.3 million in non-Federal funds to rebuild and renovate many of these systems and structures.

It must be noted that this section permits the Federal participation in such work—cost shared on a 75–25 basis—without regard to economic analysis. That is necessary because of the historic importance of these systems, and the fact that it is almost impossible to calculate accurately their true benefits to the community.

Another item of interest to me is section 1112, which authorizes the construction of emergency gates at Abiquiu Dam in New Mexico. These gates were a part of the original design of the dam, but were dropped years ago to cut costs. The addition of the gates at this time will complete the project, as it was designed.

The provision in the conference report also calls for a non-Federal share of 25 percent. That share applies solely to those costs associated with any increase in flood control benefits that may result from the construction of the emergency gates.

Frankly, Mr. Chairman, it is assumed that most, if not all, of the benefits that result from the addition of these gates will come in the form of lower maintenance expenditures by the corps. This is properly a Federal expense, since the benefits come solely to the Federal Treasury.

One of the most far-reaching and important provisions in the bill is one that affects not simply the State of New Mexico, but the eight-State area that overlies what is known as the Ogallala Aquifer.

The water table has been declining for years, a fact that imperils the rich agricultural area that is dependent upon Ogallala water. It is a problem of considerable national importance.

To meet this challenge, the conferees included from the Senate bill a provision to study water needs for the Ogallala area. The program will spend $13 million a year on water research in connection with the Ogallala. This money will be distributed among the eight Ogalalla Aquifer States—New Mexico, Texas, Colorado, Oklahoma, Kansas, Nebraska, South Dakota, and Wyoming.

This is a 5-year program, one that will give the Nation new information upon which we can build solutions to the decline of the aquifer.

One of the more troublesome provisions in the House bill is related, at least to the House Members, to the Ogallala Program. This is language that passed the House establishing a permanent prohibition on any Federal participation in any export of water out of the Arkansas River basin.

Such prohibitions are bad policy, when approached on a basin-by-basin basis. If we want to pass a bill allowing each State full control over any waters in each State, then we should debate that issue. We certainly should allow States to control fully their underground waters.

But in order to move this important legislation to the President's desk, and to resolve a very sticky issue, the conferees agreed to the prohibition for 5 years, and only 5 years.

It would be my expectation that such a prohibition will not be renewed, unless it carries with it a far broader application.

I said this issue was somewhat related to the question of the Ogallala Aquifer decline. But that relation is tenuous, at best. Few people can realistically expect anyone to pay close to $1,000 an acre-foot in order to pump water out of the Arkansas River to West Texas.

The conferees did, at my suggestion, drop one Senate provision affecting New Mexico. This was section 304, which would have moved the western borders of the Albuquerque District of the corps to the Arizona State line.

This provision is no longer needed since the corps has made this change administratively.

The corps wisely moved the Albuquerque district eastern border to the Texas line recently, and within recent months took similar action on the western boundary.

I am very pleased at the action of the corps. Until I began to discuss the issue, the State of New Mexico was divided among five corps districts—Albuquerque, Tulsa, Fort Worth, Los Angeles, and Sacramento. Splintering our State into five parts clearly made it very difficult for State officials and the people of New Mexico to resolve many water resources problems.

I applaud the corps, and urge that it find more work and programs for the excellent people who work in the Albuquerque district.

I have saved for the last a discussion of the provisions that are basically within the jurisdiction of the Committee on Finance. This material appears in title 14 of the conference report. The title imposes two tax provisions: An ad valorem tax on the value of goods moving through America's ports as a user fee to help finance a small portion of the costs of maintaining our ports each year, plus an increase, granted a small increase, in the existing barge fuel tax.

As I mentioned, these taxes are quite modest, and will produce far less in revenues than the Government spends annually on these programs.

In my view it is quite likely that we will have to obtain greater increases in these programs at some later date.

Madam President, before I close I would like to reiterate my thanks and appreciation for the work of my colleagues on the Committee on Environment and Public Works.

I have stated my appreciation—the deep appreciation that all Members of this body feel—toward the Senator from South Dakota [Mr. ABDNOR] for his leadership. JIM, we thank you. America thanks you.

The distinguished chairman of the committee [Mr. STAFFORD], has been JIM's compatriot and right-hand man throughout this struggle. He has devoted great energy to the original development of this legislation in committee and on the Senate floor, as well as its long gestation within the Committee on Conference.

Madam President, Chairman STAFFORD has placed a strong and lasting imprint on this vital bill.

While Senators ABDNOR and STAFFORD have worked long and hard on this bill, their colleagues on the other side of the aisle Senators MOYNIHAN and BENTSEN, also played key roles in pushing and pushing to get this bill completed, to get America working on this bill.

America needs to be thankful to each of them.

In closing, I would like to note the constant and hard work by the Assistant Secretary of the Army, Mr. Robert K. Dawson, to get this bill to the White House. He and his staff have

worked tirelessly, and we are in their debt.

Mr. STAFFORD. Madam President, I now yield to an extraordinarily able member of our committee who participated in these deliberations, Senator CHAFEE of Rhode Island.

Mr. CHAFEE. I wish to thank the chairman of our full committee, Madam President, and pay tribute to the chairman of the subcommittee, Senator ABDNOR, who did such a remarkable job on this legislation.

As has been mentioned, this legislation has been before us time after time. We have never succeeded in getting it through both bodies. But the persistence of the Senator from South Dakota has made it all possible, with the able assistance of the senior Senator from New York.

I would like to touch on one thing, Madam President, and that is the importance of the cost sharing, not only for the project themselves but for the study.

Every single one of us who have been Governors or mayors, whenever we thought it might be useful to have the engineers come in and do something, we would invite them in. But this provides that now the community or the State has to help pay for that study. That will slow down the communities from blithely asking the Corps of Engineers to come in and spend $100,000 or $200,000 on some study that the entity has no intention of implementing. So that is a major step forward. I congratulate those who had such a big part in this.

Mr. STAFFORD. Madam President, let me just finally say that I concur with the statements that have been made with respect to the two who have been most instrumental in bringing this bill here—I never thought we would make it at times—Senator MOYNIHAN and Senator ABDNOR. Their tireless work, their dedicated work, and their creative thinking on the programs and the plans that we have had have made possible bringing this bill through conference to this point where I think in a minute we will be able to vote on it.

Mr. MOYNIHAN. Madam President, I would like to thank the graciousness with which the chairman and Senator DOMENICI have spoken about the work of this side of the aisle.

I would like to repeat what my dear friend and colleague from South Dakota has said about the staff, particularly our own Nan Stockholm here. We would not be on this floor with historic legislation without them.

American National Government began its commitment to the internal development of the United States with water projects, specifically with inland navigation. In 1791, Alexander Hamilton gave his "Report on Manufacturers," which defined a role for the Federal Government in developing waterways for commerce. The system worked well for a century-and-a-half. It stopped working 16 years ago and commences today on a wholly new basis, a sustainable basis of cost-effectiveness and cost-shared projects.

The Senator from New Mexico spoke about our efforts 10 years ago. One of the things that the fine gentleman from the Southwest came to this Senator from the East to say is that the Water Development Program cannot be sustained if it is a regional program. It must be a national one. And this is a national one. Tonight we have heard about Baltimore, and we have heard about Hawaii.

Madam President, I would make one particular point. It is just 174 years since Thomas Jefferson declined to involve the Federal Government in support for the Erie Canal; 174 years later that one rare misunderstanding of our third President has been remedied, and the Federal Government assumes a proportionate and legitimate cost of the Erie Canal's maintenance and rehabilitation.

Madam President, I must thank, of all people, our chairman, Senator STAFFORD, who, with his serenity and his determined Yankee persistence, has made us feel serving him would serve the Nation, and it has.

Madam President, I thank my friend from Texas, Senator BENTSEN, who has given me the opportunity to speak on this occasion, our ranking member on the Committee on Environment and Public Works.

I see no Member on this side wishing to speak.

With greatest deference to Senator STENNIS, with whom we shall never again have to discuss the Tennessee Tombigbee, and with great assurance to the minority leader that Tug Fork is taken care of.

Madam President, I am delighted to join my subcommittee chairman, Senator ABDNOR, and my Environment and Public Works Committee colleagues, Senators STAFFORD and BENTSEN in offering the conference report for H.R. 6, the Omnibus Water Resources Development Act of 1986. I also want to recognize the efforts of Senator PACKWOOD, chairman of the Finance Committee, and Senator LONG in expediting their committee's review of the revenue portions of H.R. 6. I must pay tribute, too, to Chairman ROE of the House Public Works and Transportation Committee, whose leadership and devotion to producing a conference agreement enables us to present this report to the House and Senate today.

As former chairman of the Water Resources Subcommittee, and now as its ranking minority member, I have labored for many years to introduce rational economic criteria and equitable cost sharing into the Federal water planning process. Many times I have stood on this floor in the early morning hours at the end of a legislative session, and pleaded for a national policy that would end the squandering of our irreplaceable water resources. After many months of conference negotiations, I believe that we have produced a bill that will chart a new course for responsible water development into the next century.

HISTORY OF DEADLOCK IN WATER POLICY

Before I address specific reforms in this conference report, I must digress a bit to examine the historical reasons for our current deadlock in water policy. Congress has not passed omnibus water resources legislation since 1970.

In 1791 in his "Report on Manufactures," Alexander Hamilton enthusiastically advocated a role for the Federal Government in public works:

> The symptoms of attention to the improvement of inland Navigation, which have lately appeared in some quarters, must fill with pleasure every breast warmed with a true Zeal for the prosperity of the Country. These examples, it is to be hoped, will stimulate the exertions of the Government and the Citizens of every state. There can certainly be no object, more worthy of the cares of the local administrations; and it were to be wished, that there was no doubt of the power of the national Government to lend its direct aid, on a comprehensive plan. This is one of those improvements, which could be prosecuted with more efficacy by the whole, than by any part or parts of the Union.

Despite Hamilton's zeal for Federal navigation improvements, the congressional debate over their constitutionality continued for decades. Chief Justice Marshall's 1824 ruling in Gibbons against Ogden confirmed the plenary power of the Congress over commerce and navigation. By the 1860's the Federal Government had embarked on the building of an inland waterway system.

PUTTING THE GOVERNMENT IN THE WATER BUSINESS

In 1902 the Congress, led by President Theodore Roosevelt, enacted the 1902 Reclamation Act. The act put the Federal Government into the business of irrigation, as well as water supply, hydroelectric power, and flood control. With this the Federal Government began the development of the West.

The Federal Flood Control Act of 1936 established the then novel tool of benefit/cost analysis for water resources projects. The Federal Water Program today is the collection of the projects undertaken by the Army Corps of Engineers, the Bureau of Reclamation, the Tennessee Valley Authority and the Soil Conservation Service.

A PROCESS GONE AWRY

Unlike earlier times, there is today a consensus that the Nation's system of ports, inland waterways, multipurpose reservoirs, and hurricane protection projects have contributed greatly to

the wealth of the Nation, and that it is proper for the Federal Government to finance at least part of their costs. At the same time, there is a recognition that something has gone terribly awry in the water planning process, particularly in recent years.

As members of the Senate Water Resources Subcommittee we have seen the complexity and inefficiency of the water planning process develop into virtual paralysis. There is a backlog of 36 billion dollars worth of authorized but unbuilt projects. Republican and Democratic administrations have debated the causes and proposed reforms to no avail. It has been 15 years since passage of the last Omnibus Water Development Act, during which time only three new Corps of Engineers projects have been undertaken. A minor bill was passed in 1976. The construction program of the corps is a mere 25 percent of what it was 15 years ago, and still declining. Today, the corps spends more on maintenance than on construction, even though its maintenance funds have not increased in real dollars over the same period. By law the corps is permitted to contract to perform work outside the United States, and its expertise is in demand. Ironically, until last year the Corps of Engineers did more work in Saudi Arabia than in America.

According to the General Accounting Office, a corps flood control project takes an average of 26 years to complete, from the time that Congress initiates a feasibility study to the time that construction is actually finished. Over half of this time is attributable to the congressional authorization and appropriations process. Part of it also results from the corps' insensitivity to the environmental impacts of its projects which stimulates local opposition and litigation. However, since the enactment of the National Environmental Policy Act [NEPA] in 1970 and implementation of programs like the section 404 permit process which requires cooperation by the corps with the EPA and the Department of the Interior, the corps has made significant progress in this area.

The cost of the stalemate in water policy has been onerous for the Nation. Our ports remain unimproved and inadequate for modern commerce at a time when we must address our trade imbalance. Our inland waterways require lock replacements to relieve critical bottlenecks that hinder the orderly shipment of goods. Hydropower projects, remarkably clean energy sources, need to be built in areas suited to their development. And the devastating floods in the West have recently reminded us, dams and levees need repair and upgrading.

HALTING BUSINESS AS USUAL

The time is long past to halt the "business-as-usual" way of funding water projects. The old free-booting days—when whoever was chairman of the subcommittee got two dams; the ranking minority member got one, everybody else on the committee got a promise; and nobody else got any—must yield to sound technical review, environmental impact analysis, and the budget deficit.

As a manager of earlier incarnations of water bills, I have fought again and again against piecemeal appropriations and last minute project additions which make a mockery out of the congressional authorization and corps' planning process.

The Water Resources Development Act of 1986 presents us with the best opportunity we have had in more than a decade to address the important public works needs of our Nation. We must dredge our ports; replace old, inadequate locks; protect communities from flooding; and ensure the safety of our dams.

PROJECTS AUTHORIZED

The bill authorizes $16.3 billion in spending of which $12 billion would be paid by the Federal Government and $4.3 by non-Federal interests such as States, localities, port authorities, and commercial navigation companies. The conference report authorizes for construction or study 377 new Army Corps of Engineers water projects—43 port projects, 7 inland waterway projects, 115 flood control projects, 24 shoreline protection projects and 61 water resources conservation and development projects such as fish and wildlife mitigation works. Moreover the bill includes 38 studies, 63 project modifications and 26 other miscellaneous projects and programs.

REFORMS IN THIS BILL

What is innovative about this bill is the number of reform measures agreed to by the conferees which will establish a working partnership among the Federal Government, the Army Corps of Engineers and the non-Federal interests be they States, localities, ports, or commercial navigation companies. The bill initiates a system of cost sharing as well as national and local user fees, guaranteeing that non-Federal interests will have a share in planning, financing, and maintaining water projects.

COST SHARING FOR NAVIGATION PROJECTS

Foremost among the reforms is the cost-sharing scheme introduced by H.R. 6, which is based on the Senate bill. The conference report's new cost-sharing rules will apply to all corps water projects that were not yet under construction as of May 1, 1986. That includes the unbuilt separable elements—stand-alone features—of regional flood control projects like the seven-state Mississippi River and Tributaries [MR&T] Program. For navigation projects, non-Federal or local sponsor would have to contribute 10 to 50 percent of the costs of deepening or widening a channel, depending on the depth of the project. A summary of navigation cost sharing follows:

Non-Federal share of commercial harbor and channel improvement costs to be paid in cash during construction for:

Shallow ports 20 feet deep or less—10 percent.

General cargo ports—10 percent for the portion of the project 20 feet deep or less, plus 25 percent for the portion 21 to 45 feet deep.

Deep draft ports—10 percent for the portion 20 feet deep or less, plus 25 percent for the portion 21 to 45 feet deep, plus 50 percent for the portion deeper than 45 feet.

In addition the local sponsor would pay another 10 percent plus interest over a maximum of 30 years. However, the value of the lands, easements and rights of way contributed by the locals will count toward this additional 10 percent. It is fitting that the locals share in these costs for projects which directly benefit them. This cost sharing will ensure that our scarce Federal dollars go to where they are most needed. (Under current law, local interests must provide only lands and disposal areas for navigation projects, and no cash contribution is required).

AD VALOREM CARGO TAX

For the maintenance of harbors, H.R. 6 has introduced a 0.04 percent tax (4 cents per $100) which would be paid by shippers on the value of cargo moving through American ports. Revenues from the ad valorem tax expected to reach about $140 million annually will be used to pay up to 40 percent of harbor maintenance dredging costs now paid entirely by the Federal Government.

FUEL BARGE TAX FOR INLAND LOCKS AND DAMS

Half the costs of seven major inland lock and dam projects will be paid for by a doubling of the barge fuel tax from 10 cents per gallon to 20 cents per gallon by 1997. Eventually this tax will produce $120 million in revenues annually for these inland projects.

FLOOD CONTROL COST SHARING

For flood control projects, local beneficiaries will pay between 25 to 50 percent of construction costs, with the local lands, easements and rights-of-way counting toward the noncash share. At least 5 percent of the total project cost would have to be paid in cash during construction. However, H.R. 6 includes an ability-to-pay provision so that cost-sharing requirements can be reduced or waived for communities unable to meet them.

PROJECT STUDIES

As important a reform as financing projects is the new method of financing project studies in H.R. 6. Under current law, if requested by local sponsors, the corps has been obliged to undertake feasibility studies at full Federal expense. Since no local contribution was required, these studies often wasted corps' resources on impractical

studies. Only 30 percent of all project studies have produced recommendations to build.

Under the new approach, the corps will provide at Federal expense an initial reconnaissance study to be completed in 12 to 18 months. If warranted, the next step is a full feasibility study to be cost shared 50-50 by the Federal Government and local sponsors. The bill also provides value engineering reviews to increase the efficiency of corps plans and increased opportunities for competitive bidding. This will ensure that only those projects supported by local interests will proceed, and then only on a practical scale and at a prudent cost.

LOCAL DESIGN AND CONSTRUCTION OPTIONS

A related improvement will give local port officials more flexibility. They will be able to design their own projects and finance them jointly with the Federal Government; to receive design services from the corps and complete construction on their own; or to design and construct from start to finish jointly with the Federal Government. This will allow private interests to build projects more economically wherever feasible.

AUTOMATIC DEAUTHORIZATIONS

The unwieldly water planning process has left the Federal Government with a pool of authorized, but unobligated corps construction work of close to $36 billion. Under the old system, this amount plus the new amount authorized by the Water Resources Development Act of 1986, would have been theoretically available to be appropriated during any fiscal year. H.R. 6 remedies this by automatically deauthorizing any projects which have not received funding for 10 years. Estimates are that projects eligible for this deauthorization total about $26 billion. In the future projects will be automatically deauthorized if they receive no appropriations for 5 years after their authorization.

In the past, projects authorized and added to over the years grew and grew, escaping comprehensive review by Congress or agencies independent of the corps. An example is the Tennessee Tombigbee Waterway, a 234 mile long system of rivers, dams, locks and canals that was debated for decades, finally costing over $2 billion. I led the floor fight to deauthorize this project in 1981, because I believed that the economies did not justify Tenn-Tom. Unfortunately, we lost that fight 48 to 46.

A recent study shows that the Tenn-Tom traffic is only 6 percent of the tonnage predicted by the corps 10 years ago. Moreover, due to the untoward environmental consequences of Tenn-Tom, the Corps of Engineers will perform $60 million of mitigation work to offset the waterway's impact. H.R. 6 will prevent Tenn-Toms in the future by requiring the corps to return to Congress for review and reauthorization if costs increase significantly, or if major physical alterations are made to the original plan.

MITIGATION OF DAMAGES TO FISH AND WILDLIFE

Another longstanding problem which H.R. 6 addresses is adequate protection for and mitigation of damage to wildlife and fish habitat from corps' projects. To assure balanced development, the bill builds mitigation measures into every step of the construction process, in consultation with the appropriate Federal and non-Federal wildlife agencies. Moreover, every project in the bill will have to comply with the National Environmental Policy Act [NEPA].

THE CORPS OF ENGINEERS PROCESS

The projects in this bill were not hastily picked out of thin air, nor were they selected merely to please individual committee members. Each has survived an extensive process of economic and environmental review conducted by the Army Corps of Engineers. Those that were not yet past that stage of review are conditionally authorized, subject to full economic and environmental reviews.

First, the district office of the Corps of Engineers conducts a reconnaissance survey to determine whether a project is needed and, if so, to explore alternative plans. The next step is to prepare a full feasibility report, including a recommended plan, an environmental impact statement, and a determination of the economic benefits and costs of the plan. Based on the results of these studies, the district engineer makes a recommendation on whether to proceed with the project.

But that is hardly the end of the process. The District Engineer's recommendation must then be reviewed by the Division Commander, the Board of Engineers for Rivers and Harbors, the Chief of Engineers, and the Assistant Secretary of the Army for Civil Works. Finally, if the project is deemed to be in the national interest, we in the Environment and Public Works Committee receive a recommendation to authorize the project.

NEW YORK PROJECTS AND STUDIES IN H.R. 6

Mr. President, having waited 15 years for an omnibus water bill, it is not surprising that New York State, home of one of the world's great ports, and part of the Great Lakes-St. Lawrence Seaway shipping network, should have hundreds of millions of dollars of projects in this legislation—about $973.5 million worth. These projects, large and small, all will make a lasting contribution to the commerce of New York in particular, and to the Nation's economy in general. These range from the huge projects for navigation at Arthur Kill and Kill van Kull which together total about $368 million and which will ensure that the Port of New York and New Jersey remain competitive internationally—to a dredging project for Eastchester Creek which costs $500,000 but which is of no less import to the local residents. We have for the first time secured Federal assistance for the Erie Canal, built completely with State funds. Now, for the first time since 1825, the Erie Canal which links the Great Lakes to the Atlantic will receive from the Federal Government 50 percent of its annual operations and maintenance costs and up to $5 million per year in rehabilitation costs.

Mr. President, I ask unanimous consent that a summary of the provisions in the Omnibus Water Resources Act, of special significance to New York and a letter from the President of the National Wildlife Federation be printed in the RECORD.

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

PROJECTS OF INTEREST TO NEW YORK IN H.R. 6, THE WATER RESOURCES DEVELOPMENT ACT OF 1986

ESTIMATED VALUE OF PROJECTS = 1.1 BILLION DOLLARS

[Note: for costs, m = million and k = thousand]

Project	Comments
New York Harbor area:	
Arthur Kill, Navigation—total cost $42.6m; estimated Federal cost $27.5m; estimated local cost $15.1m; H.R. 6, sec. 202b.	This project will deepen the existing channel from 35 to 41 feet between Newark Bay and the Howland Hook Marine Terminal, and to 40 feet from the Terminal to Bayonne, NJ.
Fresh Kills—NJ—total cost $26m; estimated Federal cost $19.5m; estimated local cost $6.5m; H.R. 6, sec. 202b.	The Arthur Kill will be extended to a 40-foot depth to the Fresh Kills in Carteret, NJ, to enhance navigation.
Kill van Kull, navigation—total cost $325m; estimated Federal cost $167m; estimated local cost $158m; H.R. 6, sec. 202a.	This project will deepen the existing Federal channels in the Kill van Kull and Newark Bay to 45 feet and widen them at Robbins Reef, St. George, Central RR Bridge, and the Port Newark Channel junction. Also included is a turning basin at Port Elizabeth and pierhead channels at Port Newark and Port Elizabeth; 30 million tons of dredged materials will be disposed of at sea.
New York Harbor/adjacent channels, 45 feet; total cost $45.7m; estimated Federal cost $32.3m; estimated local cost $13.4m; H.R. 6, sec. 202b.	This project will add an access channel 45 feet deep and 450 feet wide from deep water in the Anchorage Channel to the head of navigation in Jersey City and another access channel 42 feet deep and 300 feet wide from the Anchorage Channel to the Claremont Terminal Channel. None of the dredged materials may be dumped in Bowery, Flushing, Little, or Little Neck Bays, or in Powell's Cove.

ESTIMATED VALUE OF PROJECTS=1.1 BILLION DOLLARS—Continued

[Note: for costs, m=million and k=thousand]

Project	Comments
New York Harbor/adjacent channels, 55 feet; total cost $326m; estimated Federal cost $156m; estimated local cost $170m; H.R. 6, sec. 201b.	The Ambrose and Anchorage Channels will be deepened to 55 feet to accommodate deepdraft vessels. Beach-quality dredged sand will be moved to Staten Island and Monmouth, NJ, at full Federal expense. No dredged materials may be disposed of in Queens, NY, harbors.
Gowanus Creek Channel—total cost $3.3m; estimated Federal cost $1.5m; estimated local cost $1.7m; H.R. 6, sec. 202a.	This project will improve the channel connecting the New York Harbor entrance channel with the Brooklyn interior. The channel will be deepened to 32, 35, and 40 feet in sections.
New York Harbor/adjacent channels study—H.R. 6, sec. 708	The Secretary is instructed to expedite the study of deepening needs for the Claremont Channel, which runs from the head of navigation in the Upper Bay approximately 2 miles eastward, and to report results of the study by Dec. 31, 1987.
New York Bight study—cost; up to $1m/yr. for 5 years, 1987–91; H.R. 6, sec. 728	The Army Corps of Engineers in cooperation with the Environmental Protection Agency will study and begin to implement if feasible a Hydro-Environmental Monitoring and Information System for the New York Bight area using a computerized buoy system and radio telemetry to assess effects of dumping in the bight. The corps will also develop a physical hydraulic model of the bight for use with existing models of the New York Harbor. The corps will consult with appropriate State, local, and academic institutions and agencies in performing this study.
Buffalo area:	
Buffalo Harbor, drift removal—total cost $2.3m; split 50/50 Federal/local; H.R. 6, sec. 1129	The project will remove debris from the harbor and remove dilapidated structures from the harbor waterfront. A continuing program will improve navigation safety in the area of the harbor.
Buffalo Harbor, small boat improvements—total cost $900k; H.R. 6, sec. 601c	All planning, design, and engineering studies for the project are authorized. The project will be ready for construction after these studies are done. Total construction costs may run as high as $9 million. Construction will need additional authorization at a later date. This project will replace the deteriorating dike and extend its dogleg extension to improve harbor safety, wave protection, and future expandability.
Cazenovia Creek, flood control—total cost $2.05m; estimated Federal cost $1.54m; estimated local cost $510k; H.R. 6, sec. 401a.	This project will protect against winter flooding resulting from ice jams. A low-concrete dam will create an 11-acre pool with an ice retaining boom. The pool will hold ice that would otherwise drift downstream and block the Creek. Flood damage will be reduced by 70 percent.
Buffalo River, toxic pollution removal—H.R. 6, sec. 1186	The conference will recommend that the problem of pollution in the river be ameliorated under the Superfund Program.
Buffalo Ship Canal Bridge—total cost $18m; split 50/50 Federal/local; H.R. 6, sec. 839	A lift-span bridge will be built across the Canal 3600 feet north of South Michigan Ave.
NYS Barge Canal—estimated O+M $10–12m per year; H.R. 6, sec. 1105	The Federal Government will henceforth reimburse NYS for 50 percent of the canal's operation and maintenance costs, and up to $5m or 50 percent per year of costs for rehabilitation and repairs of the barge canal.
Olcott Harbor, navigation—total cost $12.6m; split 50/50 Federal/local; H.R. 6, sec. 601a	Navigation improvements will include a breakwater, stone jetty, and channel work. Fishing improvements will be studied in consultation with appropriate Federal, State, and local agencies.
Niagara Frontier Transportation Authority—total cost $7m; split 50/50 Federal/local; H.R. 6, sec. 1139.	The conference will recommend that this provision for bulk storage facilities and wharves be funded under a grant from the Economic Development Administration.
Port Ontario Harbor of Refuge—H.R. 6, sec. 615	The Federal Government will assume the operation and maintenance costs of this harbor of refuge.
Dunkirk Harbor, dredging—total cost $4.6m; split 50/50 Federal/local; H.R. 6, sec. 848	The eastern inner harbor will be dredged and maintained in accordance with plans developed by the Secretary in consultation with appropriate non-Federal interests.
Buffalo fish study—total cost $5m for 4 projects; split 75/25 Federal/local; H.R. 6, sec. 704	This project will demonstrate methods of fish habitat creation in Lake Erie to be evaluated for potential use on a general basis.
Other NYS Projects:	
Coney Island/Rockaway, shoreline protection—total cost $177m; estimated Federal cost $104m; estimated local cost $73m; H.R. 6, sec. 501a.	The project will restore the Coney Island public beach to its historic shoreline, extend the westerly terminal groin, and add an easterly terminal groin. The groins will include walkways and railings for recreational fishing, and the restored beach will be periodically replenished.
East Chester Creek, navigation—total cost $500k; estimated Federal cost $450k; estimated local cost $50k; H.R. 6, sec. 866..	The Secretary will use a portion of previously authorized operation and maintenance funds to dredge and maintain the Y-shaped portion of the project.
Ellicott Creek—non-Federal cost credit; H.R. 6, sec. 1170	The already authorized flood control project is modified to allow a credit against the non-Federal share of construction costs equal to the fair market value of lands, easements, rights-of-way, or relocations provided by non-Federal interests which is greater than 25 percent of total project costs. The project will be cost-shared in accordance with the January 1984 local/State agreement.
Hempstead Harbor, vessel removal—total cost $3m; split 67/33 Federal/local; H.R. 6, sec. 1115	The Secretary will remove derelict vessels from the western shore of Hempstead Harbor as part of the already authorized New York Harbor drift removal program of the 1974 Water Resources Development Act.
Hudson River, shoal removal—total cost $150k; estimated Federal cost $113k; estimated local cost $37k; H.R. 6, sec. 828.	The Secretary shall remove the shoals between the mouth of the Roeliff Jansen Kill in Columbia County and the existing navigation channel and place the removed materials at a site designated by the city of New York.
Jamaica Bay channel—feasibility study; H.R. 6, sec. 1168	The Secretary will conduct a 1-year study of opening a channel between Jamaica Bay and Reynolds Channel, Long Island, for the purpose of water quality improvement.
Mamaroneck Harbor, navigation—H.R. 6, sec. 804	The ongoing project is modified to provide that the Federal share of costs for dredging necessary to maintain the project will be 50 percent.
Mamaroneck, Sheldrake, and Byram Rivers, flood control—total cost $68.5m; estimated Federal cost $51.4m; estimated local cost $17.1m; H.R. 6, sec. 401a.	This provides protection for the village and town of Mamaroneck and for Port Chester using channel modifications, levees, floodwalls, and other measures.
Mud dump disposal alternatives—H.R. 6, sec. 211	The EPA will designate within 3 years 1 or more sites for disposal of dredged materials other than the mud dump located 5.75 miles off Sandy Hook, NJ. The new site(s) will be not less than 20 miles from shore and will be used in lieu of the mud dump beginning 30 days after such designation.
Nakoma Brook, Sloatsburg flood control—total cost $500k; H.R. 6, sec. 401c	This project is 1 of 3 in the Passaic River Basin and will provide for flood damage protection.
Orchard Beach, erosion control—total cost $2.48m; estimated Federal cost $1m; estimated local cost $1.48m; H.R. 6, sec. 501d.	Erosion of the beach will be repaired according to the recommendations of the corps report of July 1985 using beach fill and periodic sand replenishment.
Ramapo and Mahwah Rivers, flood control—total cost $6.26m; estimated Federal cost $4.63m; estimated local cost $1.63m; H.R. 6, sec. 401a.	The project for flood control will be carried out according to the recommendations of the corps report of Nov. 27, 1984.
Westhampton Beach, periodic nourishment—estimated cost $47m over 20 years; split 70/30 Federal/local; H.R. 6, sec. 502.	This project, originally authorized in 1960, has been the subject of litigation for almost 30 years. The cost sharing provisions of Public Law 93–251, the Water Resources Development Act of 1974, will be applied for 20 years after the enactment of H.R. 6.
Vestal levee, flood control—total cost $700,000; estimated Federal cost $525,000; estimated local cost $175,000; H.R. 6, sec. 852.	The project for flood control on the Susquehanna River for Endicott, Johnson City, and Vestal is modified to authorize protective measures for the levee at Vestal to correct erosion problems and restore it to its design condition.
Great Lakes:	
Great Lakes diversions—H.R. 6, sec. 1109	To more carefully manage the lakes and protect their waters from unwarranted diversions, any diversions out of the Great Lakes Basin must be approved by the Governor of each of the Great Lake States.
Great Lakes dredged, materials disposal—H.R. 6, sec. 1154	The Secretary and corps must consult and cooperate with the concerned States in selecting disposal areas for dredged materials suitable for beach replenishment.
Great Lakes erosion/water levels—total cost $3m; H.R. 6, sec. 706	The appropriate Federal, State, and local agencies will conduct a study of shoreline protection and erosion control policy for the Secretary, in view of current and future high Great Lakes levels. At the end of the 3-year study the Secretary will report findings and recommendations to Congress.
Great Lakes commodities, marketing board—H.R. 6, sec. 1132	The board is established to develop a strategy to improve the capacity of the Great Lakes region to produce, market, and transport commodities. It will include representatives of the Great Lakes Commission, the Secretary, the Transportation, Commerce, and Agriculture Departments, EPA, and the St. Lawrence Seaway Development Corporation.
St. Lawrence Seaway/Great Lakes locks:	
Poe lock—H.R. 6, sec. 1138	Completion of the corps study of a second parallel lock next to Poe lock will be expedited, with a deadline of Sept. 30, 1986, for submission of the study to Congress. The new lock is needed to handle the potential problems if Poe Lock is closed for rehabilitation, since it is the only existing lock at that location that can accommodate 1,000-foot vessels.
Sault Ste. Marie—total cost $240m; H.R. 6, sec. 1149	A second lock is authorized at Sault Ste. Marie, MI, at full Federal expense, to be built adjacent to the existing lock in accordance with the corps report of March 1985.
Eisenhower and Snell locks—total cost $39.2m; H.R. 6, sec. 1163	The corps will rehabilitate these locks at Massena, NY, in accordance with the corps report of November 1984. The Secretary will determine appropriate cost sharing. The local share will probably come from seaway users' tolls.
General provisions:	
Petroleum product, information disclosure—H.R. 6, sec. 1199a	The Secretary will provide information relating to petroleum products transported by vessel to any State agency charged with responsibility for the administration of State tax laws that requests such information.

NATIONAL WILDLIFE FEDERATION,
Washington, DC, October 16, 1986.

Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: I want to convey our support for the conference agreement on H.R. 6, the Water Resources Development Act of 1986. In our opinion, H.R. 6 is the most significant water resources development legislation since the New Deal, and the most environmentally responsible water projects bill to date.

Enactment of H.R. 6 would go a long way toward the implementation of reforms that have been sought by successive Administrations, Republican and Democratic alike, laid out by the landmark report of the National Water Commission in 1973. Most notably, the bill contains significant new requirements for greater non-Federal participation in the financing of most types of new water resources projects. These cost-sharing and user fee provisions will enfranchise thousands of new participants in the process of planning and constructing Federal water projects. These new requirements will not only save the Treasury money, but they also will spare the environment from damage by the construction of unneeded or oversized projects.

In addition to these fundamental financial reforms, the bill contains an important pro-

vision requiring timely implementation of measures to mitigate damages to the environment that result from project development. The bill also includes needed general authority for the Corps of Engineers to restore previously damaged fish and wildlife habitat, undertake improvements at existing projects to improve their environmental performance, and protect wetlands in the Lower Mississippi Valley.

H.R. 6 contains numerous provisions and projects to enhance natural values or restore previously damaged resources. The most significant of these include the protection of the Atchafalaya River Basin in Louisiana, the mitigation of damages to fish and wildlife habitat resulting from construction of the Tennessee-Tombigbee Waterway in Alabama and Mississippi, and the initial stage of a major mitigation effort for the lower Missouri River, in Iowa, Nebraska, Kansas, and Missouri.

Several hundred unbuilt projects would be deauthorized by H.R. 6, and a new process will be set up to automatically cull the "dead wood" from the Corps' construction backlog in the future. Notably, the Cross-Florida Barge Canal would be deauthorized, with previously acquired lands to be managed for their natural and recreational value.

Among the many studies authorized by the bill is a study of the Corps' capability to create or improve fish and wildlife habitat, along with limited authority to demonstrate such capabilities. Also, in one of the first undertakings of its kind, the bill authorizes a three-year study of the implications of rising sea levels on coastal communities and related policies and programs of the Corps. This study is to include an appraisal of various strategies for managing relocation, disinvestment, and reinvestment in coastal communities exposed to coastal flooding and erosion.

To be sure, H.R. 6 also includes among its 400-plus pages several projects and provisions which we believe to be unjustified or unwise. Nevertheless, these shortcomings do not, on balance, detract from the significance of the remainder of the bill.

I urge the Senate to approve the conference agreement on H.R. 6. Your support for the restructuring of the Army's water resources development program as embodied in this legislation is greatly appreciated.

Sincerely,

JAY D. HAIR.

Mr. MOYNIHAN. Madam President, let me also thank the staff, some of whom, like the members, have worked for years on this legislation—all of whom have worked very long hours during the 99th Congress to complete work on this historic legislation.

For the Republicans: Bailey Guard, majority staff director, Thomas Skirbunt, Mark Haynes, Hal Brayman, and the support staff, Debbie Terpening and Margaret Daily.

For our side: Lee Fuller, minority staff director, Ann Garrabrant, Michael Weiss, Dick Hood, Paulette Hansen, Nan Stockholm, and support staff, Elizabeth Thompson, Marge Wright, Tanya Hart, and Andy Wolff, and Bob Bergman, our legislative counsel for this bill.

We owe special thanks to Michael Strachn, of the Army Corps of Engineers for his endless patience and assistence.

Mr. DOLE. Madam President, Congress has been unable to write a new water bill for nearly a decade because of an impasse over how costs were shared by the Federal Government, States, and local communities. This legislation shifts a larger portion of the costs associated with a water resource project to the localities benefited by the project. Such a policy encourages local communities to more adequately assess the need for, and feasibility of, building these types of projects.

KANSAS PROJECTS

Madam President, this legislation authorizes the construction of several important water projects in Kansas and contains a provision that establishes a comprehensive research and development program on the depletion of the Ogallala Aquifer. This aquifer is the largest in the United States and is an important source of water to the High Plains States of Colorado, Nebraska, New Mexico, Oklahoma, Texas, and my home State of Kansas. Monitoring over the last few years has indicated that the natural recharge is not keeping pace with the rate at which the water is being pumped from the acquifer. If this continues, these States will soon be faced with a critical water shortage.

Another provision in this bill authorizes the construction of a 21,000-foot levee and floodwall along the Little Arkansas River near Halstead, KS, and allows for the straightening of the river channel. This will allow the city of Halstead to finally receive the flood protection they have been awaiting for years. The city has had virtually no protection from a 100-year flood.

One important provision authorizes $16,100,000 to provide for the deepening of the Brush Creek Channel and the replacement of two bridges in Kansas City. This authorization is in direct response to the serious flooding that occurred in this area in 1977.

Madam President, farmers living along the upper Little Arkansas watershed in central Kansas will receive some protection from the devastating flooding they have suffered in the past. This legislation will authorize the building of 18 small dams along the river in an effort to protect acres of valuable farmland.

Of special interest to those living in southeast Kansas is a section authorizing $4 million for the construction of a paved road to the Pearson-Skubitz Big Hill Reservoir. This area is a popular recreation site. Unfortunately, when the reservoir was constructed in 1981, no paved roads were built to provide access to the area. This legislation authorizes the project on a 50-50 cost-share basis.

Madam President, levee failures during the flood of 1923 in Arkansas City, KS, left 3,000 homeless, caused about $3 million in damages, and resulted in several deaths. Flooding again occurred in 1928, 1944, and 1945. This bill authorizes the raising and extending of the Walnut River levees near Arkansas City, at a cost of $14.5 million. Doing so will protect an area of 4,000 inhabitants where property values are high.

In addition, this legislation reverses current law and allows water from Marion Lake near Marion, KS, to be used for irrigation of farmland. Doing so will allow the local farmers to obtain much-needed water for their crops while still protecting the original project purposes.

CONCLUDING REMARKS

Madam President, I wish to thank the members of the Environment and Public Works Committee for their hard work on the Water Resources Development Act. The distinguished chairman of the committee, Senator STAFFORD; the chairman of the subcommittee, Senator ABDNOR; and the ranking minority members, Senators BENTSEN and MOYNIHAN, and the House members of the conference committee, are to be commended for their efforts on this important piece of legislation.

Madam President, I commend my colleagues, the Senator from New York, and in particular the distinguished Senator from South Dakota, for an outstanding job. We have been waiting a decade for this. Thank you very much.

Mr. WARNER. Madam President, I rise in strong support of the conference report on H.R. 6, the Omnibus Water Resources Development Act.

It has been nearly 15 years since the last major water resources bill, and I want to pay special tribute to Senator ABDNOR who is chairman of the Water Resources Subcommittee, for his tireless work on this issue and for bringing us to this point tonight.

I also want to commend the able chairman of the Environment and Public Works Committee, Mr. STAFFORD, the ranking member of the full committee, Mr. BENTSEN, and the ranking member of the subcommittee, Mr. MOYNIHAN for their leadership.

Without the unfailing persistence of the members of the Environment and Public Works Committee, we would not be here to approve this historic legislation.

This is a day I have been working for since I first arrived as a Member of this distinguished body in January 1979.

It has been one of my highest priorities. I have introduced legislation and worked in coalition with my colleagues who shared in my commitment.

My colleagues and I have traveled a long, tiresome, and sometimes rocky road to reach the end of this journey for a national coordinated water policy.

This is a good, fair bill that equitably distributes the burden of financing the development of our resources and provides needed environmental protections.

Virginia Governor Baliles, the Virginia General Assembly, and our congressional delegation list the passage of this omnibus water resources bill as an essential ingredient in the economic good health of the Commonwealth.

Governor Baliles is the third Governor of Virginia—preceded by Gov. John Dalton and Gov. Charles Robb—with whom I have worked on this legislation.

I am grateful for the dedication and cooperation of these three Governors in shaping this legislation and fulfilling the non-Federal commitment which is such a crucial part of this proposal.

It was a particular privilege for me, Mr. President, to work with a highly distinguished group of my colleagues in 1983 to draft omnibus water resources legislation. Our coalition which drafted S. 865 included, in addition to myself, Mr. HATFIELD, Mr. BYRD, Mr. THURMOND, and Mr. MATTINGLY.

We were convinced then, and we remain convinced now, that the cost-sharing structure in our bill was equitable and appropriate both for our National Port System and for the Nation's taxpayers.

It is gratifying to us that the legislation before the Senate today incorporates many of the major provisions of the legislation which we introduced 3 years ago.

The Federal interest in a modern harbor system is twofold: To promote America's trade potential and economic strength, as well as to meet our defense commitments.

The United States must be prepared to meet the world demand for its goods by developing a more competitive port transportation system.

Likewise, the constitutional obligation to provide for the Nation's defense demands that the Federal Government continue its strong role in supplying both our allies' and our own energy needs.

The quick and efficient deployment and servicing of troops and equipment must be assured by modern, well-maintained harbors.

Our National Port System annually transports in excess of $318 billion in waterborne foreign commerce and generates $7 billion in Customs revenues.

A strong port system which increases our capacity to export reduces our balance of trade deficit and makes a positive contribution to employment in every State in the Nation.

This bill authorizes the deepening of the Port of Hampton Roads to 55 feet at an estimated cost of $538 million at a benefit-to-cost ratio of 3.6 to 1. It allows the project to be built in operable segments.

The Virginia Port Authority has signed a local cooperative agreement, or "221" with the Corps of Engineers to construct a 50 foot outbound channel at a cost of $46.7 million to be cost shared by the Federal Government and the State.

The Virginia General Assembly has appropriated the State share and we are ready to start dredging as soon as we approve this bill.

Madam President, as this is the first major water resources bill in nearly 15 years, we know that staff has spent untold hours to draft this bill.

I personally want to extend by appreciation to Tom Skirbunt and Mark Haynes of the Environment and Public Works Committee, who have showed me and my staff every consideration for the many projects—flood control, beach erosion protection, harbor dredging—important to Virginia.

Again, Madam President, I support this conference agreement. I urge my colleagues to support it as well.

Mr. WILSON. Mr. Chairman, there are a couple of points involving the Santa Ana River Mainstem project which are not immediately clear upon first reading of the legislative language. It is the understanding of the conferees that upon the completion of the water supply and conservation study at Prado Dam, that if that study recommends water conservation as a secondary project purpose and upon completion of the exchange for the Santa Ana Project that such water conservation will then be considered automatically authorized as a secondary project purpose?

Mr. STAFFORD. The Senator from California is correct. If water supply and conservation is found to be feasible at Prado Dam then such finding shall automatically become a secondary project purpose of the Santa Ana project.

Mr. WILSON. Thank you, Mr. Chairman for that clarification. I have a second point of inquiry and clarification, as well. It is my understanding that the reference in H.R. 6 to the Water Supply Act of 1958 refers to any additional water supply and conservation that may be recommended at Prado Dam. This reference is in no way meant to be a limitation on the corps' existing authority to impound water at Prado for conservation purposes. Is that the conferees understanding of this language?

Mr. STAFFORD. The Senator is correct. The language we have adoped is prospective, and effects additional potential storage

Mr. STAFFORD. Will the distinguished manager of the bill yield for purposes of a colloquy?

Mr. ABDNOR. I would be happy to yield to the distinguished Chairman of the Committee on Environment and Public Works.

Mr. STAFFORD. I thank the Senator. As the Senator knows, new cost-sharing requirements are the centerpiece of this bill, and constitute a major shift in the division of Federal and non-Federal financial responsibilities for water resources development in this country. In addition to simply reducing the Federal cost of new construction, what additional objectives are intended to be achieved by these new requirements?

Mr. ABDNOR. The cost-sharing reforms contained in the bill are intended to achieve several important objectives. These include: bringing the benefits of the water resources development program to more communities; producing plans with more widespread local support; encouraging smaller, more efficient projects, where appropriate; enabling the marketplace to help determine investment priorities, especially for deep draft ports; reducing environmental damages that result from unneeded or oversized projects; and helping to assure more cost-effective development.

Mr. STAFFORD. I thank the Senator for elaborating on these objectives and concur with his remarks. I am pleased to note that section 103(b) of the conference agreement provides encouragement for nonstructural projects to reduce flood damages, including waiving the requirement for cash contributions during construction. What types of measures are intended to qualify for this treatment?

Mr. ABDNOR. A variety of measures, either singly or in combination, are considered to be "nonstructural." These may include flood warning systems, flood plain regulation, removal or relocation of structures or building contents, flood proofing of structures, acquisition of flood plain lands for conversion to compatible uses, and restoration of wetlands for purposes of flood water retention. Other innovative approaches may be found in the future to reduce flood damages without construction of traditional flood water retention structures, and these too should qualify under section 103(b).

Mr. STAFFORD. Would the techniques for stream renovation and channel improvement known as the Palmiter Method be considered nonstructural within the meaning of this provision?

Mr. ABDNOR. Yes; that is certainly our intent.

Mr. STAFFORD. I thank the Senator for his clarification, and for his support on this issue. If the Senator

will yield further, I would like to clarify the intent behind certain portions of title 2 of the conference agreement, which deals with harbor development. Is section 204(d) intended to diminish the authority of the Administrator of the Environmental Protection Agency under section 404 of the Clean Water Act?

Mr. ABDNOR. No; it is not.

Mr. STAFFORD. Is section 205 intended to modify any existing environmental statutes?

Mr. ABDNOR. No; it is not.

Mr. STAFFORD. Is section 205 intended to suspend any public participation procedures currently in effect for either Federal or non-Federal agencies?

Mr. ABDNOR. No; it is not.

Mr. STAFFORD. Is section 205 intended to limit the authority or responsibility of any Federal agency to issue or deny permits under existing law?

Mr. ABDNOR. No; it is not.

Mr. STAFFORD. Is section 205 intended to limit in any way the Secretary of the Army's continuing obligations under the Endangered Species Act?

Mr. ABDNOR. No; it is not.

Mr. STAFFORD. Are permits that may be required for the operation and maintenance of new navigation projects expected to be issued within the schedule established under section 205(c)?

Mr. ABDNOR. No; they are not.

Mr. STAFFORD. I thank the distinguished sponsor of the Senate bill and chairman of the conference committee for these clarifications.

Mr. DURENBERGER, Madam President, for those of us who care deeply about this nations water resources, the accomplishment of this, the 99th Congress, have been truly remarkable. In furtherance of those objectives, I rise to express my strong support for the conference report accompanying H.R. 6, The Water Resource Development Act of 1986.

I want to make it clear from the outset that the lions-share of the credit for this historic and long-overdue legislation rightfully belongs to the chairman of the conference, and chairman of the Water Resource Subcommittee, my good friends Senator JIM ABDNOR. Through it all, JIM's dogged determination and commitment kept us moving forward when it appeared all hope was lost.

As I have indicated in previous statements, our actions to date on such important legislation as the reauthorization of the Superfund, Clean Water and Safe Drinking Water Acts represent a tremendous first step in our efforts to preserve the integrity of our water resources for future generations. With passage of the legislation before us today, we will be taking the equally important step of improving our water resource infrastructure.

Like every Member of the Senate, I have a project or two in this measure. In fact, as a member of both the authorizing committee and subcommittee, there are over 17 projects in H.R. 6 which I know will improve the quality of life for the residents of Minnesota. But I can claim with conviction that every single one of those projects is environmentally sound and economically justified. And that is the reason why, after 16 years of failure, the body will succeed where the last eight Congresses have failed.

I will not take up my colleagues time reciting the names, location and cost of all of the projects which I labored over, but there are a number of provisions which I believe are deserving of special emphasis. I would include in this group the Rochester Flood Control Project, the master plan for the Upper Mississippi River System, and the entire package of Great Lakes-St. Lawrence Seaway provisions. These projects are significant for a number of reasons, some of which bear special mention here.

ROCHESTER

Congressional approval of the South Fork Zumbro River Flood Control project brings to a happy conclusion my first legislative initiative as a U.S. Senator. Over 8 years ago I stood in the back yards of homeowners in Rochester, MN and watched in silence as the receding waters of the Zumbro River and Bear Creek slowly and painfully revealed the destruction Mother Nature wreacked on an unsuspecting and unprotected community. The loss of five lives made the $100 million in property damage seem trivial, and I vowed then that, if elected to the Senate, I would make authorization of flood protection project for the community one of my top priorities. It is with mixed emotions, then, that I view the long-awaited passage of this legislation. For, if this proposal had passed the Congress in 1980, the 3 individuals who perished in a flash flood last month might still be with us today.

MASTER PLAN-UPPER MISSISSIPPI RIVER

While many people question the utility of expanding the capacity of our inland navigation system at a time when grain isn't moving and the barge industry is suffering the consequences of over capacity, I view the authorization of a second chamber at Lock and Dam 26 and the attendant environmental mitigation and enhancement package as one of the most foresighted provisions in the bill. In one fell swoop we have taken action which promises to remove an inefficient bottleneck on the inland navigation system while at the same time putting in place the most comprehensive environmental mitigation program for a project ever adopted by the Congress. It is a provision which should enjoy the strong support of both the transportation, agricultural and environmental communities alike.

GREAT LAKES—ST. LAWRENCE SEAWAY SYSTEM

Without question, the treatment of the Great Lakes navigation system in this legislation brings to an end one of the greatest inequities in our Nation's transportation system. For the first time since the St. Lawrence Seaway opened to traffic in 1959, shippers on the Great Lakes will no longer enjoy the unenviable distinction of being the only citizens compelled to pay fees to the U.S. Government for the use of a Federal navigation improvement project. This legislation, by requiring the Secretary of State to undertake negotiations with the Canadian Government for the purposes of eliminating tolls for the use of the Welland Canal and rebating U.S. toll proceeds to users of the system brings the Great Lakes one step closer to joining our other coastal ranges as an equal partner in our national port system.

In closing, Madam President, I want to thank everyone who played a role in getting us to this point, particularly to the chairmen and staff of the Environment and Public Works and the Appropriations Committee, without whose patience and assistance this whole effort would have collapsed.

Mr. BOREN: Madam President, I would like to publicly thank the distinguished chairman of the Water Resources Subcommittee, Senator ABDNOR, and his staff for their fine work in sheparding this important legislation to the verge of enactment. I would also like to thank them for the help they provided to myself and Senator NICKLES in our efforts to assist the Cherokee Nation in building a hydroelectric facility on the Arkansas River.

This particular project is unique in that the U.S. Army Corps of Engineers and the Department of Energy's Southwestern Power Administration are being reimbursed for their expertise, in the role of subcontractor, in support of the W.D. Mayo hydroproject. This legislation should be interpreted as allowing these Federal agencies to provide their services on a par with private industry in terms of timing, cost, and efficiency.

The passing of this legislation now, and the expeditious execution of the necessary contracts between all parties, should allow the Cherokee Nation of Oklahoma to enter the private market for project financing at the current, relatively low interest rates, which will reduce the overall cost of the project, and will in the long run provide savings to the retail purchaser of the electric power produced.

I am very concerned that we must work to expedite the normally slow Federal bureaucracy. To that end I would like to cite just one example in-

volving the W.D. Mayo project. With the current thinking in the Corps of Engineers, the Cherokee Nation will not be able to enter into a formal contract for this project for over 2 years after enactment of this legislation.

The corps envisions a 2-year period following enactment for cost estimating, project design, et cetera, before they would be ready to finalize their costs. These costs are necessary so that Southwestern Power could determine the optimum economic feasibility of the project. This means that the Cherokee Nation will be precluded from securing their private financing for up to 2 years after enactment of this legislation. I don't know where interest rates are going to be in 2 years and I don't think we should ask the Cherokee Nation to assume that risk. What is interesting is that the Nation's engineering contractor, Benham-Holway, has over 60 years experience with corps projects. In fact, they are the engineers for the corps project at lock and dam 13 just down the Arkansas River. So, it would seem that a realistic and bondable cost estimate can be accomplished within 2 months. I would also like to note that the corps wrote a comprehensive feasibility study on lock and dam 13 themselves, which could be easily and quickly updated to bring about the necessary cost estimates.

Madam President, the W.D. Mayo project is a truly unique, local initiative. I would ask that the distinguished chairman of the Water Resources Subcommittee have the report language reflect these concerns.

Mr. NICKLES. Madam President, I would also like to thank the distinguished chairman of the Water Resources Subcommittee, Senator ABDNOR, for his help with the W.D. Mayo project.

Like my colleague from Oklahoma, Senator BOREN, I have concerns about how the Corps of Engineers will interpret their role in this project. In the past, contracts between the Corps of Engineers and/or the Southwestern Power Administration and a design/construction contractor, utilizing Federal funds, have always included a clause which restricted arbitration to within the corps or Southwestern Power. As a result, unilateral "final determinations" were made by those Federal agencies.

The Cherokee Nation is building the W.D. Mayo project without Federal funds. Consequently, this project, should be treated as a standard industry project, and as such, standard industry arbitration rules should apply, (each party to select an arbitrator and those two will select a third).

The bottom line, Madam President, is that when we talk about Federal agencies carrying out work on a "par with industry" we are not advocating that they are in competition with industry, just that they perform their functions with the speed of efficiency of the private sector. I would also urge my colleague, the distinguished chairman, for his support of our concerns about the unique role that the Corps of Engineers and the Southwestern Power Administration will have in the swift completion of the W.D. Mayo project.

Mr. ABDNOR. Madam President, I thank my distinguished colleagues from Oklahoma for their kind remarks and for their support of this legislation as it has made its way through Congress.

I want to join them in urging the Corps of Engineers to move as quickly as possible to execute the necessary agreements to which will permit the Cherokee Nation of Oklahoma to proceed as invisioned in this bill with hydroelectric development at the W.D. Mayo site.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the conference report. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. BROYHILL], the Senator from Washington [Mr. EVANS], the Senator from Arizona [Mr. GOLDWATER], the Senator from Washington [Mr. GORTON], the Senator from Nevada [Mr. LAXALT], the Senator from Maryland [Mr. MATHIAS], the Senator from Alaska [Mr. Murkowski], the Senator from Idaho [Mr. SYMMS] and the Senator from Connecticut [Mr. WEICKER] are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska [Mr. MURKOWSKI], would vote "yea."

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Florida [Mr. CHILES], the Senator from Arizona [Mr. DECONCINI], the Senator from Missouri [Mr. EAGLETON] and the Senator from Vermont [Mr. LEAHY] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 84, nays 2, as follows:

[Rollcall Vote No. 359 Leg.]

YEAS—84

Abdnor	Cranston	Grassley
Andrews	D'Amato	Harkin
Armstrong	Danforth	Hart
Baucus	Denton	Hatch
Bentsen	Dixon	Hatfield
Biden	Dodd	Hawkins
Bingaman	Dole	Hecht
Boschwitz	Domenici	Heflin
Bradley	Durenberger	Heinz
Bumpers	Exon	Helms
Burdick	Ford	Hollings
Byrd	Garn	Humphrey
Chafee	Glenn	Inouye
Cochran	Gore	Johnston
Cohen	Gramm	Kassebaum
Kennedy	Moynihan	Sasser
Kerry	Nickles	Simon
Lautenberg	Nunn	Simpson
Levin	Packwood	Specter
Long	Pell	Stafford
Lugar	Pressler	Stennis
Matsunaga	Pryor	Stevens
Mattingly	Quayle	Thurmond
McClure	Riegle	Trible
McConnell	Rockefeller	Wallop
Melcher	Roth	Warner
Metzenbaum	Rudman	Wilson
Mitchell	Sarbanes	Zorinsky

NAYS—2

Kasten	Proxmire

NOT VOTING—14

Boren	Evans	Mathias
Broyhill	Goldwater	Murkowski
Chiles	Gorton	Symms
DeConcini	Laxalt	Weicker
Eagleton	Leahy	

So the conference report was agreed to.

□ 2250

Mr. STAFFORD. Madam President, I move to reconsider the vote by which the conference report was agreed to.

Mr. MOYNIHAN. Madam 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 Nevada.

NATIONAL FORESTS OF NEVADA ENHANCEMENT ACT OF 1986

Mr. HECHT. Madam President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further consideration of S. 2698, the National Forests of Nevada Enhancement Act of 1986.

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. HECHT. Madam President, this bill is being held up over disputed water rights language. I just want to make it clear that the water rights language in question was also in the original H.R. 5277, the companion measure which was introduced in the House.

These bills, and that water rights language, enjoy the strong bipartisan support of the entire Nevada delegation. I want to point out that I think it is unfortunate that the House chose to ignore that language when it passed H.R. 5277. I also think it is unfortunate that there are some in this body who want to take advantage of this measure to accomplish a potentially massive reservation of the scarce waters of Nevada to the Federal Government.

Madam President, S. 2698 contains clear and unambiguous language to ensure that the transfer of lands from the BLM to the Forest Service does not create any new Federal water rights. With the Senate language, everything would be the same tomorrow as it is today, except that administration and management would be en-

hanced. I regret that the House Democrats strongly oppose that basic protection. Instead, they would use this bill to establish new Federal water rights which could severely impair future economic development in Nevada.

Madam President, a lot of people in Nevada will be disappointed that this bill did not pass this year. Many Nevadans have been working hard for 2 long years on this issue, and some have contributed their hard-earned money to send representatives to Washington to testify in favor of this bill.

I want to assure the people of Nevada that although this bill may be dead, the issue is not dead. When the Congress reconvenes in January, I will once again come before the Senate to reintroduce this bill. I am hopeful that in the less frantic early days of the 100th Congress, we will be able to act quickly and cooperatively on this issue.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. ARMSTRONG). The majority leader is recognized.

Mr. DOLE. Mr. President, I am happy to yield to the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I ask the Senator from Nevada if this is the land exchange bill?

Mr. HECHT. It is not. It is an exchange between the Forest Service and the BLM.

Mr. METZENBAUM. Mr. President, I shall submit a statement for the record.

Mr. DOLE. Mr. President, if we could have order, I would like to make an announcement that might be of some use.

The PRESIDING OFFICER. The Senate will be in order. The Senators are requested to take their seats. Staff is requested to retire to the rear of the Chamber or to the Cloakroom.

Mr. DOLE. Only those who want to go home have to listen.

The PRESIDING OFFICER. The majority leader.

NO MORE VOTES THIS SESSION

Mr. DOLE. I want first of all to thank my colleagues. I think we have reached a point where, unless we have something that has been approved by unanimous consent, we are not going to bother with any more this year. We have people buzzing around here like flies saying, "Oh, this is important, you have to do this, you have to do that." We want to accommodate as many of our colleagues as possible where there is absolutely no problem. What we cannot do is start loading up a lot of things where the administration has opposition or somebody else has opposition in this Chamber and say, "Well, let us just have one more vote." I am prepared to announce there will be no more votes this session.

[Applause.]

Mr. DOLE. That means unless we can work it out, it is probably not going to happen this year.

There are a lot of things we are going to do tomorrow, but I do not see any reason for everybody to stay tomorrow unless you just want to be around tomorrow. Senator BYRD will be here, I will be here, others may be here. What we are going to do tomorrow is deal with issues.

I shall yield to the distinguished minority leader in just a moment. I understand there are issues that have been cleared that are not controversial and that is it. Then we shall see you all after the elections.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. Mr. President, I thank the distinguished majority leader for his announcement. We have discussed this matter. We have agreed that on tomorrow only those matters that have been cleared to be acted on by unanimous consent will be taken up. We both urge Senators not to come here to ask unanimous consent to call up a matter on which they know there is going to be an objection just so they can get an objection and be able to say to the people back home that they tried to call it up. They had all year now. They have had plenty of time. So I am ready to join with the majority leader in objecting to everything tomorrow. I would like both of us to stand together and object to anything that is called up that is not previously cleared on both sides.

Mr. DOLE. I am prepared to do that. I think we have reached a point—I know a lot of people may be temporarily disappointed that they cannot roll it on through tomorrow. But I assume they will be back next year and a lot of these ideas are so good they are going to wait.

Mr. BYRD. So there will be no more rollcall votes.

Mr. DOLE. No more rollcall votes this session.

Mr. BYRD. I thank the majority leader and I congratulate him on a good job well done.

(Applause, Senators rising.)

Mr. DOLE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. DOLE. I am running for reelection. But I am way ahead, so I shall be back.

I appreciate that very much. There are a couple or three items that we have cleared and that is probably all we are going to do tonight.

Senator DANFORTH wishes to make a statement, Senator PACKWOOD. We have a resolution.

Let me yield, if I may, to the distinguished Senator from Missouri.

THANKS TO SENATORS

Mr. BYRD. Mr. President, if the majority leader will yield so I may make one comment.

Mr. DOLE. Yes, I yield.

Mr. BYRD. I want to take this opportunity to express my gratitude to all Members on both sides who have been so courteous and so cooperative in working with the joint leadership, dealing with tough problems, especially in these last few days. Members have been courteous, have been understanding. Many of them have wanted to get matters cleared that could not be cleared. I want to express my appreciation and also my good wishes that they may get some good rest and have a good Thanksgiving and a good Christmas and be back next year, fully refreshed, to do lots of work again.

THANKS TO THE MINORITY LEADER

Mr. DOLE. Mr. President, let me indicate that I did not know earlier that we were going to have this little outburst. I planned to make a statement tomorrow thanking the distinguished minority leader, but since many of my colleagues will not be here tomorrow, I want again, as I have many times in the past, to thank the distinguished minority leader for his patience, his encouragement, his guidance, his direction, his advice, and above all, his support when times are tough. They get pretty tough out here from time to time and I certainly want to extend my thanks to the distinguished minority leader.

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

(Applause, Senators rising.)

THE MISCELLANEOUS TARIFF BILL

Mr. DOLE. Mr. President, I yield to the Senator from Missouri.

Mr. DANFORTH. Mr. President, a number of Senators have expressed interest in a miscellaneous tariff bill. There is a tariff bill which has been passed by the House. It contains maybe 100 generally fairly small tariff items, but they are very important to various Members of Congress. We have been working valiantly trying to clear some kind of miscellaneous tariff bill for consideration on the floor of the Senate. We have tried various approaches, including an approach which would strip out absolutely everything that is in any way controversial in the House bill. Unfortunately, I have to announce tonight that

there is no possibility of passing any miscellaneous tariff bill this Congress. There are two basic reasons for that.

One reason is that one of the controversial features in the House bill relates to reclassification of television tubes. The chairman of the Ways and Means Committee has taken the position that he does not want any bill passed that does not have the TV tube provision in it. That provision is very controversial here, in the Senate, and some Sentors have taken the position that they would not grant unanimous consent to a bill with a TV tube provision in it. So that is one impossibility.

A second relates to watches. There is a provision in the House bill that makes watches eligible for duty-free treatment under the generalized system of preferences. That, too, is a very controversial item in the Senate. At least one Senator has taken the position that he does not want to sign off on even a noncontroversial bill without the watch provision in it. That would take a rollcall vote. The leader has indicated he does not want any more rollcall votes. So that is the end of miscellaneous tariff bills.

I am sure there are people either in Washington or watching this very carefully, or other Senators who are going to say, "Can't you please just clear the small items?" The answer to that is no, we cannot, for reasons previously stated. But we will be back next year.

I know Chairman PACKWOOD has taken the position that trade is going to be a major issue in the Senate Finance Committee. There will be ample opportunity to pass miscellaneous tariff bills next year.

DIGITAL AUDIO TAPE TARIFF ACT OF 1986

Mr. DANFORTH. Mr. President, I sincerely regret that it has not been possible to take up S. 2842, the Digital Audio Tape Tariff Act of 1986, because I believe it is vital that Congress take some affirmative steps to demonstrate to the electronics industries of the world that America does not intend to stand by and watch helplessly as its music community is decimated by the new technology of digital audio tape. Rumors are rampant that these new DAT machines will be introduced into the American marketplace in the very near future, before the Congress has had an opportunity to consider the threat that these machines pose as part of a comprehensive solution to the home-taping problem. That is why I introduced S. 2842, because I do not believe that copyright legislation dealing with the home-taping issue should be undermined before there is an opportunity for it to be fully considered by the Congress. I hope that, notwithstanding our inability to enact such legislation this year, the electronics manufacturers will voluntarily agree to insert copy-coder chips in their DAT machines if such machines are introduced in this market before this bill or more comprehensive copyright legislation can be considered.

I am heartened by the widespread support I have received for my measure. I am grateful to my cosponsors—Senators CHAFEE, BENTSEN, WILSON, CRANSTON, GORE, HEINZ, and SASSER—and to the administration, which announced in August that it supports the mandatory installation in new tape recorders of copy-code scanners. Although I view this bill as an essential interim measure, I recognize that ultimately there must be a global solution to this problem—one in which the electronics industries of all countries are uniformly obliged to provide for the protection of the intellectual property rights of copyright owners. Such a comprehensive solution is best incorporated in our copyright laws. It is my sincere hope that the home taping issue will soon be resolved, under the copyright law, so that the trade implications of this problem will not add to the already strained trading relations between the United States and Japan.

Mr. PACKWOOD. Mr. President, I wish to commend the leadership that the distinguished Senator from Missouri and chairman of the International Trade Subcommittee has shown on this matter. I too regret that it has not been possible to consider S. 2842.

Personally, I would welcome the opportunity to cast a vote in favor of S. 2842. I wholly agree with Senator DANFORTH about the need to send a clear message to our trading partners that where the technology is available for a fair method of protecting copyrights, the Congress would not want that opportunity jeopardized. Foreign electronic producers should not mistake our careful consideration of the home-taping issue for a lack of resolve to implement a legislative solution or as an invitation to flood our market with a new generation of taping machines. To many of us, the premature introduction of DAT machines in the United States would appear opportunistic and inappropriate, and it would not contribute to the evenhanded debate that this issue deserves.

RIGHTS OF SONGWRITERS AND RECORDING ARTISTS DESERVE PROTECTION

Mr. WILSON. Mr. President, I rise to associate myself with the remarks of my distinguished colleagues on the subject of S. 2842, which would provide protection against the importation of equipment whose very design invites copyright infringement.

Digital audio tape technology, so-called DAT, offers some wonderful benefits, but it is also capable of doing serious damage to the music industry in the United States and throughout the world. Before this new technology is unleashed, Congress must consider whether steps should be taken to protect against its abusive use.

Similar steps are being considered right now by the EEC. Indeed, I undertand that the EEC has already informally notified the Japanese Trade Ministry [MITI], that DAT machines are not likely to be permitted in the Common Market unless they contain copy-code scanners—which protect against unauthorized production of perfect copies of copyrighted music.

Wouldn't it be ironic if, by reason of the EEC's strong hand in favor of intellectual property, America were to become the dumping ground for all the new DAT machines, damaging American intellectual property owners even more severely.

Owners of intellectual property rights deserve the same protection as owners of real and personal property rights. Whenever one considers intangible property, such as that owned by a copyright holder, it may be difficult to appreciate the issues at stake. Yet, if there is no protection afforded by our Government for the rights of authors, filmmakers, songwriters, performing artists, and others, we will suffer a great loss, for we cannot expect the efforts of these people to continue.

The arts entertain and enlighten us, but, after all, those who work to bring them to us must be fairly compensated. The bill offered by Senator DANFORTH, S. 2842, is one small but important step that we can take to protect one group of artists who have sufferd greatly and unfairly as a result of new technology—specifically, songwriters and recording artists.

As the hasty introduction of DAT machines would precipitate a confrontation that nobody wants. I share the hope of my colleagues that the introduction of these recorders will be postponed until a consensus solution can be developed. After all, it is in the best interest of the electronics manufacturers—who likewise depend on intellectual property protection to preserve the benefits of their own technological creativity—to uphold the values and respect the rights of intellectual property.

DIGITAL AUDIO TAPE TARIFF ACT OF 1986

Mr. GORE. Let me rise to echo the sentiments of my distinguished colleague. As a cosponsor of S. 2842, I share Senator DANFORTH's deep concern about this issue, and I am likewise disappointed that time does not remain for us to act on this legislation.

It is essential that this issue be revisited promptly in the next Congress. This interim legislation, I believe, is necessary to protect the American music community. I would urge the chairman of the Finance Committee, and the chairman of the International Trade Subcommittee to take up this issue at the beginning of next year.

Mr. CRANSTON. I rise to associate myself with the remarks of my colleagues on the subject of S. 2842. Digital audio tape technology will revolutionize the quality of sound recordings at costs affordable to consumers. But digital audio technology, like other forms of electronic technology available today, poses serious threats to the integrity of intellectual property rights in music and sound recordings.

This time, however, there is a simple solution to the problem. An integrated circuit chip has been developed which when implanted in digital sound equipment will effectively prevent unauthorized copying of recorded music. The chip's effectiveness depends on the cooperation of the manufacturers of digital audio tape equipment. The purpose of S. 2842 is to provide an incentive for cooperation in the form of a significant tariff differential in favor of equipment carrying the chip.

The copy-code scanner provides vital protection for intellectual property rights in sound recordings while making it possible for digital audio tape equipment manufacturers to export and sell equipment which will be used in conformity with our laws.

Mr. President, today there is a rapidly growing market for types of electronic equipment for which the principal purpose is to evade the law in one way or another. Many of these devices are technological marvels. I do not wish to stop the advance of technology but surely there must be some balanced accommodation between technology which appropriates the property of others and the rights of intellectual property owners.

I was pleased to cosponsor S. 2842 and I commend Senator DANFORTH for his leadership on this matter. It is critical, not only to the economic future of this music industry, but for all industries based upon intellectual property to find effective answers to the threat of piracy and unauthorized copying.

TELEVISION PICTURE TUBE IMPORTS

Mr. BUMPERS. Mr. President, I am disturbed by a provision in the miscellaneous tariff bill which has been sent to us by the House. Specifically, I question the provision which closes a loophole in the customs treatment of imports of certain television picture tubes. While this provision addresses a real issue and closes what I agree is an unintended loophole in the customs regulations, the manner in which this loophole is closed potentially is counterproductive to U.S. interests.

Let me provide some background. U.S. companies still manufacture some television picture tubes in the United States, but other picture tubes are not manufactured here and are only available from foreign suppliers as imports. Both United States and foreign-owned companies buy television picture tubes from U.S. suppliers and they both also import picture tubes for manufacture and assembly of television sets in the United States. Sometimes these manufacturers import picture tubes even though there is an available U.S. supplier, and this is where the controversy has arisen.

Interestingly, the current tariff structure sets a lower tariff on imports of completed television sets and a higher tariff on imports of picture tubes. The tariff on completed TV sets is only 5 percent while the tariff on television picture tubes is 15 percent. This inverted tariff itself provides some incentive for foreign-owned and U.S. companies to manufacture complete television sets abroad and not to assemble any television sets in the United States.

The problem with this legislation is that it may exacerbate this problem with the current inverted tariff. Specifically, if there is a tariff on imports of television picture tubes and if this tariff is the same for picture tubes which are and are not manufactured in the United States, then companies which assemble television sets in the United States have an even greater incentive to move their manufacturing facilities abroad to take advantage of the lower tariff on completed sets. There would be no special incentive for buying U.S.-made picture tubes when they are available.

The customs loophole we are discussing here permits picture tubes to be imported at the lower tariff rate applicable to completed television sets. This avoids the perverse incentive which the current inverted tariff creates to assemble the completed sets abroad. But when we close this loophole, the tariff will again become inverted, creating the incentive of foreign-owned manufacturers—and U.S. manufacturers—to assemble complete television sets abroad. That is what this debate is all about.

In dealing with trade issues concerning television picture tubes and television sets, we have to keep these distinctions and incentives in mind so that we do not unintentionally encourage either for United States or foreign manufacturers to import picture tubes that are available from U.S. suppliers or for United States or foreign manufacturers to move their manufacturing or assembly operations abroad. Unfortunately, the House-passed bill might create precisely these counterproductive incentives.

The House-passed miscellaneous tariff bill is directed at closing the loophole which permits the importation of television picture tubes under the lower tariff which applies to completed television sets. I think this is a loophole and I do not object to its being closed. But both the loophole and the bill close this loophole for both picture tubes manufactured in the United States and those not manufactured here. It should be restricted only to those picture tubes which are manufactured in the United States and the lower tariff should continue to apply to television picture tubes which are imported because there is no available U.S. supply.

If there is a higher tariff on picture tubes that are available in the United States, the inverted tariff encourages both U.S.- and foreign-owned companies with manufacturing facilities in the United States to buy U.S.-made picture tubes. If the tariff on unavailable picture tubes remains the same as on completed television sets, there will be an incentive to shift manufacturing facilities abroad.

In short, by limiting the higher tariff only to picture tubes which are available in the United States, there will be two incentives for creation of U.S. jobs: one in television picture tube manufacturing and one in assembly of television sets. This is a double-win situation for the United States. The House-passed bill is a double-lose situation, both providing no incentive to purchase U.S.-made tubes and providing an incentive for manufacturing completed television sets abroad.

If the House-passed bill is not limited, the United States will be attacking imports and attacking U.S. manufacturing jobs. This is dumb and counterproductive. I am not in favor of encouraging imports where there are U.S. suppliers of the same product, but it simply makes no sense to penalize companies which do establish manufacturing facilities in our country and which must import certain components of the products they manufacture here. Taking that approach hurts employment both in the facilities manufacturing the component and in the facilities where these components are assembled into final products.

The House-passed bill acknowledges this problem by including a special exemption from the higher duty for certain small picture tubes which are not available from U.S. suppliers. I can say that this one exemption in the House bill is helpful because it applies to the projection screen picture tubes which are imported by Sanyo Manufacturing Co., which assembles televisions in Arkansas. While the screen for these tubes is large, the actual picture tube and its display diagonal are substantial smaller than 12 inches, the size limit for the small tubes exempted from the higher duty. These projection screen tubes are not available from any U.S. supplier so it is important and proper that they be exempt from the higher duty.

I understand that Senator DANFORTH has pledged to consider additional exemptions for other tubes which are not available from any U.S. supplier. Specifically, Sanyo also imports some 35-inch tubes which are not available

from a U.S. supplier and I will pursue a temporary duty suspension for these tubes if and when the Congress considers this miscellaneous tariff bill or a trade remedy bill in the next Congress.

The issue of duty suspensions can become complicated. In the case of 35-inch tubes there clearly are no U.S.-made television picture tubes, so eliminating the tariff on imports of these tubes has no effect on U.S. television picture tube manufacturers. In other cases, the issue may not be so clear. There may be a U.S.-made tube which is roughly comparable to the imported tube, but the manufacturer may find the differences commercially important even if the tubes are of roughly the same diagonal screen size.

Similarly, U.S. companies may manufacture a certain tube but not be willing or able to supply enough of the tubes to a manufacturer willing to buy them. Supply of these tubes may be abruptly interrupted, leaving the company with no alternative but to import a comparable tube. In these situations, there should be a duty suspension for the tube even though it may be available at some times or in some quantities from a U.S. producer. I understand that Senator DANFORTH cannot make any firm representations with respect to these complicated issues, but I look forward to working with him on this issue to define the terms for any duty suspension for imported television picture tubes.

This issue is like all trade issues—it's a two-edged sword. It is legitimate to encourage U.S.-based manufacturers to buy U.S.-made picture tubes when they are available. But, it would be unwise to give U.S.-based manufacturers an incentive to move their facilities offshore to take advantage of a lower tariff on completed television sets. We want assembly jobs here just as we want manufacturing jobs here. We should not take an action which creates an incentive for either assembly or manufacturing jobs to be lost. I am happy that the House-passed provision contains one important exemption and will work to see that further exemptions are adopted in cases where picture tubes are not manufactured in the United States.

I very much appreciate the willingness of Senator DANFORTH and his trade staff person, John Hall, to discuss these issues. Both the Senator and Mr. Hall have been very forthcoming and patient. This forms the basis for a continuation of these discussions in the next Congress. I regret we were unable to secure on agreement to consider this bill here and I look forward to working on this issue next year.

Mr. BUMPERS. Mr. President, I regret that the Senate could not vote on the amendment of my colleague from Arkansas, Senator Pryor, and our two colleagues from Connecticut and I that would amend the Trade Act of 1974 to allow watches to be designated as eligible articles under the generalized system of preferences [GSP].

Briefly, this amendment would have removed watches from the list of products statutorily excluded by the Trade Act of 1974 from GSP treatment. According GSP treatment to watches would bolster U.S. competitiveness against Japanese and Hong Kong suppliers and thus safeguard the 1,600 watch jobs that still remain in the United States.

Removing watches from the list of articles ineligible for duty-free treatment under GSP would have provided additional incentives for the economic development of qualified Third World countries without causing any harm to the U.S. watch industry. This would also have benefited the American consumer by eliminating the duties that imported watches now must pay.

Of particular importance is the impact that this bill would have had on the Philippines, a crucial U.S. ally that has gone through a very difficult period and is still experiencing difficulty. The best thing we can do to help the Philippines is to bolster its economy, and the fact is that the Philippines are deeply involved in the manufacture of watches. Best of all, this amendment would have done just that without jeopardizing U.S. jobs. In fact, it would have actually helped preserve existing U.S. jobs and give American consumers a break as well.

This double benefit would have come about because the sad but true fact is that the U.S. watch industry is in a sorry state: in fact, the production of completed watches has effectively ceased in the United States. Virtually all watches we buy now are imported. The U.S. industry has been reduced to producing some parts, servicing, and distribution. This is where the 1,600 U.S. jobs remain, and these jobs would have been helped by this amendment since increased demand for foreign-assembled watches would increase the demand for watch parts, watch servicing, and watch distribution.

In many ways, Mr. President, the watch industry offers a stark glimpse into the future of where the U.S. shoe industry may be just a few years down the road. This is why I have been fighting to provide some relief for the shoe industry, which is losing market share by the month in the fact of a flood of imports, and now has only about 25 percent of the market.

There is a very small watch industry in the Virgin Islands, but even that would not have been significantly affected by this amendment. The watches they produce are almost entirely of Swiss origin and have much higher retail prices than the overwhelming majority of imported watches. Furthermore, the Virgin Islands already enjoys special trade and tariff treatment that already far outweighs the benefits of GSP protection.

Mr. President, there was a time about 12 years ago when it made sense to exclude watches from GSP treatment. At that time, the U.S. watch assembly industry was fighting for its life, and Congress rightly tried to help. Unfortunately, that help was not enough, and today the U.S. watch industry, in terms of production of completed watches, is dead. We need to recognize this sad fact and let our GSP exclusion list reflect today's reality. Recognizing this reality would be a boost to the American consumer, a boon to the Philippine economy, and thus a distinct plus to U.S. security interests.

I hope we can accomplish this next year and I will do my best to bring that about.

Mr. HELMS. Mr. President, I have matter that has been cleared on both sides.

The PRESIDING OFFICER. If the Senator will suspend, the Chair will attempt to get order. The Senate will be in order.

□ 2310

FUTURES TRADING ACT

The PRESIDING OFFICER. The Chair must insist that the Senate be in order.

Mr. HELMS. Mr. President, I ask that the Chair lay before the Senate a message from the House on H.R. 4613, the Commodity Exchange Act.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, may I inquire of the distinguished Senator the nature of this particular proposal?

Mr. HELMS. Pardon?

Mr. WARNER. May I inquire of the Senator the nature of this particular proposal?

Mr. HELMS. It has been cleared on both sides. It is a message on the commodity futures trading reauthorization.

Mr. WARNER. I thank the Senator.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House recede from its disagreement to the amendment of the Senate to the bill (H.R. 4613) entitled "An Act to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that Act", and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Futures Trading Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TITLE I—FUTURES TRADING

SEC. 101. FRAUDULENT PRACTICES.

Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(1) by striking out "on or subject to the rules of any contract market," the second place it appears in the first sentence; and

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

"Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of a commodity for future delivery that is made, or to be made, on or subject to the rules of such board of trade, exchange or market.".

SEC. 102. OPTIONS TRANSACTIONS.

Subsection (c) of section 4c of the Commodity Exchange Act (7 U.S.C. 6c(c)) is amended to read as follows:

"(c) Not later than 90 days after the date of the enactment of the Futures Trading Act of 1986, the Commission shall issue regulations—

"(1) to eliminate the pilot status of its program for commodity option transactions involving the trading of options on contract markets, including any numerical restrictions on the number of commodities or option contracts for which a contract market may be designated; and

"(2) otherwise to continue to permit the trading of such commodity options under such terms and conditions that the Commission from time to time may prescribe.".

SEC. 103. EXTRATERRITORIAL SERVICE OF SUBPENAS.

Section 6(b) of the Commodity Exchange Act (7 U.S.C. 15) is amended—

(1) in the third sentence, by inserting "(except as provided in the fifth sentence of this subsection)" immediately before "may administer oaths and affirmations, subpena witnesses";

(2) in the fourth sentence by striking out "or any State" and inserting in lieu thereof ", any State, or any foreign country or jurisdiction"; and

(3) by inserting after the fourth sentence the following new sentence: "A subpena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.".

SEC. 104. EX PARTE APPOINTMENT OF TEMPORARY RECEIVERS.

The proviso of the first sentence of section 6c of the Commodity Exchange Act (7 U.S.C. 13a-1) is amended by inserting within the parenthetical phrase before the closing parenthesis the following: ", and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate".

SEC. 105. CERTAIN PROHIBITED TRANSACTIONS.

Section 9(d) of the Commodity Exchange Act (7 U.S.C. 13(d)) is amended—

(1) by inserting immediately before the period at the end of the first sentence the following: "if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission"; and

(2) by striking out the second and third sentences and inserting in lieu thereof the following new sentence: "The foregoing prohibitions shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this subsection.".

SEC. 106. AUTHORIZATION FOR APPROPRIATIONS.

Subsection (d) of section 12 of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended to read as follows:

"(d) There are authorized to be appropriated to carry out this Act such sums as may be necessary for each of the fiscal years during the period beginning October 1, 1986, and ending September 30, 1989.".

SEC. 107. REGISTERED FUTURES ASSOCIATION DISCIPLINARY ACTIONS AND MEMBERSHIP RESTRICTIONS.

Subsections (h) and (i) of section 17 of the Commodity Exchange Act (7 U.S.C. 21 (h) and (i)) are amended to read as follows:

"(h)(1) If any registered futures association takes any final disciplinary action against a member of the association or a person associated with a member, denies admission to any person seeking membership therein, or bars any person from being associated with a member, the association promptly shall give notice thereof to such member or person and file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule or regulation, may prescribe as necessary or appropriate to carry out the purposes of this Act.

"(2) Any action with respect to which a registered futures association is required by paragraph (1) to file notice shall be subject to review by the Commission on its motion, or on application by any person aggrieved by the action. Such application shall be filed within 30 days after the date such notice is filed with the Commission and received by the aggrieved person, or within such longer period as the Commission may determine.

"(3)(A) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

"(B) The Commission shall establish procedures for expedited consideration and determination of the question of a stay.

"(i)(1) In a proceeding to review a final disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction imposed by the association)—

"(A) if the Commission finds that—

"(i) the member or person associated with a member has engaged in the acts or practices, or has omitted the acts, that the association has found the member or person to have engaged in or omitted;

"(ii) the acts or practices, or omissions to act, are in violation of the rules of the association specified in the determination of the association; and

"(iii) such rules are, and were applied in a manner, consistent with the purposes of this Act,

the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the association, modify the sanction in accordance with paragraph (2), or remand the case to the association for further proceedings; or

"(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the sanction imposed by the association and, if appropriate, remand the case to the association for further proceedings.

"(2) If, after a proceeding under paragraph (1), the Commission finds that any penalty imposed on a member or person associated with a member is excessive or oppressive, having due regard for the public interest, the Commission, by order, shall cancel, reduce, or require the remission of the penalty.

"(3) In a proceeding to review the denial of membership in a registered futures asso-

ciation or the barring of any person from being associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the action of the association)—

"(A) if the Commission finds that—

"(i) the specific grounds on which the denial or bar is based exist in fact;

"(ii) the denial or bar is in accordance with the rules of the association; and

"(iii) such rules are, and were applied in a manner, consistent with the purposes of this Act,

the Commission, by order, shall so declare and, as appropriate, affirm or modify the action of the association, or remand the case to the association for further proceedings; or

"(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the action of the association and require the association to admit the applicant to membership or permit the person to be associated with a member, or, as appropriate, remand the case to the association for futher proceedings.

"(4) Any person (other than a registered futures association) aggrieved by a final order of the Commission entered under this subsection may file a petition for review with a United States court of appeals in the same manner as provided in section 6(b).".

SEC. 108. RULE REVIEW PROCEDURES.

Section 17(j) of the Commodity Exchange Act (7 U.S.C. 21(j)) is amended by striking out the third sentence.

SEC. 109. LEVERAGE TRANSACTIONS.

Section 19 of the Commodity Exchange Act (7 U.S.C. 23) is amended to read as follows:

"SEC. 19. (a) Except as authorized under subsection (b), no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

"(b)(1) Subject to paragraph (2), no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum under a standardized contract described in subsection (a), contrary to the terms of any rule, regulation, or order that the Commission shall prescribe, which may include terms designed to ensure the financial solvency of the transaction or prevent manipulation or fraud. Such rule, regulation, or order may be made only after notice and opportunity for hearing. The Commission may set different terms and conditions for transactions involving different commodities.

"(2) No person may engage in any activity described in paragraph (1) who is not permitted to engage in such activity, by the rules, regulations, and orders of the Commission in effect on the date of the enactment of the Futures Trading Act of 1986, until the Commission permits such person to engage in such activity in accordance with regulations issued in accordance with subsection (c)(2).

"(c)(1)(A) Not later than 2 years after the date of the enactment of the Futures Trading Act of 1986, the Commission shall—

"(i) with the assistance of a futures association registered under this Act, conduct a survey concerning the persons interested in engaging in the business of offering to enter into, entering into, or confirming the execution of, the transactions described in subsection (b)(1); and

"(ii) transmit a report of the results of the survey to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

"(B) Notwithstanding any other provision of law, for purposes of completing such report the Commission may direct, by rule, regulation, or order, a futures association registered under this Act to render such assistance as the Commission shall specify.

"(C) Such report shall include the findings and any recommendations of the Commission concerning—

"(i) whether such transactions serve an economic purpose;

"(ii) the most efficient manner, consistent with the public interest, to permit additional persons to engage in the business of offering to enter into, entering into, and confirming the execution of such transactions; and

"(iii) the appropriate regulatory scheme to govern such transactions to ensure the financial solvency of such transactions and to prevent manipulation or fraud.

"(2) The report shall also include Commission regulations governing such transactions. The regulations shall provide for permitting additional persons to engage in such transactions. The regulations shall become effective on the expiration of 90 calendar days on which either House of Congress is in session after the date of the transmittal of the report to Congress. The regulations—

"(A) may authorize or require, notwithstanding any other provision of law, a futures association registered under this Act to perform such responsibilities in connection with such transactions as the Commission may specify; and

"(B) may require that permission for additional persons to engage in such business be given on a gradual basis, so as not to place an undue burden on the resources of the Commission.

"(d) This section shall not affect any rights or obligations arising out of any transaction subject to this section, as in effect before the date of the enactment of the Futures Trading Act of 1986, that was entered into, or the execution of which was confirmed before the date of the enactment of such Act.".

SEC. 110. TECHNICAL CORRECTIONS.

The Commodity Exchange Act is amended—

(1) in the third sentence of section 2(a)(1)(B)(iv)(I) (7 U.S.C. 2a(iv)(I)), by striking out "Securities Exchange Commission" and inserting in lieu thereof "Securities and Exchange Commission";

(2) in the fourth full sentence of section 5a(12) (7 U.S.C. 7a(12)), by striking out "particpate" and inserting in lieu thereof "participate";

(3) in the first sentence of section 9(c) (7 U.S.C. 13(c)), by striking out "section 4k." and inserting in lieu thereof "section 4k,";

(4) in the first sentence of section 9(d) (7 U.S.C. 13(d)), by striking out "advance guarantee" and inserting in lieu thereof "advance guaranty";

(5) by repealing section 11 (7 U.S.C. 14 note);

(6) in the second full sentence of section 17(b)(2) (7 U.S.C. 21(b)(2)), by striking out "with in" and inserting in lieu thereof "within"; and

(7) in section 17(k)(1) (7 U.S.C. 21(k)(1)), by striking out "title" and inserting in lieu thereof "section".

SEC. 111. GAO STUDY OF TRADING IN CATTLE FUTURES CONTRACTS.

(a) STUDY.—The Comptroller General of the United States shall conduct and complete a comprehensive study of the effect of trading in contracts for the future delivery of live cattle on the cash market price of live cattle, with particular emphasis on—

(1) whether the reaction of the live cattle futures market to the results of the milk production termination program in March 1986, conducted under section 201(d)(3) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)(3)), was based on and accurately reflected the then prevailing conditions of supply and demand;

(2) the effect of the trading in contracts for the future delivery of live cattle on—

(i) the price relationship between feeder cattle and fed cattle;

(ii) the price discovery process with respect to live cattle; and

(iii) price competition within the cattle industry;

(3) the effect of the use of packer contracts, as a means of obtaining slaughter cattle, on the increase in short hedging in contracts for the future delivery of live cattle and the effect of this increase in short hedging on prices in the futures and cash markets;

(4) the effect on the ability of the cash markets to accurately reflect prevailing conditions of supply and demand if packer contracts become the prevalent method of marketing fed cattle;

(5) whether the present delivery system for contracts for the future delivery of live cattle creates any bias (either upward or downward) in the cash price for cattle;

(6) whether the present delivery system for contracts for the future delivery of live cattle creates price volatility during the delivery month; and

(7) whether there are advantages or disadvantages to a cash settlement system in lieu of the present delivery system in the case of contracts for the future delivery of live cattle.

(b) REPORTS.—

(1) PRELIMINARY REPORT.—Not later than January 15, 1987, the Comptroller General shall submit a preliminary report on the results of the study required under subsection (a) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(2) FINAL REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to such committees a detailed final report of the results of the study required under subsection (a).

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. CROSS COMPLIANCE FOR PRODUCERS OF EXTRA LONG STAPLE COTTON.

Paragraph A(16) of section 103(h) of the Agricultural Act of 1949 (7 U.S.C. 1444(h)(16)) is amended to read as follows:

"(16)(A) Notwithstanding any other provision of law, except as provided in subparagraph (B), compliance on a farm with the

terms and conditions of any other commodity program may not be required as a condition of eligibility for loans or payments under this subsection.

"(B) In the case of each of the 1989 and 1990 crops of extra long staple cotton, the Secretary may require that, as a condition of eligibility of producers for loans or payments under this subsection, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect shall not exceed the crop acreage base established for the farm for that commodity.

"(C) Notwithstanding any other provision of law, in the case of each of the 1987 and 1988 crops of extra long staple cotton, compliance with the terms and conditions of the program authorized by this subsection may not be required as a condition of eligibility for loans, purchases, or payments under any other commodity program.".

SEC. 202. BASIS FOR COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(c)(1)(E)(ii)) is amended by striking out "marketing year for such crop" and inserting in lieu thereof "first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

SEC. 203. VALENCIA PEANUTS.

Section 108B(4)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445c-2(4)(A)) is amended by inserting after "additional peanuts" the following: "(other than net gains on additional peanuts in separate type pools established under paragraph (3)(B)(i) for Valencia peanuts produced in New Mexico)".

SEC. 204. LOCAL AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEES.

The fifth paragraph of section 8(b) of the Soil conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) (as amended by section 3 of Public Law 99-253 (100 Stat. 36)) is amended—

(1) by inserting after the third sentence the following new sentence: "Notwithstanding the preceding sentence, there may be one local administrative area in any country for which there had been established less than three local administrative areas as of December 23, 1985."; and

(2) in the sixth sentence (as it existed before the amendment made by paragraph (1)), by striking out "; *Provided*," and all that follows through the period and inserting in lieu thereof a period.

SEC. 205. ELIGIBILITY OF CERTAIN LAND UNDER THE CONSERVATION RESERVE PROGRAM.

Section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831) is amended by adding at the end thereof the following new subsection:

"(f) For purposes of this subtitle, alfalfa and other multiyear grasses and legumes, in a rotation practice approved by the Secreary, shall be considered agricultural commodities.".

SEC. 206. MARKETING PRACTICES AND TRAINING.

(a) MARKETING PRACTICES OF FmHA APPLICANTS AND BORROWERS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study of marketing practices used by applicants for and borrowers of farm loans made, insured, or guranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.). The study shall include an examination of the methods used by the applicants and borrowers in marketing agricultural commodities, livestock, and aquacultural products and the extent to which the applicants and borrowers use advanced marketing techniques for such sales.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the study conducted under paragraph (1), together with any appropriate recommendations.

(b) ADVANCED MARKETING TRAINING FOR FARMERS AND RANCHERS.—the Secretary of Agriculture may establish a program to train farmers and ranchers in advanced techniques for the marketing of agricultural commodities, livestock, and aquacultural products produced by such farmers and ranchers, including (where appropriate as determined by the Secretary) training in the use of futures and options markets.

TITLE III—GRAIN QUALITY IMPROVEMENT

SEC. 301. SHORT TITLE.

This title may be cited as the "Grain Quality Improvement Act of 1986".

SEC. 302. DECLARATION OF POLICY.

Section 2 of the United States Grain Standards Act (7 U.S.C. 74) is amended—

(1) by inserting "(a)"after the section designation; and

(2) by adding at the end thereof the folowng new subsection:

"(b) It is also declared to be the policy of Congress—

"(1) to promote the marketing of grain of high quality to both domestic and foreign buyers;

"(2) that the primary objective of the official United States standards for grain is to certify the quality of grain as accurately as practicable; and

"(3) that official United States standards for grain shall—

"(A) define uniform and accepted descriptive terms to facilitate trade in grain;

"(B) provide information to aid in determining grain storability;

"(C) offer users of such standards the best possible information from which to determine end-product yield and quality of grain; and

"(D) provide the framework necessary for markets to establish grain quality improvement incentives.".

SEC. 303. FOREIGN MATERIAL RECOMBINATION.

(a) PROHIBITED ACT.—section 13 of the United States Grain Standards Act (7 U.S.C. 87b) is amended by adding at the end thereof the following new subsection:

"(d)(1) Subject to paragraphs (2) and (3), to ensure the quality of grain marketed in or exported from the United States—

"(A) no dockage or foreign material, as defined by the Secretary, once removed from grain shall be recombined with any grain; and

"(B) no dockage or foreign material of any origin may be added to any grain.

"(2) Nothing in paragraph (1) shall be construed to prohibit—

"(A) the treatment of grain to suppress, destroy, or prevent insects and fungi injurious to stored grain;

"(B) the marketing, domestically or for export, of dockage or foriegn material removed from grain if such dockage or foreign material is marketed—

"(i) separately and uncombined with any such whole grain;

"(ii) in pelletized form; or

"(iii) as a part of a processed ration for livestock, poultry, or fish;

"(C) the blending of grain with similar grain of a different quality to adjust the quality of the resulting mixture;

"(D) the recombination of broken corn or broken kernels, as defined by the Administrator, with grain of the type from which the broken corn or broken kernels were derived;

"(E) effective for the period ending December 31, 1987, the recombination of dockage or foreign material, except dust, removed at an export loading facility from grain destined for shipment as a cargo under one export official certificate of inspection if—

"(i) the recombination occurs during the loading of the cargo;

"(ii) the purpose is to ensure unformity of dockage or foreign material throughout that specific cargo; and

"(iii) the separation and recombination are conducted in accordance with regulations issued by the administrator; or

"(F) the addition to grain of a dust suppressant, or the addition of confetti or any other similar material that serves the same purpose in a quantity necessary to facilitate identification of ownership or origin of a particular lot of grain.

"(3)(A) The Secretary may, by regulation, exempt from paragraph (1) the last handling of grain in the final sale and shipment of such grain to a domestic user or processor if such exemption is determined by the Secretary to be in the best economic interest of producers, grain merchants, the industry involved, and the public.

"(B) Grain sold under an exemption authorized by this paragraph shall be consumed or processed into one or more products by the purchaser, but may not be resold into commercial channels for such grain or blended with other grain for resale. Neither products nor byproducts derived therefrom (except vegetable oils as defined by the Secretary and used as a dust suppressant) shall be blended with or added to grain in commercial channels.".

(b) Effective Date.—The amendments made by this section shall become effective on May 1, 1987.

SEC. 304. INSECT INFESTATION.

Not later than 6 months after the date of enactment of this Act, the Administrator of the Federal Grain Inspection Service shall issue a final rule that revises grain inspection procedures and standards established under the United States Grain Standards Act (7 U.S.C. 71 et seq.) to more accurately reflect levels of insect infestation.

SEC. 305. STUDY OF PREMIUMS FOR HIGH-QUALITY GRAIN.

(a) STUDY.—After public comment from and in consultation with grain producers, grain merchants, grain processors, and grain exporters, the Secretary of Agriculture shall conduct a study of the feasibility and appropriateness of adjusting Commodity Credit Corporation grain premium and discount schedules—

(1) to encourage the delivery, storage, and export of high-quality, clean grain; and

(2) to offer incentives to minimize the quantity of moisture, foreign material, dockage, shrunken and broken kernels, and damaged kernels in lots of grain pledged as collateral for Commodity Credit Corporation loans or in grain owned by the Commodity Credit Corporation.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit a report describing the results of the study required under subsection (a), together with recommendations, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 306. REVIEW OF OPTIMAL GRADE PROPOSAL.

(a) NOTICE AND COMMENT.—To evaluate the effects of moving to an optimal grain grading system, the Administrator of the Federal Grain Inspection Service shall—

(1) publish in the Federal Register a detailed description of the proposals contained in H.R. 5354, 99th Congress, the Optimal Grain Grading Act of 1986; and

(2) solicit public comment, during a period of not less than 60 days on—

(A) the optimal grain grading system as proposed in H.R. 5354; and

(B) the general objective of improving grain quality by revising the official United States grain standards to provide greater economic incentives for production and sale of high-quality grain.

(b) REPORT.—The Administrator shall report to Congress, by May 1, 1987, on the comments received and on the recommendations of the Administrator with respect to the matters on which comments were solicited.

SEC. 307. STUDY OF UNIFORM END-USE VALUE TESTS.

(a) STUDY.—The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to conduct a study of the need for and availability of uniform end-use value tests for grain. The study shall include the following:

(1) A survey of domestic and foreign buyers of grain to identify the information about grain characteristics that would be most useful to such buyers. The survey shall take into account those factors that buyers specify in contracts, test for, measure, or would measure if tests were available, including—

(A) the starch, oil, and protein content, breakage susceptibility, and individual kernel moisture of corn;

(B) the baking characteristics, protein content, gluten content and quality, and milling hardness of wheat; and

(C) the protein, oil, and free-fatty-acid content of soybeans.

(C) A review of the development and availability of tests for the characteristics identified in the survey conducted under paragraph (1), including an evaluation of the costs of providing an evaluation of the costs of providing such tests.

(b) END-USE TESTS.—

(1) ONGOING REVIEW.—The Secretary of agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to maintain an ongoing review to determine the end-use tests that are of economic value to buyers, and the availability and costs of such tests.

(2) REVISION OF PROCEDURES.—The Administrator of the Federal Grain Inspection Service, to the extent practicable, shall revise official grain inspection and certification procedures to include within official inspection (as defined in section 3(i) of the United States Grain Standards Act (7 U.S.C. 75(i))) those tests that are identified under the study conducted under subsection (a) as useful, available, and economically feasible.

(c) REPORTS.—

(1) STUDY AND REVISION OF PROCEDURES.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Federal Grain Inspection Service shall submit a report to Congress setting forth the results of the study conducted under subsection (a) and actions taken under subsection (b)(2).

(2) ONGOING REVIEW.—The Administrator shall report yearly to Congress on the ongoing review conducted under subsection (b)(1).

TITLE IV.—FEDERAL MEAT INSPECTION

SEC. 401. SHORT TITLE.

This title may be cited as the "Processed Products Inspection Improvement Act of 1986".

SEC. 402. PURPOSE.

The amendments made by this title are in furtherance of the findings made by Congress in section 2 of the Federal Meat Inspection Act (21 U.S.C. 602).

SEC. 403. AMENDMENTS TO FEDERAL MEAT INSPECTION ACT.

(a) MANNER AND FREQUENCY OF INSPECTION.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 6 of the Federal Meat Inspection Act (21 U.S.C. 606) is amended by striking out "That for the purposes" and all that follows through "*Provided,* That" and inserting in lieu thereof the following:

"(a)(1) For the purposes set forth in the preceding provisions of this Act, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment.

"(2) Such examination and inspection shall be conducted with such frequency and in such manner as the Secretary considers necessary, as provided in rules and regulations issued by the Secretary, taking into account such factors as the Secretary considers to be appropriate, including—

"(A) the nature and frequency of the processing operations at such establishment;

"(B) the adequacy and reliability of the processing controls and sanitary procedures at such establishment; and

"(C) the history of compliance with inspection requirements in effect under this Act, by the operator of such establishment or anyone responsibly connected with the business (as described in section 401(g)) that operates such establishment.

"(b)(1) All such products found by any of such inspectors and by the operator of such establishment to be not adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and passed'.

"(2) All such products found by any of such inspectors or by the operator of such establishment to be adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and condemned'. Each such condemned product shall be destroyed for human food purposes. The Secretary may suspend inspection at, and remove inspectors from, any establishment that fails to so condemn adulterated meat food products or fails to so destroy condemned meat food products.

"(c) For purposes of any examination and inspection, such inspectors shall have access to every part of an establishment at all times, by day or night, and without regard to whether such establishment is operated.

"(d) Notwithstanding the preceding provisions of this section,".

"(b) ENFORCEMENT METHODS.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 401, of the Federal Meat Inspection Act (21 U.S.C. 671) is amended—

(1) by inserting "(a)" after the section designation;

(2) in the first sentence—

(A) by striking out "applicant, for" and inserting in lieu thereof "applicant for";

(B) by striking out "any felony, or (2)"; and

(C) by inserting before the period at the end thereof "or (2) any felony";

(3) in the second sentence—

(A) by indenting the first word so as to create a new paragraph; and

(B) by inserting "(f)" before the first word;

(4) by inserting "(g)" before the first word of the third sentence;

(5) in the fourth sentence—

(A) by striking out "The" and inserting in lieu thereof "(h) Except as provided in subsection (e)(2), the"; and

(B) by striking out "this section" and inserting in lieu thereof "subsection (e)"; and

(6) by inserting after subsection (a), as so designated by paragraph (1) of this subsection, the following new subsections:

"(b)(1) On the request of the Secretary at the time of the sentencing of an individual who is a person responsibly connected with any business requiring inspection under title I and who is convicted of a felony involving—

"(A) the intentional adulteration of food (except as defined in section 1(m)(8));

"(B) the adulteration of food, as defined in section 1(m)(8), with intent to defraud;

"(C) bribery; or

"(D) extortion;

the sentencing court shall issue a temporary order forbidding such individual to exercise operational control of, or to be physically present at, any establishment requiring inspection under title I if the court finds that the exercise of operational control by, or the presence of, such individual at any such establishment either poses a direct and substantial threat to the public health or safety or, if such individual is convicted of a felony described in subparagraph (B), poses a clear likelihood of significant economic harm to consumers.

"(2) Such order shall terminate—

"(A) whenever the Secretary determines by order, after a hearing on the record, whether such individual should exercise operational control of, or be physically present at, any establishment requiring inspection under title I, and judicial review, if any, of such determination is completed; or

(B) 90 days after the issuance of such temporary order by the court if the Secretary does not commence such hearing before the expiration of such 90 days;

whichever occurs earlier.

"(c) Any determination and order of the Secretary issued under subsection (a) or (b) shall be conclusive and enforceable unless the affected applicant for, or recipient of, inspection service or the affected individual files, not later than 30 days after the effective date of such order, a petition for review of such order in the United States Court of Appeals for the District of Columbia Circuit or the court of appeals for the circuit in which the relevant establishment is doing business. Judicial review of such order shall be on the record on which the determination and order are based.

"(d)(1) Subject to paragraph (3), the Secretary may commence a civil action in an appropriate court, as provided in section 404, to withdraw inspection service under title I with respect to any establishment or to prevent any individual responsibly connected with any business requiring inspection under title I from exercising operational control of, or being present at, any establishment requiring inspection under title I.

"(2) If the court finds, on the basis of clear and convincing evidence, that the recipient of inspection service or such individual has repeatedly failed to comly with the requirements of this Act, or the rules and regulations issued under this Act, in a manner that poses a direct and substantial threat to the public health or safety, the court shall issue an order—

"(A) withdrawing inspection at such establishment; or

"(B) forbidding such individual to exercise operational control of, or to be physically present at, such establishment, for such period as the court determines is necessary to carry out the purposes of this Act.

"(3) Not less than 90 days, and not more than 450 days, before commencing a civil action under paragraph (1), the Secretary shall provide to each recipient of inspection service, and each individual responsibly connected with the business, with respect to which such action is commenced, a written notice that includes—

"(A) a statement that the Secretary intends to commence such action;

"(B) a comprehensive description of the violations of this Act and the regulations issued under this Act alleged by the Secretary; and

"(C) a description of the actions the Secretary considers necessary to be taken by such recipient or such individual to comply with this Act and to eliminate the need to commence such civil action.

"(e)(1) The Secretary may temporarily withdraw inspection service under title I with respect to any establishment for such period as is necessary to ensure the safe and effective performance of official duties under this Act if the Secretary determines, after an opportunity for a hearing on the record, that an officer, employee, or agent of such establishment—

"(A) threatened to forcibly assault;

"(B) focibly assaulted;

"(C) forcibly intimidated; or

"(D) forcibly interfered with,

an employee of the United States engaged in, or on account of, the performance of any of such official duties.

"(2)(A) Notwithstanding paragraph (1), the Secretary may temporarily suspend inspection service under title I with respect to any establishment, pending an expedited administrative hearing on the record and judicial review of the order of the Secretary based on such record, if the Secretary determines that temporary suspension of such inspection service is necessary for the safety of any employee who performs official duties under this Act.

"(B) If the Secretary receives, before or after temporarily suspending such inspection service in accordance with subparagraph (A), adequate written assurances from the recipient of inspection service, or the individuals involved, that the conduct or circumstances that threatened the safety of such employee will not continue or recur, the Secretary may continue or restore such inspection service on condition that such assurances are fulfilled.".

(c) WARNING; REPORTING OF VIOLATIONS.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 406 of the Federal Meat Inspection Act (21 U.S.C. 676) is amended—

(1) in subsection (b), by adding at the end thereof the following new sentence: "In determining whether the public interest could be adequately served by a written notice of warning, the Secretary shall take into account, among other factors—

"(1) the compliance history of such establishment;

"(2) the magnitude of the violation;

"(3) whether compliance with this Act would likely be obtained as a result of such notice; and

"(4) whether such violation is of a minor or technical nature."; and

(2) by adding at the end thereof the following new subsection:

"(c) Unless the Secretary by regulation provides otherwise, before any violation of this Act is reported by the Secretary for prosecution in a criminal proceeding, the Secretary shall give the person alleged to have committed such violation—

"(1) reasonable notice that the Secretary intends to report such violation for prosecution; and

"(2) an opportunity to present to the Secretary, orally or in writing, views with respect to such proceeding.".

(d) CONFORMING AMENDMENTS.—

(1) NIGHTTIME.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 9 of the Federal Meat Inspection Act (21 U.S.C. 609) is amended by inserting ", except as provided in section 6," after "equines, and" the first place it appears.

(2) ADMINISTRATION.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 21 of the Federal Meat Inspection Act (21 U.S.C. 621) is amended by striking out "and meat food products" and inserting in lieu thereof "thereof, and of meat food products".

(e) CONSTRUCTION OF AMENDMENTS.—The amendments made by this section shall not be construed to authorize the Secretary of Agriculture to refuse to provide inspection under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) at an establishment solely because such establishment does not participate in a total plant quality-control program.

SEC. 404. SAVINGS PROVISIONS.

The expiration date provisions of section 403 shall not have the effect of releasing or extinguishing any penalty, forfeiture, or liability incurred under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), as amended by section 403, or under the rules or regulations issued under such Act.

SEC. 405. SENSE OF CONGRESS.

It is the sense of Congress that the Secretary of Agriculture should—

(1) carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.); and

(2) evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under title I of the Federal Meat Inspection Act, in order to identify the producer of such livestock.

SEC. 406. ANNUAL REPORT.

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

(1) any action proposed or taken by the Secretary to implement the amendments made by section 403;

(2) any action proposed or taken by the Secretary to carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.);

(3) any action proposed or taken by the Secretary to evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under such title, in order to identify the producer of such livestock; and

(4) any personnel action proposed or taken by the Secretary as a result of the amendments made by section 403 and any effort made by the Secretary to minimize any adverse economic effect of such amendments on employees of the Department of Agriculture.

SEC. 407. CONGRESSIONAL REEVALUATION.

It is the sense of Congress that, not later than 6 years after the date of the enactment of this Act, Congress shall—

(1) evaluate the operation and effects of the amendments made by section 403, for the purpose of determining whether to extend or modify the operation of such amendments; and

(2) enact such legislation as may be necessary to efficiently and effectively carry out the Federal Meat Inspection Act (21 U.S.C. 601 et seq.).

SEC. 408. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b) of this section, this title and the amendments made by this title shall become effective on the date of the enactment of this Act.

(b) TEMPORARY APPLICATION OF EXISTING LAW.—Sections 6, 9, and 21 of the Federal Meat Inspection Act (21 U.S.C. 606, 609, and 621), as in effect immediately before the date of the enactment of this Act, shall apply with respect to establishments until the Secretary of Agriculture first issues rules and regulations to implement the amendments made by section 403(a).

Mr. HELMS. Mr. President, we are on the Senate floor again tonight to deal with H.R. 4613, the Futures Trading bill. The bill was originally passed in the Senate on October 6, and a conference on the bill with members of the House Committee on Agriculture was commenced on October 8. The House and Senate conferees reached agreement on all outstanding issues on October 9 and the conference bill and report was filed in the House on October 14.

This report was taken up on the floor of the House on October 15. Under the House rule under which the conference report was considered, however, two provisions were subject to a separate vote and one provision was stricken out. The remainder of the conference bill was then passed and sent to the Senate as a further amendment to the Senate amendment to H.R. 4613.

Mr. President, the one provision that was stricken from the bill provided for the transfer of approximately 173

acres of National Forest System land for use as a State park. The remainder of the conference bill is before us today.

Mr. President, the most contentious issue with which the conferees dealt was that of leverage transactions. The Senate provision would have caused leverage contracts to be regulated under the same regulatory scheme applicable to futures contracts, beginning 2 years after the date of enactment of the bill. The 2-year transition period was put in to give the existing leverage transaction merchants time to adjust to the changes in the regulatory structure.

The House proposal would require the Commission to conduct a survey of firms interested in entering the leverage business and to report to Congress within 2 years.

The results of the survey;

Whether leverage transactions serve an economic purpose;

The most efficient manner, consistent with the public interest, to permit new firms to enter the leverage business; and

The appropriate regulatory scheme for leverage.

In addition, the Commission's report would have to include regulations spelling out the terms and conditions under which additional firms could enter the leverage business. This entry of new firms could be on a gradual basis, so as not to overburden the Commission with new regulatory responsibilities. The regulations could also require a registered futures association to regulate the leverage business. The new leverage regulations would go into effect at the end of 45 days of congressional session after being transmitted to Congress.

The conferees debated this issue at length and it seemed to me that a compromise between the Senate and House positions was needed. After extensive debate, however, it became clear that there would be little movement from the House position and the Senate conferees ultimately receded to the House with an amendment lengthening the period for congressional review of the new leverage regulations from 45 to 90 days. I might also say, Mr. President, that the reauthorization period was set at 3 years, in part, because of the outcome on the leverage issue.

While I would have preferred a final resolution of the question of leverage, the provision that was adopted will give the Congress additional time to reexamine leverage, if such reexamination is warranted. I suspect, however, that the Senate has not seen the last of this issue.

In addition, Mr. President, the conference bill requires the Commodity Futures Trading Commission to end its pilot program in the trading of commodity options contracts and to authorize such options trading under terms and conditions set by the Commission. The bill also authorizes the extraterritorial service of subpoenas on persons located outside the territorial jurisdiction of the United States. Such subpoenas, however, may not be issued for service abroad without the prior approval of the Commission.

The conference bill also makes minor technical adjustments in the statutory framework for disciplinary actions and membership restrictions imposed by registered futures associations and requires that the General Accounting Office conduct a comprehensive study of the issues inherent in the trading of cattle futures contracts.

Mr. President, the conference bill also contains a number of miscellaneous provisions. Section 201 of the bill would prohibit the Secretary of Agriculture from requiring participants in the 1987 and 1988 Acreage Reduction Programs for wheat, feed grains, upland cotton, and rice, to limit their acreage of extra long staple [ELS] cotton to the established acreage base for ELS cotton on their respective farms. The Secretary of Agriculture would retain discretion to impose this requirement, commonly known as limited cross-compliance, on ELS cotton producers who also participate in the 1989 and 1990 programs for wheat, feed grains, upland cotton, and rice.

This provision is needed to correct a requirement in the Food Security Act of 1985 that limited cross-compliance be applied to all of—or none of—the crops for which there are acreage reduction programs, including wheat, feed grains, rice, cotton, and ELS cotton. I do not believe the farm bill conferees intended to require cross-compliance for producers of ELS cotton whenever it is required on other crops for which acreage reduction programs are in effect.

This provision will permit ELS cotton producers to expand their production to meet a burgeoning export market. Because participation in other target price programs will not be required to limit ELS acreage on their farms to their respective acreage bases, participation in the ELS program may actually decrease as a result of this legislation. For this reason the Congressional Budget Office has attributed a zero cost to this section.

In addition, the bill would, for the 1989 and 1990 crops, allow the Secretary of Agriculture to prohibit participants in the ELS Cotton Program from producing in excess of their acreage bases for other crops for which acreage reduction programs are in effect. The Secretary of Agriculture does not have this authority under current law.

Section 202 of the bill would amend the Agricultural Act of 1949 to provide that, for the 1986 crop of wheat, the payment rate per bushel will be determined on the basis of the weighted average market price per bushel for the first 5 months of the marketing year. Current law requires that the payment rate be determined on the basis of the average market price during the entire marketing year.

This provision will allow the Secretary of Agriculture to pay the balance of all deficiency payments due wheat producers after the average price for the first 5 months has been finalized. The Department of Agriculture has indicated that if this provision is enacted into law, the remainder of deficiency payments due participants in the 1986 wheat program will be made in December 1986.

This provision will move up the distribution of more than $1 billion in deficiency payments by about 7 months. Because the provision will not shift these deficiency payments from one fiscal year to another and because the payment rate is expected to be identical whether calculated under the 5-month or the 12-month formula, the Congressional Budget Office attributes zero cost to this amendment.

Section 203 of the bill would amend the Agricultural Act of 1949 to provide that distributions of net gains to producers on additional Valencia peanuts produced in New Mexico and placed in a separate pool for these peanuts not be reduced by Commodity Credit Corporation losses on quota peanuts that are placed under loan from other pools.

This amendment is needed to exempt producers of Valencia peanuts in New Mexico from cross-compliance requirements of the Agricultural Act of 1949. I do not believe the farm bill conferees intended to include New Mexico Valencia peanuts in the cross-compliance process, so I supported this technical amendment.

Section 204 of the bill would make a technical change in section 8(B) of the Soil Conservation and Domestic Allotment Act to correct language controlling the establishment of local Agricultural Stabilization and Conservation [ASC] committees.

Section 1711 of the Food Security Act of 1985 requires that each county be composed of three local administrative areas from which local ASC committees could be elected, except from counties having a population of less than 150 farmers and those areas determined by the Secretary of Agriculture to have an insufficient number of farmers to make up a slate of candidates for a local ASC committee.

This bill would give the Secretary of Agriculture discretionary authority to permit continuation of a single ASC administrative area in those counties having less than three local ASC administrative areas on December 23, 1985, the date of enactment of the Food Security Act of 1985.

Section 205 of the bill would amend the Food Security Act of 1985 to provide that, for purposes of the Conservation Reserve Program only, alfalfa and other multi-year grasses and legumes, in a rotation practice approved by the Secretary, must be considered agricultural commodities.

The statement of managers that accompanied the conference bill included language expressing the conferees' strong continuing support for implementation of the Conservation Reserve Program in a manner that provides for the conversion of highly erodible cropland (currently suffering from severe erosion problems) to less intensive uses.

Section 206 of the bill would require the Comptroller General of the United States to conduct a study of the marketing practices used by Farmers Home Administration borrowers. The section also authorizes the Secretary of Agriculture to establish a program to train farmers and ranchers in advanced techniques for marketing agricultural commodities.

Mr. President, the bill also includes a separate title dealing with the issue of grain quality. Title III of the bill, entitled the "Grain Quality Improvement Act of 1986," would make certain improvements to the U.S. Grain Standards Act to ensure the quality of grain marketed in and exported from the United States.

Section 302 of the bill would revise the U.S. Grain Standards Act to add a declaratory statement that it is the policy of Congress to promote the marketing of high quality grain; that the primary objective of U.S. grain standards is to accurately determine grain quality; and that the grain standards must provide a framework for establishing grain quality improvement standards.

Section 303 of the bill would prohibit (1) the recombination of dockage and foreign material, as defined by the Secretary of Agriculture, with grain, and (2) the addition of dockage or foreign material to grain. It should be emphasized that the conference bill does not prohibit the recombination of grain dust with grain or the addition of grain dust to grain.

Section 303 of the bill also provides that the prohibition against recombination or the addition of dockage or foreign material will not apply to certain specified activities. Further, the Secretary of Agriculture would be permitted to exempt from the prohibitions, by regulation, the last handling of grain in its final sale and shipment to a domestic user or processor, when the exemption is in the best interest of producers, grain merchants, the industry, and the public. The blending of grain products or byproducts with grain (except for vegetable oils used to suppress dust) is prohibited in the bill.

Section 304 of the bill would require the Administrator of the Federal Grain Inspection Service, not later than 6 months after the bill is enacted, to issue a final rule revising grain inspection procedures and standards to more accurately reflect levels of insect infestation.

Section 305 of the bill would require the Secretary of Agriculture, in consultation with farmers and the grain industry, to study the feasibility of adjusting Commodity Credit Corporation grain premium and discount schedules to encourage the marketing of high quality grain. The Secretary would be required to report to the respective congressional oversight committees on the results of the study within 180 days of the date of the bill's enactment.

Section 306 of the bill would require the Administrator of the Federal Grain Inspection Service to publish and seek comment on the proposals contained in H.R. 5354, the "Optimal Grain Grading Act of 1986." The Administrator would be required to report to Congress by May 1, 1987, on comments received and his recommendations with respect to the proposals.

Section 307 of the bill would require the Secretary of Agriculture to study the need for and availability of uniform end-use tests for grain. The Federal Grain Inspection Service would be directed to adopt the tests when they are found to be useful, available, and economically feasible. In addition, within 1 year of the date of enactment of the bill, the Administrator of the Federal Grain Inspection Service would be required to report to Congress describing the results of the study and actions taken to adopt useful end-use tests. The Administrator would be required to report annually on the ongoing review of end-use tests.

Mr. President, title IV of the bill, the last title, deals with the issue of Federal meat inspection. Title IV contains provisions that authorize the Secretary of Agriculture to reduce the frequency of meat inspection at certain facilities while increasing inspection activities at other facilities. The bill would likely reduce the number of Federal inspectors present at processing plants that have a strong history of compliance with the Federal Meat Inspection Act.

Title IV also strengthens the Department of Agriculture's ability to immediately withdraw inspection from processing plants that have a history of violations of the Federal Meat Inspection Act. Meat products could not be sold from these plants once an inspection withdrawal occurs.

Mr. President, I urge my colleagues to support the bill.

Mr. ZORINSKY. Mr. President, I am pleased that the Senate is taking final action on the Futures Trading Act of 1986. The legislation before the Senate incorporates the agreement reached by the committee of conference on H.R. 4613, except for a provision transferring certain National Forest System land to the Nebraska Game and Parks Commission.

Under the legislation, appropriations will be authorized to carry out the Commodity Exchange Act during fiscal years 1987 through 1989. Certain improvements also will be made in the current Commodity Futures Regulatory Program.

In addition, the legislation addresses other matters that are important to American farmers, ranchers, and consumers. These matters include: First, Federal meat inspection; second, extra long staple cotton; third, 1986 Wheat Program payments; fourth, Valencia peanuts; fifth, acreage eligible for the Conservation Reserve Program; and sixth, local agricultural stabilization and conservation committees.

FUTURES TRADING PROVISIONS

The futures markets are an integral part of the Nation's economy. They have a direct effect on agricultural producers, consumers, large and small investors, financial institutions, manufacturers, Government, and business of all types. One of the more important roles of the Federal Government is to ensure that these markets are free from fraud and manipulation.

The Commodity Futures Trading Commission is the Federal agency charged with the primary responsibility of regulating the futures industry. In addition, the industry's Registered Futures Association supplements the activities of the Federal regulatory agency through its program of self-regulation.

The CFTC was established as an independent regulatory agency in 1974. The authorization of appropriations for the CFTC was extended in 1978 and 1982. Under the Senate-passed bill, appropriations would have been authorized for an additional 6 years. Under this legislation, appropriations would be authorized for 3 years. The 3-year reauthorization period will ensure Congress an early opportunity to examine the changes made by the pending legislation.

This legislation will make relatively few changes in the Federal regulatory program of the CFTC. Most of these changes were included in the Senate-passed amendment to the House bill. The major provisions of title I of the legislation involve:

First. Clarification of the CFTC's authority to pursue off-exchange operators who engage in fraudulent activities;

Second. Removal of the pilot status of commodity option trading and numerical restrictions thereon, and authorization of such trading under

terms and conditions prescribed by the CFTC;

Third. Clarification of the CFTC's authority to serve subpoenas outside the jurisdiction of the United States;

Fourth. Procedural changes relating to disciplinary proceedings of a registered futures association and CFTC review of association rules;

Fifth. Expansion of authority for trading in leverage contracts and the separate regulation thereof by the CFTC, subject to review by Congress;

Sixth. Modification of restrictions on certain investments by CFTC personnel; and

Seventh. Conduct of a study of trading in live cattle futures by the General Accounting Office.

REGULATION OF LEVERAGE TRANSACTIONS

One of the major differences between the House bill and the Senate amendment concerned the treatment of leverage transactions. Under current law, the CFTC is required to separately regulate leverage transactions. The Senate amendment would eliminate this requirement, thereby prohibiting transactions involving leverage unless conducted on an exchange. The House bill would provide for the continued regulation of the leverage industry.

The legislation before us today will continue to authorize the separate regulation of leverage transactions by the CFTC. However, commodities on which leverage contracts could be offered will be restricted to gold, silver, and platinum. Leverage contracts involving foreign currencies and copper will no longer be permitted once existing contracts have expired.

Currently, there are only two firms permitted to engage in leverage transactions. This legislation will require the CFTC to conduct a survey of firms interested in entering the leverage business and to submit to Congress, within 2 years, the results of the survey, together with its proposed regulations to govern leverage transactions. Such regulations will be required to permit additional entrants into the leverage business. The entry of new persons into this business could be granted by the CFTC on a gradual basis so that the resources of the Commission will not be unduly burdened.

Although I believe that the Senate-passed provision that would have eliminated the authority for the separate regulation of the leverage industry within 2 years in preferable, the legislation before the Senate contains numerous safeguards to ensure that the public interest will be protected. The regulations proposed by the Commission would be subject to a 90-day congressional review period before they could be effective. In addition, appropriations will have to be reauthorized in 3 years, and this will ensure Congress the opportunity to examine the effectiveness of such regulations.

OTHER PROVISIONS RELATING TO FUTURES TRADING

The legislation will direct the General Accounting Office to make a comprehensive study of the effect of cattle futures trading on the cash market for live cattle. The study will seek to determine, among other things, whether the reaction of the futures market in March 1986 to the Government's dairy herd buyout program was an accurate reflection of the supply-demand conditons at that time. The GAO would also study the effect of futures trading on price relations between feeder and fed cattle on price competition in the cattle industry. The effect of packer contracts for slaughter on market prices would also be examined. I believe that the results of this study will be helpful to the Agriculture Committees of the House and Senate in determining whether any restrictions on such futures trading are warranted.

In addition, the legislation contains two provisions relating to advanced marketing techniques for farmers and ranchers. One provision will direct GAO to conduct a study of marketing practices of farmers and ranchers who borrow from the Farmers Home Administration. The other authorizes the Secretary of Agriculture to establish a training program for farmers and ranchers on how advanced techniques, including trading of futures and option contracts, can be used in marketing their agriculture products.

There is also a provision that will eliminate the current pilot program for commodity options trading on contracts markets. Under the pilot program currently authorized in the statute, there are restrictions on the number and types of commodity options contracts that can be traded on the various exchanges. Under this legislation, commodity options trading will be permitted under such terms and conditions as the CFTC may prescribe. Inasmuch as the pilot program has shown that such trading can serve useful purposes for investors and agricultural producers alike, the elimination of the pilot status of this program appears to be warranted.

GRAIN QUALITY

Another matter addressed by the pending legislation is grain quality. Under the provisions of this legislation, handlers will be prohibited from recombining—with any grain—dockage or foreign material that has been removed from grain. This prohibition will be effective on May 1, 1987. The prohibition will apply to grain sold in both the domestic and foreign markets, but the Secretary of Agriculture would be permitted to exempt from the requirement final sales to domestic users, such as feed lots. However, any grain that was granted such an exemption could not be resold in commercial channels or blended with other grain for resale.

The prohibition on recombining dockage or foreign material will not prohibit a number of traditional marketing and handling processes. These include the treatment of grain to suppress insect infestation, the separate marketing of dockage, and the blending of grain to adjust quality.

Another provision will require the revision of the Federal grain inspection procedures and standards to more accurately reflect levels of insect infestation.

While I am supportive of efforts to improve the quality of the grain this Nation markets, I have grave reservations concerning the amendments the legislation would make in the Federal Grain Inspection Act.

In my judgment, the amendments—which are contained in title III of the legislation—give the appearance of doing something to improve grain quality but, in operation, will not actually achieve that goal.

During the conference on the 1985 farm bill, we adopted language that was enacted into law requiring the Office of Technology and Assessment to conduct a study of U.S. grain export quality standards and grain handling practices. The study is to be conducted in consultation with the Secretary of Agriculture. The Office of Technology Assessment is to—

First, evaluate the competitive problems the United States faces in international grain markets that may be attributed to grain quality standards and handling rather than price;

Second, identify the extent to which U.S. grain export quality standards and handling practices have contributed toward the recent decline in the U.S. grain exports;

Third, perform a comparative analysis between the grain quality standards and practices of the United States and the major grain export competitors of the United States; and the grain handling technology of the United States and the major grain export competitors of the United States; and

Fourth, evaluate the consequences on U.S. export grain sales, the cost of exporting grain, and the prices received by farmers should U.S. export grain elevators be subject, by law or regulation to requirements that—

No dockage or foreign material—including but not limited to dust or particles of whatever origin—once removed from grain shall be recombined with any grain if there is a possibility that the recombined product may be exported from the United States;

No dockage or foreign material of any origin may be added to any grain that may be exported if the result will be to reduce the grade or quality of

the grain or to reduce the ability of the grain to resist spoilage; and

No blending of grain with similar grain of different moisture content may be permitted if the difference between the moisture contents of the grains being blended is more than 1 percent.

Also, under the language of the 1985 farm bill, the study is to evaluate the current method of establishing grain classifications, the feasibility of using new technology to classify grains correctly, and the effect of new seed varieties on exports and users of grain.

The Office of Technology Assessment is to submit to the agriculture committees of the House and Senate by December 1 of this year a report containing the result of the study, together with such comments and suggestions for the improvement of the U.S. grain export quality standards and handling practices as appropriate.

Nebraska wheat producers have visited me and argued strenuously against the amendments contained in title III of the pending legislation. The National Wheat Producers, as well as the National Grain and Feed Association and the National Grain Trade Council, oppose the legislation.

In short, Mr. President, the amendments to the Federal Grain Inspection Act contained in the pending legislation are, in my judgment, unwise and untimely. Congressional action should await the results of the study being conducted by the Office of Technology Assessment.

However, as I noted previously, the amendments would not become effective until May 1, 1987. That is indeed fortunate. It is my hope that with the study mandated by the 1985 farm bill, Congress will be able to fashion prior to May 1987 more effective and workable grain quality legislation than the provisions before us.

EXTRA LONG STAPLE COTTON PROVISIONS

The legislation will provide a modification in the current cross-compliance requirement for producers of extra long-staple cotton. For the 1987 and 1988 crops, producer compliance with the terms and conditions of the extra long-staple cotton program will not be required for eligibility for benefits under any other commodity program.

For the 1989 and 1990 crops, if there is an acreage limitation program for a commodity in effect, producers may be required to comply with the farm acreage base for that commodity to be eligible for benefits under the extra long-staple cotton program. This provision will allow producers of the 1987 and 1988 crops of extra long-staple cotton to exceed their farm acreage bases for that commodity without losing benefits under any other commodity program. This provision is especially important. Export sales of extra long-staple cotton have been very good, and it is anticipated that the demand for the 1987 and 1988 crops will exceed the amount that could be produced on the base acreage.

LOCAL ASC COMMITTEES

Current law requires that each county be composed of three local administrative areas from which local ASC committees are elected. There is an exemption from this requirement for counties having a population of less than 150 farmers and those areas determined to have an insufficient number of farmers to make a slate of candidates for a local ASC committee. The pending legislation will further modify this requirement to permit counties in which there were less than three such administrative areas on December 23, 1985, to have only one local administrative area.

EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM

The legislation will modify the basis for determining the portion of the wheat program payments for the 1986 crop that provides emergency compensation to wheat producers. Such emergency compensation is required because the Secretary of Agriculture lowered the loan rate for the 1986 crop of wheat.

Under current law, the Secretary must use the national weighted average market price received by producers during the marketing year in determining the payment rate for such compensation. The amendment will provide that the basis for the payment rate will be the national weighted-average market price received during the first 5 months of the marketing year instead of the entire marketing year. This change will allow wheat producers to receive their payments before next summer and will help to alleviate cash-flow problems they may otherwise experience in preparing for the 1987 crop-year.

CONSERVATION RESERVE ELIGIBILITY

Under current law, land on which alfalfa and multiyear grasses and legumes are produced is not considered cropland for the purposes of the Conservation Reserve Program. Therefore, producers of these commodities are not eligible to place this land in the Conservation Reserve Program even though it may otherwise be highly erodible land. Nor can they produce row crops on the land without risking the loss of other benefits under other commodity and lending programs because such production would violate the sodbuster or swampbuster provisions of the 1985 farm bill.

There are many producers in Nebraska and other States in the upper Midwest who produced alfalfa on their land during the years 1981 through 1985. It was the intention of these producers to plant, in accordance with their normal crop rotation practices, a row crop on the land after it had been in alfalfa for 5 years. The crop rotation practices of many of these farmers resulted in less erosion than the practices of other farmers who produced more highly erosive row crops on similar land. However, their alfalfa land is not eligible to be placed in the conservation reserve, while their neighbors' land on which row crops were produced during the same period is eligible for the reserve. The pending legislation will correct this inequity by making alfalfa or grassland eligible for inclusion in the program if produced under an approved rotation practice.

MEAT INSPECTION

The legislation also will amend the Federal Meat Inspection Act. This provision is designed to eliminate redundant inspection by granting the Secretary of Agriculture the discretion to determine the intensity and frequency of the physical inspection of the processing of meat and meat food products and to use new, innovative techniques to assure the public that the meat it consumes is both wholesome and safe. The changes in the act will not affect the requirement for continuous Federal inspection of livestock slaughtering. It affects only the use of previously inspected meat in making processed foods, such as meat pies, soups, pizzas, and similar items. The provision also strengthens the Secretary's authority to remove from the meat industry individuals and companies that threaten the public health and undermine public confidence in the meat supply.

Mr. President, modern processing control procedures can tell more about the wholesomeness of meat products than visual inspections by a Federal inspector. In relying more on these controls in cases that the Secretary determines appropriate, the cost of the Federal meat inspection program will be reduced.

LAND TRANSFER TO CHADRON STATE PARK

Mr. President, a provision of the legislation agreed to by the committee of conference on H.R. 4613—but deleted during the consideration of the conference report by the House of Representatives—would have transferred a 173-acre trace of land within the Nebraska National Forest to the Nebraska Game and Parks Commission. The land was to be used as part of the Chadron State Park. This park attracts some 200,000 visitors a year. The National Forest System land in question is contiguous to the park.

The legislation passed the Senate as a separate measure (S. 360) as well as part of the CFTC reauthorization bill.

I regret the action of the House of Representatives in rejecting the decision of the House conferees to accept the Chadron State Park amendment. However, I am happy to report to the Senate that the Secretary of Agriculture has agreed to an alternative solution under which the National Forest System land would be leased to the

Nebraska Game and Parks Commission. The length of the lease will be negotiated by the Department and the commission. At the option of the commission, the lease could extend to 30 years.

I compliment the Secretary of Agriculture for his willingness to take action under existing law that will permit the commission to use the National Forest System land as part of the Chadron State Park. The additional land will enable the commission to expand the camping facilities and nature trails at the park. The use of the land will result in a great improvement to a valuable public resource in my State.

I ask unanimous consent that the text of Secretary Lyng's letter to me of October 16, 1986, be printed at this point in the RECORD.

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

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY
Washington, DC, October 16, 1986.

Hon. EDWARD ZORINSKY,
Ranking Minority Member, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR SENATOR ZORINSKY: We appreciate your deep interest in the Chadron State Park and the desire of the Nebraska Game and Parks Commission to expand the camping facilities and nature trails at the park. We understand that Congress is considering legislation that contains a provision that would convey a 173-acre tract of land within the Nebraska National Forest to the Commission.

In that connection, we wish to inform you that the Department of Agriculture stands ready to enter into immediate negotiations with the Nebraska Game and Parks Commission for a special use authorization with respect to approximately 173 acres of National Forest System land in Dawes County, Nebraska (as depicted on a Department of Agriculture, Forest Service map entitled "Land Conveyance, Nebraska National Forest"). As you know, the National Forest System land lies north of and adjacent to the State Park.

Subject to the conditions specified in this letter, the Department is prepared to issue a lease for up to 30 years to the Nebraska Game and Parks Commission with respect to the land in question. The Commission would have use of the land only for State Park purposes. Under conditions specified in the authorization and with the concurrence of the Forest Service, the Commission would be authorized to develop the land consistent with its use as a park. Inasmuch as the land in question was acquired by the Federal Government under authority of the Bankhead-Jones Farm Tenant Act of 1937, the lease would be issued under authority of Section 32(c) of that Act.

Current statutory authority requires that the Federal Government receive fair market value for the use authorized. Thus, the annual fee, payable in advance, would ordinarily be established at five percent of the fair market value of the land. However, in view of the public purpose for which the land would be developed, this Department, under authority available to it, is prepared to reduce the annual fee charged the Commission to three percent. We have determined through a preliminary estimate that the value of the land is $30,275, or an average of $175 per acre. The fee would be subject to adjustment at the end of each five-year period of the permit; however, the fee would be increased or decreased only to the extent that there is an increase or decrease in the fair market value of the land. Any improvements made by the Commission would be disregarded in computing the fair market value of the land at each five-year interval.

We are hopeful that this arrangement will be acceptable to the Commission. However, we feel that transfer of the property to the Commission by means of a land exchange is the preferred means to permanently resolve this issue. We are hopeful that the Commission will elect to reexamine the land exchange discussed as recently as 1984 and reopen negotiations to satisfactorily conclude it. A map depicting this exchange is enclosed.

As you know, under the Multiple-Use Sustained-Yield Act of 1960, it is the Policy of Congress that our national forests be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The use of the National Forest System land in Dawes County as part of the Chadron State Park would be consistent with the declaration of Congressional policy in the 1960 Act.

We look forward to working with the Nebraska Game and Parks Commission in arranging for the Commission to use the land as part of the State park.

Sincerely,

RICHARD E. LYNG

CONCLUSION

Mr. President, the legislation before the Senate resolves the differences on a number of important issues between the House-passed bill and the Senate amendment. Many compromises were accepted on both sides. While I am far from happy with all of the provisions of the legislation, I urge my colleagues to support the recommendations of the conference committee on H.R. 4613 and pass this important legislation.

Mr. MOYNIHAN. As you know, Mr. President, I strongly opposed the leverage provision in the House bill which the conferees have seen fit to include in the final CFTC reauthorization legislation. The Senate provision was demonstrably stronger from a customer protection perspective, as evidenced by its supporters—major consumer groups, the CFTC and the North American Securities Administrators Association. Since the House itself was so evenly split on this issue, I find it hard to understand why a compromise could not have been fashioned in conference to merge the House and Senate approaches.

Nevertheless, Mr. President I have been assured by the Senate conferees that the leverage provision in this legislation will enable us to revisit the leverage issue, with the full benefit of a comprehensive CFTC report, before any form of leverage expansion is permitted. At that time, Congress should consider whether to require exchange trading of leverage, freeze leverage trading at present levels, or adopt a new regulatory approach. I ask my colleague, the distinguished Senator from Indian is my understanding correct?

Mr. LUGAR. The Senator from New York is correct. The legislation calls for a survey of possible new leverage firms and a report on whether leverage serves an economic purpose and how expanded leverage would be regulated. This CFTC report will be completed in 2 years. The CFTC then will transmit to Congress new leverage regulations. Congress will then have 90 days to review those regulations. Of course, at that time, Congress should be in the process of considering again CFTC reauthorization and will review leverage expansion or termination based upon this new CFTC report.

Mr. D'AMATO. Mr. President, I am disappointed that the CFTC reauthorization legislation as reported by the conference committee does not contain the Senate provision on leverage contracts. In its present form the legislation is inequitable because it allows leverage trading only on commodities—gold, silver and platinum—traded primarily on New York exchanges.

This discriminatory treatment is particularly curious since an original objective of the House bill was to perpetuate existing leverage business. However, this legislation actually limits existing leverage business by banning leverage trading in foreign currencies which has existed at least since 1979. I do not yet comprehend the justification for the disparate treatment between these types of commodities.

It is my understanding that the CFTC will implement this legislation by thoroughly reviewing the economic purpose issue as well as the investor protection issue. When this CFTC report is concluded, Congress will be poised, in the context of the next CFTC reauthorization, to reconsider this issue before any leverage expansion actually occurs. Through this mechanism, I hope, we can finally and properly resolve this issue and assure a strong measure of investor protection in this area.

Mr. MELCHER. As a strong supporter of the Senate leverage provision, and a member of the conference committee, let me assure the Senate that the Senate conferees understood clearly that no leverage expansion could occur without prior congressional review. Since the conference adopted a 3-year reauthorization, I would expect that in 2 years or so, when we receive the CFTC report, we will be in an excellent position to revisit the leverage issue and adopt, I hope, the leverage solution in the Senate bill. Therefore, the Senator's understanding is completely correct.

LEVERAGE

Mr. MELCHER. Mr. President, while I am pleased that this legislation reauthorizes the CFTC for 3 years and do not intend to delay enactment of this legislation, I want the record to be clear that I am most disturbed by the leverage provision in this bill.

To put it simply, it seems to me that we sacrificed the integrity of longstanding statutory principles designed to guarantee meaningful customer protections in order to reauthorize the CFTC, at all costs. In my view, we got it a little backward.

My concern is that the conferees have created an artificial, unprincipled distinction between futures contracts and nonfutures contracts, like leverage. We do not want unscrupulous con artists and bucket shop operators to seize this inadvertent loophole and design other nonfutures contracts that will not need to be traded on exchanges.

The mayhem caused by commodity bucket shops is what caused Congress, over 60 years ago, to create a broad futures contract definition and require all lawful futures to be traded on federally approved exchanges. This sound Federal policy has not been, clearly defined in, the leverage provision in this legislation.

We all should recognize that when we enact legislation which modifies principle in order to preserve private business interests, the public could ultimately suffers. I hope that the public interests are not harmed before we revisit this question again within 3 years and resolve the leverage issue properly once and for all.

Mr. HELMS. Now, Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. Is there further discussion?

The motion was agreed to.

Mr. HELMS. I move to reconsider the vote, Mr. President.

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.

TECHNICAL CORRECTION TO THE IMMIGRATION—CONFERENCE REPORT

Mr. SIMPSON. Mr. President, I have cleared these two items with the Democratic leader, Senator MELCHER, and others on both sides of the aisle. These are two technical corrections to the immigration conference report. They were passed yesterday in the House by Chairman RODINO. I therefore ask unanimous consent that the Senate turn to the consideration of House Concurrent Resolution 412 making technical corrections to the immigration conference report.

The PRESIDING OFFICER. Is there objection?

The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 412) to make a correction in the enrollment of the bill S. 1200.

The PRESIDING OFFICER. Are you ready for the question? The question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to.

Mr. SIMPSON. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

TECHNICAL CORRECTIONS TO THE IMMIGRATION CONFERENCE REPORT

Mr. SIMPSON. Mr. President, I ask unanimous consent the Senate turn to the consideration of House Concurrent Resolution 414 making technical corrections to the immigration conference report.

The PRESIDING OFFICER. Is there objection? Hearing none, the clerk will report.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 414) to correct the enrollment of the bill S. 1200.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution?

The concurrent resolution was agreed to.

Mr. SIMPSON. 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.

THE LEADERSHIP

Mr. SIMPSON. Mr. President, I have heard the very remarkably honest and sincere accolades toward our majority leader and our minority leader. Let me just say it has been a distinct pleasure for me to be part of this leadership and serve as the assistant majority leader to BOB DOLE, who is really one of the most remarkable legislators I have seen. There are majority leaders who have certain skills. This man is a legislator and accommodator and facilator. He has the patience that has escaped me so far in my travels here.

As far as the Democratic leader, he has been most cordial to me, most helpful, most supportive, been a counselor and a friend, and BOB DOLE and BOB BYRD have been superb in helping me through my duties, which I have come to enjoy. Senator CRANSTON is also a fine person to work with. He and I have shared our duties as chairman and ranking member of the Veterans Affairs Committee. It is just one of my most distinct pleasures to have served as a member of the leadership of this Congress. I thank the Chair.

Mr. BYRD. Mr. President, will the distinguished Senator yield to me.

I thank him for his overly gracious and very charitable remarks. I want to say to him that in my 28 years in the U.S. Senate I have not found a more congenial, amiable, agreeable, likable, personable individual than my good friend, the distinguished majority whip.

Mr. SIMPSON. The Senator is most gracious.

Mr. BYRD. In the words of Alexander Pope, "Thou art my guide, philosopher and friend."

Mr. SIMPSON. I love it. Throw it on again.

Mr. STEVENS. Mr. President, I am delighted my good friend, the Senator from Kansas, the majority leader, is seated here beside me. I would like to make a statement, if I may.

We have come through now the first 2 years of Senator DOLE's leadership as majority leader. This has been an historic Congress. When we come back in January we will be entering the 100th Congress of our Nation and we will be making preparations for the celebration of the bicentennial of our Constitution.

We had a very contested election not quite 2 years ago. There will be another election for the leader on our side in November. BOB DOLE has done an excellent job at the majority leader. If he will allow me, it would be my intention to place his name in nomination in November. He seeks reelection as the majority leader and he deserves the right to continue as majority leader on the basis of what he has accomplished.

BOB, if you have done nothing else, you are allowing us to go home before the election with the understanding that we will not come back to a post election session. As an old friend of mine Ev Dirksen would say: The country will be safe for 2 months for the Congress will not be in session.

So we thank you very much BOB DOLE; I thank you personally for what you have done and congratulate you on your service as our majority leader.

FARM TALK

Mr. EXON. Mr. President, we are all very much aware of the extreme difficulty that the farm States and our farmers and ranchers are going through today. I am continually advised by a very close friend of mine, Vince Rossiter of Hartington, NE, who is an expert of experts as far as farm matters are concerned. He recently sent to me an excellent editorial from the Parsons, Kansas Farm Talk. I ask

unanimous consent that the entire editorial be printed in the RECORD.

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

GRAIN IN THE CHAFF

Sir Leslie Price, retired chairman of the Australian Wheat Board, reported in Feedstuffs by William S. Scholes—"Overproduction in the world is such that any relief for the Australian (wheat) industry is likely to be only temporary. There is a major trade war going on between the European Community and the U.S., and by the looks of it, they are going to run this one right out to the end. (In Australia) there will be restructuring and some of the larger growers are going to expand, but others aren't going to make it. Between 7 percent and 10 percent of Australia's 50,000 wheat farmers will be forced to give up their farms. Some may be fortunate enough to have a neighbor who will buy up their land, but others won't be. . .. Australia is not big enough to turn the rest of the world around, and we need to remember that."

1980. Republican Platform on Agriculture.—"We pledge . . . a president who will listen to American farmers."

1985 Democratic Criticism of Republican Farm Policy—"Not only is the Administration not acting in the interest of American farmers . . . it is not even listening to American farmers. Whether the Administration pursues is so-called market-oriented farm policies out of ideological blindness or simply cites them as an excuse to justify its callousness toward American farmers is difficult to determine, but it is certain that the Republican-Reagan policies have meant the neglect and abandonment of American farmers in their hour of need."

John Block (while serving as Secretary of Agriculture), reported in the Los Angeles Times—"You can't stop the farm crisis. It's like trying to lay down in front of a steamroller . . . you lay down but you're not doing anything to stop it. Whatever happens, happens. Agriculture is being reshaped, restructured by powerful economic forces, some national, some even international in nature. They are just forces beyond the reach of farm programs and secretaries of agriculture and presidents and congresses.'

Keith Schneider, journalist, reported in the New York Times article "Looking Abroad to Fill Our Bellies"—"With Americans eating so much foreign food, the nation's balance of trade in agriculture—once a huge source of export hearings—is dipping into deficit. In May and June, the nation imported $419.7 million more farm products, edible and non-edible, than it exported, the first monthly agricultural trade deficits in a generation . . . Imported food is flooding the market at prices that American farmers can't possibly match."

Bill Janis, Department of Commerce economist, reported in the New York Times by Keith Schneider—"The entire emphasis in American agriculture has been on sending raw grain overseas. But that policy is dead as dinosaurs. Argentina, Canada, Brazil, France, China, India—everybody's competing with us in major grains, and we're losing our share of the market. Let's stop pretending we're going to get back to where we were five or ten years ago, and concentrate on exporting higher value products."

Richard Lyng, Secretary of Agriculture, reported in Grass and Grain by Agri-News Service—"We will continue to have a large number of small farms that are surviving and thriving because they will have off-farm income. I don't see anything wrong with that. I don't think he (the small farmer) can expect to make a living on that farm . . . he can have the best of both world's by staying in farming and having some off-farm employment as well . . . The American farmer is fortunate in being able to find other work. In Europe, they've had no place to go."

Harold Beyeler and Mike Toner, farmers from Stuarts Draft, Virginia, a position paper on how beef imports have affected American cattlemen in the past 16 years—"USDA's own import-export statistics on beef show that not once in the last 16 years did America produce enough beef to fulfill its domestic needs. We've imported beef that's the equivalent of 48,177,273 head of live cattle in 16 years—that's 3,011,080 head of slaughter cattle per year that we didn't get an opportunity to raise."

Rudolf Bentzel, economist for Protestant Farmers Organization in West Germany, excerpt from meeting in McPherson, KS, reported by Ray Hemman in the Hutchinson News—"In the last four years farm incomes (in Europe) have dropped 30 to 50 percent. We have so many farmers on the edge of poverty. Many have negative incomes. About 30 percent of our farmers will not survive the next three or four years. Another 30 percent is on the edge of survival. The final 30 percent are pretty well off, and they will survive and buy up the land of the other farmers."

Lord Belstead, Minister of State at the Ministry of Agriculture, Fisheries and Food, United Kingdom, reported in Feedstuffs—"The problem with which Britain has to contend is not simply one of reducing crop surpluses, but also of maintaining rural structures, populations and proper care of the environment. . . . This makes it imperative that we seek alternative crops, new uses for crops and alternative uses for land."

Dr. Val Farmer, rural sociologist and counselor, syndicated column entitled "The Farm Crisis Has No Boundaries"—"Farmers in New Zealand feel that they have been 'left naked in a cold wind' by the government's bringing in market-oriented economic policies too quickly. A lot of New Zealand farmers are at the stage in the farm crisis of 'screaming, marching and blaming.' This is a small world after all. The pain and suffering extend beyond national borders. What happens here is happening elsewhere. Global economic and trade issues have great impact on agricultural producers in exporting nations. Everybody wants a level playing field, slightly tilted in their direction."

Folger Addison, journalist, article in the Spotlight—"America's trade woes are usually depicted in terms of deindustrialization, the loss of our country's industrial base to foreign competition. But another ugly specter has just raised its head; the loss of America's balance of trade in agriculture, once a major source of export earnings has declined into a deficit."

Rene Hochull, president, of Switzerland's Union for Small and Medium Peasant-Holdings, reported by Daniel Menning in Le Paysan Travailleur and reprinted in the North American Farmer—"It is high time that the Swiss Confederation engaged in an agricultural policy favorable to peasants and small farmers. The disappearance of small farmers has now reached such a magnitude that one no longer has the right to remain simply a spectator."

Gil Pederson, coordinator for the Saskatchewan National Farmers Union, Canada, reported in the North American Farmer—"Canadian farmers cannot afford to compete against the treasuries of the U.S. and the ECC. Unless deficiency payments are implemented, there will be a lot more bankrupt farmers (in Canada) in the next few years."

William Seidman, chairman of the FDIC, reported in the Washington Post by Hobart Rowan—"Last year a record 120 commercial banks failed. This year about 150 will fold, and the banks that are closing are getting bigger. The FDIC is trying to liquidate an inventory of $12 billion in assets."

TAX TAG BILL

Mr. PACKWOOD. Mr. President, so that I might advise the Senate, I do plan to offer the House concurrent resolution that is the tax tag bill that we had here last night. The House has sent it back to us and taken out many things we had in it. It is my intention to put most of them back—I do not have the papers yet; they will be here in about 10, 15 minutes—send it back to the House tonight in the hopes they will accept it tomorrow but I am not prepared to go forward until about 11:30.

POSTHUMOUS PROMOTION TO LT. COL. E.S. ONIZUKA

Mr. MATSUNAGA. Mr. President, I send a bill to the desk and ask for its immediate consideration.

SEC.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Reserving the right to object, I am sure I will not. Will the Senator tell me what it is?

Mr. MATSUNAGA. It has been cleared by both sides.

Mr. METZENBAUM. I have no objection.

□ 2320

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2948) to authorize the President to promote posthumously the late Lieutenant Colonel Ellison S. Onizuka to the grade of Colonel.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MATSUNAGA. Mr. President, the bill I am introducing today—which has been cleared on both sides—for the relief of Ellison S. Onizuka is a substitute for S. 2674, which I introduced on July 22, 1986, with the cosponsorship of my colleague from Hawaii, Mr. INOUYE. S. 2674 was referred to the Committee on Armed Services but has not yet been reported out. The bill I am introducing today provides for a posthumous promotion of Lt. Colonel Onizuka to the rank of colonel in the Air Force, but does not

provide for an increase in survivor benefits to Ellison Onizuka's surviving widow.

Lieutenant Colonel Onizuka, aged 39, was one of the astronauts who perished in the *Challenger* disaster on January 28, 1986.

Passage of this bill will serve not only to recognize the supreme sacrifice which Ellison Onizuka made to advance our country's space program, but would also assure future military astronauts that their devotion and dedication will be rewarded and not forgotten. The Department of the Air Force in behalf of the Department of Defense has recognized the unique circumstances of Lieutenant Colonel Onizuka's death and fully supports the bill. The Office of Management and Budget has no objections to its consideration.

Mr. President, I urge passage of the bill, and I ask unanimous consent that an article entitled "Boyhood Friend Seeks Meaning of Onizuka's Death," written by Hubert S. Kimura for the Windward Sun Press of Hawaii, be printed at this point in the RECORD, along with an article entitled "Ellison Onizuka: A Quite Pride in His Ancestry, Faith and Island Heritage," written by Pauline Yoshihashi for the New York Times.

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

[From the Windward Press, March 13-19, 1986]

BOYHOOD FRIEND SEEKS MEANING OF ONIZUKA'S DEATH

(By Hubert S. Kimura)

While watching the spaceship Challenger explode into a flaming ball of fire with plumes of white smoke on TV, my teary-eyed teenage daughter asked me. "Why did he have to die . . . why Ellison?" I heard her question but I wasn't really listening. I tried to respond but my vocal cords were frozen.

Although my eyes were glued to the shocking reruns, my jumbled-up-thoughts flashed back in time to my high school days when I enjoyed "talking story" and playing basketball and baseball with Ellison.

Thinking of Ellison had always brought back cherished memories of my youth. As an assistant coach to Ellison's Pony League baseball team in the 1950s. I was fortunate to help him develop his athletic skills and watch him display his leadership talents. Ellison had the knack for motivating his teammates to play at peak levels game after game.

Our coach, Zane Fujimoto, recently told me, "I remembered Ellison's bunch, they were real close and they played real hard." He added, "they were an awesome team . . . they won practically every game they played."

I have long forgotten this team's outstanding stats . . . the number of hits, home runs and RBIs, but I clearly remember their unbeatable team spirit and incredible positive attitude.

These unselfish Kona boys radiated genuine happiness and joy when any one of them did something well. They had a strong sense of fair play. For example, during pick-up baseball games after baseball practices. Ellison, Walter Harada and Stanley Oka (two other team leaders) voluntarily chose weaker players to even-up the contest.

To them, winning at all cost took a backseat to being fair. They had a wholesome, contagious kind of spirit that made them special. In some ways, they were typical Kona boys. They loved to play sports and hated to pick coffee in the rain.

During the peak of the coffee season, it was not uncommon for "Kona kids" to work from sunrise to sunset, rain or shine, seven days a week. They had numerous unpleasant chores such as spraying weed killer in the hot sun, washing fermented coffee beans and loading and transporting hundreds of pounds of coffee beans to the mill. I always wondered if hard work on the coffee farm contributed to quality human values.

I knew Ellison as a vibrant all-around boy who cared about people and was extremely sensitive to their feelings. He was a super Eagle Scout who scored a "10" on each of the 12 points of the Scout Law, "trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean and reverent." He was the kind of boy who would plant flowers that he may never smell or plant shade trees under which he may never sit.

Although I did not know him well as an adult, accounts of his "glass-house" lifestyle as a NASA astronaut and well-publicized accomplishments assured me that he was the same gifted and talented person I knew as a youth.

Ellison clearly showed that a sincere and humble country boy who grew up with coffee-stained T-shirts and faded jeans can reach the stratosphere of success, become a national hero and still wear his fame with amazing grace and humility.

Instead of basking in the spotlight and taking personal credit for his phenomenal achievements, Ellison was more interested in "giving credit where credit is due." At every opportunity, he recognized and praised his supporters and associates who opened pathways for him.

In one tragic countdown, he gave his life which now serves as a spiritual freeway to the stars for other dreamers to travel. Ellison had, as usual, returned more than he had received.

Ellison was a distinguished leader, a courageous adventurer and a soft-spoken achiever who was Hawaii's celebrated "home-grown" astronaut in the U.S. manned space program. His heroics placed Kona on the world map.

I just cannot help but feel a deep sense of loss and sorrow. I just cannot keep from thinking . . . Why did this dreadful thing happen to a precious Kona boy? What other accomplishments might he have achieved? What does his death mean?

I have searched high and low within myself for the answers . . . but there are none. Life is fragile, and sometimes it seems to be so terribly unfair, often to those who are genuinely good. But for reasons known only to the one "upstairs," he took Ellison with him.

I will always remember Ellison as a special bright-eyed youngster who never forgot his Kona roots, as a courageous young astronaut who rode on the wings of his dream and as an unselfish winner who taught me the true meaning of success.

Through him, I have come to understand that at the heart of commitment and achievement is a genuine positive attitude. Patti LaBelle's upbeat song "New Attitude" captures the essence of this attitude, "feeling good from my head to my shoes . . . know where I'm going and I know what to do . . ."

Through him, I have grasped a clearer insight to the old proverb, "As you sow, so shall you reap." Those who give without expecting return will win in the game of life . . . givers gain, takers lose. The more Ellison received, the more he gave back to his friends, community and country.

He lived by the Scout Oath, "On my honor, I'll do my best, to do my duty to God and my Country. . . ." He laid his life "on the line" for human progress. What more can you ask from a "giver."

Through him I have learned the true meaning of the "Ganbare" spirit, a Japanese word that means the courage and determination to keep on going, keep on trying, to "hang in there tough" with every ounce of energy.

Ellison personified a win-win philosophy of humanity, sincerity, and warmth. In his attitude, behavior and deeds, he exemplified a spirit that sprouted from the heart of the Kona coffee fields. I call this spirit the "Kona Spirit."

People with Kona Spirit don't cut in line, proliferate graffiti, hurt people's feelings or tell lies. They allow other drivers to change lanes, volunteer their time and resources to help people, keep their word and deliver more than they promise.

To my daughter and other young people who are searching for answers, I say look up into the heavens, seek Ellison's spirit and when you find it, tell him, "I have found the Kona Spirit . . . I am ready to fly with you!"

ELLISON ONIZUKA

(By Pauline Yoshihashi)

HOUSTON.—Growing up on the Kona coast of Hawaii, Ellison Shoji Onizuka picked coffee beans, played basketball and dreamed of hurtling through space in an imaginary supercharge craft.

No one knew where the idea came from, including his parents. "He had it inside of him, like a dream," said his mother, Mitsue Onizuka. "We didn't understand it, but he knew what he would do."

Three decades later, in January 1985, Lieutenant Colonel Onizuka rocketed into the sky aboard the space shuttle Discovery.

As one of a handful of minority applicants selected for training by NASA, he became the first Hawaiian, the first Japanese-American and the first Buddhist astronaut. He was quietly and frankly proud of that heritage; in turn, many people who were Hawaiian or Japanese American or Buddhist saluted him as one of their own. He presided over their festivals, spoke at their functions, practiced their religion and continually thanked them for helping him along his way.

The horror of the Challenger explosion has now cast him as a hero to many in those communities, and family members and friends say such a thing would have astonished him.

They say he was a modest man genuinely surprised with his own success. "I still pinch myself to convince myself that the dream came true," he said last spring. Friends and relatives often saw him as he saw himself.

"Around us, he was just El," Claude Onizuka, his older brother, said in a telephone interview from Hawaii last week. "When he'd come home, he'd drink beer and talk story, and be just another guy."

A TENACIOUS, AFFABLE PROFESSIONAL

Colleagues in the Air Force and the shuttle program knew Colonel Onizuka as a tenacious and affable professional who could simplify complicated problems. As an aeronautical engineer, he recognized the risks of the shuttle, they said.

William B. Scott, an old friend from Edwards Air Force Base, Calif., said that Colonel Onizuka had described the explosive force of the Discovery launching as amazing and unnerving. He remembered his saying, "You're really aware that you're on top of a monster, you're totally at the mercy of the vehicle."

The astronaut's wife, Lorna Yoshida Onizuka, told a Honolulu newspaper last year that he had collected the insurance policies and documents that she would need if he did not return from the coming Challenger mission. Mrs. Onizuka has been described as extremely distraught since the explosion.

Despite the risks, her husband had had unwavering enthusiasm for the shuttle. "It was so beautiful up there that we didn't want to come back," he told Barbara Spencer, a neighbor, at a welcome-home party for the Discovery crew.

Born in Kealakekua on Hawaii's main island on June 24, 1946, Ellison Shoji Onizuka was the third of Masamitsu and Mitsue Onizuka's four children. His grandparents had emigrated from Japan to be contract laborers on the sugar plantations.

His 72-year-old mother still runs the family's little general store in Keopu, a coffee-growing community halfway up the sculpted slope of an inactive volcano, Mount Hualalai. Ellison helped out in the store, explored the island's mountains and caves with friends and developed a fascination for seeing how things worked.

"When he was a young child, we would tease him because he would break things apart and not be able to put them back together," his mother said in a telephone interview last week. "He was experimenting, seeing how things go."

In the local elementary and high schools, his mother said, he was "a good student, not excellent, but pretty good." In high school he became involved in Buddhism, the Boy Scouts and the 4-H Federation. He attained Eagle Scout rank in his senior year.

In 1964, he left the islands to attend the University of Colorado and study aerospace engineering in the Air Force Reserve Officer Training Corps.

Classmates and instructors at Colorado said he excelled in aerodynamics and astronautics. "He felt that discovery was the name of the game in engineering and science," said Maj. Michael Francis, a fellow student.

In the summer of 1969 Ellison Onizuka received his master's degree in engineering and married Lorna Yoshida, a fellow Hawaiian who was studying at a nearby college. The couple had two daughters, Janelle Mitsue Onizuka, now 16 years old, and Darien Lei Shizue Onizuka, 10.

AN INTOLERANCE FOR INCOMPETENCE

He went on active duty in 1970 at McClellan Air Force Base near Sacramento, Calif. He was a link between pilots and designers, devising tests to adapt aircraft to new functions and equipment. Among his projects was a system for using heavy helicopters to salvage jets that went down in Vietnam.

Associates say his nature hastened his rise. "He wasn't a systems-oriented person," said John L. Jones, a mechanical engineer who worked with Colonel Onizuka at McClellan. "If the military system or a person got in the way, he would find a way to go around. He liked people, but couldn't stand incompetence blocking his way."

He applied for the Air Force Test Pilot School at Edwards Air Force Base, Calif., while studying at McClellan, and entered in 1974. The class cited him for keeping morale up in the demanding program and instructors commended him for his spirit. "He was a fighter pilot disguised as a flight test engineer," said Brig. Gen. John P. Schoeppner of the Air Force.

Colonel Onizuka stayed at Edwards to become an instructor in the classroom and in the air. Then, in 1978, he became one of a class of 35 selected for astronaut training. He moved his family near the Johnson Space Center in Houston.

He liked to putter around the family's brown brick house or tinker with his car. Neighbors said that colonel Onizuka often spent hours splitting wood and ran about 10 miles each day.

Family members said that he was very close to two daughters and enjoyed watching them play soccer for the school teams. "Janelle is the father all over," Claude Onizuka said of his niece. Ellison also loved deep-sea fishing, Mr. Onizuka said, and had helped his daughter Darien land a small marlin after fighting a 420-pound marlin of his own on his last trip to Hawaii.

Last year he was grand marshal of Nisei Week festivities in Los Angeles, the oldest and largest Japanese-American cultural festival in the country. "He was so excited by that," said Matt Matsuoka, retired executive of the Honda International Trading Corporation, a close friend who asked had him to participate. "He wore his dress uniform with all his medals for almost all of the events, and even his family had never seem him wear that uniform before," Mr. Matsuoka said.

Like many third-generation Japanese Americans, Colonel Onizuka did not speak fluent Japanese. On a promotional tour of Japan he read a speech first in English, then in Japanese, and traveled with his mother and family to the Fukoka Prefecture to pay respects at his family's ancestral shrine.

He also took pride in being Hawaiian, and would return from his visits home with Kona coffee, crates of pineapples and macadamia nuts for fellow engineers and pilots.

Buddhism played an important part in his life. Last September he presented a medallion with a wisteria blossom, the symbol of his Jodo Shinshu faith, to Monshu Koshin Ohtani, the Abbot of Jodo Shinshu Buddhism. He had worn the medallion, which was given as an act of devotion, in the Discovery mission.

"As a test pilot and an astronaut, he had to deal with life and death," Bishop Seigen Yamaoka, head of the Buddhist Churches of America, said. "As long as death is seen as the enemy, you fight it, and become more attached to life.

"In time he came to the realization that death is not an enemy to defeat, but a compassionate friend," Bishop Yamaoka said. That realization allowed him to appreciate the sacrifice of his family in allowing him to do the work he loved, the Bishop said.

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, was read the third time, and passed, as follows:

S. 2948

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized to promote posthumously to the grade of colonel the late Lieutenant Colonel Ellison S. Onizuka, United States Air Force, who died on January 28, 1986, while serving as a crew member on the space shuttle Challenger.

SEC. 2. No increase in compensation or benefits based on the military service of the late Lieutenant Colonel Ellison S. Onizuka shall result from a posthumous promotion authorized under the first section of this Act.

Mr. MATSUNAGA. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

RETIREMENT OF SENATOR CHARLES McC. MATHIAS

Mr. SARBANES. Mr. President, it is difficult for me to imagine the Senate without my senior colleague from Maryland. For over a quarter of a century MAC MATHIAS has been one of our Nation's leading public servants and one of Maryland's most illustrious sons.

Since coming to the Congress in 1971, I have been honored to work with MAC MATHIAS and to be his colleague and friend. He is a leader of integrity and intellect, of courage and compassion, for whom I have the deepest respect and affection.

Throughout his public career MAC MATHIAS has been steadfast in his commitment to the vision of our Founding Fathers, to the principles of the Constitution, and to the well-being of all our people. His eloquent advocacy of humane values has elevated our national life and made a singular contribution to a just and decent society. MAC's politics have been marked by a civility and grace which ennoble our national life and drive from the political scene the mean and petty. Maryland and the Nation have been fortunate to have a man of his quality in public office.

Having served the people of Maryland—as Frederick city attorney, State legislator, Congressman, Senator—MAC now plans—to put it in his own words—"to shift to a new field of activity, while retaining many of the interests and concerns" of his life.

These interests and concerns have been many and varied over the course of MAC's distinguished public career, touching virtually every matter that has come before the Nation. Many of these are worthy of extended comment but let me mention two in particular—his outstanding record on protecting and preserving our environment, especially the Chesapeake Bay, and his role in creating a nation in

which "there is no legal barrier of any kind between Americans of differing race or creed."

Mr. President, last year when he was reflecting on some of the events during his time in the Congress, MAC MATHIAS pointed out that:

In 1960 we were a nation divided by barriers of law, custom and practice. Today there is no legal barrier of any kind between Americans of differing race and creed. That is change in its most positive form.

With characteristic understatement, MAC then added "I am proud to have played a role in that peaceful revolution." Mr. President, MAC MATHIAS played a very major role in every piece of civil rights legislation that came before this body during his time in the Senate. Working with his close friend, the late Clarence Mitchell, Jr., the head of the Washington office of the NAACP, MAC was instrumental in helping to tear down those barriers of law, custom, and practice of which he spoke.

At a time when the Chesapeake Bay was reaching a crisis stage in its environmental decline, MAC MATHIAS took the lead on this issue and made it his personal crusade. He understood that the magnitude of the problem called for an effort involving not just the Federal Government and Maryland but also Virginia and Pennsylvania—not only the Environmental Protection Agency, but all the Federal agencies with activities along the bay's shores. MAC MATHIAS has been the catalyst which led ultimately to the completion of the EPA's comprehensive study 3 years ago, laying out a program for reversing the decline of the Chesapeake Bay. Our hopes for restoring this national resource, America's largest and richest estuary, are the consequence of MAC's dedicated and intelligent leadership.

Mr. President, in reflecting on MAC's career, the Baltimore Evening Sun in an editorial aptly commented:

Let us also not forget the great distinction with which "Mac" Mathias has served this state, for eight years in the House of Representatives, and 18 years in the United States Senate. In that quarter of century of service he has shown himself to be a man of principle and conscience in areas ranging from civil rights to the control of nuclear weapons. His single-minded pursuit has been a humane public policy within the limits of our fiscal ability. As he bows out, the appropriate words are those chosen by Oliver Wendell Holmes when he saw his colleague Louis Brandeis passing at a distance: "There goes a good man."

Mr. President, as MAC MATHIAS leaves this body, as he puts it, "to practice law, lecture at Johns Hopkins and pull long overdue weeds at his farm," he goes with the respect and admiration of all of us who have been fortunate enough to serve with him, and, more importantly, with the appreciation and best wishes of the people of Maryland and the Nation. Christine and I will always cherish the friendship of MAC and Ann Mathias, and we join so many others in wishing them happy and satisfying lives in the years ahead.

Mr. President, since MAC MATHIAS, upon his retirement from the Senate, will be turning his attention to the teaching of our next generation, I think it appropriate that an article in the University of Maryland's Diamondback, explaining in his own words the "Tremendous Satisfaction" he has felt from his public service, be printed in the RECORD, and I ask unanimous consent to do so.

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

TREMENDOUS SATISFACTION

Charles Mathias Jr.

My years as a U.S. Senator have been a rare and rewarding experience. The Senate is unique—a legislative body with jurisdictions and responsibility without parallel or precedent anywhere else in the world.

"The world's greatest deliberative body" has been recognized as a remarkable institution by people from all over the world, including Britons, from whom we borrowed our system. That is high praise indeed! The Senate was "the most remarkable of all inventions of politics," according to William Gladstone, a Prime Minister of Great Britain during the Victorian era. To one British ambassador, it was a "masterpiece of the Constitution makers."

So, I am proud to have served here for 18 years and for eight years before that in the House of Representatives. But being a senator has not always been easy. The pressures and challenges of the Senate are demanding as well as rewarding. I have been fortunate to have had outstanding predecessors, beginning with Charles Carroll of Carrollton. Their examples provided guidance in making some of the difficult decisions.

But I also depend on the people of Maryland to help me decide the controversial issues. Often it is the points in a constituent letter or the arguments from a Marylander who visits my office that provides the deciding factor in issues facing not only the state but the entire country.

I am often asked what I will miss the most after I leave the Senate. Of course I will miss the prestige of the office and the chance to meet and discuss important issues with world and national leaders; it would be unnatural not to miss such privileges.

But most of all, I will miss the opportunity to help people solve their individual problems with government. The widow who has not received her Social Security check, the immigrant who needs an extended visa, the disabled veteran trying to cut through red tape to get his benefits—these people have turned to me for assistance and I have received tremendous satisfaction from helping them.

Maryland has changed dramatically since I first came to Washington. At that time the Chesapeake Bay was endangered, Baltimore was in disrepair, the state's roads and highways were filled with potholes and inexpensive public transportation seemed an impossible dream.

But after pounding the fragile ecology of the Bay with decades of pollution, we have begun action to restore this great waterway to a healthy condition.

Today, Baltimore is a national model of inner-city renewal. It is possible to drive across Maryland from Ocean City to Garrett County without having to stop for repairs to your car. And for state residents unable or unwilling to drive, efficient and reasonably inexpensive public transportation systems operate in many parts of the state.

I have been a witness to many of the changes that have shaped this state in the past quarter-century and, indeed, a participant in them. Some of the improvements are nothing less than remarkable.

When I was first elected to Congress in 1960, the nation was divided by barriers of law and custom that denied many Americans the basic rights we cherish. When I became a senator in 1968, the delicate balance of power was in peril from the excesses of the presidency. Today, the Civil Rights and War Powers acts are legislative actions that will transcend our lifetime to protect the foundation of democratic government for generations to come. Their enactments have brought me a tremendous sense of fulfillment.

These achievements notwithstanding, as I approach my final days of public service in the Senate, my work here is far from complete.

Twenty-two years after the passage of the Civil Rights Act, a myriad of legal and economic obstacles still exists that deny some Americans equal access to our nation's blessings. Fair housing is one of these problem areas. I am currently sponsoring the Fair Housing Act Amendments to insure that Americans will not be discriminated against as they seek a comfortable place to live.

As chairman of the Rules Committee, I am trying to substantially change the funding of congressional campaigns. The extravagant financial demands of political campaigns and the accompanying pressures to yield to special interests constitute nothing less than a crisis of liberty.

During my remaining time in the Senate, I will continue to press for public financing of congressional races to restore public confidence to our electoral system.

Many other problems remain to be solved. The Chesapeake Bay's wetlands are still shrinking and Baltimore's unemployment remains too high.

I would offer some advice to my successors. The protection and extension of basic human rights in America and around the world must never disappear from the public agenda. More and more we will discover that the measure of our civilization will be taken from how we protect and provide for minorities and the disadvantaged.

Nor can this country shrink from its duty to protect individual liberties established by the Constitution. As our technology grows, deliberate threats and unintentional incursions on our basic freedoms must continually be checked.

Finally, I would urge my successors to follow the voice of reason and conscience instead of bowing to special interests or parochial pressures. Public office demands vigilance and dedication that, at times, can seem extraordinary.

I have served in Congress under seven presidents through a turbulent and fascinating period. The friendship, support and dedication of my fellow Marylanders during this period have been the greatest reward of this experience.

□ 2330

SENATOR CHARLES "MAC" MATHIAS

Mr. METZENBAUM. Mr. President, MAC MATHIAS is an intelligent, gracious, and thoughtful man whose personal qualities have translated themselves into a Senate career marked by integrity and fairness.

We have served together for many years on the Judiciary Committee, where the entire Nation has seen Senator MATHIAS' deep personal concern for civil rights, for fairness, the Constitution, judicial quality, and for compassion in the law and in the court system. He was a giant in our work on the death penalty, the Voting Rights Act, antitrust and fair housing law.

The people of the State of Maryland very likely would have reelected Senator MATHIAS to be their Senator for as many terms as he wished to serve. He did a great job in representing the interests of Maryland, a beautiful State with a wide variety of resources and a diverse and skilled population. But MAC MATHIAS also meant a great deal to the rule of law and justice under which all Americans live, and which we cherish as uniquely American.

He has been a staunch guardian of all of our liberties, and I will miss his voice and integrity in the Senate.

SENATOR CHARLES McC. MATHIAS, JR.

Mr. CHAFEE. Mr. President, if I might I would just like to pay tribute to the Senator from Maryland who made that very eloquent statement regarding his senior colleague and I just like to say regarding MAC MATHIAS I think the phraseology that Senator SARBANES used was so appropriate. He lacked any vestige of meanness and pettiness. His career indeed was marked by grace and civility and also by principle and determination.

MAC MATHIAS is a man of character as so well has been testified to here today.

Also I would like to mention he is a joyous human being, a great person to be with, a marvelous companion, one with a grand sense of the history of our Nation, and although he will be leaving this Chamber I and I think all of us look forward to our continued association with him, Ann, and his family in the days ahead.

We wish him the very best.

SENATOR BARRY GOLDWATER

Mr. METZENBAUM. Mr. President, I rise to say farewell and Godspeed to Senator BARRY GOLDWATER, a man for whom I truly have respect and admiration and affection.

BARRY GOLDWATER's voice became familiar to generations of Americans, as he worked tirelessly to carve out a space for his ideas in the political territory, and the political philosophy, of our country. The Senate will seem different, less lively, less diverse, after he leaves it.

I don't know if there has ever been an odder couple in the Senate than when BARRY GOLDWATER and I worked together on problems related to military weapons procurement. He and I wrote a long, long letter together to Secretary Weinberger, just after he became Secretary of Defense, in which we offered him our best thinking on a number of ideas relating to military procurement, and the need to introduce real competition into the procurement system. We then met together with the Secretary to share our ideas with him.

And Senator GOLDWATER and I filed suit together in Federal court to stop the Defense Department from its proposal to let a sole-source contract for the CTX airplane.

BARRY GOLDWATER was right on those important issues, just as on many other occasions he has stood up and spoken his mind, no matter whose feathers may be ruffled.

I particularly remember his statement on the importance of judicial independence, when he quoted the Federalist Papers on the floor of the Senate to make his point asking. . . .

". . . whether or not it is wise and enduring public policy to say that the Federal courts are forbidden to use certain kinds of remedies in cases properly brought before them or are denied jurisdiction to consider this or that social issue.

Nevertheless, if I had an hour, it probably wouldn't be enough time to list those issues on which BARRY and I have disagreed over the years, but he has always been willing—more than willing, eager—to say what he believes, and stand up for what he says. That is exactly what every Senator owes his or her country, and that is why I am going to look forward to BARRY GOLDWATER's continued speaking out, even though it will not be from his usual desk on this floor.

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

Mr. CHAFEE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1374.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1374) entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", do pass with the following amendment:

Strike out all after the enacting clause; and insert:

ESTABLISHMENT OF NATIONAL HERITAGE CORRIDOR

SECTION 1. That for the purpose of preserving and interpreting for the educational and inspirational benefit of present and future generations the unique and significant contributions to our national heritage of certain historic and cultural lands, waterways and structures within the Blackstone River Valley in the States of Massachusetts and Rhode Island there is hereby established the Blackstone River Valley National Heritage Corridor (hereafter in this Act referred to as the "Corridor"). It is the purpose of this Act to provide a management framework to assist the States of Massachusetts and Rhode Island and their units of local government in the development and implementation of integrated cultural, historical and land resource management programs in order to retain, enhance and interpret the significant values of the lands, waters and structures of the Corridor.

BOUNDARIES AND ADMINISTRATION

SEC. 2. (a) BOUNDARIES.—The boundaries shall include those lands generally depicted on a map entitled Blackstone River Valley National Heritage Corridor, numbered BRV-80,000 and dated October 1986. The map shall be on file and available for public inspection in the office of the Department of the Interior in Washington, D.C. and the Massachusetts and Rhode Island Departments of Environmental Management. The Secretary of the Interior (hereafter referred to as the "Secretary") shall publish in the Federal Register, as soon as practical after the date of enactment of this Act a detailed description and map of the boundaries established under this subsection.

(b) ADMINISTRATION.—The corridor shall be administered in accordance with the provisions of this Act.

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

SEC. 3. (a) ESTABLISHMENT.—There is hereby established a commission to be known as the Blackstone River Valley National Heritage Corridor Commission (hereafter known as the Commission) whose purpose shall be to assist Federal, State and local authorities in the development and implementation of an integrated resource management plan for those lands and waters as specified in section 2.

(b) MEMBERSHIP.—The Commission shall be composed of nineteen members appointed by the Secretary as follows:

(1) the Director of the National Park Service, ex officio, or a delegate;

(2) six individuals nominated by the Governors of Rhode Island and Massachusetts and appointed by the Secretary, who shall be the Department of Environmental Management Directors from Rhode Island and Massachusetts, the State Historic Preservation Officers from Massachusetts and Rhode Island, and the Department of Economic Development Directors from Massachusetts and Rhode Island;

(3) four representatives of local government from Massachusetts and four from Rhode Island nominated by the Governor of their State and appointed by the Secretary, to represent the interests of local government; and

(4) two individuals, nominated by the Governor of Massachusetts and two individuals nominated by the Governor of Rhode Island appointed by the Secretary, to represent other interests each Governor deems appropriate.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(c) TERMS.—Members of the Commission shall be appointed for terms of three years.

(d) COMPENSATION.—Members of the Commission shall receive no pay on account of their service on the Commission, but while away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(e) CHAIRPERSON.—The chairperson of the Commission shall be elected by the members of the Commission.

(f) QUORUM.—(1) Ten members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(2) Any member of the Commission may vote by means of a signed proxy exercised by another member of the Commission, but any member so voting shall not be considered present for purposes of establishing a quorum.

(3) The affirmative vote of not less than ten members of the Commission shall be required to approve the budget of the Commission.

(g) MEETINGS.—The Commission shall meet at least quarterly at the call of the chairperson or ten of its members. Meetings of the Commission shall be subject to section 552b of title 5, United States Code (relating to open meetings).

STAFF OF THE COMMISSION

SEC. 4. (a) STAFF.—(1) The Commission shall have the power to appoint and fix the compensation of such staff as may be necessary to carry out its duties.

(2) Staff appointed by the Commission—

(A) shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(B) shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates determined by the Commission to be reasonable.

(c) STAFF OF OTHER AGENCIES.—(1) Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out the Commission's duties.

(2) The Commission may accept the services of personnel detailed from the States of Massachusetts and Rhode Island (and any political subdivision thereof) and may reimburse that State or political subdivision for those services.

POWERS OF COMMISSION

SEC. 5 (a) HEARINGS.—The Commission may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(2) The Commission may not issue subpoenas or exercise any subpoena authority.

(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission, if so authorized by the Commission, may take any action which the Commission is authorized to take by this Act.

(c) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) USE OF FUNDS TO OBTAIN MONEY.—The Commission may use its funds to obtain money from any source under any program or law requiring the recipient of such money to make a contribution in order to receive such money.

(f) GIFTS.—(1) Except as provided in subsection (g)(2)(B), the Commission may, for purposes of carrying out its duties, seek, accept, and dispose of gifts, bequests, or donations of money, personal property, or services, received from any source.

(2) For purposes of section 170(c) of the Internal Revenue Code of 1954, any gift to the Commission shall be deemed to be a gift to the United States.

(g) ACQUISITION OF REAL PROPERTY.—(1) Except as provided in paragraph (2) and except with respect to any leasing of facilities under subsection (c), the Commission may not acquire any real property or interest in real property.

(2) Subject to paragraph (3), the Commission may acquire real property, or interests in real property, in the corridor—

(A) by gift or devise; or

(B) by purchase from a willing seller with money which was given or bequeathed to the Commission on the condition that such money would be used to purchase real property, or interests in real property, in the corridor.

(3) Any real property or interest in real property acquired by the Commission under paragraph (2) shall be conveyed by the Commission to an appropriate public or private land managing agency, as determined by the Commission. Any such conveyance shall be made—

(A) as soon as practicable after such acquisition;

(B) without consideration; and

(C) on the condition that the real property or interest in real property so conveyed is used for public purposes.

(h) COOPERATIVE AGREEMENTS.—For purposes of carrying out the plan, the Commission may enter into cooperative agreements with the State of Massachusetts and the State of Rhode Island, with any political subdivision of each State, or with any person. Any such cooperative agreement shall, at a minimum, establish procedures for providing notice to the Commission of any action proposed by the State of Massachusetts and the State of Rhode Island, such political subdivision, or such person which may affect the implementation of the plan.

(i) ADVISORY GROUPS.—The Commission may establish such advisory groups as the Commission deems necessary to ensure open communication with, and assistance from, the State of Massachusetts and the State of Rhode Island, political subdivisions of the State of Massachusetts and the State of Rhode Island, and interested persons.

DUTIES OF THE COMMISSION

SEC. 6. (a) PREPARATION OF PLAN.—Within one year after the Commission conducts its first meeting, it shall submit a Cultural Heritage and Land Management Plan to the Secretary and the Governors of Massachusetts and Rhode Island for review and approval for 90 days. The plan shall be based on existing State plans, but shall coordinate those plans and present a unified historic preservation and interpretation plan for the corridor. The plan shall—

(1) provide an inventory which includes any property in the corridor which should be preserved, restored, managed, developed, maintained, or acquired because of its national historic or cultural significance;

(2) establish standards and criteria applicable to the construction, preservation, restoration, alteration, and use of all properties within the corridor;

(3) develop an historic interpretation plan to interpret the history of the valley;

(4) contain policies for land use management which consider and detail the application of appropriate land and water management techniques, including but not limited to local zoning, use of easements, and development of intergovernmental cooperative agreements, so as to protect the Corridor's historical, cultural, scenic, and natural resources and enhance water quality of the Blackstone River in a manner consistent with supporting economic revitalization efforts;

(5) contain a coordination and consistency component which details the ways in which local, State, and Federal programs may best be coordinated to promote the purposes of this Act; and

(6) contain a program for State and local government implementation of the plan.

(b) APPROVAL OF THE PLAN.—(1) No plan submitted to the Secretary under this section shall be approved unless the Secretary finds that the plan, if implemented, would adequately protect the significant historical and cultural resources of the corridor and consistent with such protection provide adequate and appropriate outdoor recreational opportunities and economic activities within the corridor.

(2) In determining whether or not to approve the plan, the Secretary shall consider whether:

(A) the Commission has afforded adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the plan;

(B) he has received adequate assurances from appropriate State officials that the recommended implementation program identified in the plan will be initiated within a reasonable time after the date of approval of the plan and such program will ensure effective implementation of the State and local aspects of the plan.

(3) If the Secretary disapproves the plan, he shall advise the Commission in writing of the reasons therefor and shall indicate any recommendations for revisions. Following completion of any necessary revisions to the plan, the Secretary shall have forty-five days to either approve or disapprove the plan.

(c) IMPLEMENTATION OF THE PLAN.—(1) After review and approval of the plan by the Secretary and the Governors of Massachusetts and Rhode Island as provided in subsections (a) and (b) the Commission shall give priority to actions which assist in—

(A) preserving and interpreting the historic resources of the valley;

(B) completing State and local parks in the corridor; and

(C) supporting public and private efforts in economic revitalization consistent with the goals of the Cultural Heritage Plan.

(2) Priority actions to be carried out under paragraph (1) shall include—

(A) assisting the States in appropriate preservation treatment of the Blackstone Canal;

(B) assisting the States in designing, establishing, and maintaining visitor centers and other interpretive exhibits in the corridor;

(C) encouraging private landowners adjacent to the canal or river to retain or reestablish, where possible, vegetative, or other buffers as specified in the State park plans;

(D) assisting in the enhancement of public awareness of an appreciation for the historical and architectural and geological resources and sites in the corridor;

(E) assisting the State or any local government or any nonprofit organization in the restoration of any historic building in the corridor;

(F) encouraging, by appropriate means, enhanced economic and industrial development in the corridor consistent with the goals of the plan;

(G) encouraging local governments to adopt land use policies consistent with the goals of the State park and the plan and to take actions to implement those policies; and

(H) ensuring that clear, consistent signs identifying access points and sites of interest is put in place.

TERMINATION OF COMMISSION

SEC. 7. (a) TERMINATION.—Except as provided in subsection (b), the Commission shall terminate on the day occurring five years after the date of the enactment of this Act.

(b) EXTENSION.—The Commission may be extended for a period of not more than five years beginning on the day referred to in subsection (a) if, not later than one hundred and eighty days before such day—

(1) the Commission determines such extension is necessary in order to carry out the purpose of this Act;

(2) the Commission submits such proposed extension to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate; and

(3) the Governor of Massachusetts, the Governor of Rhode Island, and the Secretary each approve such extension.

DUTIES OF THE SECRETARY

SEC. 8. (a) PURPOSE.—To carry out the purposes of this Act, the Secretary shall assist the Commission in preparing the Cultural Heritage and Land Management Plan. Following approval of the plan as provided under section 6 (a) and (b) the Secretary shall assist the Commission to design and fabricate interpretive materials based on the plan including—

(A) guide brochures for exploring the heritage story of the valley by automobile, train, bicycle, boat, or foot;

(B) visitor displays (including video presentations) at several locations well distributed along the corridor, including both indoor and outdoor displays; and

(C) a mobile display depicting the heritage story to be used in the park, public buildings, libraries, and schools.

(b) TECHNICAL ASSISTANCE.—The Secretary shall, upon request of the Commission, provide technical assistance to the Commission in the preparation of the plan and for implementing the plan as set out in section 6(c).

DUTIES OF OTHER FEDERAL ENTITIES

SEC. 9. Any Federal entity conducting or supporting activities directly affecting the corridor shall—

(1) consult with the Secretary and the Commission with respect to such activities;

(2) cooperate with the Secretary and the Commission in carrying out their duties under this Act and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(3) to the maximum extent practicable, conduct or support such activities in a manner which the Commission determines will not have an adverse effect on the corridor.

AUTHORIZATION OF APPROPRIATIONS

SEC. 10. There is authorized to be appropriated annually to the Commission $250,000 for the next five fiscal years to carry out the purposes of this Act; except that the Federal contribution to the Commission shall not exceed 50 per centum of the annual operating costs of the Commission.

Mr. CHAFEE. Mr. President. I am delighted that S. 1374, a bill which I introduced last year along with Senators PELL, KENNEDY, and KERRY, to establish the Blackstone River Valley National Heritage Corridor in Rhode Island and Massachusetts, is on its way to the President for signature. This bill provides national recognition to the Blackstone River Valley, the cradle of the American industrial revolution.

I regret that the House of Representatives did not agree to the full amount of funding the Senate legislation had originally provided. The Senate version of the bill provided for $500,000 for 5 years to establish a 19-member commission. This amount was reduced to $250,000 by amendments adopted by the House of Representatives.

The purpose of this measure is to preserve for the benefit and inspiration of present and future generations the cultural, historical, recreational, and economic resources of the Blackstone River Valley corridor. This bill is not only important to the States of Rhode Island and Massachusetts, but to the Nation as well.

The mills, villages, transportation networks, and social history of the settlers of the Blackstone River Valley tell the story of the industrialization of 18th and 19th century America. From the Blackstone Valley an appreciation of the larger national patterns of industrial development may be gained.

The Blackstone Valley illustrates several historical themes which are at present underrepresented in the National Park System. Three factors distinguish the Blackstone Valley from other industrial regions. The valley is the first industrial region in the United States. The first widespread use of waterpower for industry occurred along the Blackstone River. And lastly, the Rhode Island system of manufacturing developed here.

The water power potential of the river and its waterfalls played an important part in the development of the Blackstone Valley. In 1793, an event occurred that would change the history of America. In that year Samuel Slater constructed the first water powered mill in Pawtucket along the banks of the Blackstone. The American industrial revolution was born.

As the industrial revolution took hold, entrepreneurs looked for ways to move their goods more cheaply. Construction of the Providence to Worcester Canal began in 1823 and was completed in 1828. The construction of the Providence to Worcester Railroad along the river made the canal uncompetitive, and the Blackstone Canal quickly lost its prominence. However, the impact of the canal on the development of Providence, Worcester, and the towns and villages of the valley was considerable.

In 1983, Congress requested that the National Park Service assess the national significance of the Blackstone River corridor. The National Park Service prepared a report, "Conservation Options," to address future options to conserve the Blackstone Valley corridor. The draft report suggests the development of an interstate heritage protection plan complemented by an expanded level of Federal recognition, support, and technical assistance.

The legislation takes account of the recommendations of the National Park Service, and builds upon the research and the efforts of the departments of environmental management in Rhode Island and Massachusetts, the Rhode Island Blackstone Citizen's Advisory Committee, and other interested parties. This bill provides national recognition for the corridor, lending distinction to this important project.

This legislation will establish a commission to develop a unified historic preservation and interpretation plan for the corridor in Rhode Island and Massachusetts. The Commission will operate for 5 years and will assist in the marketing and implementation of the plan. For example, the Commission will assist in the restoration of historic buildings, the preservation of the canal, or the reconstruction of the towpath. It will assist in the establishment, design, and maintenance of the visitors centers. The operating budget for the Commission will not exceed $250,000 per year.

The Commission will be composed of 19 members, including the Director of the National Park Service, the directors of the departments of environmental management of Rhode Island and Massachusetts, the directors of the departments of economic development for the two States, four representatives of local government from each State appointed by their Gover-

nors to represent local interests, and two individuals from each State to represent the States' interest.

National designation helps to assure that the cultural, historical, natural, and recreational resources of the corridor realize full potential. We can help to establish a legacy of the past as well as develop a vision for the future of the valley. With our assistance today the vision of a renewed Blackstone Valley and Park will become a reality.

I urge my colleagues to join with Senator PELL and myself in supporting this important and worthwhile bill.

Mr. McCLURE. In the passage of S. 1374, the House of Representatives included new language regarding the miscellaneous powers and duties of the Blackstone River Valley National Hertiage Corridor Commission. I would appreciate some clarification from my friend from Rhode Island as to their exact meaning.

Mr. CHAFEE. I would be happy to respond to the questions of my friend from Idaho.

Mr. McCLURE. It is my understanding that the commission is essentially an advisory body with primary responsibility to develop a plan for the management of the corridor, but has no authority to actually mandate or control the activities set forth pursuant to the plan or plans that ultimately may be adopted by the States of Rhode Island and Massachusetts. Does the Senator concur with this interpretation?

Mr. CHAFEE. Yes, the Senator is correct in his interpretation.

Mr. McCLURE. Is it also the Senator's understanding that it is the intent of the legislation to base the plan for the corridor on existing State plans and that the implementation of the plan will be under the jurisdiction of the State or local governments?

Mr. CHAFEE. Yes, the Senator is correct.

Mr. McCLURE. Does the Senator agree that there is no intent whatsoever to create or adopt any Federal zoning regulations or requirements as a part of any plan adopted pursuant to this bill?

Mr. CHAFEE. There is no intent to create any Federal zoning requirements and I believe the language of the bill clearly suggests no such requirement.

Mr. McCLURE. One final point, is it the Senator's understanding that the Secretary of the Interior is given no authority to override or preclude in an way the control and implementation of the final plan by the State or local governments.

Mr. CHAFEE. Yes, that is my understanding of the intent of this legislation.,

Mr. McCLURE. I thank the Senator for his responses with respect to this legislation which I know he has worked so diligently to see enacted. Based on the Senator's remarks I am willing to accept S. 1374 as approved by the House of Representatives.

Mr. CHAFEE. Mr. President, this is a matter of great importance to my State and also to the State of Massachusetts.

I defer to my senior colleague.

BLACKSTONE—BIRTHPLACE OF THE INDUSTRIAL REVOLUTION

Mr. PELL. Mr. President, S. 1374, the Blackstone River Valley Heritage Corridor Act of 1986, represents an important step toward preserving the birthplace of the American industrial revolution—the Blackstone River Valley in Rhode Island.

The Blackstone River Valley is where we fought an economic battle that changed the world. We owe it to ourselves and our children to make sure that it is preserved and that we learn from its lessons.

We have worked hard at the Federal level to earn national recognition of the legacy of the Blackstone River Valley, and I appreciate the help and guidance of the Senate Energy and Natural Resources Committee.

My colleague, the junior Senator from Rhode Island [Mr. CHAFEE] and I have worked long and hard together with Representative FERNAND J. ST GERMAIN of Rhode Island toward this goal. We have been encouraged by the enthusiastic support of State and local officials and the residents of Rhode Island.

The Federal assistance authorized by this legislation will help preserve our historic heritage at the same time that it helps encourage private investment and joint public and private ventures too numerious to mention.

I am confident that the Blackstone River Valley National Heritage corridor will help revitalize the Blackstone and will be a source of justifiable pride to Rhode Island.

It also will assure that we preserve a part of our historic legacy. The Blackstone River is our link not only to the past but to the future.

Mr. CHAFEE. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Rhode Island.

The motion was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. PELL. 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 Louisiana.

WELFARE REFORM

Mr. LONG. Mr. President, one regret on leaving the Senate is that I will not be here to participate in the effort to reform our welfare system. I wish to leave my thoughts—for whatever they are worth—for my former colleagues.

Before we can achieve welfare reform, we need to think carefully about what welfare reform really is. With welfare, as with other issues, there is too much of a tendency to equate reform with change. Not every change is a reform.

In 1971, the Governor of the State of California, Ronald Reagan, concluded his testimony on welfare reform before the Senate Committee on Finance in this way:

> We should measure welfare's success by how many people leave welfare, not by how many more are added.

President Reagan restated this same definition of the goal of welfare reform in his address earlier this year on the state of the Union.

Welfare reform should seek to reduce the welfare rolls. This is not because of any theory that welfare recipients are loafers or cheats. Rather it is because what they want and need is the opportunity to work. The welfare rolls should be reduced because Government has no right to relegate productive members of society to a status of lifelong dependency.

This country has ample capacity to provide opportunity for employment to all who are able to work. There is no excuse to continue a welfare system which promotes dependency.

It is a matter of simple economics that society and the families involved will both benefit if we redirect the resources spent on welfare into productive employment. Welfare reform should not be a matter of making welfare more attractive. It should be a matter of making work more attractive than welfare.

We have already accomplished a degree of welfare reform over the past 10 years or so. In the late 1960's and early 1970's, the welfare rolls were exploding. The number of recipients of Aid to Families with Dependent Children increased from 3 million in 1960 to 11 million by the mid-1970's. The idea gained currency that welfare dependency was a fundamental right. This led to proposals for guaranteed income plans which would have added more millions to the rolls of those who were dependent on public assistance. Government agencies and so-called welfare advocates viewed the concept that parents should work and should support their children with indifference or hostility.

The Senate, however, upon the recommendation of its Committee on Finance, declined to adopt this philosophy of dependency and set about to make such improvements as it could to the welfare system in ways calculated to reduce rather than increase dependency.

Mr. President, it was my lot to be chairman of the committee during those years and to absorb a great amount of abuse from the more liberal of the printed media. In my judgment, time has—to a large extent—proved me right.

One major element of welfare reform was the Child Support Enforcement Program enacted in 1975 despite much opposition from within and without the Government. At the time, arguments were raised that the program was punitive and that Government agencies and courts had more important tasks than making parents support their children. Opponents said it would not prove to be worth the effort.

In fact, the program proved to be a great success. In 1978, it collected $1 billion from absent parents. Now, it is collecting three times that amount. What taxpayers spend on this program is less than what they save through the direct reduction of welfare costs. And there are much larger hidden savings to the extent that this program enables families to avoid becoming dependent on welfare.

Child support is welfare reform. It obtains support for children not from the taxpayer but from those who are legally responsible for those children. The children affected are better off financially because of the program, and they learn important lessons from it. They learn that the Government respects and will enforce their rights. And they learn that, as adults, they will be expected to live up to their responsibilities.

Another important element of welfare reform is the effort to develop employment opportunities and to make work as attractive as possible to those who might otherwise become dependent on welfare.

During the past several years, Congress has acted on a number of items addressing these issues. The social services program was established in large part to help make available the child care that mothers may need to enable them to undertake employment. Tax provisions assisting working families with child care expenses were also broadened. The targeted jobs tax credit was enacted to encourage employers to make entry level jobs available to those who would otherwise become dependent on welfare.

An important element of welfare reform is aid to low-income working families—not by adding them to the welfare rolls but by keeping them off the welfare rolls. One way in which Congress has achieved this objective is through a program called the earned income tax credit.

Originally, the Finance Committee proposed to call this program the "work bonus." And that is what it is. If a family is choosing between work and welfare, this program provides a bonus for choosing work. With welfare, going to work reduces your benefit. With the earned income tax credit, going to work brings you an added benefit.

The recently passed tax bill will provide a large degree of welfare reform by expanding the earned income tax credit and by eliminating or significantly reducing the income tax burden on low-income working families. Both of these actions will tend to make work more valuable and more attractive than welfare.

Congress has done a great deal of welfare reform in the past decade or so. But we have only scratched the surface. Our Government is still spending billions of dollars to continue employable persons and their families in situations of dependency. Our Government is still asking the taxpayer to help support the children of absent parents who could and should be made to live up to their responsibilities. The Government thereby subsidizes irresponsible, antisocial conduct to the tune of billions of dollars.

We can do better.

We are collecting about $3 billion a year in child support. This is several times what we collected when the program started in 1976, but it is a very small portion of what should be collected. A recent census study shows that only about a third of absent parent families get any support whatever from working fathers. When support is collected, it is often very little. A book entitled "Child Support Enforcement: Unequal Protection Under the Law" was published last year by the National Forum Foundation. That book estimates that the child support potential is $30 billion—10 times—I repeat, 10 times—our present level of success.

When the Child Support Program was first proposed, it had a great deal of opposition. Welfare rights advocates said it was punitive. Welfare agencies felt it interfered with their primary job of distributing assistance payments. The Social Security Administration and the Internal Revenue Service objected to using their resources in the effort to find and collect from absent fathers. The armed services objected to the idea of withholding child support from runaway fathers seeking, I suppose, the same sort of appeal as the French Foreign Legion—an escape from one's past and a refuge from family obligations.

Despite all this opposition, the legislation was enacted. One major reason it was enacted was the emergence of the women's movement. Women's organizations came to recognize that opposition to the Child Support Program was a direct attack on the legal rights of children and their mothers. The reluctance of Government agencies to help enforce those rights was a major factor in condemning millions of female-headed families to a life of poverty and dependency.

With the active support of women's organizations the Child Support Program was enacted in 1975 and significantly strengthened last year.

But a great deal remains to be done. With some exceptions, many Government agencies still see child support enforcement as a very low priority. Interstate collection is a major problem, and the 1975 act authorized access to the Federal courts to help deal with this problem. But that authority remains virtually unused. The Justice Department—under Edwin Meese, of all people—now heads the list of those agencies that have managed to escape their proper share of what should be a coordinated attack on dependency and poverty. I have been told of cases where U.S. marshals simply declined to carry out court orders dealing with child support. In a recent article, the attorney general of Connecticut was quoted as calling delinquent child support the Nation's greatest example of widespread "lawlessness."

Another area in which we are doing far less than we could is the establishment of paternity. This is the fundamental element in the success of any child support enforcement system. We have developed all the necessary scientific tools to make it possible to prove paternity with a high level of certainty. But we are simply not putting enough effort into this job. The number of illegitimate births each year is running about three times the number of paternity determinations.

If we are to have welfare reform, the first step must be a strengthening of the effort to obtain for children the support they are entitled to have from their parents. This should be a continuing area of high priority for women's organizations and for the Congress. We must find ways to make public officials understand that the establishment and enforcement of children's support rights is a major national priority. It is not less important than their other duties. We must convince or require courts to set child support awards at adequate levels. We must reach the point where those who have children, do so in the knowledge that they will not be able to evade their responsibility to support those children.

In addition to a stronger Child Support Program, we must undertake a fundamental reform of the welfare programs themselves. Our major welfare programs are designed in a manner that might be appropriate if they served only those who are truly unemployable. But that is not the case. The great bulk of our spending on these programs goes to families which have—at least in part—capability of self-support. Instead of spending

those funds to foster continued dependency, we should spend them in ways which unleash that capacity for self-support.

The essence of our present approach to welfare is that the Government pays people for doing nothing. It then tries to coax or coerce them into doing some work, but drastically reduces their assistance payment when they do work. This is an inherently flawed approach.

We should drop this dependency-oriented welfare system and create a new system which offers job opportunities rather than handouts to those who are in need but capable of work.

A recent article in the New Republic, entitled "The Work Ethic State" by Mickey Kaus presents a careful analysis of the damage which our present welfare system is doing to our society. Mr. Kaus examines many of the proposals currently being considered for welfare reform and demonstrates their weaknesses compared with an approach which starts out by offering a job opportunity. I strongly urge my colleagues to read this outstanding article, and I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. LONG. Mr. President, I also ask unanimous consent to have printed in the RECORD an article on child support enforcement to which I referred earlier. This article by Neal R. Pierce appeared in the Boston Sunday Globe on July 27.

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

(See exhibit 2.)

Mr. LONG. Another disturbing aspect of welfare dependency should be discussed.

A new study by the National Bureau of Economic Research shows that children from welfare families have a much higher rate of criminal conduct and they, themselves, also have a much greater tendency toward becoming wards of the Government.

By contrast children from low-income working families have a far higher rate of employment and socially desirable conduct.

I ask unanimous consent to have printed in the RECORD an article describing a new book, based on that study, which discusses the problems of crime, dependency, and the contribution that our present welfare system is making to both of these problems.

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

(See exhibit 3.)

Mr. LONG. Mr. President, if one will read the articles and the books that I have mentioned, unless that person is irreversibly prejudiced from the beginning, he or she will be forced to the same conclusion which the Senate Committee on Finance reached after it spent 3 years focusing on the problem.

That conclusion was this: The answer lies in moving away—just as rapidly as feasible—from every aspect of the program that pays idle persons who are capable of working to remain idle.

The money devoted to that program should be spent paying or subsidizing activities where persons in need will be put to work, or at least required to do some socially desirable activity rather than paying them to let their productive capabilities atrophy or, worse, to drift into mischief.

In effect, the $17 billion of Federal and State money going into the AFDC Program is being used in a manner which subsidizes dependency, idleness, even misconduct that is only a part of what is being spent in this way. If one includes health benefits, food stamps, certain aspects of unemployment benefits, public housing, and the advantageous tax treatment of these benefits, the overall cost runs to many billions more. Overall we are spending as much as $40 billion, perhaps more, for these various benefits for people of working age and their families. This means that, on average, each income taxpayer is contributing something over $400 per year to provide these dubious benefits. If these benefits were all targeted to the 3.7 million welfare family units in jobs or job subsidies they would average upward of $10,000 per family.

If we could direct these funds—or a large part of them—to making those families productive, a great deal could be achieved for the good of the family and the taxpayer. Every individual who can be put to work in day care, health care generally, including hospital care, law enforcement, sanitation, and beautification can be an asset where we once had a liability.

How could such a change of direction be made? Over a period of time we could stipulate that no more able-bodied adults would be paid to be idle. New applicants would be offered work rather than welfare.

In the early stages of such a program, enough work could be found in child care, health care, and other Government activities to put all new applicants to work. After that, we should start subsidizing employers to hire those who need jobs.

Perhaps one-third of the welfare mothers could—and should—be usefully employed in child care. Those familiar with the talents of welfare clients report that, on average, welfare mothers do a very good job working in child care facilities.

Also there are many jobs—more than we need for the purpose—presently held by illegal aliens. If the new immigration bill proves successful to make it a crime for an employer to hire illegal aliens, many of these jobs will be available to those who would otherwise be on welfare.

A problem will be to persuade welfare clients to take the low-paying jobs. The answer is to subsidize such jobs using the sort of approaches that have already proved effective. To make the jobs pay enough, more subsidy will be required than we have been willing to provide in the past.

But which is a better approach: To have a mother with a college diploma doing housework when she would prefer work outside the home, while the welfare mother lives in dependency, or an arrangement between the two women so that the college graduate could afford to hire the erstwhile welfare client to do housework while the college graduate took a job requiring a college education? Every dollar spent in such a fashion helps two families.

The tax credit for child care is a success that is here to stay. The trouble is that it is not enough. To make it enough it should be made refundable—as is the earned income credit.

Furthermore to make these jobs attractive we would need to make the alternatives—idleness and dependency—less attractive by reducing the grants for dependency to able bodied people.

The shift from welfare dependency to work need not be all or nothing. It could be done by degrees.

For example, the program could start with new applicants who have but one child. When the program was working as intended for these new applicants, it could be broadened to add all those with one child as a second step, and so on.

As one who has struggled in this vineyard for a lifetime, I do not advocate that we leap into a new program with both feet in such a fashion as to create needless hardship or chaos.

The important thing is to change the direction and to allow plenty of time to experiment with new techniques to see how they are working.

It took this Government at all levels 40 years to create those aspects of our social service program which have earned the name of the "welfare mess".

If it should take us 10 years or even 20 years to replace the "mess" with a carefully structured replacement that we can proudly proclaim as our answer to poverty, it is worth the time and trouble.

What I have outlined as a better approach to solving the problem of family support is not an offhand, unworkable panacea. Something quite like this proposal was carefully developed in the early 1970's by the Committe on Finance and recommended to the Senate. The Senate approved widespread pilot testing of such an approach, but it did not become law because of the resistance of the other

body. In 1981, Congress did enact authority for States to exercise broad discretion in trying an approach of this type and that authority was expanded in 1984. Unfortunately, up till now, no State has really availed itself of this authority even though it is now written in such a way as to permit as limited or extensive use of the authority as the State finds appropriate.

Why have States been so reluctant to embark on efforts to have an employment program rather than a dependency program?

Persons familiar with the jobs and mental attitudes of State welfare administrators tell me that the employment approach is not something that one can expect to be recommended by an administrator whose experience and success has been gained in operating what is basically a program designed to hand out assistance payments. An administrator who endeavors to move in that direction may find it controversial. If it fails—even in the short run—it could cost him his job. The safe way for a bureaucrat is to avoid rocking the boat. It is much easier to continue on with the traditional attitudes and thinking of those similarly situated.

In order for a State to move from the existing type of welfare program to a program that truly emphasizes work, it will almost invariably require that the Governor, concerned about the attitude of taxpayers who are paying for such a system, insists upon trying the new approach.

Most governors have little knowledge or expertise in the details of running welfare programs and therefore rely on their welfare administrators. Hence the tendency on the part of most State administrators has prevailed. They have clung to that which they inherited rather than boldly accept the risk of trying something that has the potential of being better.

Only a few Governors, such as former Governor Ronald Reagan, have had the courage and the audacity to break with a familiar program that is a failure in hopes of starting a new one that could be a success. The Kaus article demonstrates how the AFSCME union has been hard at work for selfish reasons to prevent such programs from succeeding.

As we begin to seriously search for ways to reform the welfare programs, I would hope the administration would undertake to encourage States to make use of the new authority to experiment with the concept of providing jobs instead of welfare.

The articles I have asked to insert in the RECORD demonstrate that the existing welfare system not only does not work, but it is counter productive to the goal of helping families become self-sufficient. Welfare reform cannot come from expanding the present welfare system. It must come from replacing that system with one that directs employable people to employment rather than subsidizing their continued unemployment. The present system has been in existence for some 50 years. It is hard to abandon something that has been around that long—but abandon it we must because it does harm not good. It does not liberate families, it entraps them.

EXHIBIT 1

THE WORK ETHIC STATE

(By Mickey Kaus)

"The most important analytic point . . . is the fact that poverty in America forms a culture, a way of life and feeling, that makes it a whole."

Who said that? Here's a hint—he wrote in the early '60s. Here's another: he dramatically portrayed the breakdown of family life in the black ghetto, the tendency of young men to move from one woman to another without forming marital bonds, and the disastrous rise in the number of families headed by women. This new culture, he said, was different from the culture of other poor ethnic immigrants—more isolated, more dispiriting, more self-perpetuating.

Give up? Did you guess Daniel Patrick Moynihan, author of a famous government report on this topic in 1965? Well, you're wrong. If you guessed Kenneth Clark, the black sociologist whose book *Dark Ghetto* anticipated much of Moynihan's report—you're also wrong. Those are both good guesses. But the quote is from the socialist Michael Harrington—from his 1962 book, *The Other America*, generally credited with prodding a Democratic administration into launching the War on Poverty.

Today it's Ronald Reagan who warns of "a permanent culture of poverty . . . a second and separate America." Reagan conservatives blame the growth of this underclass on the antipoverty war Harrington started. The mere existence of this underclass is considered a refutation of liberalism, and many liberals seem to react as if that were true. But as Harrington's quote shows, we really haven't come very far since 1962, when the War on Poverty hadn't even begun.

In the intervening years much of America's policy establishment fled from the underclass problem. Black leaders, caught up in the enterprise of building ethnic pride ("black is beautiful") and worried in part that an unflattering description of ghetto life would reflect on all blacks, reacted against Moynihan's report, enforcing an etiquette of silence on the subject. Liberal whites, frustrated by the failure of the "hand-up-not-handout" programs of the early Great Society, nevertheless were reluctant to "blame the victim." Instead, they gravitated toward a bland redistributionism which held that if the poor couldn't or wouldn't earn their way out of poverty, the government should simply give them cash in the form of a guaranteed income.

Now we're back at the beginning. The government is not about to try to end poverty by simply mailing out checks. More important, there is justified doubt that cash in itself can end the pathology. No one who has watched Bill Moyers' "CBS Reports" on the black family's decline, or read Leon Dash's series on black teenage pregnancy in the *Washington Post*, or Nicholas Lemann's recent *Atlantic* articles on "The Origins of the Underclass," or Ken Auletta's book on the same subject, can doubt that there is a culture of poverty out there that has taken on a life of its own. Right and left now recognize that neither robust economic growth nor massive government transfer payments can by themselves transform a "community" where 90 percent of the children are born into fatherless families, where over 60 percent of the population is on welfare, where the work ethic has evaporated and the entrepreneurial drive is channeled into gangs and drug-pushing. In the District of Columbia ghetto, "getting paid" is slang for mugging somebody.

The underclass embraces only a minority of the poor. It doesn't even include most who go on welfare. (A majority get off the welfare rolls within two years.) On the other hand, about 10 to 15 percent of single mothers who go on welfare stay there for eight years or more, and they account for about half the money spent on welfare at any one time, according to a study by David Ellwood and Mary Jo Bane of Harvard. These people, who are poor on a more or less permanent basis, are part of who we're talking about.

Is the underclass black? Certainly it does not include most blacks, two-thirds of whom live above the poverty line. And it has become fashionable for conservatives to downplay the significance of race in the poverty culture, the better to lay the blame squarely on liberal welfare programs. "The focus on blacks cripples progress," writes Charles Murray, author of *Losing Ground* and the most prominent neocon underclass theorist. Murray claims to have found a town in Ohio where white mothers are producing illegitimate babies at Moynihan-report levels (25 percent of all births), presumably encouraged by the same welfare system that ensnares blacks.

But it is simply stupid to pretend that the culture of poverty isn't largely a black culture. Lemann's recent *Atlantic* essay effectively debunks the idea that we can treat the underclass as a color-blind phenomenon. Lemann stresses a fairly direct connection between those blacks who worked in the sharecropping system in the South and those who formed the lower class of the ghettoes after the great migration North. When desegregation allowed middle- and upper-class blacks to escape the ghetto, Lemann argues, they left behind the black lower class that had always been there. Only now that isolated lower-class culture was free from the restraints the black middle class had quite self-consciously imposed on it.

A large ongoing survey at the University of Michigan shows that although blacks compose only 12 percent of the population, they make up 62 percent of those who stay poor for a long time and 58 percent of the "latent poor"—that is, those who would be poor but for welfare. In this respect the old stereotype that most of the poor are black is accurate. The statistics are equally striking on the question of family breakup. Black illegitimacy rates have always been many times higher than white rates. Then, starting around 1965, the black rate rose dramatically from its already high Moynihan-report level of 25 percent to close to 60 percent today. White illegitimacy rates have been rising too, but the white rate is still only about 13 percent. That Murray could find one poor town where the white rate reaches less than half the average rate for *all* blacks only proves how vast the gap is. Even if whites were a majority of the long-term poor, it would be hard for them to create a poverty "culture" because poor

whites have never been confined to segregated communities.

So yes, the problem I am talking about is the culture of our largely black, largely urban ghettos. It is only part of the broader problem of poverty, although it is the most intractable part. It is only part of the problem facing black Americans, although all blacks are unfairly stigmatized by the behavior of the underclass minority. Today, when most liberal black leaders are finally speaking frankly about the crisis in the ghettos, the important question is no longer whether there is a culture of poverty, but what we are going to do to change it.

ONLY BLACK PEOPLE CAN DO THIS

One possible solution is "self-help," which means efforts by the black middle and upper classes to perform what William Raspberry calls "an unprecedented and enormously difficult salvage operation" in the ghetto. This strategy accords with both the hesitancy of liberal whites to tell blacks how to behave and the interest of bootstrapping black neocons in shifting the focus away from a "civil rights" strategy that relies on government intervention. "Only blacks can effectively provide moral leadership for their people," says Glenn Loury of Harvard, a prime spokesman for self-help. More successful blacks, especially, "are strategically situated to undertake" this task. Even Loury's liberal black critics, such as Roger Wilkins, accept both the need for changing underclass culture and the assumption that "only black people can do this." Let-Blacks-Do-It is the new left-right consensus.

When you get to just how the black community itself is going to accomplish a "massive cultural turnaround," however, things get vague. Loury talks about "discussion of values" and "building constructive, internal institutions." Wilkens admits he has only "the sketchiest of ideas." The "local Urban League," he says, could "assemble a roster of role models and present them as a package of assembly speakers for inner-city schools."

Good luck to such efforts, but let's be realistic: today's underclass infants will be great-great-grandparents before these well-intentioned and pathetically limited schemes accomplish any "massive cultural turn around." The "luckier blacks" can't do it themselves. I'm not even sure it's *fair* to expect middle-class blacks to bear the load of reshaping the underclass simply because they share the same skin color.

Nor is it clear that all the black talk of "self-help"—tinged as it often is with an element of separatism—will push in the right direction. Blacks are more likely to make it by integrating with mainstream economic culture than by selling each other toothpaste. But self-helpers from Louis Farrakhan to Republican heroes such as conservative community activist Robert Woodson seem to be promoting inherently limited bootstrapping operations that restrict the arena for black enterprise to the nation's poorest community.

Above all, the Let-Blacks-Do-It boom tempts nonblacks to avoid thinking with any urgency about solutions to the problem that everyone is so proud to have reacknowledged. The biggest disappointment was Moynihan's recent book *Family and Nation*, an effort long on elegantly posed questions and short on answers. Moynihan was once a bold social reformer, but here he was talking about the "limits of government." Likewise, former Virginia governor Charles Robb recently attracted a lot of attention with a speech referring to "self-defeating patterns of [black] behavior." The *New York Times* praised Robb's willingness to face up to "hard truths." But when it came to hard solutions, Robb's most concrete suggestion was that "young mothers, as a condition of receiving welfare" be required to "let visiting teachers come to their homes periodically, to teach learning games and encourage language development. . . ." Learning games!

The alternative is to search for the sort of sweeping government effort that has helped solve our other problems—not new civil rights laws, but efforts that might have the same beneficial effect as the early civil rights laws. As Moynihan says, in the best two sentences in his book, "The central conservative truth is that it is culture, not politics, that determines the success of a society. The central liberal truth is that politics can change a culture and save it from itself.'

THE UMBILICAL CORD THEORY

That brings us to the subject of welfare reform. If you are looking for a political handle on the culture of poverty, there is none bigger. Welfare reform is a hot topic in Washington these days, next on the National Agenda once tax reform is out of the way. Task forces are springing up all over the place. Reagan has commissioned three. Mario Cuomo has one. Bruce Babbitt has one designed to keep Reagan's honest from the left, while Michael Novak chairs one to horn in from the right. The mood is early War on Poverty, but in Reagan's Washington the eager young antipoverty warriors are carrying copies of *Losing Ground* rather than *The Other America."* They are going to break the culture of poverty by replacing the Great Society with a "conservative vision of the welfare state."

What's wrong with the current welfare state, anyway? The basic features of our current system for the poor are these: Fairly generous benefits are available to those who are deemed totally and permanently disabled. Very little in the way of benefits (mainly Food Stamps and stingy state "general relief" money) is available to able-bodied men and women, single or married. But if you are a single parent (almost always a mother) responsible for taking care of a child, you qualify for Aid to Families with Dependent Children (AFDC), which is what most people mean by welfare. In California and New York the AFDC benefit, combined with other benefits, is high enough to bring a welfare mother close to the poverty line. In most Southern states the AFDC benefit is much lower.

The central dilemma of our welfare state, then, is not the age-old general tension between "compassion" and "dependency." For most of the able-bodied, Americans have decided against much cash compassion. Ours is a more specific and modern dilemma: what about a single able-bodied woman who must also care for a child? If we give her no more aid than we give able-bodied men, we may be punishing the child. But to aid the child, we must aid the mother, as AFDC does—and then risk the "social hazard" of encouraging women to put themselves in that disastrous position. To women, the AFDC system seems to say, "Have a kid and the state will take care of you—as long as you don't live with the father." To men, if says, "Father children and the state will take care of them."

This can't *help*. But the current attack on welfare by conservatives mixes up two quite distinct theories as to how it might hurt. In theory #1, prospective mothers and fathers are influenced directly by the economic blandishments of AFDC, much as if by bribes. A mother might have a baby "to go on welfare." A father might leave his wife or girlfriend so she qualifies for the program. Believers in this theory are apt to say that welfare *caused* the growth of the underclass. This is the theory behind Charles Murray's notorious "Harold and Phyllis" story, which compares in minute detail the financial prospects of a fictitous ghetto couple on and off welfare, concluding that between 1960 and 1970 benefit increases and eased eligiblity rules had tipped the balance and made welfare an appealing option.

As "absent father" cases grew from 30 percent of AFDC homes in 1940 to 64 percent in 1960, even many liberals were quite willing to denouce AFDC's discrimination" against intact families. The preferred liberal solution, however, was not to take benefits away from broken families but to extend them to intact ones. The guaranteed-income concept was the logical conclusion of this line of thought.

But once the guaranteed income was politically dead, liberals took off after the Bribe Theory. And it turns out the theory doesn't hold up very well. For one thing, as Lemann points out, the Bribe Theory doesn't account for black exceptionalism. Welfare certainly couldn't have caused the black family patterns that W.E.B. DuBois noted in Philadelphia in 1899, 35 years before welfare existed.

For another, the impact of marginal Harold-and-Phyllis style calculations on the decision of women to have a child out of wedlock does not appear to be great. The illegitimacy problem got worse in the mid- to late 1970s, even though AFDC benefits were falling in real dollars. And, in a much-cited study, Ellwood and Bane compared family structures in states with varying benefit levels and concluded that high benefits have no effect on the decision to have a baby. Ghetto teenagers don't have children to go on welfare, these experts tell us. They have babies to increase their self-esteem, to give themselves "something to love" in a world where delayed gratification seems pointless. Teenage men seek to prove their masculinity, while girls as Dash's series described in horrifying detail, are often ridiculed by other girls if they remain virgins too long into their teens.

But there is a second, and far more plausible, theory that implicates welfare in this cultural catastrophe. It holds that although welfare might not cause the underclass, it sustains it. With AFDC in place, young girls look around them and recognize, perhaps unconsciously, that girls in their neighborhood who have had babies on their own are surviving, however uncomfortable (but who lives comfortably in the ghetto?). Welfare, as the umbilical cord through which the mainstream society sustains the isolated ghetto society, permits the expansion of this single-parent culture. It is its economic life support system, much as the entertainment deduction is the life support system of the culture of the $45 business lunch. No businessmen goes into an overpriced restaurant in order to run up a big deduction. But without the deduction, businessmen would quickly change their lifestyle and such restaurants would disappear.

The Umbilical Cord Theory doesn't talk of families being directly "pulled apart" by welfare, but of families that are never formed in the culture welfare subsidizes. Once AFDC benefits reach a certain threshold that allows poor single mothers to sur-

vive, the culture of the underclass can start growing as women have babies for all the various non-welfare reasons they have them. Indeed, precisely because nobody has babies in order to go on welfare, marginally lowering welfare benefits won't affect them.

If the Bribe Theory is the basis for Murray's "Harold and Phyllis" example, the Umbilical Cord Theory underlies his equally notorious "thought experiment." What would happen, he asks, if there were no welfare at all? Answer: things would have to change. "You want to cut illegitimate births among poor people? . . . I know how to do that," Murray told Ken Auletta in a Washington Monthly interview. "You just rip away every kind of government support there is. What happens then? You're going to have lots of parents talking differently to daughters, and you're going to have lots of daughters talking differently to their boyfriends. . . ." If the daughters didn't, their plight trying to raise kids without welfare would serve as an example to their neighbors.

The implications of this second view of welfare are far nastier than those of the Bribe version. If the Umbilical Cord Theory is correct, it isn't enough to extend welfare benefits so that intact families are well off in comparison to single-parent families. You have to deny benefits to the single-parent families, to unplug the underclass culture's life support system.

Those of us who don't have the stomach to go through with Murray's "experiment" (and Murray himself waffles) are compelled to come up with a more humane way of changing welfare culture. And there remains the possibility that something less than Murray's "let-them-starve" solution might work—something that doesn't cause pain exactly, but that does impose upon individuals the consequences of their choices, at the same time that it offers them a way out. Something like work.

This is the promise of "workfare," right now the hottest thing in the hot field of welfare reform. Workfare holds out the hope of achieving the ends of Murray's "experiment," without the intolerable toll of human suffering, simply by exposing welfare recipients to the necessity that has been the fate of mankind since Eden: the necessity of labor.

THE 6-PERCENT SOLUTION

In 1969, when Nixon proposed this ambitious guaranteed income scheme for families with children, his domestic adviser, one Daniel Patrick Moynihan, threw in a token "work requirement" to placate conservatives. This gave William Safire, Nixon's speechwriter, the excuse he needed to label the entire concoction "workfare," thus permanently confusing the meaning of that term. The Nixon plan, in reality, offered the poor money with no strings attached. As such it was the opposite of what most people mean by workfare, and what I mean by workfare, which is what Ronald Reagan meant by workfare when he first proposed in 1967 that welfare recipients in California be required to work, in government public service jobs if necessary, in exchange for their welfare checks.

Workfare drove liberals berserk back then. Thanks in part to liberal opposition, Reagan's California program never really got off the ground. But he persisted, and when he got to Washington in 1981 he proposed requiring all states to make welfare recipients work off their grants at the minimum wage. Congress didn't give him that, but it did allow states to experiment with workfare if they wanted.

The result is one of those bipartisan movements that seems to herald a genuinely productive marriage of liberalism with the more authoritarian wing of conservatism. *Time* magazine reports: "In statehouses across the country, Democrats and Republicans have joined forces to support legislation that combines the job programs traditionally favored by liberals with efforts to pare the welfare rolls advocated by conservatives." Some 28 states have run experiments, most of them small, with one or another variety of workfare. More important, three of the five biggest states in the union—California, New York, and Illinois—all recently announced ambitious plans to apply workfare precepts to their entire caseloads.

The appearance of a new bipartisan toughness can be deceiving, however. Virtually everybody by now agrees that, as Cuomo put it, "work is better than welfare"—that welfare recipients, mothers included, should be in the labor force (something neither liberals nor conservative women's-place-is-at-home types would have agreed on a few years ago). Beyond that, "workfare"—like "industrial policy"—is vague enough to mean quite different things to different people.

On one extreme is Massachusetts's touted Employment and Training Choices program, ET for short. But ET is not really workfare at all. There is nothing mandatory about it. True, welfare mothers with no children under six must *register* for the program, but registration for work has been a federal welfare requirement since 1967. (It's "nothing other than filling out a form," says Massachusetts Welfare Commissioner Charles Atkins.) Everything else about ET is voluntary and upbeat. Welfare mothers are offered a variety of services designed to help them find work—job appraisals, career planning workshops, remedial education, job training, placement services. Those who find jobs get transportation allowances and free day care for a year after they start work, plus Medicaid for up to 15 months if their employers don't provide health insurance.

But welfare recipients don't have to do any of this. If they prefer they can still stay home and collect a check. If "clients" decline ET's "invitation" to participate, they are placed on an automated "future participation" list and targeted for "special marketing campaigns." As for mandatory programs—that is to say, workfare—Atkins has a simple answer: "I think workfare is slavery."

ET is the new hope of liberals who don't really like workfare at all. The Democratic National Committee flew Massachusetts governor Michael Dukakis down to Washington in March to brag about the program as an example of "Democrats Making It Work." The DNC publicity brochure contrasts Massachusetts's success story" with Reaganite workfare. "They offer a punitive approach, a negative approach," it says. "They try to club people off welfare." ET offers "ladders of opportunity." "We don't need another study," DNC Chairman Paul Kirk said, ridiculing the Reagan administration's welfare task forces. "Governor Dukakis has been out solving the problem."

Why might ET make a difference where similar programs had failed? First, it seems to have changed the perception that welfare mothers are unemployable. Various studies have shown that, of all "underclass" groups, AFDC mothers are the most capable of making the transition to the world of work. (It's the men who are most often unemployable.) But state employment departments, which are typically responsible for placing the unemployed in jobs, have traditionally told AFDC mothers, "don't call us, we'll call you," worried that if they actually refer them to jobs, employers will be so horrified they will stop asking the state for referrals. Atkins signed the Massachusetts Division of Employment Security to an interagency "performance contract" under which it gets paid $1,000 for every welfare case placed in a job. This appears to have broken through the prejudice against AFDC mothers. (It may have helped that the head of the Massachusetts Division of Employment Security is Atkins's wife.)

Second, there are undoubted advantages to ET's all-carrot, Up-With-People approach. "If we went confrontational, they would feel criticized, scared, angry," argues Anne Peretz, director of The Family Center, a clinic that serves welfare recipients living in public housing. (She is also the wife of TNR's editor-in-chief). "If you try to force somebody to do something, they will succeed in not doing it." Peretz says the "excuses" available to those in the welfare culture "are just endless"—sickness, baby-sitter troubles, teenagers who need emergency attention. "You can get everybody up and marching in the right direction, but you will lose the war" unless the behavior is truly self-motivated. Peretz sees no alternative to coaxing and cajoling welfare cases into action by appealing to "that part of themselves" that wants to become self-supporting, a process she likens to "seduction."

ET is the embodiment of this classic social-work approach—dealing one-on-one with each "client," tailoring a plan for each, slowly building up "self-esteem" and "mastery" from within, overcoming the welfare culture through the skilled application of "human services."

Unfortunately, the grandiose claims made for ET tend to wilt on close inspection. Dukakis boasts that 25,000 recipients have been placed in jobs since October 1983, but one-third of those are only in part-time jobs. And it's only the full-time jobs that pay ET's much-touted "average of over $10,000 per year"—$5 an hour. In ET's first 18 months, half of its full-time job placements paid less than $4.50 an hour. Half of the part-time placements paid less than $3.75. A big ET selling point is that it offers, not minimum-wage slots, but "real jobs with real wages" paying enough to support a family. But even in a state with a 3.3 percent unemployment rate (lowest in the nation), many ET graduates must content themselves with work not far above the $3.35 minimum wage. A year after they leave the program, about half of ET's success stories still aren't earning enough to go off welfare completely.

The ET hype encourages a fallacy that commonly plagues government training programs: the Gross vs. Net Fallacy. It's one thing to boast about placing 25,000 people in jobs. It's another to say those 25,000 wouldn't have gotten jobs without ET. Reasons for skepticism abound. As pro-ET types stress in other, more convenient, contexts, there is always tremendous movement on and off welfare. As of June 1985, some 31 percent of ET's job placements were listed as "appraisal only"—that is, their contact with ET was limited to an initial counseling session before they got a job (although they may also use ET's free day and transporta-

tion). Surely many of these people would have found work without ET.

Welfare commissioner Atkins will say only that the "vast majority" of the 25,000 jobs are attributable to ET. Even that claim is dubious. Atkins has refused to allow an independent study to compare ET's success with that of a local control group that doesn't get ET. He says, reasonably, that he doesn't want to deny any recipient full access to ET's training. But where such studies have been done they have consistently shown that huge "gross" job placement gains turn out to be slim or non-existent "net" improvements over the placements that would have happened anyway. In San Diego's "work experience" experiment, for example, a gross gain of 61 percent melted into a net gain of less than 6 percent.

The most important criticism of ET, however, is that it doesn't come close to "solving the problem" of the culture of poverty. ET is about as good a voluntary job-training program as we are likely to get. It is competently run, well-funded, skillfully marketed. It operates in the hottest regional economy in the country. But of 112,983 welfare cases in 1985, about 7,660, or 6.8 percent, actually got full-time jobs through ET. Even if all of those people wouldn't have found work otherwise, that isn't a big enough percentage to transform the underclass. "What we did in ET is pick off the people who are most motivated to go to work," Atkins admits. Those remaining are the least-motivated, the hardest to "seduce." ET offers those willing to work their way out of the culture of poverty a way to do it, no small thing. But it leaves the culture itself largely unscathed.

WHISTLE-WHILE-YOU-WORKFARE

If we could rely on volunteers to end the culture of poverty by working themselves out of it, we probably wouldn't have a culture of poverty in the first place. The whole problem is that there are people who won't climb up a "ladder of opportunity" even when the economy or the government dangles it in front of their noses. If it's dramatic change we want, we must look to programs that "make" people do things they might not do if they have a check coming every month. I say "make" with caution, given the liberty with which terms like "slavery" are used in the workfare debate. Nobody is talking about throwing indigents in jail if they don't work. True workfare—the mandatory kind—merely says that if you take the state's money, the state has a right to ask something in return.

That said, there is often little practical difference between ostensibly "mandatory" work programs and "voluntary" programs such as ET. I watched a crack ET caseworker, Betty Wornum, process a welfare mother who had been called in for her "registration." It was obvious that, if Wornum could help it, there was no way that woman was going to get out of the office without signing up for some sort of training program. ("I've got a real good program for you!") The "client," visibly nervous among the bureaucrats who controlled her check, was not about to stand on her rights, at least not just then.

For their part, many "mandatory" programs are not so mandatory after all. Some maintain large "unassigned pools" of recipients who are receiving welfare but not working. Illinois, which hopes to dissolve its unassigned pool, will nevertheless have a "modified job search component," in which the state will do little more than contact the recipient "at least" every six months. San Diego's highly published experimental program "required" new applicants to perform public service work. But once applicants had been "excused for health or other reasons" or obtained an "exemption," San Diego's plan didn't embrace a noticeably higher portion of the eligible welfare population than Massachusetts's.

Instead of flaunting their permissiveness ET-style these "soft" workfare programs do formally require able-bodied welfare recipients to participate. The formal requirement performs what Richard Nathan, a Nixon welfare expert and a leading Soft Workfare advocate, calls a "signaling" function. It tells those on welfare that it's not good to sit at home, instead of "it's too bad you're a victim." Working off one's welfare grant can also teach "life skills"—the importance of showing up on time, of working with others, etc. But work requirements should not, the Softs wil tell you, be "punitive." The results is a sort of whistle-while-you-workfare emphasizing the positive things working can do for a recipient, in which work requirements are not really applied to people who resist them. "Welfare mothers who don't want to work probably do have hangups, physical or emotional problems," Nathan told me—veering close to the "you're a victim" excuse-making he had just criticized.

Some Softs quite openly see workfare as a convenient conservative cover to protect the existing welfare system from Reaganite dismantling. The theory is that if the public thinks able-bodied welfare cases are being made to work, that will remove the "stigma" from welfare, and the public will be more inclined to support a generous system. But unless the beneficiaries really *are* made to work, this strategy is more than a bit cynical. cal.

Most state workfare programs are of the soft variety. West Virginia, for example, is typically billed as one of the toughest workfare states. But it excuses welfare mothers from work when they are "job ready" (because working off their grant can't teach them anything more) or when they have "barriers" to employment—a euphemism for people who are so screwed up they won't get jobs anyway. That lets off the hook 20,000 of the 36,000 participants. Other programs only require recipients to show up for 12 or 13 weeks of "work experience."

Indeed, soft workfare usually offers alternatives to what are sometimes called "crude" work-off-your-grant schemes. "Job search," where recipients learn how to write a résumé, dress for an interview, read the want ads, and then actually look for jobs under the prodding of supervisors, became a hot alternative because it promised cheap placements—at least until a recent study by the Manpower Demonstration Research Corporation cast doubt on its effectiveness. Most of the programs billed in the press as "workfare" are really mandatory job search schemes with a short work "experience" requirement at the end for those who don't find a job.

In judging workfare programs, Softs ask questions like: What was the net gain in placing people in private sector jobs? In income? Did workfare teach any usable skills? At what cost? The MDRC's thick, professional, and well-publicized studies describe the incremental successes of work programs according to these measures in mincing detail. MDRC's latest report of modest gains for "work experience"—3 to 6 percent increases in private sector employment, 0 to 15 percent decreases in welfare payments—rated 20 inches in the *New York Times*. Those who oppose soft workfare tend to use the same client-centered criteria, noting evidence that work experience participants feel they aren't learning many new skills. "Sweeping streets or cleaning buildings," says Massachusetts's Atkins, "doesn't do shit for preparing someone to go and get a job in the private sector."

Of course, if you worry about the effect of welfare in sustaining the underclass, umbilical-cord style, the Softs have it all wrong. Workfare should not be a short-term program to help existing welfare clients, but a long-term program to destroy the culture of poverty. In this "hard" view, what's most important is not whether sweeping streets or cleaning buildings helps Betsy Smith, single teenage parent and high school dropout, learn skills that will help her find a private sector job. It is whether the prospect of sweeping streets and cleaning buildings for a welfare grant will deter Betsy Smith from having the illegitimate child that drops her out of school and onto welfare in the first place—or, failing that, whether the sight of Betsy Smith sweeping streets after having her illegitimate child will discourage her younger sisters and neighbors from doing as she did. These are questions MDRC doesn't ask, and they would be very difficult to answer if it did ask them.

Hard workfare advocates, such as Robert Carleson, architect of Reagan's first-term welfare cuts, or Lawrence Mead, whose book *Beyond Entitlement* champions work requirements, think it's good when someone works off her grant, whether or not it increases her income. If she is still working for her grant two years or ten years later, it's still better than not working. If she learns some skills while sweeping and cleaning, if it motivates her to go get a private sector job, that's gravy. Where the Softs seem quite content with their modest six percent improvements in employment, the Hards at least ask the urgent question: Will program X eventually destroy the culture of poverty or only help a few escape it?

The Hard Workfare prescription is a bit of a leap into the dark, a piece of social engineering bold enough to make anyone familiar with the Law of Unintended Consequences extremely nervous. Not the least of the doubts is whether it is even possible to apply a truly mandatory work requirement to the entire caseload of a large state. None of the workfare experiments, mostly Soft, that have been going on long enough to study has been large enough to have a measurable impact on a big amorphous thing like Culture. That is about to change.

THE POVERTY LAWYERS' PLAYPEN

If George Deukmejian, California's Republican governor, could talk like Mario Cuomo, we would all have heard more than enough about GAIN (Greater Avenues for Independence), the welfare reform plan that sailed through the state's legislature early this year. But Deukmejian's a bore, so the most important welfare reform in decades went largely unnoticed in the Eastern press.

GAIN is big. It tries to impose a mandatory program on the largest welfare caseload in the country. GAIN is also complicated. Democrats added so many options, protections, and furbelows to Deukmejian's basic work-off-your-grant proposal that the GAIN flow chart resembles a diagram of the Chernobyl nuclear plant. As finally adopted, California's plan offers a generous menu of training and education "options" to welfare recipients in addition to "work experience,"

here relabeled "pre-employment preparation" (PREP). Welfare recipients (who get free day care if necessary) can choose to take vocational education, remedial education, English-as-a-second-language, among others, instead of working for their checks. This smorgasbord approach is the latest workfare fashion. Attribute it to ET's influence.

But unlike ET, under GAIN recipients must do *something*. No welfare recipient will be forced to work off her grant right away. If she doesn't get a job after training in a specific job skill, then the state may require her to work off her grant—but it must offer her a workfare job that uses the skill she has learned. Welfare mothers trained as nurses' aides may not be required to work as secretaries, etc. Only if the recipient screws up in some way—drops out of school or falls out of the training program—may she be required to take a long-term public service job unrelated to her training. These "long-term PREP" cases are reviewed every six months, and may then be recycled through the system.

As a hard workfare strategy to destroy the poverty culture, GAIN suffers from the two major structural flaws common to most such programs. First, it requires nothing of welfare mothers until their oldest child reaches the age of six. This one restriction excuses two-thirds of the welfare caseload in California. If the sight of other teenagers living on welfare after having babies is a bad influence on their contemporaries, workfare programs limited to those with school-age children may not dramatically change those background conditions. And if anyone wants to avoid the workfare obligation, one way out is obvious—she can "go home and have another baby," as California State Senator Diane Watson threatened her inner-city constitutents would do when confronted with "forced labor." Hard workfare advocates such as New York's Blanche Bernstein worry privately about this have-a-kid loophole. Bernstein would extend workfare to mothers with no children younger than three, which would bring 62 percent of the national welfare caseload into the program. Beyond that, Bernstein says she is "depending on physiological constraints"—i.e., there are only so many babies a woman can have.

Even more important, neither GAIN nor any mere "workfare" plan does much to employ those in the underclass who have few welfare benefits to "work off," namely able-bodied men. The welfare mother whose ET session I observed asked if there were any way the program could find a job for her "friend." That was the third such request the caseworker had had that day. It will be hard to break the culture of single motherhood as long as among non-whites aged 20–24 there are only 48 employed civilian—i.e., "marriageable"—men for every 100 women (as William Julius Wilson and Kathryn Neckerman of the University of Chicago estimate). In fact, the absolute number of illegitimate black births has not been increasing, but the rate at which legitimate black families are formed has plummeted. No program is apt to arrest this decline unless it puts more men into jobs. By offering women who head fatherless families a way out of poverty, while failing to offer it to potential fathers (or childless women), work and training programs may reinforce whatever incentives in favor of single-parent families the AFDC system generates ("Have a Kid, Get Job Training").

There's another perverse incentive created by AFDC-only workfare, which might be called the Cheryl Liberatore Factor. Liberatore is the 13,000th graduate of ET in Massachusetts, a pert, enthusiastic-looking woman who may be seen on the front cover of an ET publicity brochure. "After one year, Cheryl is earning more than twice what she received on welfare and is employed as a secretary at one of Boston's largest universities," the caption reads. What the caption does not say is that before she was on welfare, Liberatore was employed in a low-wage job, but she quit it to go on welfare to qualify for ET training. Programs like ET and GAIN may not cause a stampede of Liberatores to the welfare office, but they are certainly *unfair*, in that they offer a goodie to those on welfare that isn't available to the poor suckers who labor in lousy jobs.

Even as applied to welfare mothers with school-age children, GAIN has big problems. The first, pointed out by Mead, is a dilemma common to all workfare schemes, perhaps to all political activity—namely that its harder to take something away from someone that it is not to give it to them in the first place. In workfare, what is being taken away is the right to a welfare check with no strings attached.

The government has been trying since 1967 to require able-bodied welfare recipients take available private sector jobs. The effort has been a failure, in part because states didn't really think welfare mothers could work, in part because it's easy to arrange not to be hired by a private employer ("All you have to do is show up drunk," a former Carter welfare official told me). But it has also failed because taking away someone's welfare benefits is a long, cumbersome business hedged about by legal restrictions. Workfare eliminates the first two reasons by having the government provide the job itself. The third problem—the Take Away problem—remains.

California's workfare statute is a poverty lawyer's playpen. Welfare recipients don't have to participate in GAIN if they are "seriously dependent upon alcohol or drugs," if they have "an emotional or mental problem," a "medically verified illness," "legal difficulties,"; or a "severe family crisis." Participants may not be penalized for failing to work if the job they are offered is more than one hour or one mile's walk away from their home (those California winters!), if the job is "not related to the individual's capability to perform the task on a regular basis" (whatever that means), if the government fails to give them, not one, but a choice of two day-care arrangements, if the government fails to provide "necessary" services, if it rains ("inclement weather or other act of nature precludes . . . other pesons similarly situated . . ."), etc. etc. etc., including the lawyers' favorite elastic clause, "good cause." The law announces in advance that recipients may be absent or tardy ten percent of the time without penalty.

A recipient who refuses to work will first lose the right to spend her grant as she sees fit—the welfare office will assume "management" of her money, paying her landlord directly, and so on. If she continues to refuse, and is somehow shown at all the various hearings and appeals to have had no excuse, the ultimate penalty is not loss of her entire grant. Federal law limits the penalty to only that portion of the grant designated for her own personal support—about $115 to $120 a month, according to California officials, out of an average combined AFDC-Food Stamp grant of about $700 a month for a family of three.

To this impressive array of loopholes California adds a peculiarly revealing one: no recipient has to take a private sector job if it is "at a wage level that results in a loss of income." This clause reflects one of the genuine practical riddles of welfare reform, the Low Wage dilemma. The dilemma is simply that the sort of jobs welfare recipients can get in the marketplace will not support a mother with kids—so that any decent welfare standard will pay more than most potential jobs. Under California's rules, a job must pay more than welfare after child care, transportation, and health insurance. If the average monthly benefit for a mother with two kids is $700, and if you figure that child care costs $200 and health insurance and transportation $100, that means that the state can only require this average welfare mother to take a private sector job paying the equivalent of $1,000 a month, or $5.76 an hour. Remember that in Massachusetts, the most prosperous state of the union, half the successful ET graduates made less than $4.50 and you have some idea of the task California has set for itself.

Faced with the dilemma of low wages, California has simply grasped one horn, embracing what might be called the Good Jobs Fallacy. At a famous set of hearings staged by the National Welfare Rights Organization in 1970, militant welfare mothers pounded the table and declared, "We only want the kind of jobs that will pay $10,000 or $20,000." California's scheme comes close to accepting the very moral assumption workfare is supposed to deny—that it's OK to stay home and get a check, so if we want recipients to work we must offer something better than "menial" or "dead end" jobs. Through an elaborate training and education of effort, it seeks to enable its welfare clientele to get these "good job." But the unpleasant truth is that most of the jobs available to long term-welfare mothers will be menial, dead end jobs. There's also that annoying question of fairness again. A great many Americans work in dead end jobs. According to Columbia labor market expert Eli Ginzberg 40 percent of the jobs in the economy are "bad jobs" paying low wages and offering little chance for advancement. Are all these people to be given the option of going on the dole?

But mightn't the prospect of having to work off your grant in a public service job provide an incentive to take a "bad" private sector jobs even if it's not required? Not likely at least in a state with generous welfare benefits. The minimum rate at which California workfarers work off their grants is set at $5.07. But because workfare hours are limited to 32 a week (to leave a day for job search) no matter how high a welfare mother's benefit, many recipients will in effect be earning more per hour. Workfare may not be as good a deal as just getting a check, but it's likely to be a better deal than any private job a welfare mother can find (especially if workforce comes with free child care and Medicaid). Won't welfare recipients begin stacking up in workfare jobs? At this point, GAIN's architects begin to talk about how embarrassing it is to be on workfare, how it's not really a "job" at all. Workfare advocates like Nathan may hope it removes the "Stigma" of depending on the government, but in California they are relying on stigma.

What will the workfare workers do, anyway? GAIN officials estimate that about 20 percent of those participating in GAIN will end up on long-term workfare. That's a minimum of 34,000 jobs, with a maximum of

. . . who knows? Ah, but there are plenty of things to do, you say. Roads are crumbling. Playgrounds and schools are falling into disrepair. Streets are increasingly filthy. The elderly need care. Have workfarers help perform some of these jobs and the public will see it's getting something for its money. Isn't that what liberals always meant by the government being the employer of last resort?

Perhaps, but you don't hear too many liberals saying that anymore, for a simple reason; public employee unions. They are a bedrock Democratic interest group, and they hate workfare. Their most obvious fear is that lowpaid workfare workers will be used to displace regular, highly paid union members. Even if no regular workers lose their jobs, and even if all workfare workers were paid the same as regular workers, workfare would still depress wages of existing workers by forcing them to compete with people hungrier than they are. At the Washington headquarters of AFSCME, the nation's largest public employee union, there is a spare, windowless office occupied by a kindly man named Al Russo. Russo's job is to fight any attempt to employ the destitute in public service jobs. The row of files behind him, each with the name of a different state, shows he's been busy lately.

If AFSCME can't kill a workfare scheme, it settles for statutory language to protect its members. In California, Democrats inserted a few key clauses written by AFSCME's lobbyist. As a result, not only may no current state employees be fired to make way for workfare workers, but none may be deprived of overtime. No work "customarily performed" by union members may be performed by welfare recipients. And no workfare slots may be opened at any agency in which regular employees are on layoff—which, in the land of Prop. 13, means most agencies.

California officials, in fact, have given up on using workfare recipients in state agencies. They hope, instead, to put them to work in the nonprofit sector. The United Way, the American Red Cross, the Urban League, and organizations that supply "adult services" and "child care services" are mentioned as possible job sites. One L.A. official suggested workfare workers might be assigned to welfare rights organizations, where they would presumably work to abolish workfare.

This nonprofit gambit sharply restricts the number of potential jobs. It also means that workfare workers will almost never actually build anything, clean anything, or perform any service useful enough for the government to already be doing it itself. Meanwhile, if you're looking for a potential swamp of makework, the nonprofit sector, which has neither the discipline of the bottom line nor that of the ballot box, is a good place to start.

The biggest potential swamp is training itself. When people pay for their own training, they're likely to try to make it worth the money. This self-motivation is less likely when the programs are offered free (as with ET), and even less likely still if training is a way to avoid workfare, as with GAIN. Sound alarmist? Here is how Willie Brown, speaker of the California assembly, described his vision of his state's plan: "[You] will agree to go through a series of training programs, we will agree to increase your welfare benefits, your child care benefits, your grooming benefits, and all the other things. At the end of the training we'll start a search process to place you. If after a series of incidents at which we have attempted to place you and there's nonavailability, starting the next January you'll come back to us. We'll talk again. If we haven't been successful at finding you a job, then we'll put you in another training program . . . and we keep this process going, maybe forever."

Maybe California is just too soft. Those searching for a government trying to impose hard workfare on a big urban caseload might look to the Koch administration in New York City. Koch's welfare officials like workfare for its deterrent effect. They have tended to favor programs with few loopholes and programs that keep recipients working off their grants for long periods, if necessary. Koch's problem is Governor Cuomo, whose administration resisted even a city effort that applied workfare only to mothers with no child under 14. Last October, Koch aides finally convinced Cuomo to approve a new plan for New York City in which workfare is supplemented by a number of training and work options. Cuomo promptly hogged the headlines when his administration leaked the plan to the press and pledged to extend it statewide.

Cuomo has only embraced workfare of the softest sort. His statewide plan, still being debated in Albany, falls for the Good Jobs Fallacy in a big way, promising "individualized" training for "salaried" jobs to be created in "opportunity zones" as part of a "new partnership" between business and labor. Workfare assignments are a last resort, only when it will "enhance the employability of the recipient," and then only for six months. In May, New York City welfare official Herb Rosenzweig charged that Cuomo's statewide proposal would "emasculate" the city's plan. Nathan, a workfare moderate, calls Cuomo's effort "a lot of air."

Even Koch's relatively tough program is limited to mothers with children over six—just one-fifth of the New York City caseload. And, in another indication of how difficult it is to require work from those who are already getting a welfare check, some 40 percent of the cases called up so far this year are listed as "pended," meaning they are in some stage of adjudication.

ONLY WORK WORKS

What would a program that had a real chance of undermining the underclass look like? The deficiencies in the efforts currently underway give us some idea. First, it would be a program that expects women to work even if they have young children. Second, it would offer work to ghetto men and single women as well as to the welfare mothers. Third, it will have to deal with the related Take Away and Low Wage dilemmas; how can you require welfare recipients to accept private jobs if they pay less than welfare? How can you avoid making workfare or training more lucrative than private sector work?

Solving these problems will take something more radical than and existing workfare plan. It must be far bigger, in order to offer jobs to men, and far tougher in its dealings with young mothers. Above all, the program must unambiguously announce the cultural norm it seeks to promote in place of the culture of welfare.

What is required, I think, is something like this: replacing all cash-like welfare programs that assist the able-bodied poor (AFDC, general relief, Food Stamps, and housing subsidies, but not Medicaid) with a single, simple offer from the government—an offer of employment for every American citizen over 18 who wants it, in a useful public job at a wage slightly below the minimum wage. If you could work, and needed money, you would not be given a check (welfare). You would not be given a check and then cajoled, instructed, and threatened into working it off or "training it off" (workfare). You would be given the location of several government job sites. If you showed up, and worked, you would be paid for your work. If you don't show up, you don't get paid. Simple.

Unlike "workfare" jobs, these jobs would be available to everybody, men as well as women, single or married, mothers and fathers alike. no perverse "anti-family" incentives. No "means test" either. If David Rockefeller showed up, he could work too. But he wouldn't. Most Americans wouldn't. The low wage itself would "ration" the jobs to those who needed them most, and preserve the incentive to look for better work in the private sector. Instead of paying what in effect are high workfare "wages" and then relying on the stigma of welfare to encourage people to leave, this program would pay low wages but remove the stigma. Those who worked in the jobs would be earning their money. They could hold their heads up. They would also have something most unemployed underclass members desperately need: a supervisor they could give as a job reference to other employers. Although the best workers could be promoted to higher paying public service positions, for most workers movement into the private sector would take care of itself. If you have to work anyway, why do it for $3 an hour?

Those who didn't take advantage of these jobs, however, would be on their own. No cash doles. Mothers included. (Remember, we're only talking here about those able to work.) People who show up drunk for their jobs, who show up high, or who pick a fight with their supervisor could be fired (though they could show up again after a decent interval). There would be no need to "require" work. Work would be all that was offered. The problem of having to take away high benefits to force low-wage work would be solved by simply not providing those benefits in the first place.

This is not a new idea. Similar proposals have been advanced in the past by Russell Long and (of all people) Arthur Burns. Basically, it makes the same decision Franklin Roosevelt made in 1934, when he decided to replace a system of cash relief for the able-bodied with the Work Projects Administration, the WPA. Liberals who invoke Roosevelt's "compassionate" legacy tend to forget this anti-dole decision. Meanwhile, Reagan gleefully quotes Roosevelt's description of the dole as "a narcotic," somehow failing to mention that FDR said it in the speech where he proposed the largest government jobs program in the nation's history. In fact, FDR's anti-dole and pro-WPA opinions were of a piece, a decision in favor of work-welfare and against cash-welfare.

Of course, Roosevelt's WPA was designed to combat general unemployment at a time when most of those needing "relief" were veteran workers and nobody imagined that the tiny AFDC program, nestled unnoticed in the New Deal structure, would one day sustain millions of husbandless mothers. Our goal, in contrast, is to break the culture of poverty by providing jobs for ghetto men and women who may have no prior work habits, at the same time as we end the option of a life on welfare for single mothers. It is the transformation of the welfare state into the Work. Ethic State, in which status, dignity, and government benefits

flow only to those who work, but in which the government steps in to make sure work is available to all. There are a number of obvious objections to so simple a solution.

Will the wage be enough to support a family? No. This is the Low Wage dilemma. The poverty line for a family of three is $8,570. A full-time, minimum-wage job brings in only $7,000, and the government jobs proposed here would pay less than that. But there are ways to supplement the incomes of low-wage workers outside the welfare system (while preserving an incentive to seek better pay). The current Earned Income Tax Credit is one, the innovative Wage Rate Subsidy system of Brandeis professor Robert Lerman (which would pay half the difference between the family breadwinner's wage and 56 an hour) is another. Even Ronald Reagan once proposed this approach while testifying against the guaranteed income in 1972.

A subsidized wage would, in effect, be a guaranteed income *for those who work* (a far more affordable proposition than an income guarantee that doesn't have a base of wages to start from). There is no objection, in the Work Ethic State, to the government sending out checks as long as able-bodied people only get them if they work. Supplementing wages is a much better solution to the Low Wage problem than pretending the underclass can get "good jobs" that pay enough in themselves to support a family.

Will people be allowed to starve? That state's basic obligation, in this scheme, is to provide dignified work for all who can work, and a decent income for the disabled. There will be those who refuse work. Many ghetto men, at least initially, will prefer the world of crime, hustle, and odd jobs to working for "chump change." One advantage of the Work Ethic State is that criminals can be treated as criminals, without residual guilt about the availability of jobs. Others—the addled and addicted—will simply fail at working, or not even try. Even a fraction of welfare mothers, the most employable underclass group, will have trouble. "The workplace is so foreign to so many people who are second-and third-generation dependents," says Tom Nees, a Washington, D.C., minister whose Community of Hope works with welfare families poor enough to be homeless.

The first underclass generation *off* welfare will be the roughest. Those people who fail at work will be thrown into the world of austere public in-kind guarantees—homeless shelters, soup kitchens, and the like—and the world of private charitable organizations like Nees's. This aid would be stigmatizing (as it must be if work is to be honored), but it could be compassionate. Nobody would starve. Counseling, therapy, training, could be offered, even subsidized by the government, in order to help these people back on their feet. The one thing the government would not offer them is cash.

What about mothers with young children? The government would announce that, after a certain date, single mothers would no longer qualify for cash welfare payments. The central ambiguity of our welfare system—whether single mothers should work—would be resolved cleanly and clearly in favor of work. This hard choice is a key way the Work Ethic State would hope to break the self-perpetuating culture of poor, single-parent families. Teenage mothers who had babies could no longer count on welfare to sustain them. They would have to work like everyone else, and the prospect of juggling motherhood and a not-very-lucrative job would make them think twice, although it would also offer a way out of poverty that Charles Murray's starvation solution would deny.

What would the children do when their mothers were working? If the government is going to expect poor mothers to work, then it will have to provide day care for all those who need it. This will be expensive (Massachusetts pays $2,800 a year for each day-care slot). But it won't be as prohibitively expensive as many who raise the day-care issue seem to believe. In every state in which free day care has been offered to AFDC mothers, demand has fallen below predictions. "It is never utilized to the extent people thought it would be," says Barbara Goldman of MDRC. Most mothers, it seems, prefer to make their own arrangements. Whether those arrangements are any good is another question. The government might actually have to take steps to encourage day care, as part of the general trend toward getting kids out of underclass families and into school at an early age.

What about mothers with very young children, two years and under? A destitute mother with a newborn infant presents the basic AFDC dilemma in its starkest form. It *is* a dilemma, meaning there are arguments on both sides. One alternative is to allow temporary cash welfare for the first two years of a child's life, with a three-year limit to avoid the have-another-kid loophole. A two-year-free ride is better than a six-year free ride. Teenagers are likely to be friends with someone in their community who has a two-year-old kid and is "up against it," as Murray puts it. On the other hand, no free ride at all (except for in-kind nutritional assistance during pregnancy and infancy to avoid disastrous health problems) would clearly have stronger impact. It would also put mothers into the world of work without letting them grow accustomed to dependency. Oklahoma applies its soft workfare requirement to mothers as soon as their kids are born, with no apparent ill effects.

And if a mother refuses? The short, nasty answer is that if a mother turns down the state's offer of a job with which she might support her children, and as a result her children live in squalor and filth, then she has neglected a basic task of parenthood. She is subject to the laws that already provide for removal of a child from an unfit home.

What about teenagers who haven't even finished high school? They could receive free day care while finishing, and inkind nutritional assistance, but no cash. To obtain any extra cash necessary to support a baby, they would have to work, in one of the guaranteed government jobs if necessary. Again, the government could offer as many free training programs as it wanted, but without cash entitlements. Since training would no longer be an alternative to working, trainees would have every incentive to make the most of it.

Will there be enough jobs these people can do? As noted above, the objection can't be that there aren't enough worthwhile jobs to be done. The crumbling "infrastructure" that preoccupied Washington three years ago hasn't been patched up overnight. All around the country governments have stopped doing, for financial reasons, things they once thought worthwhile, like opening libraries on Saturday and picking up trash twice a week. Why not do them again?

But there are plausible doubts whether the welfare recipients who would need public service employment are suited to doing all these worthwhile jobs. One objection has to do with women and physical labor. Are we really going to have teenage girls repairing potholes and painting bridges? One response is, why not? Women can fill potholes and paint bridges (and water lawns and pick up garbage), just as women can be telephone repairmen and sailors. Feminism has rightly destroyed the sex stereotypes that used to surround much physical work. Anyway, there are many non-arduous "women's" jobs that need doing—nurses' aides, Xerox operators, receptionists, clerks, coat checkers, cooks, and cleaners. Private schools often require parents to keep order on playgrounds twice a month. Public schools might employ one or two parents to do the same full-time. Day-care centers could too. Is there any point in offering women free day care and then putting some of them to work in day-care centers? Yes. First, that would still free up a lot of women for employment. Second, and more important, the day-care jobs would exist within the culture of work—with alarm clocks to set, appointments to keep, and bosses to please—rather than the culture of welfare.

A second objection has to do with competence. Can an illiterate, immature high school dropout be trusted to work in a hospital as a nurses' aide, or in a public office as a clerk? Maybe not. But who can't sweep a floor? The liberals who make this objection often seem to have an opinion of underclass capability that makes William Shockley look generous. In fact, supervisors of soft-workfare workers polled by MDRC rated welfare recipients as productive as regular entry-level workers. For those with severe limitations—well, even a leaf-raking job takes leaves. If that's all someone's capable of doing, does that mean she shouldn't be paid for doing it? The alternative, remember, is to pay her to stay home and raise children.

A third objection is that any program will inevitably degenerate into makework. Exhibit A here is not the WPA, which left a whole legacy of valuable public works. Even Reagan has been known to get misty-eyed about the WPA. The problem is CETA, the Ford-Carter program that is now universally condemned as a boondoggle. CETA (Comprehensive Employment and Training Act) was a disaster for a variety of reasons, but one big reason was that doing anything useful would have offended unions. Construction unions insisted on restrictions that basically precluded CETA from building anything. AFSCME was on guard lest CETA provide any useful service that might be performed by civil servants. So we wound up with CETA workers in experimental film workshops and mime troupes. In California they took a dog and cat census.

It's not as if government unions are wrong to think a guaranteed job program will hurt them. It will. It's not as if the unions can be easily "bought off." I asked AFSCME's Russo if there was anything—any bribe, compromise, or protective language that would allow his union to sign off on the idea of low-wage public service jobs. He had a ready answer: "No." At some point, if we are serious about breaking the poverty culture, we must be serious enough to sacrifice the interests of this protected group. Why should well-paid government workers be shielded from the competitive labor market at the expense of the poorest segment of society?

Pragmatism, if not fairness, requires that no current government workers be laid off. As those workers leave through natural attrition, however, the government would be free to replace them with guaranteed jobholders. Guaranteed job projects could then be chosen on the basis of how useful they are, not whether a union objects to them. Wherever possible, they would be designed to produce a tangible benefit—collected garbage, clean subway station, a basketball hoop with a new net—that the public could see. If they took underclass workers outside the ghetto, so much the better. Projects could be ongoing, expanding as necessary in times of high unemployment. Vague-sounding service efforts—drop-in centers for veterans, community organizing—would be avoided, not because they aren't valuable, but because results are hard to measure and the possibility of spending all day doing very little is high.

Yes, public works jobs would be relatively inefficient compared with their private sector counterparts. The government would have to learn to work with the dregs of the labor market, and the program (like the most successful War on Poverty program, the Job Corps) would have to be relatively authoritarian. Boondoggles would happen. But at least the public would be getting *something* for its money.

Won't it cost a fortune? The WPA, at its peak, employed 3.3 million people full time. CETA, at its peak, 750,000. At the pit of the past recession, there were 11.4 million unemployed (4.6 million for more than 15 weeks). What fraction of them would want subminimum-wage jobs—and how many of those not in the labor force would come out of the woodwork to claim those jobs—is anybody's guess. It's usually more expensive, at least initially, to give people jobs than it is to give people cash welfare. Jobs require materials and expensive supervisors. A reasonable estimate, based on previous programs, is about $10,000 per job. That's $10 billion for every million jobs. Pretty soon you're talking real money. The long-run savings, of course, would be huge if the welfare culture was absorbed into the working, taxpaying culture. In the short run, however, welfare savings would be less, and the benefit of the work done would show up as savings only if it was work the government would be doing anyway. Would these short-term savings balance out the extra short-term costs? Probably not. Who cares? The point isn't to save money.

The point is to enforce the work ethic. This is a long-term cultural offensive, not a budget-control program or an expression of compassion. The sharpness and simplicity of its choices—no cash welfare for the able-bodied, no exceptions for parenthood—are its main virtue, because they embody with unmistakable clarity the social norms that are in danger of disappearing in the underclass culture.

Liberals, in particular, should leap at the chance to reassert those values. The Work Ethic State proclaims the equal dignity of all who work, an idea that seems more Democratic than Republican. In any case, it's very American. If it helps, ambitious liberals might note that every poll ever taken shows that cash for the disabled and jobs for the able-bodied is what the public supports. Now is a propitious moment to appeal to these sentiments, because the current workfare boom gives liberals a chance to achieve, through the back door, the ancient Democratic dream of a guaranteed job. Indeed, workfare, expanded to include everyone and not just single mothers, is a guaranteed job. But I won't tell if you won't.

Certainly we can't rely on the new conservative poverty fighters to save the day. The feverish reforming now under way is long on ambition and short on institutional memory. One young Reagan official was cited recently in the *Washington Post* as being shocked, shocked, that "a welfare mother who ventures to work sometimes loses as much in benefit reductions as she earns." But of course it was liberals in the late 1960s who tried to cure this problem, by providing "work incentives" that let welfare mothers keep part of what they earned. It was Reagan who got rid of them when they didn't work.

Reagan's main welfare task force, headed by a second-echelon official named Charles Hobbs, has been sending out signals in all directions. One memo, circulated to several states, contains a bland and self-contradictory list of "policy goals" virtually identical to the list issued by Jimmy Carter eight years ago. There is talk of letting each state devise its own welfare program, financed by federal "bloc grants."

Some type of work program is likely to emerge from this conservative rethinking. But already many conservatives are having second thoughts about the WPA-like implications of workfare. A few Reagan advisers, like Carleson, still favor it. But others, such as former OMB counsel Michael Horowitz, are lobbying for an austere cash system. Still others would make welfare temporary. The fact is that conservatives are ideologically incapable of solving the underclass problem. It takes more government than they can stomach. Reforming welfare means requiring work. Requiring work eventually means providing government jobs. Requiring work of welfare mothers means a large day-care program. The work ethic culture we want to establish is a national culture, and it requires a national program, not a federalist cacophony.

The Reaganites need help. If they ask for it, if they seek to learn from past mistakes, liberals, who have had plenty of opportunities for such learning, might usefully start by telling them this: Welfare doesn't work. Work "incentives" don't work. Training doesn't work. Work "requirements" don't work. "Work experience" doesn't work and even workfare doesn't quite work. Only work works.

EXHIBIT 2

ENFORCING CHILD SUPPORT WITH A FEDERAL STICK

(Neal R. Peirce)

WASHINGTON.—If there's been a dark island in policies of the 50 states, it's child support. With rare exceptions, state bureaucrats and judges have failed to force deadbeat fathers to support their offspring.

Connecticut Attorney General Joseph Lieberman calls delinquent child support this nation's "most widespread incidence of lawlessness." Of almost 9 million women supporting children on their own, the last Census Bureau count showed 58 percent legally entitled to child support from the father. But fewer than half received the full support to which they were entitled. A quarter received nothing.

Tough federal standards, supposedly out of style in the Reagan era, are to be the saving force. With near-unanimous congressional and Reagan administration support, Congress two years ago passed rigorous child-support conditions that states must meet to avoid loss of federal welfare funds. Now most states are getting around to enforcement.

It is a classic use of the big federal stick—cajoling states into compliance by threatening a cutoff of aid funds. But who's to say these rules are wrong?

They require: That states tap the salary of a father who falls more than 30 days behind in support payments. That tax refunds to negligent parents be intercepted. That credit agencies be informed about parents in arrears on child payments. That states streamline their judicial machinery so cases won't drag on year after year before indifferent courts.

What's more, aggrieved mothers (or the occasional aggrieved father) won't have to hire a lawyer first: Filing a complaint with a local child-support enforcement agency will start the proceedings. And the protections will apply to all families with a child-support problem, not simply welfare families.

Simple justice should require no less.

Why have states been so negligent on the child-support issue? In the case of public assistance families, suggests University of Michigan law professor David Chambers, it's because welfare departments falsely believed most fathers of kids on welfare couldn't pay.

For families above the welfare line, states assumed child support was a matter of private dispute connected with a divorce—not the public's business.

Only with the goading of the women's movement have governments recognized that child support is a public problem.

A political consensus is behind child-support reform today. Women's rights groups continue in the forefront. But now they're joined by conservative organizations which see a chance to cut the welfare rolls.

Says Wayne Dixon, author of a report on child support for the New Right-affiliated National Forum Foundation: "The federal legislation was needed; it is excellent and the feds have now done all they can in providing carrots and sticks."

Dixon praises the child-support record of a handful of states, including Pennsylvania, Michigan and Massachusetts. But on the whole, he charges, "The states are grossly understaffed and the legislatures haven't allocated enough money and staff."

Which raises the bottom-line question: Will the new federal legislation be enough to force positive state-level reform? Washington is serious about securing compliance and withholding states' AFDC funds if necessary, says David Smith of the federal Office of Child Support Enforcement in the Department of Health and Human Services.

Women's groups are more skeptical. State and local social-service agencies will likely face "an explosion" of child-support cases when women realize how easily they can now have their ex-mates' salaries attached, speculates staff attorney Nancy Polikoff at the Women's Legal Defense Fund. That may cost big new bucks, which legislatures will likely resist. Polikoff predicts outside advocates will have to sue some states to make them comply with the new federal law.

State governments are going to have to cope—in law, rules, money—with an issue they've long swept under the rug. The silver lining is that the tougher the states are, the more today's lawbreaking fathers will make their payments upfront, fully, as automatically as they pay taxes. With luck, enforcement costs can then drop again. And a climate of justice, that our society should have

had all along, will exist for the children of broken families.

EXHIBIT 3

[From the Washington Times, Aug. 14, 1986]

THE WORK ETHIC AND WELFARE

(By Allan C. Brownfield)

Despite the laws against discrimination and requirements for affirmative action, and other government programs to alleviate the effects of the racism of previous years, young black Americans have an unemployment rate which far exceeds that of other young people.

In 1983, a bare 45 percent of black men who were aged 16 to 21 and out of school were employed, whereas 73 percent of their white counterparts had jobs. In 1985, with the U.S. economy in full swing, only 36 percent of black male youths aged 18 and 19, and 60 percent of those aged 20 to 24 were employed, compared with 51 percent of 18- and 19-year-olds and 77 percent of 20- to 24-year-olds 15 years earlier. Nearly half of 16- to 24-year-old black men had no work experience at all in 1984. Even compared with European countries such as Britain or Belgium, joblessness among young black Americans is staggering—and shows no signs of improving.

Why is this? What can be done to improve the situation? Is "racism" the primary factor, as so many civil rights organizations argue?

To try to answer these questions, the National Bureau of Economic Research developed a survey to illustrate the lives on young, inner-city black men living in poverty areas of Boston, Chicago, and Philadelphia. The survey was conducted in 1979 and 1980, and the results—together with analyses of their meaning—have just been published in The Black Youth Employment Crisis, edited by Richard B. Freeman and Harry J. Holzer.

Mr. Freeman, director of the Labor Studies Program at NBER and professor of economics at Harvard University, and Mr. Holzer, assistant professor of economics at Michigan State and faculty research fellow at NBER, declare that, "In many respects, the urban unemployment characteristics of Third World countries appear to have taken root among black youths in the United States."

Perhaps the most important finding of the study was that there is no single cause of the problem and hence no single solution. Rather, joblessness among young black men is part of other social pathologies that go beyond the labor market, including youth crime, drug and alcohol abuse, and performance on the job, particularly absenteeism.

An important alternative to work for black youth is crime. In the NBER survey, 32 percent of the youths thought they could earn more from criminal "street" activity than from legitimate work. In fact, about one-fourth of all income reported by the inner-city black youth was from crime.

Perceptions of the riskiness of crime were also found to be a major factor in whether youths chose a legitimate job or criminal activity. Clearly, the increased leniency of law enforcement has increased criminal activity among the young inner-city residents.

The NBER study also found that youth joblessness is connected to a family's welfare status. Mr. Freeman reports that, "Black youths from welfare homes with the same family income and otherwise comparable to youths from non-welfare homes had a much worse experience in the job market. Youths living in public housing projects also did less well than youths living in private housing.

"Thus, the unemployment rate among 19- to 24-year-olds who received no public assistance and who did not live in public housing was 28 percent in 1979. Among those from families on welfare, the unemployment rate rose to 43.0 percent. And among those whose families who collected welfare and lived in public housing, the unemployment rate soard to 52 percent. Clearly, the current welfare system—lacking programs or incentives to promote employment—is doing nothing to correct joblessness."

Another finding was that youths from families in which other members worked tended to do better in the mob market. In an essay, Linda Datcher-Loury, assistant professor of economics at Tufts University, and Glenn C. Loury, professor of political economy at Harvard, note that, "The results obtained in this analysis indicate that a young man's subjective attitudes and ocupational aspirations have a large, significant effect on the hours they work."

It also was found that church-going and "good" attitudes or aspirations are important in enabling youths to take appropriate steps toward escaping poverty. Professors Freeman and Holzer point out that "churchgoing turned out to exert a significantly positive influence," as did possession of strong long-term career desires.

The wide differences between black and white youth employment have developed only in the past few decades. In 1954, nearly equal percentages of black and white youths were employed. Since, unemployment rates for black youth have soared. Among the factors which the study shows to have contributed to the deterioration of black youth employment: the growth of the female labor force, the rising number of welfare households, and the increasing willingness of youth to participate in crime.

It is clear that dependence upon welfare destroys the work ethnic. Robert Lerman, director of the Center for Human Resources at Brandeis University, writes that, "the findings make clear the importance of linkages between family characteristics, welfare programs, and the employment outcomes of young black men. Understanding how these interactions operate is essential for devising policies that can make a difference . . . . It may be . . . that family-centered policies—that raise job holding and family stability among black adults—are the best approach for improving the employment chances of black youth."

Evidently, the youths' attitudes toward school and work—not racism in the larger society—are the No. 1 problem. The authors persuasively argue that solutions which deal only with the labor market, and not with the family structure from which subjective attitudes are developed, are likely to fail. What is needed is an approach which rewards work, not crime, and a welfare system which provides an incentive for work, not indolence and dependency. Above all, efforts are needed to strengthen black family life.

Few who read this study will continue to propose many of the failed policies of the past, for now they will understand exactly why such policies bore so little fruit.

AMENDMENTS TO DECLARATION OF TAKING ACT

Mr. DURENBERGER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5363.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 5363) entitled "An Act to amend the interest provisions of the Declaration of Taking Act", with the following amendment:

Strike out all on page 1A of the Senate hand-engrossed amendment over to and including line 2 on page 3, and insert:

That the Act of February 26, 1931 (40 U.S.C. 258a through 258e), is amended—

(1) in the second paragraph of the first section by striking "interest at the rate of 6 per centum per annum", and inserting "interest in accordance with section 6 of this Act"; and

(2) by adding at the end the following:

"SEC. 6. Interest required to be paid under this Act shall be calculated by the district court as follows:

"(1) Where the period for which interest is owed does not exceed one year, interest shall be calculated for such period from the date of taking at an annual rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 week United States Treasury bills settled immediately before the date of taking.

"(2) Where the period for which interest is owed is more than one year, interest for the first year shall be calculated in accordance with paragraph (1) and interest for each additional year shall be calculated on the combined amount of the principal (the amount by which the award of compensation exceeds the deposit referred to in the first section of this Act) and accrued interest at an annual rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 week United States Treasury bills settled immediately before the beginning of each additional year.

The Director of the Administrative Office of the United States Courts shall distribute to all Federal courts notice of the rates described in paragraphs (1) and (2).".

Mr. DURENBERGER. Mr. President, I move to concur in the House amendment.

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

The motion was agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

MULTIPLE APPEAL DECISIONS WITH RESPECT TO THE SAME AGENCY ORDER

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar Order No. 1059, H.R. 439, dealing with the court of appeals.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 439) to amend title 28, United States Code, to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order,

The PRESIDING OFFICER. Is there objection to the request of the Senator from Minnesota?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3490

(Purpose: To amend title 28 of the United States Code to provide that judges of the United States Claims Court shall continue in office after their 15-year term has expired if reappointed or until a successor takes office, and to provide that such judges receive the same Federal salaries as the judges of the United States Tax Court)

Mr. DURENBERGER. Mr. President, I send an amendment to the desk on behalf of Senator HATCH and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER], on behalf of Mr. HATCH, proposes an amendment numbered 3490.

Mr. DURENBERGER. 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:

At the appropriate place insert the following:

SEC. . Section 172 of title 28, United States Code, is amended to read as follows:

"§ 172. Tenure and salaries of judges

"(a) Each judge of the United States Claims Court shall be appointed for a term of 15 years. Any such judge so appointed may be reappointed and shall continue in office until his successor takes office.

"(b) Each such judge shall be compensated at the rate equal to the rate received by judges of the United States Tax Court.".

Mr. METZENBAUM. Mr. President, would the Senator from Minnesota be good enough to explain what the Hatch amendment is?

Mr. DURENBERGER. I would like to be good enough to do that.

[Laughter.]

Mr. METZENBAUM. Is this the salary matter for the Court of Claims judges?

Mr. DOLE. Yes.

Mr. DURENBERGER. I am informed that the Senator is correct in his assessment of the contents of the amendment.

Mr. METZENBAUM. I thank the Senator.

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

The amendment (No. 3490) was agreed to.

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

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

The motion to lay on the table is agreed to.

Mr. METZENBAUM. Mr. President, may I have some assurance that the only thing in that amendment is the increase in salary for the members on the part of the judiciary and there is nothing more in the amendment?

Mr. DURENBERGER. Mr. President, I would say to my colleague from Ohio that I have been assured, at the time that I undertook this responsibility, that the Senator is correct in his assessment of the contents of all these amendments. They all relate to the pay issue with regard to the court of appeals.

Mr. METZENBAUM. Mr. President, I do not wish to provide any difficulty for the Senator from Minnesota, for whom I have the highest respect. But I wonder if he might put in a quorum call so that the Senator from Ohio might have a chance to go down the list.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. COHEN. I ask unanimous consent that the quorum call be rescinded.

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

TRIBUTE TO SENATOR GARY HART

Mr. COHEN. Mr. President, this may be the last day that a close friend of mine will serve in this body.

I want to offer just a few words about what his service has meant to the Senate and to the country and what his friendship has meant to me.

First let me say that I will miss him because I'm afraid the press will stop knocking at my door to ask me: "What can you tell us about GARY HART? What's he really like? Do you think he's been successful? Does he have leadership qualities? What kind of President would he make? Can you give us some insights into the interior man?"

These are all important questions, and I have tried to provide some serious answers.

There are many tests of success in our occupation—I hesitate to use the word profession. For some, it may be the racking up of a long list of bills that bear their names. For others, it may be the passage of a single piece of legislation that leaves an indelible stamp upon the Congress or the country. For still others, it may consist of carrying the bacon home to their States or serving as ombudsman for their constituents—all may carry the stamp of success.

I think each of us has known the joy of helping a vulnerable constituent overcome an inequity and has shared in the fleeting glory of having an amendment or bill bear our name. The inner applause thumping in our hearts is gratifying, albeit momentary.

But I do not believe that GARY HART has ever been satisfied with just the ephemeral rewards we receive. He is a serious and high-minded man who cares deeply about the quality of the water we drink, the air we breathe, the quality of life we will provide for an aging society and that which we will leave as a legacy for our children and grandchildren.

Most of all, he thinks about the tough issues of how we preserve the peace by preparing for war. Indeed, he is justifiably concerned about whether we are capable of deterring the kinds of military conflicts that we are most likely to face in the future, and if deterrence fails whether we can hope to win them.

Not everyone will agree with his proposals for military reform or those for arms control and reductions. The measure of his success is not whether a majority on any given day agrees with him. The mark of his success is that he has forced us to challenge so many conventional and comfortable assumptions. Perhaps he knows the joys of a thinker or teacher—what Justice Holmes called the subtle rapture of a postponed power—what Justice Holmes called the subtle rapture of a postponed power—the knowledge that some of his thoughts will last well beyond his years. If so it is the kind of success that many of us would envy and few enjoy.

There is another standard of success that is important or, at least, should be important to all of us. And that is the question of manners, of civility, of how we conduct ourselves in conducting the Nation's business, of how we go about winning our legislative battles.

Adlai Stevenson once remarked that it is important to win, but it is more important to win without engaging in conduct that shows you're unworthy of winning. One thing that I have admired about Gary—even while disagreeing with him—is that he has never stooped to conquer. He has always kept the level of debate high, civil and responsible. In this respect, he is very much in the select company of former colleagues like Howard Baker and Abe Ribicoff.

Finally, on a personal note, I have had the extraordinary experience of slipping into the world of fiction with GARY. In the early morning hours of a day of legislative exhaustion—much

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like this one—6 years ago, we decided to explore questions about international terrorism, drug smuggling, espionage, the Kennedy assassination and the multidimensions of patriotism by writing a novel. It was a wonderful and rewarding adventure. I discovered a coauthor of many facets and delights.

Should Senator HART decide to pursue higher political aspirations, I wish him well. In the event he is unsuccessful in such an endeavor, I hope he would consider retiring to a Venetian villa. Perhaps then, we could find a way to bring Thomas Chandler and Elaine Dunham back from Moscow.

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

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

□ 2350

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. DURENBERGER. Mr. President, frankly, I am glad we were delayed on the adoption of my amendment. I enjoyed that a great deal. Among the people here in the Senate, probably no one has gotten to know GARY HART quite the way that our colleague from Maine has. I am glad I was here for those comments.

Mr. MOYNIHAN. Mr. President, will the Senator yield for a question?

Mr. DURENBERGER. Yes.

Mr. MOYNIHAN. The Senator from Maine mentioned his pleasure of having coauthorship with the Senator from Colorado. And the Senator also suggested that the Senator from Maine might continue to be an author. I feel honored on behalf of my friend to say that he has his newest treatise in a bound galley, and it will shortly be on sale. It has to do with the arms negotiations in Geneva. And there is a meticulously fine map of the city, and a listing of the persons involved.

Mr. COHEN. Mr. President, if the Senator will yield, as a matter of fact, I think the title of the novel is taken from one of the poems of Aechyles, which I am sure the Senator from New York has read.

Mr. MOYNIHAN. Indeed, I have.

Mr. DURENBERGER. Mr. President, to get back to something more mundane, I believe I have an amendment at the desk.

The PRESIDING OFFICER. The pending question is the motion to lay on the table the motion to reconsider the vote by which the prior amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3491

Mr. DURENBERGER. Mr. President, I have an amendment at the desk on behalf of Senator DOLE, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER] for Mr. DOLE, proposes an amendment numbered 3491.

Mr. DURENBERGER. 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 the bill, add the following new section:

Section 140 of Public Law 97-92, 95 Stat. 1183, 1200, is hereby repealed.

Mr. DURENBERGER. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Kansas.

The amendment (No. 3491) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. McCONNELL. Mr. President, H.R. 439 is designed to simplify the procedure for selecting the proper forum when a Federal agency order is appealed in more than one Federal circuit court. The present law confers jurisdiction on the circuit where the appeal was first filed.

This first-to-file rule has had some very unseemly consequences. It has fostered sophisticated "races-to-the-courthouse" by attorneys who believe they will receive a more favorable ruling in the circuit of their choice. This belief by attorneys, whether true or not, damages the publics' perception of the Federal courts as impartial arbiters of justice.

The races are also not without their economic costs. Our courts are frequently tied up in an effort to determine where a certain appeal was first filed. Many times the petitions are filed at the exact same time and the courts have no way of knowing the proper forum to consolidate the appeal. Our courts have better things to do than act as finish-line judges and that is why I have pushed this legislation through the Judiciary Committee and onto the floor.

H.R. 439 would give all sides 10 days in which to appeal an agency's order. If more than one appeal was filed within that time, the judicial panel on multidistrict litigation would, by means of random selection, designate the circuit to consider the appeal from among the courts of appeals in which petitions for review had been filed.

The circuit court chosen by the judicial panel on multidistrict litigation to hear the appeal would continue to have the flexibility afforded by the doctrine of forum nonconveniens. If the court determines that, for the convenience of the parties and in the interest of justice the case should be transferred, it can transfer the appeal to a more appropriate forum.

H.R. 439 would remove the incentive for attorneys to race to the circuit of their choice. It would save their clients a lot of money and it would let the courts get back to their traditional role of resolving cases and controversies between litigants.

AMENDMENT NO. 3492

(Purpose: To provide for private relief in the case of Nabil Yaldo)

Mr. MATSUNAGA. Mr. President, I send two amendments to the desk on behalf of Senator LEVIN, and ask for their immediate consideration. I ask unanimous consent that they be considered en bloc.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Hawaii [Mr. MATSUNAGA], for Mr. LEVIN, proposes an amendment numbered 3492, which is amended by adding at the appropriate place the following new section:

"In the administration of the Immigration and Nationality Act, the provisions of section 204(c) of that Act shall be inapplicable in the case of Nabil Yaldo."

AMENDMENT NO. 3493

(Purpose: To provide for the private relief of Hyong Cha Kim Kay)

The assistant legislative clerk read as follows:

The Senator from Hawaii [Mr. MATSUNAGA] for Mr. LEVIN, proposes an amendment numbered 3493, which is amended by adding at the appropriate place the following new section:

"Notwithstanding the provisions of section 212(a)(23) of the Immigration and Nationality Act, Hyong Cha Kim Kay may be issued a visa and admitted to the United States for permanent residence if she is found to be otherwise admissible under the provisions of that Act.

This exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the date of the enactment of this Act."

The PRESIDING OFFICER. Is there debate on the amendments? If not, the question is on agreeing to the amendments of the Senator from Michigan.

The amendments (No. 3492 and 3493) were agreed to.

Mr. MATSUNAGA. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were 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?

So the bill (H.R. 439), as amended, was passed.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

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

The motion to lay on the table was agreed to.

Mr. THURMOND addressed the Chair.

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

MEMORIAL TO THE AMERICAN ARMORED FORCE

Mr. THURMOND. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Joint Resolution 43.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S.J. Res. 43) entitled "An Act to authorize the Armored Force Monument Committee, the United States Armor Association, the World Wars Tank Corps Association, the Veterans of the Battle of the Bulge, the 11th Armored Cavalry Regiment Association, the Tank Destroyer Association, the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, and 16th Armored Division Associations, and the Council of Armored Division Associations jointly to erect a memorial to the "American Armored Force" on United States Government property in Arlington, Virginia, and for other purposes," do pass with the following amendments:

Strike out all after the resolving clause, and insert:

SECTION 1. ESTABLISHMENT OF MEMORIAL.

(a) GENERAL.—Subject to subsection (c), the organizations specified in subsection (b) are authorized jointly to establish a memorial on Federal land in the District of Columbia or its environs to honor members of the American Armored Force who have served in armored units. The memorial shall commemorate the exceptional professionalism of the members of the American Armored Force and their efforts to maintain peace worldwide.

(b) ORGANIZATIONS.—The organizations referred to in subsection (a) are: the Armored Force Monument Committee, the United States Armor Association, the United States Field Artillery Association, the World Wars Tank Corps Association, the Veterans of the Battle of the Bulge, the 11th Armored Cavalry Regiment Association, the Tank Destroyer Association, the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, and 16th Armored Division Associations, the Council of Armored Division Associations, and the National Association of Uniformed Services.

(c) STANDARDS.—The memorial shall be established in accordance with the standards set forth in H.R. 4378, as passed by the Senate with amendments on September 10, 1986, and further amended by the House of Representatives on September 29, 1986, except that section 6(b)(1) of H.R. 4378 shall not apply to the memorial.

SEC. 2. PAYMENT OF EXPENSES.

The United States shall not pay any expense of establishment of the memorial.

Amend the title so as to read: "Joint resolution authorizing establishment of a memorial to honor the American Armored Force.".

Mr. McCLURE. Mr. President, the Congress has recently approved legislation (H.R. 4378) which establishes guidelines for commemorative works to be located on Federal land in the District of Columbia and its environs. That legislation provides that military memorials shall only be established to honor branches of the service—that is, Army, Navy, Air Force, Marine Corps, Coast Guard, and Merchant Marine—or wars or major conflicts. Absent such criteria, there would be a potential for hundreds of requests for memorials to subdivisions of the military.

Mr. President, there may be as few as 50 sites remaining for future commemorative works in Washington, DC. I believe it is impossible for the Congress to choose among worthy military units when we have such a limited amount of space remaining in the Nation's Capital. The National Capital Memorial Advisory Committee, an advisory panel to the Secretary of the Interior, recommends that memorials to military units be located in the areas where they were headquartered.

Mr. President, I note that today the Senate will approve Senate Joint Resolution 43, to establish a memorial to the American Armored Force in the Nation's Capital. Certainly our tank forces have served this country well and are most deserving of national recognition. I must state, however, that such a memorial does not meet the criteria established for military monuments in the memorial policy legislation. The reason we are approving Senate Joint Resolution 43 today is because it has passed the Senate twice before, once in the 98th Congress and also in September 1985. This project was approved by the Senate 6-months prior to introduction of the memorial policy legislation. Consequently, I believe it is equitable and appropriate to authorize a memorial to the American Armored Force at this time. Passage of this legislation, however, should not be considered a precedent for other military units wishing to establish monuments in Washington, DC. Those groups should be encouraged to honor their own in the areas where they were based.

Mr. President, I want to make it clear that while the memorial policy legislation provides limitations on the kinds of memorials which may be established, it also ensures that every individual who has served in a branch of the Armed Forces of the United States may be honored with a memorial in Washington, DC, and that those involved in combat can receive special recognition.

Mr. THURMOND. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. Is there objection to the motion?

Mr. METZENBAUM. Mr. President, reserving the right to object, I am sure I will not, I did not hear the Senator from South Carolina describe this. What is this?

Mr. THURMOND. This is a memorial to the American Armored Force in the Nation's Capital. The House has already passed it. There is no objection as I understand it.

Mr. METZENBAUM. I have no objection. I thank the Senator from South Carolina.

The PRESIDING OFFICER. Is there objection to the motion?

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I move that the Senate concur in the House amendment to the title.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

PUBLIC THANKS TO SENATOR METZENBAUM'S STAFF

Mr. METZENBAUM. Mr. President, I rise to take a couple of minutes to publicly speak about my own staff.

I know everyone around here relies to a great extent on their staff. I particularly do.

I am frank to say that I could not do what I do without them.

Jim Brudney, my labor counsel, made the age discrimination bill possible. It may be of interest to my colleagues to know that the bill was passed last night somewhere around 2:30 in the morning.

I do not think Senator HEINZ or myself, who are coauthors, were on the floor at the time. There is not much doubt about the fact that his dogged pursuit of a compromise actually saved that bill's very existence.

It bears his imprint, as does the sheltered workshop bill, and the senior citizens and blind and disabled of this country will be able to reach their full potential as a result of his efforts in seeing to it that there is no arbitrary provision making people retire merely by reason of their having obtained a particular age.

□ 2400

Another one of my staff, Eddie Corriea, of my judiciary staff, has done an incredible job on RICO, the drug bill, the pesticide law, and the plain fact is there would not be any RICO bill without Eddie's work.

James Wagoner has been a one man strike force against the drug export bill. Few will know how his work has helped literally save thousands of lives in the Third World. Even as late as tonight he was working to bring about a satisfactory conclusion with respect to that matter. As we all know, that matter has not become law and will not become law in this session.

Joel Johnson, a new father, married another one of the members of my staff. He is also father of the infant formula bill which will do so much to improve the health of newborn babies.

Linda Green, who only came onto my staff some months ago, seems to know every civil rights law ever written and every court decision on those laws. She came on my staff some months ago and has made a great contribution by reason of her being with us.

Dick Woodruff, who handles transportation issues, did so much to help indentify the deficiencies in the Conrail deal. His work has saved the taxpayers hundreds of millions of dollars.

Evelyn Bonder authored an important bill on Alzheimer's research which is very close to becoming law this year, and if it does not become law this year, I feel certain it will become law next year. The elderly and the hungry have no greater champion.

David Starr, some have described as being on my staff merely to dig out new tax loopholes to which we might object. Some have suggested he is on a bonus arrangement for each loophole that he finds. David has done a superb job. Not only does he know the laws as well as anyone; he is a master of pension law. When LTV retirees receive their health and life insurance benefits, each payment should carry a footnote of thanks to David Starr.

Ellen Bloom may handle more issues than anyone on my staff. When working Americans are in trouble or consumers need some protection, Ellen Bloom is at my office door with an idea to help them out in a hundred different ways.

Bob Roach is my enthusiastic, energetic energy legislative assistant who has boundless energy and enthusiasm on countless complex issues which I am frank to say I would not be able to understand without his help, whether the issue has to do with uranium enrichment or Price Anderson or military lands. He has protected the taxpayers and the environment.

Cheryl Birdsall has been with me a good many years. She handles education issues. She recently helped untangle a thorny problem with the higher education bill. Her work means so much to our children and their future.

Then those who have left my staff: Peter Harris, my administrative assistant, who was willing to work untold hours with a sense of dedication and devotion that is incomparable. Without him I could not do it.

Doug Lowenstein, chief of the legislative staff, who gives a sense of dedication, determination, and devotion to the problems that existed in my office and the legislative responsibilities, and I am everlastingly grateful to both of those.

Finally, Anthony just began handling public land issues. As a quick study, he has already saved the taxpayer money and protected them on environmental issues.

I want to thank all of you. I do not think there is a sharper, more dedicated, greater legislative staff in Congress. I know that the hour is past 12 midnight and tonight like so many other nights you are in the office attending to your responsibilities. I know that you are in early and I know that you stay late. You all have my deep gratitude.

One last special note of appreciation to the Democratic floor staff because the Democratic floor staff, day in the day out, is there to help every Member on this side. They attend to our concerns. They look out for our problems. I am everlastingly grateful to them. Without them it would just be impossible to do.

Mr. President, I thank my colleagues for bearing with me while I took a few moments to express my appreciation for my own staff.

PROVIDING FOR A LAND EXCHANGE IN THE STATE OF ALASKA

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate now turn to H.R. 5730, the Haida land bill, which has been received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5730) to provide for a land exchange in the State of Alaska.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, I commend the efforts of my colleagues from Alaska, Senator MURKOWSKI and Representative DON YOUNG, on H.R. 5730, the Haida land exchange bill. This bill is a fair compromise, which addresses the legitimate needs of the Haida people and furthers the interests of the Federal Government in southeast Alaska.

H.R. 5353, as amended by the Senate, authorizes the appropriation of funds for the purchase of Goat Island from Haida Corp. Unfortunately, we were not able to secure such an appropriation in the fiscal year 1987 interior appropriations bill. I want to assure the Haida people, however, that I will pursue the necessary appropriation in the fiscal year 1988 appropriations process, and I hope that my friends, the distinguished chairman of the Interior Appropriations Subcommittee and Senator JOHNSTON, will support my efforts. H.R. 5730 is identical to H.R. 5353 as amended by the Senate.

Mr. McCLURE. Mr. President, I understand the concern expressed by my colleague from Alaska, and I will certainly work closely with him next year to protect the interests of the Haida people and the United States.

Mr. JOHNSTON. Mr. President, I concur with the comments made by my colleague from Idaho, and I certainly intend to work with him and Senator STEVENS to accommodate the needs of the Haida people next year.

Mr. MURKOWSKI. Mr. President, I rise today in strong support of this bill. It was passed in the House of Representatives on September 30 on the suspension calendar. What the bill would do is authorize the Forest Service to enter into a land exchange in my State with a small native village corporation, called the Haida Corp. It would also permit the sale of some of the corporation's land.

In order to obtain legislation this year, every conceivable item of controversy has been eliminated from the bill. The timber industry, the environmental community and the State of Alaska are apprised of the bill's particulars, and their concerns have been met. Extensive hearings have been held in Congress, and negotiations have been conducted with the Forest Service and other interested parties

both here and in the State. The Forest Service also endorses the legislation.

As introduced, the bill included a land exchange by which the Haidas could obtain valuable timber lands which had once been part of their traditional territory. But due to objections from the Forest Service and conflicting interests of the timber industry and environmentalists, and in light of the pressing need to get these people legislation this year, that section was eliminated. The bill now leaves for another day what lands the Haidas might obtain to complete their ANCSA entitlement and provide them with a future. The value for the land to be acquired was determined through negotiation with the Forest Service and meets with Forest Service approval.

These people have suffered greatly from the decline of the fishing industry and the crash in the timber market. The land they received under ANSCA had marginal commercial timber value to start with, and the disastrous drop in timber prices in recent years has made much of it of little value today for timber harvesting purposes. There was considerable delay on the Government's part in conveying the Haidas their land. This delay greatly exacerbated the problem of the falling timber prices.

It is critical that the Haidas obtain legislation this year which permits them to sell some of their lands. Such legislation is the only feasible way they can reorganize in chapter 11 and avoid liquidation. At present, they are facing a December 31 deadline of this year by which time they must file a satisfactory plan of reorganization or face foreclosure.

I should mention that for hundreds of years the Haidas had claim to the richest timberland in the entire State. But due to technicalities in ANCSA, including the particulars of how the village of Hydaburg was surveyed, and the fact the Government moved these people from their traditional villages to a new site, their traditional timber rich lands were not available to them. The Haidas stand today on the brink of complete liquidation. This bill will allow them to survive and accommodates the interests of every conceivable interested party. I commend the efforts of all those involved in working to produce this legislation. I urge support of this legislation.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on third reading.

The bill (H.R. 5730) was ordered to a third reading, read the third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I thank my good friend for clearing this bill.

TECHNICAL CORRECTIONS IN THE ENROLLMENT OF H.R. 3838—TAX REFORM ACT OF 1986

Mr. PACKWOOD. Mr. President, I believe we are now prepared to turn to the concurrent resolution.

Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on House Concurrent Resolution 395.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate to the resolution (H. Con. Res. 395) entitled "Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 3838", with the following amendments:

(1) Page 2, line 8, at the end of the matter inserted by the Senate amendment, insert:

(QQ) Springville Mill Project, Rockville, Connecticut.

(2) Strike out the proposed paragraphs (295), (297), (305), (310), (319), (320), (322), (326), (343), and (350) and redesignate the other paragraphs accordingly.

(3) Strike out the proposed paragraph (301) and insert the following:

(301) On page 124, in paragraph (1) of subsection (k) (relating to application of at-risk rules), strike out "qualified basis" and insert "eligible basis".

(4) Page 23, after line 15, insert:

(369) On page 83, in subparagraph (S)—

(A) strike out "placed in service" and insert in lieu thereof "to be placed in service", and

(B) strike out "Company" and insert in lieu thereof "Company, or its subsidiaries,".

(370) On page 627, in subparagraph (W) strike out "$225,000,000" and insert in lieu thereof "$25,000,000".

(371) On page 83, in subparagraph (X) strike out "the home rule city and the State housing finance agency adopted inducement resolutions on December 20, 1985" and inserting in lieu thereof "the home rule city on December 4, 1985, and the State housing finance agency on December 20, 1985, adopted inducement resolutions".

(372) On page 381, immediately before subsection (e) (relating to effective dates) insert the following:

"(5) Sections 414(m)(4)(A) and 414(n)(3)(A) are each amended by striking out "and (16)" and inserting in lieu thereof "(16), (17), and (26)"."

On page 614, in paragraph (2) of subsection (d) insert before the period "and if section 1313(b)(5) of this Act does not apply to any bond issued with respect to such facility or purposes".

On page 660, in paragraph (50) (relating to certain additional projects), as redesignated by this resolution, strike out "Section 141(a)" and insert in lieu thereof "Section 141(b)".

On page 660, in paragraph (51) (relating to transition bonds subject to certain rules), as redesignated by this resolution, strike out "section 148 and subsection (d) and (g) of section 149" and insert in lieu thereof "sections 147(g), 148, and 149(d)".

On page 8 of the House Concurrent Resolution, strike out "$720,000" and insert in lieu thereof "$7,200,000".

On page 63 of the House Concurrent Resolution—

(A) strike out "with respect to" in line 13 and insert in lieu thereof "with respect to current",

(B) strike out "issued before 1992" in line 14, and

(C) strike out "Section 146 of the 1986 Code and the last" in line 23 and insert in lieu thereof "The last".

(5) Section 558 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULES.—

"(2) In the case of an employer who entered into a collective bargaining agreement—

"(A) which was effective on April 1, 1979, and which remained in effect through June 5, 1982, and

"(B) under which contributions to the multiemployer plan were to cease on June 5, 1982,

"(C) of an employer incorporated in the State of Ohio August 16, 1962.

Subsection (a)(1) shall be applied by substituting June 12, 1982' for 'September 26, 1980'.

Resolved, That the House disagree to the following amendments of the Senate:

(A) the amendment beginning on line 2 of page 1A of the Senate amendments,

(B) the amendment beginning on line 7 of page 3 of the Senate amendments,

(C) the amendment beginning on line 16 of page 4 of the Senate amendments,

(D) the amendment beginning on line 4 of page 5 of the Senate amendments,

(E) the amendment beginning on line 8 of page 5 of the Senate amendments, and

(F) the amendment beginning on line 9 of page 7 of the Senate amendments.

Mr. PACKWOOD. Mr. President, I ask unanimous consent to dispose of the amendments of the House in the following fashion: The Senate concur in amendments 1 and 3; recede from its amendment referred to on page 5F; disagree to House amendment No. 5; insist on Senate amendments referred to on page 5(A), 5(B), and 5(C).

I further ask unanimous consent that the Senate recede and concur with an amendment to the Senate amendment referred to on 5(D), as follows, which I send to the desk.

AMENDMENT NO. 3494

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD] proposes an amendment numbered 3494.

On page 5(D)

In lieu of the matter proposed, insert the following:

On page 62, beginning with line 21, strike through page 63, line 6.

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

The amendment (No. 3494) was agreed to.

Mr. METZENBAUM. Mr. President, the Senator from Oregon and I have discussed this. I believe this totally reflects the various matters we have discussed heretofore and I think matters which have been cleared by staff. I think pretty much it also goes back to the same position that we were in before when this went back to the House the first time.

Mr. PACKWOOD. It went back to the same position, exactly as the Senator from Ohio stated it.

Mr. METZENBAUM. I thank the Senator.

AMENDMENT NO. 3495

Mr. PACKWOOD. Recede and concur with an amendment to the Senate amendment referred to on page 5(D), as follows:

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD] proposes an amendment numbered 3495.

Mr. PACKWOOD. 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:

In lieu of the matter proposed, insert the following:

On page 71, strike lines 4 through 7 and insert:

"(243) On page 76, in paragraph (11) (relating to certain aircraft)—

(A) strike "Kansas, Florida, Georgia, or Texas" in subparagraph (A) and insert "the United States";

(B) strike ", the date of conference committee action)" in subparagraph (C) and insert:

(C) strike subparagraph (C) and insert:

(C) The aircraft is—

(i) purchased on or after August 16, 1986, and before January 1, 1987, or

(ii) is subject to a binding contract which was in effect on August 16, 1986, or entered into on or after August 16, 1986, and before January 1, 1987, and

is delivered and placed in service pursuant to such purchase or contract bfore July 1, 1987.

Any airplane which is one of 7 airplanes with respect to which an airline signed an airplane purchase agreement on January 20, 1986 (with respect to which the financing contingency was removed no later February 7, 1986), the estimated cost of which is $2,900,000 and which was delivered before May 23, 1986, and placed in service by May 27, 1986, shall be treated as described in this paragraph.

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

The amendment (No. 3495) was agreed to.

AMENDMENT NO. 3496

Mr. PACKWOOD. Mr. President, I further ask that the Senate concur in the House amendment No. 2 with an amendment, as follows:

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD] proposes an amendment numbered 3496.

In lieu of the matter proposed insert the following:

Strike out the proposed paragraphs (297) and (305).

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

The amendment (No. 3496) was agreed to .

AMENDMENT NO. 3497

Mr. PACKWOOD. Mr. President, I ask that the Senate concur in the House amendment No. 4 with an amendment, as follows:

The PRESIDING OFFICER. The clerk will report.

□ 0010

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD] proposes an amendment numbered 3497.

Mr. PACKWOOD. I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

Add at the end of the matter proposed to be inserted by the House amendment (4) the following:

( ) On page 315, in paragraph (3) (relating to transitional rules) add the following new subparagraphs:

(W) South Carolina Family Farm Development Authority with respect to obligations the aggregate amount of which shall not exceed $10,000,000 issued on or before December 31, 1989.

(X) Clemson University Continuing Education and the Component Housing Project.

( ) On page 617, insert between the 5th and 4th lines from the bottom of the page, the following flush language:

"The provisions of this paragraph shall not apply to any bond issued after December 31, 1990."

( ) On page 73 of the House Concurrent Resolution, strike "a 150,000 square foot office building which is projected to cost" and insert "the Eastman Place project and office building in Rochester, New York, which is projected to cost up to".

AMENDMENT NO. 3498

(Purpose: To amend section 408 of the Federal Aviation Act of 1958 to ensure fair treatment of airline employees in airline mergers and similar transactions)

Mr. MOYNIHAN. Mr. President, I send an amendment in the second degree to the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. MOYNIHAN], for himself and Mr. PACKWOOD, proposes an amendment numbered 3498 to amendment No. 3497.

At the end of the amendment, insert the following new section:

SEC. . (a) Section 408 of the Federal Aviation Act of 1958 (49 U.S.C. App., 1378) is amended by adding at the end the following new subsection:

"FAIR TREATMENT OF EMPLOYEES

"(g) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to adversely affect the wages and working conditions including the seniority of any air carrier employees, labor protective provisions calculated to mitigate such adverse consequences, including procedures culminating in binding arbitration, if necessary, shall be imposed by the Secretary as a condition of approval, unless the Secretary finds that the projected costs of protection would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving there will be no adverse employment consequences or that projected costs of protection would be excessive.".

(b) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 408. Consolidation, merger, and acquisition of control."

is amended by adding at the end the following:

"(g) Fair treatment of employees.".

Mr. MOYNIHAN. Mr. President, this is an amendment to ensure fair treatment of airline employees in airline mergers, requiring equitable treatment in integration of seniority lists, or where an employee loses his job or his wages are reduced as a result of the merger and the arbitration of disputes arising from labor-protection provisions.

I send the amendment to the desk for myself and Mr. PACKWOOD.

The PRESIDING OFFICER. The Chair, in his capacity as the Senator from Missouri, suggests the absence of a quorum.

The clerk will call the roll.

The 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.

Mr. BYRD. Mr. President, I hope the Senate will not be in much longer. After all, the Senate is going to be back in tomorrow. There are so few Senators around. I know that Senators are in need of rest and the staff is in need of rest. If the Senate were not going to be in tomorrow, it would be a different thing, but the majority leader has said we will be in and I hope we will complete action on this measure soon and go out.

I suggest the absence of a quorum.

Mr. PACKWOOD. Mr. President, will the Senator withhold?

Mr. BYRD. I withhold.

Mr. PACKWOOD. I say to the minority leader, as soon as the Moynihan amendment is settled one way or the other, that is the last of it.

Mr. ARMSTRONG. Mr. President, for the benefit of the minority leader, I might mention that a number of us have been waiting patiently and do expect to offer a resolution which I do not expect to be controversial. A number of Members have been waiting patiently to speak who will not be here tomorrow.

Mr. BYRD. I hope the resolution is cleared.

Mr. ARMSTRONG. I understand it is cleared at this point and as soon as the amendment of the Senator from Oregon is taken care of, we shall call it up.

Mr. BIDEN. Mr. President, is it appropriate to ask unanimous consent—I am not asking for it—to temporarily set aside the measure we are considering for 3 minutes for the purpose of taking up and passing the resolution of which the Senator from Colorado speaks? I make that unanimous-consent request.

Mr. ARMSTRONG. Mr. President, that would be fine with me, but it is going to take longer than 3 minutes.

Mr. BIDEN. I withdraw the request.

Mr. ARMSTRONG. There are several people who wish to speak and who think it is important enough that the issue be laid out to make a record.

Mr. PACKWOOD. Mr. President, I support the amendment of the Senator from New York very strongly, but there has been objection offered to it and it has been indicated there would be no more rollcall votes. If this were pushed, it would require a vote. As strongly as I do support it, I feel the bill cannot go anyplace as long as the amendment is left on it.

Mr. MOYNIHAN. Mr. President, in the circumstances, it having been announced that there will be no more rollcall votes, I do withdraw the amendment reluctantly.

The PRESIDING OFFICER. The Senator has that right.

The amendment (No. 3498) was withdrawn.

Mr. PACKWOOD. Mr. President, I have a series of different colloquies involving the tax bill which have been cleared on both sides. I ask unanimous consent that the colloquies be entered into the RECORD as if given.

PRESIDING OFFICER. Without objection, it is ordered.

GENERAL AVIATION TRANSITION RULE

Mr. ROTH. Mr. President, the Packwood amendment to House Concurrent Resolution 395 would have that provision dealing with new airplanes with 19 or fewer passenger seats contained in sec. 204(a)(11) of the enrolled tax bill (H.R 3838) apply to all such airplanes "manufactured at the point of final assembly in the United States".

I have a question I would like to pose to the distinguished manager of the resolution. Is it his understanding that the expression "manufactured at the point of final assembly" would apply to airplanes initially constructed overseas to which firms located in my State add 10 percent or more value through the installation or completion of: a portion of the avionics; interior finishing process including seats, tables or carpeting; inside or outside lighting; exterior painting; and windows and their component parts?

Mr. PACKWOOD. Yes, that is my understanding. I want to make it clear that this does not mean that a foreign manufacturer could simply fly a completed airplane to the United States, tighten some screws, and claim that the "point of final assembly" for the aircraft is in the United States. What we have in mind with this rule is that at least 10 percent of the value of the airplane must be added in the United States.

Mr. BUMPERS. May I ask the chairman whether this 10 percent value added must all be added at the "point of final assembly" or whether some of this U.S. value may be added through U.S. suppliers? For example, I understand that certain aircraft manufacturers use U.S.-made engines, but these engines are first flown to manufacturing facilities abroad to be attached to the airplanes. The airplanes then are flown to the United States where more U.S. value is added at the point of final assembly. The result is that substantially more than 10 percent of the value added and domestic content of the airplanes made by these companies is from U.S. workers at the point of final assembly and from U.S. suppliers in many States at many points in the assembly process. My question is whether this meets the requirement that 10 percent of the value added be in the United States.

Mr. PACKWOOD. My answer is yes. It makes no difference whether all the 10 percent U.S. value added is added at the "point of final assembly" or whether some of it is added to the airplane earlier in the manufacturing process, as for example, by the installation of U.S.-made engines during the assembly done abroad.

Mr. BOREN. Mr. President, I am very pleased that a transition rule of significant help to the economic development of eastern Oklahoma was included in this concurrent resolution. It was intended that it be originally included in the text of H.R. 3838. Oklahoma industries has been planning for a long time to undertake this project using tax exempt bonds in order to qualify for lower cost financing as a part of an urban development action grant. This new chicken processing plant would provide 800 jobs for Le Flore county which is suffering from severe unemployment. The grant process has been held up because of the indecision surrounding this tax exemption. I appreciate the assistance of the chairman in helping to clear up this matter. This action will be good news to eastern Oklahoma and to so many who want a chance to work and support their families in these very difficult times in our State.

There is a second provision in this concurrent resolution of importance to Oklahoma, the expansion of the ITC exemption for aircraft assembled in Oklahoma City. My colleague from Arkansas, Mr. BUMPERS, has explained the general purpose of this modification and I am delighted that the Oklahoma facility where British Aerospace assembles its planes has been included.

Specifically, British Aerospace has a facility in Oklahoma City, operated by AAR, where it prepares airplanes for final delivery including modifying planes for customers, installing air conditioning and baggage parts and painting the aircraft. In addition, the planes assembled there use U.S. engines manufactured by Garret Turbine Engine Co. in Arizona.

This Oklahoma facility is a "point of final assembly" within the meaning of the transition rule and substantially more than 10 percent of the value of the aircraft comes from U.S. suppliers, the Garrett and U.S. labor at the AAR facility. In short, by extending the reach of this transition rule to all 50 States, the chairman of the Finance Committee has extended the rule to include the airplanes assembled at the Oklahoma City facility for British Aerospace.

Mr. LAUTENBERG. Mr. President, I would like to address a question to the distinguished chairman of the Finance Committee dealing with a matter we discussed earlier this week.

It deals with what I consider a real and obvious unfairness in the measure before us. It has to do with certain transition rules for the investment tax credit. What we have are three U.S. shipping firms. They will compete in the exact same market—the Japan-United States auto trade. Each firm has a contract to purchase new car carrying ships.

I discussed with the chairman an amendment I intended to offer that would make sure that each firm would get the same transition relief. The amendment related to the Japan-United States auto trade. The Japanese have exported millions of automobiles to the United States. They use some 80 to 90 ocean going vessels to ship those cars. But, the Japanese never used United States-flag ships. One third of those vessels have been Japanese-flag ships. The rest have been flags of convenience. But, never U.S. flags.

Then, Mr. President, the Congress brought pressure. And the Japanese

Government, and the Japanese automakers responded. The automakers agreed to use four U.S.-flag ships. That's a modest concession, when you consider that they use 20 times that many ships. But, it was a welcome concession. It means an important toehold in a major market. It means jobs for U.S. merchant seamen. And, by breathing life into the U.S. merchant marine, it means enhanced U.S. national security.

Those four U.S.-flag ships are being built now. They're being built pursuant to contracts with three U.S. shipping firms. Two of the ships are being built for Central Gulf Corp. of New Orleans. One is being built for Maritime Overseas Corp. of New York. And one is being built for Marine Transport Lines of New Jersey.

The ITC for Central Gulf's ships is protected by H.R. 3838. The ITC for Maritime Overseas' ship would be protected by the resolution before us. But, the ITC for Marine Transport would not be protected.

That's unfair. There are three firms, in the identical situation. They will all compete in the same market. If preserving the ITC makes sense for one, it makes sense for all.

If we impair the ability of one firm to compete, we risk undermining our efforts to open up a market with the Japanese. We risk undermining our own credibility.

The fact is that without the ITC, operation by MTL will be uneconomic. It might be forced to back out of its contract. If that happened, the United States would be embarrassed and we would be handing the Japanese an excuse to turn away from United States shipping firms.

Mr. President, the problem is that the Finance Committee staff says that they were never made aware of the need for transition relief for Marine Transport. I, for one, was not contacted by representatives for the shipping firm until last week. They relied upon contacts they made on the House side. The union, which wants the jobs, made their own efforts in the Senate and the House.

The bottom line is that the chairman considers this a new item. And, as I understand the chairman, there are many other Senators with new items. If he opens the door for one, he would feel compelled to open the door for others. If he amends his unanimous-consent agreement to allow an amendment to add one, he would have to amend it to allow amendments for others. There is no time for that. The concurrent resolution would die, and many necessary, clarifying changes of a technical nature would die with it.

Mr. President, I do not intend to kill the resolution. However, I would like to put my concern on the record and to seek a response from the chairman.

Mr. PACKWOOD. Mr. President, the Senator from New Jersey is right. We simply cannot accommodate his amendment, without opening the door to others. However, as we have discussed this matter privately, I do want to say that he raises a justified complaint. There is no fair reason why one of the four ships should be denied relief granted to the remaining three. It puts the shipping firm at a competitive disadvantage. I certainly would not want to impair our efforts to get more U.S.-flag vessels in the Japan-United States auto trade. For that reason, I want to say to the Senator from New Jersey that I look forward to working with him next year to address his concerns.

Mr. LAUTENBERG. Mr. President, I thank the chairman. I regret that this matter was not brought to our attention earlier, so that it might have been included this year. But, I accept his commitment to address the matter next year, and I look forward to working with him to ensure that all three competitors are treated the same.

Mr. President, for the sake of the record, I ask unanimous consent that certain documents pertaining to this matter be printed in the RECORD.

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

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
Washington, DC, October 14, 1986.

Hon. FRANK R. LAUTENBERG, U.S. SENATE,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR LAUTENBERG: I want you to know that you have MEBA's wholehearted support in your endeavor to correct an oversight in the tax reform bill in regard to transitional rules for car carrier contracts.

The Marine Engineers' Beneficial Association has been at the forefront in efforts to persuade the Japanese automobile manufacturers and the Japanese government to employ a reasonable number of United States-flag vehicle carriers in the important Japan/United States automobile trade. Although the United States is the most important market for Japanese automobiles, it has provided no employment for American seamen. This has taken place despite the fact that we permit more than 2.3 million Japanese automobiles to arrive in the U.S. annually—*all* on Japanese-controlled car carriers.

Three Japanese automobile manufacturers have agreed to charter four United States-flag vehicle carriers for this trade. This is nothing short of a revolution in Japanese trade practices, but it also signifies that we are able now to offer service every bit as efficient as one of our major foreign competitors. Each of the four charters was negotiated during 1985, and charter contracts and construction contracts were consummated before July 31, 1986. The companies—Central Gulf Lines of New Orleans, Louisiana; Maritime Overseas Corporation of New York, New York; and Marine Transport Lines of Secaucus, New Jersey—assumed the availability of the investment tax credit in working out the charter rates and the financing.

Because of an apparent oversight, the transition rules and the concurrent resolution to correct oversights, which passed the House of Representatives, includes only three of these vessels—even though they are all similarly situated and they all need the transition rule relief. The carrier contract for Marine Transport Lines was omitted. The consequences of omitting one vessel could adversely impact the American Merchant Marine and render the omitted vessel uneconomic in a very competitive market.

As matters now stand only three of the four vessels are included in the transition rule and in the Concurrent Resolution (H. Con. Res. 395) to correct technical errors in the enrollment of H.R. 3838. The Conference Report to accompany H.R. 3838 (Page I-79) includes only two vessels. The House concurrent resolution adds one additional vessel.

I strongly support your efforts to correct this oversight by including the fourth vessel in the concurrent resolution to correct technical errors that is now before the Senate. Your amendment is essential for badly needed jobs in our merchant fleet. It is important as well in the interest of fairness to all U.S.-flag carriers about to enter this new market.

With kind personal regards.

Sincerely,

C.E. DEFRIES,
President.

KURRUS & KIRCHNER,
Washington, DC, October 7, 1986.

Hon. FRANK R. LAUTENBERG,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR LAUTENBERG: As the attorney for Marine Transport Lines, Inc. (MTL), which has its headquarters in Secaucus, New Jersey, I should like to call to your attention a gross inequity that now exists in the transition rules to accompany the Tax Reform Act, and to request your assistance. MTL is a United States shipping company which owns or operates more than 50 ships in various bulk trades in international oceanborne commerce.

The transition rule that affects MTL would preserve the investment tax credit for certain United States-flag vehicle carriers, for which construction contracts and charters were negotiated during 1985 and concluded prior to June 1986. During that period, three Japanese automobile manufacturers agreed to charter four United States-flag carriers for use in the Japan/United States automobile trade. MTL had the honor of being the first United States company selected by a Japanese automobile manufacturer.

The contracts that were concluded for the MTL vessel were the result of more than one year of planning and effort. This agreement by the Japanese automobile manufacturers to charter four United States-flag vessels repesented a significant breakthrough. Even though the United States is the largest market for Japanese automobiles and the United States consumer pays the cost of transportation, the Japanese automobile manufacturers, who control the routing and choice of ocean carriers, had never previously agreed to employ a United States-flag vehicle carrier in this.

Because of an apparent oversight at the staff level, the transition rules and the concurrent resolution to correct oversights, which passed the House of Representatives, includes only three of these vessels—even

though they are all similarly situated and they all need the transition rule relief. Ironically, even though MTL was the pioneer in this effort, the MTL vessel was the one omitted. The consequences of omitting one vessel could be damaging to the American Merchant Marine and render the omitted vessel uneconomic in a very competitive market. This inequity should not be left for technical correction by the next Congress. Let me undertake to explain why the case is *sui generis.*

During 1985, three American companies (MTL, Central Gulf Corp. and Maritime Overseas Corp.) negotiated independently with individual Japanese automobile manufacturers for the construction and charter of four new vehicle carriers to be registered under the United States flag. Because this was considered a breakthrough for the American Merchant Marine, the companies were willing to negotiate contracts that were only marginally profitable. In order to obtain the vessel financing, each company was required to guarantee the availability of the investment tax credit that existed under the Internal Revenue Act at this time. The availability of the ITC was considered essential to the economic feasibility of the contracts. These credits were intended to offset costs that the Japanese automobile manufacturers were unwilling to bear, including workers' compensation expenses.

In the consideration of a transition rule to preserve the ITC for these vessels, there has been some confusion over the number of vessels that need such a rule. The language for the transition rule covering vehicle carriers was sent to Senator Packwood by Senator Murkowski. It was understood that the rule would be introduced by Senator Long at the conference on the Tax Reform Act. Central Gulf Corporation, which contracted for two vessels, is a constituent of Senator Long. Although Senator Murkowski's office was fully aware that the Japanese had concluded arrangements to charter four United States-flag vehicle carriers, it was Senator Murkowski's understanding that only three of the vessels required protection under the transition rule because contracts for the MTL vessel had been concluded prior to January 1, 1986. Unfortunately, Senator Murkowski's understanding was incorrect. All four of these vehicle carriers require the benefits of the transition rule.

The fact that all four vessels require the transition rule was made clear to each of the Senate and House conferees on H.R. 3838 but not to Senator Murkowski's office. On August 7, 1986, the leadership of the House Merchant Marine and Fisheries Committee sent a letter (copy enclosed) to Chairman Rostenkowski and to each of the other House conferees pointing out that there were four vehicle carriers that were similarly situated which should receive the same protection under a transition rule concerning the investment tax credit. On August 27, 1986, the president of the National Marine Engineers' Beneficial Association wrote a letter (copy enclosed) to each of the Senate conferees pointing out this same circumstance and urging that the transition rule include all four vessels. As far as I am aware, the House and Senate conferees intended to treat all of these vessels alike and that the failure to include all of the vessels in the transition rule was clearly an oversight at the staff level.

As matters now stand only three of the four vessels are included in the transition rule and in the Concurrent Resolution (H. Con. Res. 395) to correct technical errors in the enrollment of H.R. 3838. The Conference Report to accompany H.R. 3838 (page I-79) includes only two vessels:

(c) SPECIAL AUTOMOBILE CARRIER VESSELS.—The amendments made by section 201 shall not apply to two new automobile carrier vessels which will cost approximately $47,000,000 and will be constructed by a U.S.-flag carrier to operate, under the U.S.-flag and with an American crew, to transport foreign automobiles to the United States, in a case where negotiations for such transportation arrangements commenced in April 1985, formal contract bids were submitted prior to the end of 1985, and definitive transportation contracts were awarded in May 1986.

The concurrent resolution adds one additional vessel:

(P) The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than $28,000,000 and which will be constructed by Maritime Overseas Corporation to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985 and definitive transportation contracts were awarded before June 1986.

I am aware that a number of technical corrections will have to be made in the Tax Reform Act by the next Congress. However, it is important that this oversight should not be left for such action—it should be corrected by including the fourth vessel in the concurrent resolution to correct technical errors that is now before the Senate. If no action is taken on this vessel at this time, it is possible that a decision may be made not to register the vessel under the United States flag. This would be disastrous for the American Merchant Marine and to our national security.

Therefore, I request that you urge Senator Packwood to correct the above oversight and to include in the concurrent resolution the following transition rule for the vehicle carrier that has been omitted.

The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than $22,000,000 and which will be constructed by Marine Transport Lines, Inc. to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985 and definitive transportation contracts were awarded before June 1986.

Sincerely,

RICHARD W. KURRUS.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC, August 7, 1986.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR DAN: Reference is made to our letter to you of July 22, 1986, (copy enclosed) concerning a transition rule for automobile carriers that will be offered during the conference on H.R. 3838 by Senator Russell B. Long.

As stated in that letter, Senator Long's proposal would retain the investment tax credit for three United States-flag vehicle carriers which will be constructed for United States companies and will be used to transport vehicles from Japan to the United States.

Senator Long's proposed transition rule assumes that there are only three vehicle carriers involved in this situation which should be protected insofar as the investment tax credit is concerned. We are now informed that there are four vehicle carriers that are all similarly situated and should receive the benefit of the transition rule. Therefore, in order to treat all companies that come within the intent of Senator Long's transition rule alike, we request that you support the following proposed transition rule:

PROPOSED AMENDMENT: "AUTOMOBILE CARRIERS"

At page 1518, line 12, add the following as number "(24)" and renumber the ensuing transition rules:

"(24) SPECIAL AUTOMOBILE CARRIER VESSELS.—The amendments made by Section 201 shall not apply to four (4) vehicle carrier vessels which will be constructed by or for United States companies at a total cost of approximately $94,000,000 under transportation contracts that were negotiated during 1985 and were consummated prior to June 30, 1986; the vessels that are subject to this rule shall be documented under the laws of the United States, comply with United States manning laws, and be used to transport vehicles in the foreign commerce of the United States.

Sincerely,

WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries.
ROBERT W. DAVIS,
Ranking Minority Member, Committee on Merchant Marine and Fisheries.
MARIO BIAGGI,
Chairman, Committee on Merchant Marine.
GENE SNYDER,
Ranking Minority Member, Subcommittee on Merchant Marine.

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
Washington, DC, August 27, 1987.

Re: Transition Rule for Certain United States-Flag Vehicle Carriers Under H.R. 3838.

DEAR CONFEREES: The Marine Engineers' Beneficial Association has been at the forefront of efforts to persuade the Japanese automobile manufacturers and the Japanese government to employ a reasonable number of United States-flag vehicle carriers in the important Japan-United States automobile trade. Although the United States is the most important market for Japanese automobiles and even though this trade provides employment for a considerable number of Japanese seamen (approximately 4,000 billets), it has provided no employment for American seamen. This has taken place despite the fact that we permit more than 2.3 million Japanese automobiles to arrive in the U.S. annually—all on Japanese-controlled car carriers.

As I believe you know, three Japanese automobile manufacturers have recently agreed to charter four United States-flag ve-

hicle carriers for this trade. This is nothing short of a revolution in Japanese trade practices, but it also signifies that we are able now to offer service every bit as efficient as one of our major foreign competitors. Even though this may be a token gesture by the Japanese, we consider it an extremely important step, and we hope it will be the prelude to the introduction of a considerable number of United States-flag vehicle carriers in this trade.

Each of the four charters was negotiated during 1985, and charter contracts and construction contracts were consummated before June 30, 1986. The companies—Central Gulf Lines of New Orleans; Maritime Overseas Corporation of New York; and Marine Transport Lines of Secaucus, New Jersey—assumed the continued availability of the investment tax credit in working out the charter rates and the financing.

These companies have to honor these contracts the increased costs. In fact, they will lose money because the rates they negotiated are so tight that even with the ITC, they expect just to break even. It would be unfair under these circumstances, I believe, to deny the investment tax credit to these four vessels. Although there is still no provision for protecting the investment tax credit for these vessels in the transition rules in either the Senate or the House versions of H.R. 3838, it is my understanding that Senator Russell Long has agreed, in principle, to sponsor an amendment which would protect the investment tax credit for these vessels.

We have discussed this proposed rule with most of the conferees and they have not expressed any objection to the following transition rule, which I hope you will be able to help shepherd through even at this late date.

PROPOSED AMENDMENT: "AUTOMOBILE CARRIERS"

At page 1518, line 12, add the following as number "(24)" and renumber the ensuing transition rules:

"(24) SPECIAL AUTOMOBILE CARRIER VESSELS.—The amendments made by Section 201 shall not apply to four (4) vehicle carrier vessels which will be constructed by or for United States companies at a total cost of approximately $94,000,000 under transportation contracts that were negotiated during 1985 and were consummated prior to June 30, 1986; the vessels that are the subject of this rule shall be documented under the laws of the United States, comply with United States manning laws, and be used to transport vehicles in the foreign commerce of the United States.

We have here the penetration of a brand new market, a first for American shipping and the kind of aggressive pro-U.S. trade that we all know this country desperately needs. It will provide hundreds of American jobs and more U.S.-flag vessels—at no cost to our government. It is everything that we have all been working so hard for for so many years.

With all best wishes, I remain

Sincerely,

C.E. DEFRIES,
President.

Mr. BUMPERS. Mr. President, I supported the Senate amendments to the House concurrent resolution and I am disturbed by the House action in rejecting these amendments. The Senate has a legitimate role in the constitutional process and I think the amendments we adopted here should at least be considered on the merits by the House.

It has been said that the Senate amendments which the House now has rejected are "new starters" and "substantive changes," or that they "reopen" issues that had been resolved. I cannot speak to all the Senate amendments, but I can speak to the one on page 5, line 8, of the Senate amendments, the amendment correcting the enrollment of the general aviation transition rule.

This provision corrects an error. The amendment avoids an unintended result. It is technical in nature. And, the issues with which it deals is a Senate issue, not a House issue, and the correction was agreed to by the Senate sponsor of the provision in the tax conference.

Let me be specific. The tax reform bill contains a transition rule which extends the availability of the investment tax credit for purchases of aircraft manufactured in 4 explicitly named States. The Senate amendment would extend the scope of this amendment to all 50 States and, to finance this change, it restricts the rule so that it does not provide a retroactive windfall to purchasers who had no reasonable expectation that they would receive a tax credit on their purchase.

The chairman of the Finance Committee said on the Senate floor during debate on the tax reform conference report that it was his impression that this rule covered all general aviation aircraft with a point of final assembly in the United States. It turns out that this understanding is not correct, so Senator PACKWOOD and the Senate sponsor of this transition rule, Senator DOLE, agreed that the rule should be corrected to apply to all 50 States, not just to the four explicitly enumerated States.

That is what the Senate amendment to the House concurrent resolution does. It corrects a factual error in the tax reform bill. It avoids an unintended result. The issues were raised with respect to a transition rule offered by a Senator and the amendment to that rule was agreed to by that Senator. This is not a matter with respect to which the House has any reason to object.

This issue is very important to Arkansas. It turns out that both of the major general aviation aircraft companies inadvertently left out by the initial provision are in Arkansas, Falcon-Jet and the Arkansas Modification Center. They both have major facilities in Arkansas and they manufacture planes with a substantial U.S. value added, a value added ranging from 30 percent to 60 percent depending on the particular plane. All the planes manufactured by these companies in the United States use U.S.-made engines and U.S.-made avionics. By granting the transition rule to the aircraft manufactured in other States, the transition rule put the two Arkansas companies at a disastrous competitive disadvantage.

So, we avoided an injustice. We corrected an error. We did not raise any new issues. We consulted fully with the affected Member. We did nothing out of order. We did not relitigate any issue. The Senate amendment on this issue is technical in nature.

If there are Senate amendments which do introduce new substantive issues not raised in the conference, let's focus on them. If there are issues which simply relitigate an issue resolved in the conference, let's focus on them. But, let's be selective. Let's not lump everything in one basket and reject it out of hand.

So, I support the correction of the tax reform bill on this subject. I am sure if the House would look at this issue, it will see it as a legitimate correction of an error.

I am delighted that the Senate is insisting on this amendment as it sends this resolution back to the House. I am sure we could have consulted more fully about these amendments before we sent them over the first time, but it is very hard to juggle all the duties we have in these closing days. I am hopeful that the consultations we have had last night and today have cleared the air and have demonstrated to the House that this amendment is appropriated for this concurrent resolution.

Mr. PACKWOOD. Mr. President, several Senators have sought my advice about interpretation of several provisions in the Tax Reform Act of 1986. I would like to take this opportunity to respond. Many of these points relate to statements made by Chairman ROSTENKOWSKI on October 2, 1986, which appear on pages E3389 through E3393 of that day's CONGRESSIONAL RECORD.

First, I would like to reiterate my understanding of the meaning of "income equivalent to interest" under the foreign tax provisions in the bill. This term is used to refer to items which have historically been interpreted as the equivalent of interest, such as commitment fees. It does not refer to broad categories of income that have historically and consistently been distinguished from interest, such as income derived from factoring receivables of unrelated parties.

I cannot agree with Mr. ROSTENKOWSKI's statement, at pages E3389-3390, that the plain meaning of the words "income equivalent to interest" includes factoring income. The courts, and the Internal Revenue Service informally, have consistently distinguished such income from interest, unless a purchase of receivables is in economic substance a loan to the

seller—which may be secured by the receivables.

I also disagree with Mr. ROSTENKOWSKI's statement that this provision was designed to prevent abuses under the related party factoring rules enacted in 1984. This was not the reason we added the provision.

The 1984 provisions were directed at related party factoring involving controlled foreign corporations, particularly the factoring of domestic related party receivables. Such factoring could give rise to a tax deduction in the United States, while shifting the income to a foreign affiliate. Tax on this income would be deferred since such income is neither foreign personal holding company income nor subpart F income. In addition, the factoring of domestic related party receivables would serve to effectively repatriate the tax deferred earnings of the controlled foreign corporation without the incidence of tax. It was this tax-free transfer of earnings and effective repatriation, where the credit risk and collection obligations with respect to the receivables remain within the same controlled corporate group, at which the 1984 provisions were aimed.

In contrast, the factoring of unrelated party receivables results in neither a transfer of earnings among affiliates nor a repatriation of earnings. Such factoring results in the transfer of credit risk and collection obligations from one unrelated person to another. Thus, taxpayers who factor receivables to unrelated parties are in much different circumstances than related parties who factor receivables. Unrelated party factoring simply does not involve the tax benefits that the 1984 provisions were designed to restrict.

Second, with respect to the statement by Mr. ROSTENKOWSKI on page E3390 regarding the colloquy between Senator MOYNIHAN and me on the subject of binding written contracts for depreciation and ITC transition relief, Mr. ROSTENKOWSKI stated that a binding written contract must be between a taxpayer and a person who will build or supply the property in order to qualify for transition relief. This statement is not reflected in the discussion of the rule appearing in the statement of managers, nor is the rule so limited. In the situation described in the colloquy between Senator MOYNIHAN and me, a taxpayer was obligated by contract between the taxpayer and a municipality to construct a building for the taxpayer's own account. That contract, if breached, would have subjected the taxpayer to damages not limited to a specified dollar amount. There is no reason which would justify treating the taxpayer any differently than a taxpayer contractually bound to pay for property built by or acquired from the other party to the contract.

Third, Mr. ROSTENKOWSKI's statement regarding my colloquy with Senator GLENN about FERC licenses misinterprets the facts discussed in the colloquy. The FERC order, although not a license, states specifically that the project will be a qualifying small power production facility. In that situation, the owner of the facility should be able to rely on a specific finding—not a mere assumption—contained in a FERC order that project meets FERC requirements, although the order is not a license per se.

Fourth, Mr. ROSTENKOWSKI's statement regarding my colloquy with Senator HAWKINS concerning section 204(a)(2) of H.R. 3838—concerning what constitutes a substantial modification when the facility is virtually identical to the facility described in the original certification, merely because the amended certificate allows for a change in the location of the facility within the same oil field and merely because the amended certificate allows for the possibility that additional partners may be admitted to the partnership which owns the facility.

Fifth, I would like to clarify the operation of the provision in the conference report modifying the rules governing qualified scholarship funding corporations. The new rules require that all earnings of such corporations be used to finance additional student loans or be rebated to the Federal Government, rather than to State or local governments, as under present law. In making this modification, it is not the intent of the conferees that existing qualified scholarship funding corporations must cease operations pending modifications of their articles of incorporation to reflect the revised Federal law, provided that steps are taken to effect those amendments with reasonable speed.

Sixth, I would like to clarify two aspects of the changes to the extraordinary dividend rules as they relate to qualified preferred dividends. The statement of managers might possibly suggest that basis reduction is required with respect to qualified preferred dividends only for the portion of the total excess dividends that is attributed on a prorata basis to the dividends that were actually within the 2-year holding period. I agree with Mr. ROSTENKOWSKI that such an interpretation is not correct. In addition, the statement of managers suggests that taxpayers may elect to have the special qualified preferred dividend computation apply. The statute provides no election and none is intended.

Finally, I would like to clarify a provision in new section 89 of the Internal Revenue Code. That section imposes five qualification requirements on certain employee benefits that are excluded from gross income under other code sections. One of the requirements is that the benefit plan be maintained for the exclusive benefit of employees. The statement of managers indicates that a benefit plan that covers spouses and dependents of employees may satisfy the exclusive benefit requirement if such coverage is permissible.

I would like to clarify that an employee benefit plan will not fail the exclusive benefit test if the plan benefits a person who is not a spouse or dependent, as long as that person is permitted to exclude the benefit from gross income under the same code section which excludes that benefit from the gross income of employees. For example, section 132(f) treats retired employees, disabled employees, and parents of employees as employees for the purpose of certain excludible fringe benefits. Fringe benefit plans to which section 132(f) apply would not violate the exclusive benefit requirement of new section 89 simply because they provided a benefit to the persons described in section 132(f).

Mr. BUMPERS. Mr. President, I support the Finance Committee amendment to the concurrent resolution correcting the enrollment of the tax reform bill. The committee amendment contains a correction of vital interest to Arkansas and I appreciate the efforts of Senator PACKWOOD to correct this error.

The error is contained in section 204(a)(11) of the tax reform bill. This section would provide special transition relief to purchasers of aircraft manufactured in four explicitly enumerated States, Kansas, Florida, Georgia, and Texas. The relief provided is that the investment tax credit—which is repealed effective January 1, 1986, under the bill—would continue to be available for certain aircraft. The aircraft covered are aircraft which are "in inventory or in the planned production schedule of the final assembly manufacturer," which have had "orders placed for the engine(s) on or before August 16, 1986," which are subject to a binding contract "on or before December 31, 1986," and which are "delivered and placed in service by the purchaser, before July 1, 1987."

The chairman of the Finance Committee said during the Senate debate on the tax reform conference report on Saturday that "he was under the impression—this provision—covered all the domestic plane manufacturers in the United States." September 27, 1986, RECORD at S13891. As I will explain, this impression is based on a misconception about the structure of the aircraft manufacturing industry in the United States.

Arkansas—a State not covered by this transition rule—has two manufacturers of general aviation aircraft, FalconJet, a French-owned company, and the Arkansas Modification Center, which manufactures aircraft for British Aerospace. While neither of these companies is U.S. owned, both compa-

nies manufacture planes which have substantial value added in Arkansas or from U.S. suppliers, and the point of final assembly for these planes is in the United States.

For example, the FalconJet uses engines manufactured by Garrett Turbine Engine Co. of Arizona and avionics manufactured by Collins Avionics of Iowa. The British Aerospace planes—both those assembled in Arkansas and in Oklahoma—also use Garrett engines. Both companies have major facilities in Arkansas, where much of the work on these planes is done. FalconJet employs about 600 people and AMC employes about 300 in Arkansas. Clearly, both of these companies are "domestic" in the key sense—they employ U.S. workers, directly and through U.S. suppliers, and the final assembly of the planes is in the United States. There is substantial U.S. "domestic content" in all the planes they assemble in the United States.

Both companies meet the other principal limitation in the provision that the aircraft be manufactured in the United States. According to the provision, a plane is manufactured at the "point of its final assembly." In the case of both FalconJet and British Aerospace planes, the companies fabricate and install the cockpit and cabin furnishings, prepare and install the avionics equipment and radar and paint the planes in Arkansas. These efforts include installation of any customer selected optional equipment. Similarly, British Aerospace has a major facility in Oklahoma City operated by AAR where it prepares aircraft for final delivery including modifying planes for customers, installing airconditioning and baggage parts, and painting the aircraft. In short, the point of final assembly for the FalconJet and for the British Aerospace planes at both the Arkansas and Oklahoma facilities is in the United States.

The only respect in which these two companies did not meet the standards set in section 204(a)(11) at these facilities in Arkansas and Oklahoma was that these two States were not among the four explicitely mentioned States in the rule. By specifically including Arkansas—and all other States—in the list of States to which this provision applies, both FalconJet and the British Aerospace planes now are covered.

It should be obvious that I was not involved in the drafting of the transition rule in the tax reform bill. The retroactive repeal of the investment tax credit is one of the most ill-conceived provisions in the bill. I strongly oppose this retroactive repeal and have received many complaints from companies in Arkansas this issue. I would support extending the ITC at least through 1986 for all taxpayers.

I made no request that FalconJet or British Aerospace planes be exempt from this repeal of the investment tax credit. I would be happy if this transition rule was repealed altogether and if no aircraft manufactured in the United States is exempt from the ITC repeal. I understand that both FalconJet and the Arkansas Modification Center would support repeal of this transition rule. Furthermore, I am not sure that any manufacturers of business aircraft has provided a justification for a special exception to the ITC repeal. But, if this transition rule is to remain in effect—and that clearly is the desire of its sponsors—then it should be applicable to all the companies which compete in the U.S. market and which manufacture aircraft in the United States.

It is for this reason that I support adding Arkansas to this list of States. Only by adding Arkansas—and all other States—to the application of this transition rule can we avoid an injustice. I am not attempting to secure special treatment for an Arkansas company or for the business aircraft industry. But, I am trying to secure equal treatment for the business aircraft manufacturers in Arkansas.

We would not have had this problem if in the first instance the transition rule had been drafted as a generic rule, rather than one which necessarily gives certain companies a competitive advantage over others. There may be other transition rules in the tax reform bill which are drafted this way, but most of them simply provide relief to one company or one industry. By benefiting one company, these transition rules may help that company compete with other companies, but these rules are not drafted specifically to have an anticompetitive effect, as was the case here.

The impact of the original provision in the tax reform bill on foreign-owned aircraft companies with substantial operations in the United States would surely have led to a major international dispute. The United States has, for example, argued strenuously that the European Airbus consortium should not do precisely what this original provision would have done, discriminate against foreign companies and suppliers. Were this amendment to remain in effect, the Airbus governments might be justified in providing launch aid for the A330/340 next March.

After the GATT Conference in Uruguay last month, it would have been quite unwise for the United States to have enacted a provision designed specifically to benefit United States manufacturers and to give them a competitive advantage over their foreign competitors. Do you think for one minute that the Governments of France and Britain would stand by and permit the United States to provide special tax incentives only to United States companies and which benefits are specifically denied to French- and British-owned companies even though these companies have substantial manufacturing facilities in the United States?

In fact, the United States and France have signed an Agreement on Trade in Civil Aircraft, dated April 12, 1979, which includes an agreement "to avoid attaching inducements of any kind to the sale or purchase of civil aircraft from any particular source which would create discrimination against suppliers from any signatory." Article 4.4. The transition rule in the tax reform bill would seem clearly to violate this agreement.

By correcting this provision in the concurrent resolution we have avoided these disputes and have provided transition relief on an equal base to all general aviation planes manufactured in the United States. This is fair and it is smart. In a time when we are running huge trade deficits, it would be counterproductive to penalize foreign-owned companies which establish substantial manufacturing operations in the United States.

While the provision is fairer as amended by the concurrent resolution, I still have some questions about it. There may still be repercussions from this provision with our trading partners. Even as amended it provides special tax benefits to U.S. taxpayers who purchase aircraft manufactured in the United States and does not provide these benefits to any U.S. taxpayer if the plane he purchases is not manufactured in the United States. This has the effect of an explicit "buy American" requirement and it directly discriminates against foreign-manufactured planes. Even though the provision now includes planes manufactured by foreign-owned companies in the United States, it still does not include planes which are manufactured abroad, either by U.S.-owned or foreign-owned companies. This is a problem I wish we had been able to remedy.

In addition, the original provision was retroactive to purchases which already have occurred. The House tax reform bill—adopted by the House on December 17, 1985—repealed the investment tax credit for property placed in service after December 31, 1985. The Finance Committee reported its version of the tax reform bill on May 29, 1986, and this bill repealed the investment tax credit effective on the same date as did the House bill. Persons who purchased aircraft after the House passed the tax reform bill last December have been on notice since then that they might not receive the benefits of the investment tax credit. Certainly, they have been on notice of this possibility since May 29 of this year when the Senate Finance Committee agreed to repeal the investment tax credit retroactively. Only

when the tax reform conference report was agreed to on August 16 and made public on September 18, 1986, did anyone become aware of the possibility that certain of these aircraft purchases might quality for the investment tax credit.

I am delighted that the committee amendment takes care of this problem and that it would apply to contracts that were binding on August 16, which will avoid purchasers canceling contracts and entering into new contracts before the end of the year. This improves the bill and reduces its revenue impact as well.

During discussions on this transition rule the issue of retroactivity has been raised as a way to reduce the revenue impact of this provision, which is estimated to be $27 million, or the revenue impact of the provision expanded to include other U.S.-based manufacturers. Redrafting this provision to avoid this windfall has been resisted, but I want to make it clear that in including Arkansas in the list of States I am not supporting the retroactive application of the initial or modified provision.

I am pleased that we have avoided an injustice here. I am not sure that transition relief is called for here, but if it is provided it should be provided uniformly to all U.S. manufacturers of general aviation aircraft. That is the principle that I have worked for and that is the principle we have established here. We may not be finished with the mischief that is caused by the original transition rule, but the committee amendment to the concurrent resolution is an improvement.

Again, let me express my appreciation to Senator PACKWOOD for his assistance in correcting this error.

I ask unanimous consent that several letters and other documents on this issue be printed at this point in the RECORD.

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

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC, September 22, 1986.

Hon. BOB PACKWOOD,
Chairman, Senate Finance Committee, Dirksen Building, Washington, DC.

DEAR BOB: We are writing to call to your attention the implications of the drafting of a provision in the tax reform legislation, a copy of which we have just obtained. The provision in question seeks to preserve U.S. jobs in the aircraft manufacturing industry, but it fails to include aircraft manufactured in Arkansas and in other states where aircraft are manufactured. This is unfair and these states should be included in the provision to prevent a grave injustice.

Specifically, the final draft contains a transition rule on page I-76 which exempts "certain aircraft" from the amendments made by section 201 and 211. The aircraft which are exempted are those "manufactured in Kansas, Florida, Georgia, or Texas." Aircraft manufactured in other states are not exempted no matter how many U.S. jobs are affected and no matter how much they are put at a competitive disadvantage.

One of the many companies which engages in the final assembly of aircraft with "19 or fewer passenger seats" is Falcon Jet Corporation of Arkansas. FalconJet employs 650 people and expects to expand its employment to 800. It expects that this provision may result in the loss of the sale of six to eight aircraft. These sales would be lost to companies which are included in the transition rule. This will hurt FalconJet but it also will hurt its principal suppliers, which are located in Arizona (Garrett Turbin Engine Corporation) and Iowa (Collins Avionics).

We are informed that another state disadvantaged by this provision is Delaware, where Atlantic Aviation assembles the Westwind.

The revenue effect of including Arkansas (and other states adversely affected) in the list of states covered by this transition rule should be negligible because the sole effect will be to retain the same number of sales in Arkansas, instead of shifting them from Arkansas to the states mentioned in the transition rule. The inclusion of another state (or states) should not increase the total number or value of sales, thus, it should not increase the amount of accelerated depreciation and investment tax credit that is taken.

In terms of Arkansas jobs, 50% of the value of the planes assembled in Arkansas is directly attributable to U.S. suppliers. Most of this value is added in Arkansas but much of its comes from Arizona, Iowa and elsewhere. The issue here, therefore, is U.S. jobs vs. U.S. jobs, not U.S. jobs vs. foreign jobs.

We would expect that the Finance Committee will offer an amendment to correct technical erriors in the drafting of this bill. In our view, it would be appropriate in this amendment to extend the effect of this provision to aircraft manufactured in Arkansas.

If you have any questions about this issue, please contact either of us or contact Chuck Ludlam at 224-3095.

Sincerely,

DAVID PRYOR,
DALE BUMPERS.

FALCON JET,
September 29, 1986.

Attention: Mr. Chuck Ludlum.

Hon. DALE BUMPERS,
U.S. Senate,
Washington, DC.

GENTLEMEN: I am pleased to present the following data in support of your efforts to have Arkansas included as one of the states eligible for extended ITC coverage for small aircraft under the new tax bill's transition rules.

As currently written, Falcon Jet and its operation in the State of Arkansas will be severely effected. Sales of our aircraft during the transition period would be virtually nonexistent and employment at our Little Rock, Arkansas completion facility reduced below currently planned levels.

The Falcon series aircraft has a significant portion of U.S. content in its total price. Engines, avionics and many airframe systems such as wheels and brakes are manufactured in the U.S. in addition to the work accomplished in Little Rock. It should also be noted that some of the other aircraft currently qualifying for this ITC extension contain significant foreign content, i.e. the Gulfstream, manufactured in Georgia has Rolls Royce engines, the Cessna Citation, manufactured in Kansas, has Pratt Whitney of Canada, engines, and the Beech Jet, manufactured in Kansas, is assembled from a Japanese kit. More specifically, of the $207,000,000 in Falcon Jet new aircraft sales last year, $120,000,000 or 58% was of U.S. origin.

In addition to Arkansas, we anticipate a negative impact upon our major suppliers, Garrett and Sperry in Arizona and Rockwell/Collins in Iowa and Florida and at our home office in New Jersey. We estimate that up to 300 jobs may be lost in these areas with over ½ of these in Arkansas alone. A list of some of our additional U.S. suppliers is attached for your information.

I hope that this is of assistance to you. Please call me at (201) 393-8047 if I can provide any additional data.

Sincerely,

J. MORGAN YOUNG,
Vice President, Finance & Administration.

ADDITIONAL U.S. SUPPLIERS FOR SOME OR ALL OF OUR PRODUCTS LISTED BELOW.

Abex, California; ADR, New York; Aeronco, Ohio; Aerosonic, Texas; Aeroquip, Michigan; AiResearch, California; Airpax, Maryland; Astek, New York; Baker, Georgia; Barfield, Florida.

Barker Coleman, Illinois; Bendix, New Jersey; Cannon, California; Circle Seal, California; Conrac, California; Custom Components, California; Dayton Granger, Florida; Deutsch, California; Dorne & Margolin, New York; Dukes International, California.

Eldec, Washington; Flite-Tronics, California; Fox Tronics, Texas; Gables, Florida; General Electric, Massachusetts/Pennsylvania; Global, California; Goodyear, Ohio; Grimes, Illinois; Grumman, New York/Florida; Gull, New York.

Hartwell, California; Honeywell, Minnesota; HTL, California; I.D.C., New Jersey; I.T.T., California; J.E.T., Michigan; Kollsman, New Hampshire; Lear Siegler, Illinois; Leland, Ohio; Lewis, Connecticut.

Lindberg, California; Litton, California; Lord McGraw Edison, Massachusetts; Pacific Scientific, California; Resistoflex, New Jersey; Rayehem, California; R.C.A., New Jersey; R.C. Allen, California; Rosemont, Minnesota.

Smiths, Florida; Stratoflex, Texas; Turbomach, California; Sperry Vickers, Mississippi; Sterer, California; Sunstrand, Illinois; Systron Donner, California; Teledyne, California; Texas Instruments, Texas; Walter Kidde, New Jersey; Wemac, Illinois; York, Pennsylvania and Zip Aero, Georgia.

RESPONSE TO ROSTENKOWSKI STATEMENT

Mr. DOLE. Mr. President, I would like to ask the distinguished chairman of the Finance Committee if he would comment on a few additional issues discussed in Mr. ROSTENKOWSKI's statement.

Mr. PACKWOOD. I would be pleased to respond to the distinguished majority leader.

LIFE INSURANCE

Mr. DOLE. I thank the chairman. As the distinguished chairman will recall, he and I discussed several items of interpretation concerning the limitation of the deduction for interest paid in connection with a life insurance policy owned by a business. The chairman of the Ways and Means Committee

seems to have been somewhat reluctant to commit himself on the extent of the grandfather provision.

I can understand the reluctance on the part of the Ways and Means chairman to commit to all the specifics in each of the colloquies entered into in the Senate. The provision concerning business life insurance, for example, was a Senate provision. We have had a greater opportunity to study the specifics of the types of transactions which could possibly be affected, and therefore, would naturally feel more comfortable in giving appropriate guidance to taxpayers on this subject.

Would the distinguished chairman of the Finance Committee care to comment on this subject?

Mr. PACKWOOD. I am encouraged that the chairman of the Ways and Means Committee has suggested that an application prior to the effective date would suffice to evidence a purchase, and I am also pleased that he expects the IRS and the courts to review the facts of specific cases as, of course, they should. However, I continue to believe that the guidance as to intent contained in our earlier colloquy should help the IRS and the courts apply the facts in accordance with congressional intent.

MIRROR SUBSIDIARIES

Mr. DOLE. I would also like to ask the chairman if he would care to comment on Mr. ROSTENKOWSKI's statement concerning so-called mirror subsidiaries. We had engaged in a colloquy in which we had agreed that change of the tax treatment of mirror subsidiary transacitons could not be fairly implied from the repeal of the general utilities doctrine and that we did not, in fact, specifically address the subject of mirror subsidiaries. Treasury has authority to promulgate regulations in this area on a prospective basis, but they are not required to do so by the Tax Reform Act.

Does the distinguished chairman still share this view?

Mr. PACKWOOD. My views on this subject are unchanged. I am absolutely confident that there was no consensus on the part of the Senate conferees that the tax treatment of mirror subsidiaries should be changed. In fact, several of the Senate conferees explicitly made known their opposition to any required change in this area.

Let me take a moment to give some further background on how this issue developed during the conference on H.R. 3838. The Senate conferees adopted the House provision, with modifications, repealing the general utilities doctrine. The House bill does not change in any way the tax treatment of mirror subsidiary transactions under current law. Nor does the report of the Committee on Ways and Means even mention mirror subsidiary transactions. The report merely alludes to the issue by stating in a footnote: "The committee anticipates that, in a consolidated return context, the Treasury Department will consider whether aggregation of ownership rules similar to those in sec. 1.1502-34 of the regulations should be provided for purposes of determining status as an 80-percent distributee."

The final bill also does not contain any language which would change the tax treatment of mirror subsidiary transactions. However, the staff proposed new language requiring such a change for possible inclusion in the statement of managers. This additional language was the subject of specific negotations by Mr. ROSTENKOWSKI and me during the final days of drafting the conference report. We agreed not to adopt that language. Nevertheless, language similar to that rejected during the drafting of the conference report appears in Mr. ROSTENKOWSKI's statements on September 25, 1986—page H8358 of the CONGRESSIONAL RECORD—and on October 2, 1986—page H3389 of the CONGRESSIONAL RECORD. The fact that this interpretation was explicitly rejected should be dispositive.

I would like to emphasize my understanding that, although the Treasury Department has authority to promulgate regulations in this area, there is no requirement to do so under the bill. In my view, taxpayers can continue to rely on existing consolidated return regulations on this pont.

PRE-1981 STRADDLES

Mr. DOLE. The distinguished chairman of the Ways and Means Committee also discussed the treatment of investors in pre-1981 straddles. He disagreed with our earlier colloquy that the conferees did not intend to incorporate the language of the Ways and Means Committee report as part of the conference agreement. Would the chairman of the Finance Committee care to comment on this issue, as well?

Mr. PACKWOOD. As the majority leader well knows, this issue was the subject of some dispute during the conference on the Tax Reform Act. After the amount of discussion on the issue, it would seem unreasonable to believe that the Senate conferees intended to adopt language concerning these investors contained in the Ways and Means Committee report merely by remaining silent in the conference statement of managers.

ITC TRANSITIONAL RULE FOR TRANSFERRED PROPERTY

Mr. NICKLES. Mr. President, I wish to confirm with the distinguished chairman of the Committee on Finance a point relating to the repeal of the investment tax credit. It is my understanding that property qualifying as transition property under the binding contract exception may continue to qualify if the contract is transferred, including cases where there is more than one transfer and a transfer between related parties. Further, it is my understanding that, while transition property generally may not be placed in service before such a transfer, transition property may be placed in service before a transfer if it is leased back to the transferor, under a sale/leaseback transaction, within 3 months after the date the property was originally placed in service.

Mr. BOREN. I am pleased that my distinguished colleague has raised this matter, as I believe that a clarification is necessary. It is important to establish clearly, first, that the 3-month rule of the Code also applies for purposes of the binding contract exception of the bill and the statement of the managers in the conference report regarding transfers of binding contracts; and, second, that there are no special restrictions applicable to multiple transfers or transfers between related parties.

Mr. PACKWOOD. The understanding of the Senators is correct. For example, property otherwise eligible for the binding contract exception retains that status if the contract is transferred, including a transfer between related parties, and then placed in service within 3 months of a sale/leaseback agreement.

SCHOLARSHIPS

Mr. DANFORTH: Mr. President, I would like to ask the chairman of the Finance Committee for his view on my interpretation of section 123 of the tax reform bill which deals with the taxation of scholarships. Normally, amounts received as qualified scholarships are not taxable to the recipient except to the extent that the amount of the scholarship exceeds amounts necessary for tuition and basic fees. This provision also states that where a student receives payment for "teaching, research, or other services" that are required as a condition of receiving the qualified scholarship, the payment is taxable to the student.

My concern is that normal student activities that may be required as a condition of receiving the scholarship (such as playing a sport for a recipient of an athletic scholarship, or playing in the orchestra for a recipient of a music scholarship) do not constitute "other services" for which these students are being compensated and therefore, that the portion of their scholarships which are necessary for tuition and fees should not be taxable to them.

Mr. PACKWOOD. The Senator's interpretation is correct. The term "other services" does not include normal student activities required as a condition for receiving a scholarship. Amounts received for tuition and fees in those cases is not taxable to the recipients of those scholarships.

INSTALLMENT SALES

Mr. DECONCINI. Mr. President, I want to raise an issue which became apparent after the conference report was released. The new disproportionate disallowance rule for installment sales has an effective date of taxable years ending after December 31, 1986, instead of beginning after December 31, 1986, as in the original Senate bill. The change of the word "beginning" to "ending" substantially changes the effective date in the Senate passed bill.

It is my understanding that this provision was designed to allow those taxpayers now using the installment sales method, particularly homebuilders, time to adjust to these new rules. Am I correct that this was the intent of the conferees.

Mr. PACKWOOD. The Senator is correct.

Mr. DECONCINI. I have been advised by a number of builders who happen to have a taxable year other than a calendar year that the new rules will impact on them in a significantly different, and adverse, way than it will on calendar year taxpayers. I assume that there was no explicit decisions by the conferees to treat taxpayers differently based solely on their fiscal year.

Mr. PACKWOOD. The Senator is correct in his assumption.

Mr. DECONCINI. I would ask the chairman to review this situation to determine whether the change of the world "beginning" to "ending" contradicted the intention of the conferees.

Mr. PACKWOOD. I believe that the Senator from Arizona raises a valid concern regarding this new rule. I look forward to working with the Senator from Arizona next year in an effort to address his concerns.

Mr. HEINZ. Mr. President, I wish to seek clarification from the chairman relating to several technical points relating to transitional rules important to my state. The first relates to the Philadelphia Convention Center and trash-to-steam projects. As you know, these projects have been underway since Congress began work on the 1984 act.

First, I understand that the exception to the volume cap for both the convention center and trash-to-steam projects is intended to be extended through 1988.

Second, the bond described in the second line of section 1316(g)(2)(A) of the tax bill is one "issued to provide a facility."

Mr. PACKWOOD. The Senator from Pennsylvania is correct in his understanding.

Mr. HEINZ. The second relates to the transitional rule for the Frankford Arsenal.

I understand the Conference Committee intends that the Frankford Arsenal project is to include the buildings, the property, and the infrastructure.

Mr. PACKWOOD. The Senator from Pennsylvania is correct in his understanding of the committee's intent. It is hoped that this provision will save this important historic rehabilitation project.

Mr. HEINZ. If I may, Mr. President, I would like to ask the chairman a question about another issue that appears to me to be unclear at this time. The matter concerns a transition rule that would grandfather from loss of the investment credit and current depreciation, any property that is part of a project that the Federal Energy Regulatory Commission certified as a qualifying facility before March 2, 1986. Qualifying facility is a legal term. The designation gives the project certain rights under the Public Utility Regulatory Policies Act.

Independent Power Systems, (IPS) has been working for several years to build a facility in Archbald, PA, that will burn culm to generate steam and electricity. The plan from day one has been to sell the electricity to a local utility and to use the steam to grow lettuce in a hydroponic greenhouse. The greenhouse will be built next to the powerplant. The same person will own both facilities.

The Federal Energy Regulatory Commission certified the project as a qualifying cogeneration facility on April 24, 1985. The FERC certificate describes the powerplant. It does not mention the greenhouse because FERC is concerned only with powerplants. Nevertheless, it is clear from the FERC order and from supporting documentation submitted to FERC in connection with the order that the greenhouse was part of the original project. In order to be certified as a qualifying cogeneration facility, (IPS) had to show that some form of thermal energy would be produced—and actually consumed as thermal energy—amounting to at least 5 percent of the total output of the cogeneration facility. The greenhouse is the sole user of the steam.

The transition provision in the bill says that property is grandfathered if it is part of a project that was certified by the Federal Energy Regulatory Commission before March 2, 1986. I assume the project in this case includes not only the powerplant but also the greenhouse. I want to ask the chairman whether that is also his understanding.

Mr. PACKWOOD. That is my understanding.

SECTION 633(F) OF TAX BILL

Mr. HEINZ. Finally, I have a question concerning section 633(f) of the bill which clarifies pre-1982 law by stating that a certain transaction is a tax-free exchange. Unfortunately, the relief is company specific and does not cover the other two public companies which consummated almost identical exchanges. One of these companies is a corporate constituent of mine. It was my intention to broaden the bill in a generic fashion to cover all three impacted taxpayers. This is apparently not possible at this time.

What concerns me is the possible implication of the provision on the ongoing tax controversies. The transactions met the requirements of law when consummated. The transactions were undertaken for sound business reasons with the advice and opinion of counsel that these exchanges were tax free. I would hope that no contrary inference would be drawn from the fact that one company has successfully sought legislative relief. Would the chairman so state?

Mr. PACKWOOD. No contrary inference as to the proper determination or application of law to the ongoing cases should be drawn from the enactment of section 633(f).

Mr. HEINZ. I thank the chairman. In addition, I would be hopeful that any subsequent technical clarification legislation would remove the obvious inequity and make the section 633(f) relief generic.

TRANSITION RULE FOR EASTMAN PLACE, ROCHESTER, NY

Mr. MOYNIHAN. Mr. President, I would like to clarify an item in House Concurrent Resolution 395, paragraph (251), which includes the following item:

"(38) The amendments made by section 201 shall not apply to—

* * * * *

"(D) a 150,000 square foot office building which is projected to cost $20,000,000, with respect to which an inducement resolution was adopted in December 1986, and for which a binding contract of $500,000 was entered into on April 30, 1986,

"(E) * * *"

I wish to clarify with the distinguished chairman of the Finance Committee that this provision is intended to describe the Eastman Place project in Rochester, NY. I have recently learned that the square footage of the building we attempted to describe may be somewhat less than 150,000 square feet. Further, while the total budgeted for the project is $20 million, the final cost may be somewhat less. To avoid any possible confusion, I would ask the chairman to confirm my understanding that the provision in question is intended to apply to the Eastman Place project in Rochester, NY.

Mr. PACKWOOD. The Senator from New York is correct. The provision denominated 38(D) in paragraph (251) of House Concurrent Resolution 395 is intended to apply to the Eastman Place project in Rochester, NY.

Mr. GRASSLEY. If the distinguished Senator from Oregon will be so kind as to clarify a point relating to what constitutes portfolio income

under the Tax Reform Act of 1986. If an individual, partnership or closely held corporation receives interest income with respect to fees receivable, for example fees owed for services previously provided, will not be treated as portfolio income?

Mr. PACKWOOD. As the distinguished Senator from Iowa is aware, the Senate report and the conference agreement provided certain exceptions from the definition of portfolio income in cases where such income is derived in the ordinary course of a trade or business. As noted in the Senate report, interest charges on accounts receivable will not be considered portfolio income. Thus, by the same token, interest income received by a taxpayer with respect to fees receivable which are similar to accounts receivable and arise in the ordinary course of the trade or business, will not be considered portfolio income for purposes of section 469(c).

Mr. HATCH. Mr. President, I rise to inquire of my good friend, the distinguished chairman of the Finance Committee, if he would indulge me in a brief colloquy to clarify the wording of a particular transition rule contained in the Tax Reform Act of 1986.

The able staff who worked tirelessly to complete the drafting of the conference report to this landmark legislation inadvertently omitted an important date in the depreciation section of the report pertaining to a transition rule for a mixed-use development project located in a home-rule city, the zoning for which was changed to residential business planned development on November 26, 1985, and with respect to which both the home rule city on December 4, 1985, and the State housing finance agency on December 20, 1985, adopted inducement resolutions. The date in question is the date on which the home rule city adopted an inducement resolution, December 4, 1985. To avoid any problems in the identification of this project for depreciation tax treatment, I would like to ascertain if it was the intention of the conference to include this date, as it did for the transition rule for this project in the tax-exempt bond section?

Mr. PACKWOOD. That is correct. The date was inadvertently left out.

Mr. HATCH. I thank the Senator. In addition, the description used to identify this project in both the depreciation and tax-exempt bond sections does not accurately reflect the nature and scope of the project, which includes apartments, office rentals and commercial space, not just multifamily housing. If amendments would be in order on this resolution, I would ask that the Senate consider changing the definition of this project from multifamily mixed-use housing project to simply mixed-use development project to better capture the true extent of this project and avoid any legal misinterpretation.

REPEAL OF THE INVESTMENT TAX CREDIT SECTION 202 OF THE BILL

Mr. KASTEN. I would like to seek clarification on two aspects of the transition rules for the investment tax credit.

It is my understanding that, based on the Finance Committee report, for all ITC transition rules the term "property" includes any and all spending which is properly chargeable to the capital account for that property.

As one specific example, in the case of production machinery that is subject to the binding contract rule, the term "property" includes not only spending for such items as freight and installation but also any wiring, piping, fabrication costs, and engineering and overhead costs which are properly chargeable to the capital account under IRS regulations. These other costs that are incidental to the purchase of the basic hardware or components parts are included in the term "property" even though these incidental costs were not themselves subject to the binding contract as of December 31, 1985.

Mr. PACKWOOD. Yes, all expenditures which are properly chargeable to capital are also included within the term "property" under the ITC transition rules.

Mr. KASTEN. I also want to clarify operation of the transition rule for self-constructed property. I have a constituent who is reconstructing a number of diaper machines pursuant to the multiphase but interrelated plan begun in 1984 and to be finished in 1986. The overall plan began in 1984 and fully 70 percent of the total cost of the plan had been either spent or was committed for by December 31, 1985. This total interrelated plan involves reconstruction of a number of components of the taxpayer's entire diaper lines. For example, two components involved modifications of new manufacturing technologies while another component involves reconstruction of the airhandling system for these upgraded diaper machines. These components are absolutely essential for the operation of these diaper machines. Because the entire plan that began in 1984 is dependent upon completion of all components, the whole plan, including all of its various component parts, is but one integrated "property" within the meaning of the ITC transition rule.

My understanding is that the transition rule for self-constructed property will include all the spending necessary to bring that integrated property to a state of readiness for its intended use, notwithstanding the fact that a limited amount of actual spending for and construction of some components may not have been formally approved or occurred until 1986.

Mr. PACKWOOD. Yes; the taxpayer's diaper machine is but one integrated property within the meaning of the ITC transition rule. The reconstruction of the diaper machines you have just described which involve many components will qualify in its entirety for transition relief provided that the spending satisfies the monetary standard set forth in the transition rule, assuming that otherwise the components would be treated as a single property.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur with an amendment.

The motion was agreed to.

Mr. PACKWOOD. Mr. President, I move to reconsider en bloc the vote on the motions on the House message on House Concurrent Resolution 395.

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

The PRESIDING OFFICER. The motion to lay on the table was agreed to.

JUDICIARY COMMITTEE HEARINGS ON IMPROPER INVESTIGATIVE AND PROSECUTORIAL PRACTICES

Mr. ARMSTRONG. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 514) to hold hearings in the Judiciary Committee on procedures for protecting citizens against improper investigative and prosecutorial practices.

Mr. ARMSTRONG. Mr. President, this resolution arises out of concerns which are shared by a number of Members on both sides of the aisle about episodes of unethical or illegal conduct by employees of the U.S. Government, including the Department of Justice and the IRS. Some of these episodes are just allegations and it remains to be seen whether or not they are well-founded and will in fact be proven. In other cases, this wrongdoing has been found by the courts.

I think there are several Members who want to speak. I have a fairly lengthy statement I want to make in a few minutes, but in the interest of those who want just to associate themselves with it and have brief statements, I would like to yield the floor so they may seek recognition.

Mr. BIDEN. Mr. President, I shall take just a moment. It is presumptuous of me to speak on behalf of the Judiciary Committee, but whether I or any Democrat has the responsibility for conducting these hearings or the committee composition stays as it is and the majority stays as it is and Senator THURMOND or Senator HATCH have that responsibility, I want to point out the one amendment to the

resolution that was made by the Senator from Delaware before it was sent to the desk.

□ 0020

The resolved clause says, "Resolved that the Committee on the Judiciary appropriately funded shall hold hearings," et cetera. I want to make it clear, in order to hold such series of hearings to investigate the allegations of wrongdoing requires additional funding for the Judiciary Committee primarily made up of investigators of some experience and consequence. And so if the Senate wishes the Judiciary Committee next year to hold hearings into the allegations arising out of matters that were before the Senate this year, I want to warn the Senate the committee will not be able to do that without additional funding, additional moneys to be able to do it.

I have no objection to the resolution. I agree with the purpose for which the Senator from Colorado submits it, but I want to make it clear, it is understood that in order to be able to get this job done, if the Senate chooses the job should be done, it will require additional moneys.

I thank my colleagues. I yield the floor.

Mr. ARMSTRONG. Mr. President, I would now like to take a few minutes to give the background of this resolution and how it comes to us in this form at this particular time.

During the course of the deliberations on the Claiborne matter, questions arose about the propriety of the strike force activities which led to the indictment and conviction and later the impeachment of Judge Claiborne. Some Members expressed concern of whether or not the prosecution in the Claiborne case was overbroad, overreaching, whether or not in fact it was overzealous to the point of being improper. As that question arose, a number of us who had similar concerns involving other cases began to express those concerns. I want to share one case which illustrates the depth and seriousness of this matter.

About 3 years ago a constituent of mine, one William Kilpatrick, called me and said, "Look, I am about to be indicted for something which is not a crime, but I am going to be indicted because the prosecutors want to put me out of business and even though what they charged me with is not a crime, it will have that effect."

Well, I looked into it with some skepticism for obvious reasons because everybody, I guess, who is about to be indicted or who is convicted or sent to jail says, "I am not guilty," or "It wasn't a crime," or "I didn't do it," or something of the kind.

Now, Mr. President, Mr. Kilpatrick was so insistent that finally I just had to at least listen to what he was trying to tell me, and in fact he submitted memoranda of law from his defense counsel and so on and persuaded me at length that there was at least some reason to be concerned about a miscarriage of justice. And so I sought legal advice; what could I do as a Senator to prevent this from happening if, in fact, everything that he said was absolutely right, which I was not prepared to believe at that point.

What I found out was there was not anything I could do and since that was the case, since I was not in a position to intervene and there was not any proper action I could take, I promised that I would follow the case and when it was disposed of I would continue to be interested.

Well, the case in due course came to trial and the court held—two courts in fact—that the 24 counts on which Mr. Kilpatrick was indicted and subsequently tried in fact did not constitute crimes under the Federal Code. And in fact Mr. Kilpatrick's business was ruined and he alleges that he spent some $6 million in defending himself.

Well, he got off. He did defend himself.

A national television program took interest in the Kilpatrick case and in the course of doing their story on it came around and asked me what I thought and what I intended to do.

I recounted basically what I have told the Senate, that I had promised to be interested, and in fact I promised that I would seek hearings of some sort to give Mr. Kilpatrick and others who might be similarly situated the opportunity to tell their side of the story.

After that appeared on a nationwide television network, I began to hear from people all over the country who had or claimed to have had similar experiences. I had no way to really cope with that, but I determined I would seek before the Finance Committee some hearings on a handful of cases where courts had actually looked into issues. I am not talking now about rumors, I am not talking about unsubstantiated accusations, or tax protestors, or people who think the whole idea of an income tax is unconstitutional. I am talking about cases where there had been an investigation, where a trial had been held and where courts handed down rulings.

One of these cases was the Kilpatrick case, and in that case the judge, Judge Fred Winner of the District Court of Colorado, not only exonerated Mr. Kilpatrick but he excoriated the Justice Department in the case in the following particulars. In a moment I am going to ask that that opinion be inserted in the RECORD but in essence what the court found in the Kilpatrick case was harassment, knowingly indicting Kilpatrick for offenses which did not constitute crimes, subverting the grand jury process, abusing the rights not only of Mr. Kilpatrick but of witnesses before the grand jury, abuse of pocket immunity, a general attitude of improper and unethical behavior, and a cavalier disregard for the rights of people who had business before the court.

That is the Kilpatrick case.

The second case which came to my attention involved the so-called omni case which I also will ask unanimous consent to insert in the RECORD. In that case, Mr. President, the issue is altering evidence. The Federal prosecutor admitted having done so. It so happens that this same Federal prosecutor was involved in a similar case 5 years earlier. And the question that occurs to me, which has not been satisfactorily answered to date, is how could a person do this, be involved in the same kind of an episode twice 5 years apart and what was the Justice Department management practice by which they sought to avoid such improper conduct and protect the rights of taxpayers and other citizens?

Mr. President, I am also concerned as a result of what I have learned about these cases about the independence of the grand jury system. We had an attorney representing a national association of attorneys, I believe it was the trial lawyers, who testified that he had often heard prosecutors make statements such as the following about grand juries: "I could get a grand jury to indict a ham sandwich." The indication being—this is something we have discussed with Judge Winner, with other attorneys, and others who are far more knowledgeable than I—that perhaps the grand jury system is not functioning in its intended way.

Mr. President, I am not sure what the outcome of this investigation by the Judiciary Committee will be, but I will tell you this:

In the hearings which Senator GRASSLEY and I held by the Finance Committee, the Department of Justice was not responsive to our concerns. They were not forthcoming. They did not give me the impression that they wished to be cooperative. And so I hope that if the Senate passes this resolution, as I expect we are going to, the Judiciary Committee will employ the kind of investigators and legal counsel that will enable them to bring all the facts to light and, if necessary, subpoena people from the Justice Department, the IRS, or elsewhere. So I think it is important that we know what is going on, what steps may be necessary, if any, to be sure that the rights of taxpayers and other citizens are properly protected.

Mr. President, that is what this is all about. I only want to close by saying that while I am concerned, I would not want anything I have said to constitute a blanket indictment. I am convinced that there are a few bad apples

in any barrel and the problems which have come to my attention may not be general in nature and scope, they may not be representative of the IRS or the Justice Department, and indeed I believe that is unlikely, but I think it is important that we know for sure. I think it is tremendously important that the Senate assure itself that the business of the Justice Department and the IRS is managed in a way that there will not be repetition of these events and the rights of taxpayers and other citizens are protected.

Mr. President, I do ask unanimous consent to insert this material in the RECORD and then yield and look forward with interest to what others may have to say.

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

UNITED STATES OF AMERICA, PLAINTIFF,

v.

WILLIAM A. KILPATRICK, DECLAN J. O'DONNELL, JOHN PETTINGILL, SHEILA C. LERNER, MICHAEL L. ALBERGA, C.S. GILL, C.M. SMITH, BANK OF NOVA SCOTIA, DEFENDANTS.

Crim. No. 82-CR-222

United States District Court, D. Colorado.

Sept. 24, 1984

Defendants were charged with conspiracy, mail fraud, and tax fraud, and one defendant with obstruction of justice. The United States District Court for the District of Colorado dismissed all except one count, and the Government appealed. The Court of Appeals, after briefing but before oral argument, partially remanded case for determination of whether prosecutorial misconduct and irregularities in grand jury process constituted additional grounds for dismissal. Before and immediately after the partial remand, the District Court, 575 F.Supp 325, Fred M. Winner, Senior District Judge, ordered that the Government provide defendant with copies of transcripts of all grand jury proceedings. On remand, the District Court, Kane, J., held that indictment had to be dismissed because of totality of circumstances, which included numerous violation of federal criminal rule pertaining to grand juries, violations of statutory witness immunity sections, violations of the Fifth and Sixth Amendments, knowing presentation of misinformation to the grand jury and mistreatment of witnesses.

Indictment dismissed.

1. Grand Jury ⚖23

Prosecutor's description to grand jury of role of "grand jury agent" in connection with office of "agent of the grand jury" created for Internal Revenue Service special agents misled grand jury, which was consistently reminded of agents' uniquely created and described role and urged to rely on special agents as their "agents," as to appropriate role of IRS agents in investigation in violation of criminal rule relating to grand juries, especially since agents did not view their role and conduct their investigation as agents of independent unbiased grand jury. Fed.Rules Cr.Proc.Rule 6, 18 U.S.C.A.

2. Grand Jury ⚖42

Responsibility and decision-making authority that criminal rule relating to grand juries vests in government attorneys was relinquished to and exercised by Internal Revenue Service, which undertook policy of determining whether and to whom disclosure of confidential grand jury material would be made and whether notifications of disclosure would be made. Fed.Rules Cr. Proc.Rule 6(e), 18 U.S.C.A.

3. Grand Jury ⚖41

Disclosure of grand jury information is only one of forbidden purposes and it is equally improper to manipulate grand jury investigation to obtain evidence for eventual civil use by the Internal Revenue Service. Fed.Rules CR.Proc.Rule 6(e), (e)(3), 18 U.S.C.A.

4. Grand Jury ⚖41

Government's publicizing of names of individuals and entities that were being in vestigated as well as nature of grand jury's inquiry breached grand jury rule's imposition upon government attorneys of obligation to secure grand jury information from improper disclosure. Fed.Rules Cr.Proc.Rule 6(e), 18 U.S.C.A.

5. Grand Jury ⚖41

Government's imposition of unauthorized secrecy obligations upon two witnesses, in order to prevent suspects from determining nature and extent of any communication that might have been revealed and to foreclose challenge to testimony based upon applicable privilege, violated a grand jury rule. Fed.Rules Cr.Proc.Rule 6(e)(2), 18 U.S.C.A.

6. Grand Jury ⚖36

General instructions, months prior, that grand jurors not draw inferences from individual's invocation of privilege against self-incrimination cannot correct practice of calling witnesses only to have them invoke their Fifth amendment privilege before the grand jury. U.S.C.A. Const.Amend. 5.

7. Grand Jury ⚖1

Most important function of grand jury is to stand between government agents and suspect as unbiased evaluator of the evidence.

8. Grand Jury ⚖39
Indictment and Information ⚖144.1(2)

Events which occurred in grand jury room while special agents assigned by Internal Revenue Service to assist prosecutors were present as "agents" of the grand jury and not under oath as witnesses under examination violated grand jury rule provision concerning who may be present, before grand jury and required dismissal of indictment charging conspiracy, mail fraud, tax fraud and obstruction of justice. Fed.Rules Cr.Proc.Rule 6(d), 18 U.S.C.A.

9. Indictment and Information ⚖144.1(2)

When grand jury provisions concerning secrecy is violated recklessly, and systematically dismissal of indictment is appropriate; when knowing violations of rule prejudice and embarrass targets whose identities the government reveals, contempt remedy is not always wholly adequate and under those circumstances it is not necessary for defendant to show that he has been prejudiced by violations. Fed.Rules Cr.Proc.Rule 6(e) 18 U.S.C.A.

10. Indictment and Information ⚖144.1(2)

Violations of grand jury secrecy requirments and direction to witnesses not to disclose fact or substance of their grand jury testimony based on prosecutors' relinquishment to Internal Revenue Service of their responsibility to determine persons to whom disclosure would be made, and IRS's failure to provide mandated prompt notification of disclosure and improper manipulation of secret material to obtain information and data for use during civil litigation required dismissal of indictment charging conspiracy, mail fraud, tax fraud and obstruction of justice. Fed.Rules Cr.Proc.Rule 6(e), (e) (2, 3), 18 U.S.C.A.

11. Witnesses ⚖304(1)

Practice of bestowing informal or pocket immunity through letters of assurance rather than following congressionally authorized procedure for conferring grants of immunity is illegal; when granting immunity, Deparment of Justice must comply with statutory requirements. 18 U.S.C.A. §§ 6002, 6003.

12. Indictment and Information ⚖10.1(4)
Witnesses ⚖304(1)

Prosecutors' repeated use of letters of assurance or so called "pocket immunity" for grand jury witnesses violated applicable witness immunity statutes and tainted grand jury indictment with its illegality. 18 U.S.C.A. §§ 6002, 6003.

13. Indictment and Information ⚖144.1(2)

Calling of seven witnesses before grand jury to take advantage of impermissible inferences that arose from their invocation of privilege against self-incrimination did not require dismissal of indictment per se but a factor to be considered in determining whether grand jury had been overreached or usurped. U.S.C.A. Const. Amend. 5.

14. Grand Jury ⚖36.4(2)

Improper efforts to prejudice defendants by impermissible inferences from seven witnesses' assertions of their privilege against self-incrimination was compounded by questioning before grand jury concerning payment of witnesses' legal fees, since no legitimate purpose for such questioning exists. U.S.C.A. Const. Amend. 5.

15. Grand Jury ⚖36.8

Mischaracterization of testimony before grand jury and unidentified use of questionable hearsay information with regard to vital issues intrudes upon independent role of grand jury particularly where misrepresentations could not be expected to be readily apparent to grand jury and relate to material issues in prosecution.

16. Criminal Law ⚖662.1

Guarantees of Sixth Amendment apply to corporate defendants with same force as to individual defendants. U.S.C.A. Const. Amend. 6.

17. Indictment and Information ⚖144.1(2)

Dismissal of indictment was inappropriate remedy for *Massiah* violations as result of interrogations of bank employees in absence of counsel where bank's counsel performed ably and adequately throughout litigation and no prejudice was demonstrated, but *Massiah* violations entered into qualitative assessments of prosecutors' and grand jury's conduct in determining whether indictment should be dismissed based on totality of the circumstances.

18. Indictment and Information ⚖144.1(2)

Totality of circumstances concerning grand jury investigation, from inception of 20-month grand jury investigation when prosecutors divined office of "agent of the grand jury" on Internal Revenue Service agents through time agents' improper "summaries" were presented shortly before indictment was returned, usurped indicting grand jury and required dismissal of indictment charging conspiracy, mail and tax fraud, and obstruction of justice. 18

U.S.C.A. §§ 2, 371, 1341; Fed. Rules Cr. Proc. Rule 6, 18 U.S.C.A.

Charles Alexander, Trial Atty., U.S. Dept. of Justice, Tax Div., Washington, D.C., and Robert N. Miller U.S. Atty., Linda S. Surbaugh, Asst. U.S. Atty., Denver, Colo., for U.S.A.

William C. Waller, Richard K. Rufner, Wagner & Waller, P.C., Engewood, Colo., for Kilpatrick.

James L. Treece, Littleton, Colo., for O'Donnell.

David L. Hiller, Dubosky & Hiller, Denver, Colo., for John Pettingill.

Thomas French, Dill, Dill & McAllister, Denver, Colo., for Lerner.

Donald E. Van Koughnet, Naples Fla., for Alberga & Gill.

C.M. Smith, No Appearance.

James E. Nesland Ireland, Stapleton & Pryor, Denver, Colo., and Robert J. Anello, Obermaier, Morvillo & Abramovitz, New York, for Bank of Nova Scotia.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Kane, District Judge.

PROCEDURAL BACKGROUND

After a twenty month investigation conducted before two successive grand juries, the instant proceeding was commenced on September 30, 1982 by the filing of a twenty-seven count indictment chargin seven individuals and The Bank of Nova Scotia with conspiracy, mail fraud and tax fraud and also charging William A. Kilpatrick with obstruction of justice (Count 27). The bank was charged in ten counts with conspiracy to defraud (18 U.S.C. § 371) (Count 1) and aiding and abetting a mail fraud (18 U.S.C. § 1341 and § 2) Counts 13 through 21).

On February 21, 1983, I dismissed the first twenty-six counts of the indictment for failure to charge a crime and as improperly pleaded. Additionally, upon separate motion by the bank, I dismissed the charges in which the bank was named upon the ground that the indictment failed to allege that the bank or any of its representatives had the requisite knowledge and intent to commit the crimes charged. The government appealed the dismissals.

On August 8, 1983, after briefing but before oral argument, the Tenth Circuit entered an order partially remanding the case to me so that all defendants could participate in hearings to determine whether prosecutorial misconduct and irregularities in the grand jury process constituted additional grounds for dismissal.

Before and immediately after the partial remand by the Tenth Circuit, the Honorable Fred M. Winner, Senior United States District Judge, presided over post-trial motions hearings following a guilty verdict against Mr. Kilpatrick on Count 27. On August 25, 1983, at about the time of his retirement from the bench, Judge Winner issued a memorandum decision which, among other things, summarized the status of the hearings which were being reassigned to me. Further, Judge Winner ordered that the government provide defendants with copies of transcripts of all proceedings that occurred before the grand juries. After some bizarre episodes of procedural novelty, Judge Winner's opinion was finally published. *See United States v. Kilpatrick*, 575 F. Supp. 325 (1983). The instant Findings of Fact, Conclusions of Law and Order must be read in conjunction with Judge Winner's opinion.

The government attorneys failed to provide defendants with complete transcriptions as ordered. They apparently overlooked, and did not transcribe, dozens of proceedings before the grand jury. The latter proceedings—which converted into hundreds of pages of transcript and, more significantly, disclosed clear violations of Rule 6—were not produced until the defense detected the lack of compliance with Judge Winner's order. Even now, the government remains unable to provide transcripts of all the proceedings and was unable to produce a single Rule 6(e) order (which the government attorneys testified they obtained) authorizing several major disclosures of grand jury matters. The government asserts that it had turned over such transcripts as could be had as soon as they were received from the court reporter. Such, in my view, does not excuse the failure to produce complete and accurate transcripts. If the assertion minimizes the inference of dissimulation, it exacerbates stronger ones of confusion and indifference.

FACTS ESTABLISHED BY THE RECORD [1]

A. Grand Jury Agents

[1] Despite detailed instructions from the impaneling court that the grand jury should maintain its independence and not develop into a "prosecutor's agent," shortly after both grand juries involved in the investigation leading to the instant indictment were sworn, the prosecutors created the office of "agent of the grand jury" for Messrs. Mendrop and Raybin, Special Agents assigned by the IRS to assist the prosecutors.[2] Several months later an IRS agent assigned to the civil division and who the prosecutors relied upon as an expert was also sworn in as an "agent of the grand jury." G.J. Tr. Schneider, May 3, 1982, 1:34 p.m. at pp. 2-3. The prosecutors divined the office of "grand jury agent" by personally administering oaths before the grand jury to Raybin, Mendrop and Schneider.[3] The government concedes that the prosecutors possessed no authority to administer such oaths. Indeed, the prosecutor who administered the oaths now concedes he created the oath and was "shooting from the hip" when he did so. K.Tr. 501.

The government argues that this event should be viewed as a technical mislabeling of no great import. It is, however, more than a misnomer.

First, the prosecutor's description to the grand jury of the role of a "grand jury agent" clearly misled the grand jury as to the appropriate role of the IRS agents in the proceedings. *See* Winner opinion, 575 F.Supp. at 329. As conceded by the prosecutor, there is simply no basis for his description to the grand jury of the role of grand jury agents.[4] K.Tr.501.

Second, the grand jury was consistently reminded of the agents' uniquely created and described role and urged to rely upon the IRS special agents as their "agents." Thus, on many occasions when Raybin and Mendrop appeared as witnesses the government attorney reiterated that they were appearing as "agents of the grand jury." [5] *See e.g.*, G.J. Tr. Mendrop, August 4, 1981, 9:25 a.m., at p. 2, August 5, 1981, 4:04 p.m., at p. 2, September 29, 1982, 9:32 a.m., at p. 2; G.J. Tr. Raybin, July 8, 1981, 9:11 a.m., at p. 5, March 3, 1982, 1:19 p.m., at p. 2, September 29, 1982, 2:32 p.m., at p. 2. Further, the government attorneys assigned special importance to identifying the IRS agents with the grand jury. When conducting interviews in connection with the investigation, Raybin and Mendrop were directed by the prosecutor to inform witnesses that they were "assisting a grand jury investigation in the Judicial District of Colorado." K.Tr. 619; *see also* G.J. Tr. Mendrop, August 5, 1981, 4:04 p.m., at p. 2; G.J. Tr. Raybin, July 8, 1981, 9:11 a.m., at p. 5, September 29, 1982, 2:32 p.m., at p. 2.[6]

Third, contrary to the role of the IRS agents described to the grand jury by the prosecutors, Mendrop and Raybin *did not* view their role and conduct their investigation as agents of an independent, unbiased grand jury. Rather, they viewed their role as agents of the Department of Justice, not the grand jury. When asked if his function as an agent of the grand jury was to assist the grand jury, Raybin testified:

A: My duties were designed to assist the Department of Justice in its investigation.

K.Tr. 232.

Mendrop similarly interpreted his role as agent of the grand jury to be "primarily" to assist the prosecutors;

Q: Mr. Mendrop, who were you really assisting in this matter during the grand jury investigation?

A: Well, *primarily, I was assisting the attorneys for the government* and indirectly I'm sure that I must have been assisting the grand jury through the work that I was doing for the investigation that they were, that they had under consideration.

Q: Well, in fact, you directly represented to the grand jury that you were assisting them, did you not, sir?

A: I'm not sure how you mean that.

Q: In fact, you represented to the grand jury that you were their agent and Mr. Snyder also represented to the grand jury that you were their agent; is that correct, sir?

A: I believe those words were used, yes, sir.

K.Tr. 401-02 (emphasis supplied).

Ironically, the government attorneys who created the grand jury agents and described their role are confused themselves as to whether the "agents" roles should be considered aligned with that of independent grand jurors or the prosecutors.[7] K.Tr. 534-35; 1126.

Fourth, the government attorneys used the "grand jury agents" to do more than assist the attorneys in the investigation. They used them to summarize evidence in front of the grand jury. On the first day that the second grand jury convened, after his pseudo-investiture as a grand jury agent, Raybin summarized the investigation so far conducted, explained tax shelters to the jury, and opined that the circular financing utilized in the tax shelters under investigation was illegal. *See* G.J.Tr. Raybin, September 29, 1982, 2:32 p.m.; Mendrop, September 29, 1982, 9:32 a.m.; Raybin, September 30, 1982, 10:40 a.m. Similar kinds of substantive testimony were given by Raybin on September 9, 1981, and March 3, 1982. *See* G.J. Tr. Raybin, September 9, 1982, 10:02 a.m.; March 3, 1982, 1:19 p.m. On September 29 and 30, 1982, when the government attorneys, and apparently the "agents of the grand jury," were seeking the indictment, Raybin and Mendrop purported to summarize the evidence for the grand jury to support the 27 count indictment presented by the government attorneys. On September 30, 1982, Schneidera appeared as "the expert" in the field of tax shelters to summarize the legal theory. G.J. Tr. Schneider, September 30, 1982, 9:22 a.m. These summaries contained numerous inaccuracies and

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Footnotes at end of article.

were misleading in several respects. Although the government attorneys were quick to inform the grand jury of their role as advocates, the grand jurors were never informed that their "agents" were "primarily" representing the interests of the Department of Justice attorneys.

Finally, the prosecutors' creation and use of grand jury agents resulted in many other abuses and Rule 6 violations. Most notably the agents made many joint appearances before the grand jury, without the presence of government counsel, and read transcripts to the jurors. K.TR. 483-87; 636-39; 691-92; 707-12.

Raybin and Mendrop appeared before the second grand jury to give testimony regarding the investigation. Each time they appeared alone, were sworn, and were examined by the government attorneys. When they appeared to read testimony from the first grand jury to the second grand jury, they appeared together, were apparently not sworn, and were not examined by government attorneys because the latter were usually absent. It is not clear in what capacity they were appearing to read testimony. The conclusion was exacerbated by two other IRS agents—Burke and Shea—also appearing together to read testimony to the second grand jury. In what capacity they were appearing is even less evident since they were not made "grand jury agents" and the record of their appearance does not support a finding that they were witnesses.

The transcripts of the agents' simultaneous appearances establish that they were not present as witnesses. They appear not to have been sworn; they appeared together; they were not examined; and they were mostly unaccompanied by government attorneys. The testimony of the prosecutors and agents that the agents were sworn, even if evidenced by a transcript, would not authorize their simultaneous appearances under Rule 6(d). The recollection of the prosecutors and agents that the oath was administered is challenged by the almost dozen transcripts showing the oath was not administered on any single occasion where the agents appeared together.

The record reveals that the agents' many appearances before the second grand jury, whether sworn or unsworn, were largely unsupervised. The agents were frequently unattended by government attorneys and, in some instances, may have convened the grand jury sessions without government counsel in order to read testimony. K.Tr. 483-87; 636-39; 691-92; 707-12.

In other instances the transcripts do not make clear precisely when the agents entered or left the grand jury room. It appears that they many have been present while the prosecutors engaged in coloquy with grand jurors. G.J. Tr. Remarks of Prosecutor, February 2, 1982, 1:07 p.m. at p. 18; Remarks of Prosecutor, February 4, 1982, 3:30 p.m. at pp. 2-3; Remarks of Prosecutor, April 6, 1982, 9:08 a.m. at p. 8.

Both prosecutors acknowledge that the agents *"were not* under examination" when they read to the grand jury. K.Tr. 485 (emphasis supplied); *see also* K.Tr. 707. The conclusion that they were not under examination is inescapable because no attorney was present to conduct an examination. Further, the grand jurors were under instructions *not* to question the agents during such appearances. K.Tr. 481-87.

B. Improper Disclosure, Improper Use and Secrecy Violations

[2] During the course of the grand jury investigation, the government representatives systematically disregarded the strictures of Rule 6(e). The record demonstrates that the responsibility and decision making authority that Rule 6(e) vests in government attorneys was relinquished to and exercised by the Internal Revenue Service. Members of that agency undertook a policy of determining whether and to whom disclosure of confidential material would be made and whether notification of such disclosure would be made pursuant to the Federal Rules. Moreover, the evidence suggests that information was disclosed to other IRS agents for use in civil cases. Grand jury secrecy was repeatedly breached by those with a duty to remain silent and secrecy obligations were imposed upon others of whom the law does not require confidentiality.

(1) Disclosure

The disclosure notices filed pursuant to Rule 6(e)(3)(B) indicate that numerous individuals at all levels of the Internal Revenue Service, many of whom were assigned from the civil division of that agency, were permitted access to grand jury material. DX Q; *see* K.Tr. 26, 29-36, 40, 43, 50. The hearings have demonstrated that numerous other IRS personnel (all of whom were civil personnel), were given access to grand jury material, that these people were never identified on a disclosure notice and that they remain unknown even now.

That the decision as to which individuals should be privy to the grand jury material was frequently made by the IRS, rather than by the prosecutors, was admitted by the agents.[8] K.Tr. 241. That it was the norm is confirmed by several additional facts. Disclosure was made liberally and often before obtaining attorney approval, an act the prosecutors acknowledged violates Department of Justice rules. K.Tr. 57-69; 754. Notice of such disclosure was not made "promptly" as required by Rule 6(e). The decision as to which names to include on the disclosure lists was largely left up to the IRS agents. The integrity of the lists themselves, as well as the decisions to make disclosure to the listed personnel, is lacking. The government attorneys admitted that they were unable to identify a substantial number of those named on the disclosure notices. K.Tr. 498-99. Further, these notices were frequently filed by attorneys having little relationship to the investigation. *See* K.Tr. 15-67; DX Q. The IRS agents were likewise unable to identify many of the persons on the list or why they were listed. K.Tr. 14-22, 30, 36-38, 39, 43-44, 56, 60-61, 65, 69, 106-09.

Perhaps the best illustration of the insouciance with which grand jury disclosures were made and recorded appears in the circumstances surrounding the post-indictment notice. The agents were directed by the government attorneys to pick their brains and prepare a catch-all disclosure notice listing any individuals whom they could recall may have had access to secret grand jury materials but who were not listed as required. Thus, on October 20, 1982, approximately three weeks after the indictment was returned, a final notice of disclosure adding sixteen names of IRS employees was filed. K.Tr. 57-59.

The agents' post hoc attempt to determine to whom disclosure had been made in order to supplement the disclosure notices was not entirely successful. Numerous persons with access to grand jury material were forgotten and never included on the notices. The discovery of these forgotten people occurred only because, during the hearings, government representatives testified at length concerning two computer programs compiled from grand jury documents, ostensibly for purposes of assisting in the grand jury's investigation. *See, e.g.,* K.Tr. 71-79, 87-91, 157-61. The performance of this function was riddled with Rule 6(e) violations.

Although the prosecutors testified that a court order was obtained permitting the transfer of the derivative grand jury information for that purpose to Lowry Air Force Base, the government was unable to produce such an order at the hearings. K.Tr. 494-9; 517; 755; 807. The prosecutors acknowledge that no order was obtained permitting transfer of similar information to Dallas and Utah, a failure caused by their unawareness even at the hearing that the IRS agents had taken it upon themselves to arrange for the computer work to be done at those locations and because the prosecutor left the "details" of the computer work to the IRS. K.Tr. 87-88, 494-96, 523, 807.

Many IRS employees with access to information used in compiling the computer program were eventually listed on the disclosure notices. *See* K.Tr. 34, 40, 43, 61, 72, 76, 78. Just as many, however, apparently never found their way onto the lists. Although the computer programs were created by computer "groups" in Dallas and Ogden (K.Tr. 74-76), the Disclosure Notices list few, if any, of the computer personnel from Utah or Texas. The indifference of the government attorneys is further revealed by the fact that a student clerk assisting the prosecutors was not listed as having had access to grand jury material although it was revealed at these hearings that she did. K.Tr. 1085-87.

Whatever instructions there were, if any, concerning disclosure and use of the grand jury material as apparently passed on by the staff of the Internal Revenue Service itself and not by the Department of Justice attorneys. Little or no instruction concerning the strictures of Rule 6(e) is included in the training of many of those IRS employees who has access to the information. K.Tr. 155.

Further, when the IRS agents acting as "agents of the grand jury" undertook the task of explaining the secrecy provisions to other employees of the IRS, it is clear that the information was of little practical use. For example, one such agent testified that, although he informed the supervisor of the computer program that he should disclose information only to one whose name was listed on the disclosure notices, only a few of the names on those lists were revealed to the supervisor. K.Tr. 155.

(2) Improper Use

The free rein given the IRS by the Department of Justice attorneys in this investigation and in the use and disclosure of grand jury material presents a serious possibility that the extraordinary powers of the grand jury were manipulated in order to obtain evidence useful in later civil litigation. The record reveal that such a danger was real and that substantial investigative activities disclosures were made for purposes other than "to assist an attorney for the government in the performance of [his] duty to enforce federal criminal law." *See* Rule 6(e)(3), Fed. R. Crim. P.

[3] IRS institutional intent to take advantage of the grand jury investigation in civil audits was confirmed by Richard Gullion, a civil IRS agent assigned to the examination division in Denver, who freely acknowledged that the IRS hoped to take advantage of

the facts developed by criminal investigation after conclusion of the criminal proceedings. W.Tr. 836-38. The government, in resisting this claim, has asserted that no improper disclosure to IRS civil agents has occurred. K.Tr. 150-51, 413-14, 416-17, 645-46. Disclosure of only one of the forbidden purposes. It is equally improper to manipulate the grand jury investigation to obtain evidence for eventual civil use by the IRS. *United States v. Sells Engineering, Inc.*, 463 U.S. 418, 103 S. Ct. 3133, 77 L. Ed. 2d 743 (1983). As is discussed below, the record confirms that the grand jury's extraordinary powers and resources were, in part, initiated and channeled for just such a purpose.[9]

The government's investigation of defendants originated at the IRS in 1979. From August, 1979 to July, 1980, the IRS conducted a joint civil and criminal investigation. In July, 1980, the IRS referred its investigation to the Tax Division of the Department of Justice with the recommendation that a grand jury investigation be conducted because its administrative processes were potentially ineffective. DX M.

The agents' testimony that they abandoned all civil interest when the grand jury commenced reminds me of Joel Chandler Harris' story about Bre'r Rabbit asking the fox not to throw him in the briar patch. At least one witness believed that the government was anxious to build civil cases through the use of grand jury information. W.Tr. 73-74. Several facts confirm that the IRS agents did not abandon entirely IRS civil interest in recouping taxes.

For example, agents of the IRS interviewed numerous tax shelter investors. The interviewees were threatened that if they did not speak voluntarily a grand jury subpoena might be obtained. Thus, they were informed that the interview was being conducted in lieu of a grand jury appearance. K.Tr. 191. In connection with these investor interviews the IRS agents assisted in the creation of "Investor Questionnaires." These questionnaires instructed interviewers to ask numerous questions concerning the tax shelters. Several of the questions involved investor motives, a subject of no conceivable relevance to a criminal investigation of the targets but highly relevant in a civil audit of the investor. DX W; G.J. Tr. Raybin, January 6, 1981 at pp. 4-7. That this interviewing program had no criminal investigation purpose is demonstrated by the fact that no investor, let alone any investors interviewed, appeared before the grand jury. None of the interviews, nor the results of the interviews, was presented to the grand jury. K. T. 149. The government offered no explanation at the hearings of why and for what purpose such interviews were conducted.

Civil IRS employees, armed with grand jury information, were brought into the investigation to prepare audits of the tax shelter investors. These audits, like the interviews, were not presented to the grand jury and no reasons or explanations for their preparation were offered at the hearings. K. Tr. 149.

IRS activity since the return of the indictment confirms its intent to utilize the grand jury investigation and information for civil litigation purposes. Since return of the indictment the IRS has issued civil audit letters to the investors interviewed, notifying them that their returns were being examined. The letter read in part "[a] report will be issued in the near future containing a position consistent with *facts* as presented in the Federal Grand Jury Indictment of September 30, 1982, for the United States District Court for the District of Colorado." DX L (emphasis supplied); *see also* K. Tr. 176-78, 344-48.

Finally, several statements attributed to the prosecutors by witnesses during the course of the investigation confirm that the grand jury proceedings, at least in part, were conducted for other than legitimate federal criminal purposes. Richard Birchall, a former attorney with the Department of Justice, testified that "[t]here was a vengeance to the manner in which [the prosecutor] conducted the investigation." W.Tr. 69. Mr. Birchall also reported that on one occasion the prosecutor indicated that even if he were unsuccessful on the merits, the defense would be excessively expensive to the defendants. W. Tr. 133.

A similar improper motive was testified to by Donald Morrison a witness who made numerous grand jury appearances. With regard to a proposed business activity of some of the defendants, Morrison testified that a prosecutor indicated that they were going to "shoot in the [the] ass [the] coal deal." W. Tr. 192. These statements were vigorously denied by the prosecutors. I am in no position to resolve the obvious conflict in the testimony by assessing the credibility of witnesses appearing before Judge Winner with those appearing before me. Thus, I do not find as a fact that the statements were actually made. I describe them here because they illustrate the infusion of hostility and vitriol which permeates this entire case—a condition which I attribute to the frequently rude, consistently arrogant, and occasionally obnoxious conduct of some of the government attorneys assigned to the prosecution of this case.[10]

(3) Secrecy Violations

[4] Several instances demonstrate blatant disregard for the time-honored tradition of grand jury secrecy. As discussed below, such violations were utilized by the government, not only to gain what was certainly perceived as an advantage in connection with the intended prosecution but were also apparently part of an improper attempt to embarass the targets and hinder the ongoing operation of their business during the course of the grand jury investigation.

Throughout the course of the grand jury investigation the government widely publicized the names of the individuals and entities that were being investigated as well as the nature of the grand jury's inquiry. The dissemination of information concerning the proceedings before the grand jury was undertaken without the circumspection normally afforded such disclosure by government attorneys. Such disclosures were particularly egregious insofar as the recipients of the information were known customers and business associates of the targets.

With the knowledge of Department of Justice attorneys, numerous letters were sent out identifying the targets, the related entities and the nature of the criminal investigation. The letters were sent to individuals beyond the subpoena power of the grand jury and with whom it was understood the targets had ongoing business and professional relationships. The letters, which were written on the letterhead of the United States Attorney, but signed by supposed agents of the grand jury, were not only misleading in terms of the capacity in which they were sent, but also clearly posed a danger of adversely affecting the acknowledged business and professional relationships. K. Tr. 121-25, 597-98, 969-75; DX V-1 through V-15; DX Y.

The text of the letters read in part as follows:

The *United States Department of Justice is conducting a Grand Jury investigation of the business activities of William A. Kilpatrick, Declan J. O'Donnell, John Pettingill and Sheila C. Lerner* for the years 1977 through 1980. The Grand Jury is attempting to determine whether these individuals, through United Financial Operations, Inc., P & J Coal Company, Inc., Marlborough Investments, Ltd., International Fuel Development Corp., Ltd., and International Block Construction Company, Ltd., have committed violations of Title 18 and Title 26 of the United States Code.

The Grand Jury has obtained information which indicates that you have had and/or currently do have a business relationship with one or more of the individuals and/or entities listed above. It has been determined that your testimony will be helpful in resolving questions which still face the Grand Jury. Subsequently, the United States Department of Justice cordially invites you to appear and testify before the Federal Grand Jury in Denver, Colorado (U.S.A.) at your convenience. Transportation, lodging and meals will be arranged for and paid by the United States Department of Justice.

* * * * *

We look forward to your response,
Sincerely yours,
STEPHEN L. SNYDER
Trial Attorney
Criminal Section
Tax Division
By: PAUL E. RAYBIN
Special Agent

(Emphasis supplied.)

The impropriety of publicly identifying targets in these letters was readily apparent to Judge Winner:

[T]he identity of the persons and the transactions which were under grand jury scrutiny shouldn't be disclosed to anyone by letter or otherwise, but these startling letters did precisely that.

575 F. Supp. at 334.

The prejudicial disclosure of the targets and the nature of the grand jury's investigation, however, was not limited to these "startling letters." During the course of the investigation, the "agents of the grand jury," and other employees of the IRS, ostensibly in connection with the ongoing criminal investigation, interviewed numerous investors in the tax shelters. Those investors, too, were informed of the nature of the grand jury's inquiry and the names of those being investigated. K. Tr. 93-94.

Rule 6(e) imposes upon government attorneys the obligation to secure grand jury information from improper disclosures. That obligation was breached several times. The disclosure of secret grand jury material was not limited to identification of the targets of the investigation. Grand jury information was also shared with Richard Birchall a witness and one-time potential target.[11] Details of the investigation were revealed to Birchall during a meeting in which one of the prosecutors attempted to persuade him to assist in the government's investigation by suggesting that the grand jury had received evidence warranting his consideration as a target. W. Tr. 44-52, 983-84; 575 F. Supp. at 332-33.

Moreover, Birchall, who apparently was led to believe that he might face criminal exposure, was left unattended in a room housing grand jury material. He admittedly utilized the opportunity to rummage

through the grand jury documents. 575 F.Supp. at 332-33. In further disregard of the secrecy provisions of Rule 6(e) another witness, Bernard Bailor noted that the room in which the grand jury material was housed was generally left open. W. Tr. 1130-31. Judge Winner commented that he found Mr. Bailor's testimony to be knowledgeable and candid during the hearings. 575 F.Supp. at 338-43.

Whatever may be said as to the impropriety of Richard Birchall's rummaging through grand jury testimony and documents when he was left alone in the grand jury storage room, it does not excuse the government attorneys' impropriety in availing him of that opportunity. Before leaving him alone in the grand jury storage room they accuesed Birchall of making several extortion threats to O'Donnell, a target of the investigation. K.Tr. 377, 381, 422-23, 425-26. Birchall obviously took advantage of the opportunity improperly provided to him to search through the grand jury records and documents.

(4) Improper Imposition of Secrecy Obligations

[5] For what the record reveals was clearly an improper strategic purpose, secrecy obligations in clear violation of Rule 6(e)(2), Fed.R.Crim.P., were imposed upon two grand jury witnesses. On January 5, 1982, David H. Hoff and David R. Major appeared before the grand jury. When Hoff appeared separately before the grand jury he was advised:

Q: You are also aware that the proceedings of this Grand Jury are secret and that is covered by Rule 6 of the Federal Rules of Criminal Procedure, that is, any questions I put to you today, questions that the Grand Jury may have, any discussion we have in this room at your appearance, that your appearance should be kept secret by you; do you understand that?

A: Yes, sir, I do.

G.J.Tr. Hoff, January 5, 1982, 9:59 a.m., at p. 4. A similar directive was given to David R. Major, G.J.Tr. Major, January 5, 1982, 11:13 a.m., at p. 5.

These confessed violations of Rule 6(e) were neither innocent nor inadvertent. Rather, the record reveals the improper obligation to keep the information and fact of their appearances secret was imposed for a strategic purpose.

Both witnesses occupied positions as attorneys who had formerly represented Defendants Kilpatrick and O'Donnell in previous SEC proceedings involving the same tax shelters under investigation before the grand jury. *See* G.J.Tr. Remarks of Prosecutor, January 5, 1982, 9:09 a.m., at p. 8. The government attorney explained to the grand jury the purpose of calling them as follows:

The primary focus of our investigation involving the financing is the factual representations made concerning Marlborough Investments Limited, IFDC; we want to know what the lawyers were told by the principals, and what information they relayed to the parties.

G.J.Tr. Remarks of Prosecutor, January 5, 1982, 9:09 a.m., at p. 12. Thus, the government attorney imposed the unauthorized secrecy obligations upon these two witnesses to prevent defendants from determining the nature and extent of any such communication that might have been revealed and to foreclose a challenge to such testimony based upon an applicable privilege.

Such a conclusion is buttressed by the fact that the same government attorney examined four other witnesses that same day, several witnesses two days later on January 7, 1982, and approximately fifteen witnesses on other occasions. *None* of those witnesses were given the same directive. The prosecutors were fully cognizant that Rule 6(e) prohibits the imposition of secrecy obligations on grand jury witnesses.[12]

Indeed, during these hearings, the Department of Justice attorney involved acknowledged that at the time he imposed the improper obligations he was aware of the United States Attorneys' Manual provisions prohibiting the imposition of an obligation of secrecy upon a witness. Yet, although provided with ample opportunity, he was unable to offer any legitimate reason for his transgressions. K.Tr. 697-99.

C. Use of Pocket Immunity

During this investigation, Department of Justice attorneys ignored entirely the federal immunity statute (18 U.S.C. §§ 6001, *et seq.*) which prescribes the congressionally authorized procedure for conferring grants of immunity and, instead, secured testimony by engaging extensively in what I have previously described as the "damnable practice" of bestowing "informal immunity" through "letters of assurance." *United States v. Anderson*, 577 F.Supp. 223, 223[13] (D.Colo.1983). The testimony of 23 witnesses in this investigation was secured by means of such "immunity" conferred by Snyder and Blondin. K.Tr. 513. Not one witness was given statutory immunity.

The profligate issuance of such "letters of assurance" had its inception shortly after the investigation commenced, in a telephone call between one of the prosecutors and Bernard Bailor, Esq., who, with his firm, represented many of the witnesses who later received such letters. K.Tr. 476. Bailor explained that his clients would not testify voluntarily before the grand jury. In response, the prosecutor suggested that in lieu of statutory immunity he would be willing to issue letters of assurance. Mr. Bailor accepted the offer and at that point a procedure for issuing the so-called informal "immunity" was inaugurated. K.Tr. 476-77.

After reaching his agreement with Bailor, the prosecutor apparently consulted with senior assistant chief Edward Vellines of the Tax Division. According to the prosecutor, Vellines indicated that the prosecutor had the authority to issue such letters of assurance provided he abided by the instructions of a Department of Justice memorandum and the United States Attorneys Manual and provided further that the recipient was not a target of the investigation. K.Tr. 514-15; 602; 623.

Thereafter, the prosecutors undertook, without seeking specific approval from any superior, what was characterized as a "liberal" policy of distributing this type of informal immunity to witnesses. At no point was an effort made to obtain statutory immunity for any witness, nor was the United States Attorney's Office for the District of Colorado informed of the issuance of such letters though written on United States Attorney's stationery. K.Tr. 476-77, 720, 731-32; 575 F.Supp. 335-36; Remarks of Prosecutor, February 2, 1982 at 1:07 p.m. at p. 5-8; DX U-1-U-17.

No witness who testified pursuant to this form of informal "immunity" bestowed by the prosecutors indicated that he or she would have been less cooperative or unwilling to testify had he or she been granted statutory immunity. Rather, the government attorneys readily concede that they chose the method they did simply for the sake of expediency—to by-pass the review procedure established by Congress in the statutory scheme. K.Tr. 476, 721-22; 724-28. Among the vehicles for review avoided by the unauthorized method chosen here was the statistical compilation that Congress indicated as among its purposes for establishing the statutory procedure. Indeed, the government acknowledged that, unlike grants of statutory immunity on which central records are maintained, there is no realistic way for the Department of Justice to determine the number of letters of assurance executed. K.Tr. 729; 839. Despite what the prosecutor explains were his specific instructions, informal immunity was bestowed upon individuals once considered targets of the investigation (*i.e.*, John Jewell and Richard Bell). Moreover, one of the prosecutors admitted having conferred immunity upon an individual who it was later learned had failed to file tax returns for several years. K.Tr. 734-35; *see also* G.J.Tr. Kitrick, May 5, 1981, 10:36 a.m., at p. 3-4; Stephenson, April 6, 1981, 3:01 p.m., at p. 3-4, 575 F.Supp. at 335.

In their deliberate efforts to avoid the review process and the certainty that Congress intended in the granting of witness immunity, the prosecutors injected serious ambiguity in the critical area of witness credibility. Several facts demonstrate the seriousness of the ambiguity created by this unauthorized procedure.

Despite alleged explanations of letters of assurance,[14] the grand jurors whose job it was in this investigation to assess witness credibility were presented with conflicting descriptions of the effect of these letters upon the witnesses and, consequenlty upon the value to place upon their testimony. On some occasions, the witnesses were advised before the grand jury that the letters gave them "immunity" and that they had no Fifth Amendment privilege. *See, e.g.*, G.J.Tr. Stanley, April 6, 1981, 4:27 p.m., at p. 5; Stephenson, April 6, 1981, 3:01 p.m., at p. 4; Kitrick, May 5, 1981, 10:36 a.m., at p. 4; Miller, June 2, 1981, 9:28 a.m., at pp. 3-4. On other occasions, witnesses were advised that although they were testifying after receiving a letter of assurance, they retained their Fifth Amendment privilege and could refuse to testify. *See, e.g.*, G.J.Tr. Jewell, February 4, 1982, 1:19 p.m., at pp. 2-3; Caddell, February 4, 1982, 10:50 a.m., at p. 3; Folsom, April 6, 1982, 11:42 a.m., at p. 4; *see also*, G.J.Tr. Remarks of Prosecutor, February 2, 1982, 1:07 p.m. at pp. 5-8.

Moreover, the prosecutors' avoidance of statutory immunity in this investigation left every witness in the posture of testifying with the impression and fear that unless the witness' testimony pleased the government, the government might withdraw its assurances. That such a fear was more real than imagined was apparent to Judge Winner in his review of the events surrounding the grand jury appearance of Richard Bell, a witness who testified with a "Letter of Assurance."

Mr. Bell was represented by his borther, Malcolm, and attorney practicing in New York City, and a witness I found to be straight-forward, fair, convincing, and most generous to Mr. Snyder. Malcolm Bell succumbed to the carrot of pocket immunity for his brother, but, later he was told by Mr. Snyder that if Richard "testified for Mr. Kilpatrick, all bets were off." Maybe this meant that if Mr. Bell perjured himself he would be prosecuted for perjury, but if the immunity statute had been followed, the nagging question of the meaning of "all bets are off" wouldn't confront us.

575 F.Supp. 335.

The meaning of the admonition of the prosecutor was a "nagging question" to Malcolm Bell, who as an experienced attorney ultimately determined that the prosecutor must have meant that the deal was not withdrawn but that Richard Bell was subject to perjury. More significantly, however, Richard Bell, as would most lay witnesses, believed it meant the "Letter" would be withdrawn. T.Tr. 460-63.

D. Witness Innvocation of Privilege Against Self-Incrimination

The prosecutors pursued their course of distributing letters of assurance "quite liberally" until, in the words of one of them, it was decided "all good things come to an end." G.J.Tr. Remarks of Prosecutor February 2, 1982, 1:07 p.m. at p. 5. At that point they replaced the unauthorized procedure with the equally abusive and dubious practice of calling witnesses who had not been issued letters and having them invoke their Fifth Amendment privilege before the grand jury regarding the targets and the transactions under investigation; knowing in advance that they would do so. K.Tr. 515.

In all, seven witnesses were called to invoke their privilege in February and March, 1982. That the purpose was to prejudice the grand jury against the targets and the tax shelter transactions under investigation, and not to lay a statutory predicate for immunizing the witnesses (which the prosecutor never did) cannot be denied. First, the prosecutor who called the witnesses admitted that he did not do so to obtain congressionally authorized grants of immunity. K.Tr. 515. Second, the uniform questions posed to the witnesses evidence the intention to utilize the witnesses assertion to prejudice the grand jurors against the targets:

Q: Now, Mr. Drizin, if I would ask you any questions concerning any relationship you may or may not have had with William A. Kilpatrick, John Peddingill [sic], Shiela Lener or Declan J. O'Donnell or United Financial Operations, would you assert your right against self-incrimination on those questions?

A: Yes, sir.

G.J.Tr. Drizin, March 2, 1982, 9:29 a.m., at p. 4. Third, the prosecutor did not limit his questioning merely to have the witness invoke his Fifth Amendment privilege but rather questioned several of the witnesses to elicit that Kilpatrick's company, United Financial Operations, was paying their attorneys' fees, leaving the grand jury with the impression that their refusal to testify was being financed by the targets.[15] *See e.g.*, G.T.Tr. D'Amico, February 4, 1982, 12:35 p.m., at pp. 6-7.

[6] That the prosecutor's conduct in this regard (which occurred before the second of the two grand juries empanelled in connection with this investigation) was known to him to be improper and prejudicial is revealed by his statements to the first grand jury several months earlier:

Immediately all the witnesses I had subpoenaed today decided that they would not want to come in here and testify and they said they would assert their Fifth Amendment rights.

I could force them in here under their Fifth Amendment rights, but under the Department of Justice guidelines *I should not do that except in exceptional circumstances should I bring a person in here and have them assert their Fifth Amendment rights because it serves no purpose and it only serves to prejudice, and it can prejudice a layman.*

G.J.Tr. Remarks of Prosecutor, February 2, 1981, 9:40 a.m. at pp. 2-3 (emphasis supplied). Indeed, the prosecutor did to the second grand jury precisely what he told the first grand jury he could not and should not do. The only difference is that, when he did it anyway, he did not tell the grand jurors that he was doing it to them. General instructions, months prior, that jurors not draw inferences from an individual's invocation of the privilege against self incrimination cannot correct such corruptions of the grand jury process. G.J.Tr. Remarks of Prosecutor, July 8, 1981, 10:50 a.m. at p. 6; January 5, 1982, 9:09 a.m. at pp. 22-23.

E. Government Summaries of the Evidence

Although the investigation of the instant case covered almost two years, the transcripts reveal that the case against The Bank of Nova Scotia was, for the most part, presented on a single day, September 29, 1982, the day before the indictment was returned. It was done, moreover, almost exclusively by having Mendrop summarize the "evidence" against the bank. The government seeks to explain these summaries as nothing more than legitimate use of hearsay testimony by the grand jury. *See United States v. Roger*, 652 F.2d 972, 975 (1981)

During the course of the September 29, 1982 proceedings, the grand jurors expressed concern that The Bank of Nova Scotia was being singled out for prosecution while other banks that allegedly permitted similar banking activity were not being named as defendants. In response, the prosecutor suggested that the Bank of Nova Scotia was a more appropriate target because, unlike the other institutions involved, it was a large internationally known bank doing business in the United States and its prosecution could be expected to deter others. *See* G.J. Tr. Mendrop, September 29, 1982, 9:32 a.m., at p. 50-52. The prosecutor erroneously suggested that the "evidence" indicated that The Bank of Nova Scotia representatives were familiar with the operation of Kilpatrick's business and that the IRS was to be defrauded by virtue of the banking activity. *See* G.J. Tr. Remarks of Prosecutor, September 29, 1982, 8:52 a.m. at pp. 8, 13.

No evidence of the kind suggested by the prosecutor had been presented to the grand jury. The discussion of these points was heard for the first time during the testimony of Mendrop. Instead of being presented as a witness who was to present hearsay investigative information concerning the Bank's role, Mendrop was introduced to the grand jurors as one who was to "summarize" and "just walk through, one more time, and refresh your memory." *See* G.J. Tr. Remarks of Prosecutor, September 29, 1982, 8:52 a.m. at p. 5. Mendrop then proceeded to "summarize the evidence relating to each of the individuals involved" and "the evidence pertaining to The Bank of Nova Scotia." *See* G.J. Tr. Mendrop, September 29, 1982, 9:32 a.m., at pp. 40, 52, 64, 66, 72. on the vital issue of the bank's knowledge and intent, however, it is clear that Mendrop's testimony was both misleading and inaccurate. In particular, Memdrop purported to "summarize" in connection with the bank's role the testimony presented by three witnesses: Messrs. Walters Ros and Charles. An examination of the grand jury testimony, however, reveals that it was not a summary of the evidence before the grand jury. One of the witnesses whose testimony was "summarized" never appeared before either grand jury. The other two witnesses whose testimony was "summarized" did not give testimony even remotely resembling that supposedly. "summarized" by Mendrop. The grand jury was never informed of these mischaracterizations or of any alternative basis for Mendrop's summary.

The inaccurate "summaries" of the evidence before the grand jury concerning the role of The Bank of Nova Scotia was particularly abusive for several reasons:

(i) The misleading "summaries" were presented by an individual upon whom the grand jurors had been urged to rely as their "agent,"

(ii) The investigation spanned 20 months and two successive grand juries. Much of the testimony of the 27 witnesses who appeared before the first jury was read to the second grand jury in an improper and unsupervised manner,

(iii) The grand jurors had not previously focused on The Bank of Nova Scotia as a target since the bank was not mentioned as a target until the month the indictment was returned;

(iv) The reading of testimony from the first grand jury (which included the testimony of Ros and Charles) occurred early in the presentation of the case to the second grand jury. The grand jurors and the prosecutors frequently commented upon the monotony and difficulty of listening to the readings and, indeed, the grand jurors expressed confusion as to which transcripts had been read. *See, e.g.* G.J.Tr. Remarks of Prosecutor, November 4, 1981, 9:12 a.m. at p. 5; Remarks of Prosecutor, February 2, 1982, 1:07 p.m. at p. 20; and

(v) The improper summaries related to vital issues concerning the Bank's knowledge and intent. Unbeknown to the grand jurors, the government attorneys contemporaneously entertained serious doubts as to the accuracy of certain critical "facts" contained in the summaries.

In sum, the mischaracterizations reasonably could not have been expected to be picked up by the grand jurors and, undoubtedly, formed a substantial basis for the indictment against the bank. The examples of improper mischaracterizations of the evidence are detailed below.

(1) Mr. Waters

Asserting that he was discussing a "few of the pieces of evidence" and "the summary of the evidence pertaining to The Bank of Nova Scotia," Mendrop purported to summarize what the prosecutor characterized as the "evidence" provided by Waters about a trip supposedly made by defendant Monte Smith, the bank's Cayman Island branch manager, to Kilpatrick's offices in Denver. (Smith was vital as it is upon his activities that the bank has been claimed vicariously liable.) G.J.Tr. Mendrop, September 29, 1982, 9:32 a.m., at p. 36, 64, 65-72; *see also* G.J.Tr. Remarks of Prosecutor, September 29, 1982, 9:07 a.m., at p. 10. According to Mendrop and the prosecutor, this claimed trip by Monte Smith was important because it demonstrated that Smith was familiar with Kilpatrick's tax shelter operations. Apparently unbeknown to the grand jurors, Waters never testified before either of the grand juries. The grand juries were never informed of the actual source of Mendrop's testimony which apparently was an interview of Waters or testimony of Waters at a contempt hearing involving Kilpatrick.

Whatever the source, it is clear that Mendrop's supposed "summary" of Waters' testi-

mony is an inaccurate recitation of "facts" in several significant respects. At the time Mendrop was supposedly summarizing the "facts" of Monte Smith's trip to Denver, the government attorneys entertained serious doubts about its accuracy because Waters' description of the individual he met at Mr. Kilpatrick's offices did not resemble Monte Smith.[16] The testimony of Waters during the 1983 obstruction trial of Mr. Kilpatrick confirms the inaccuracies of Mendrop's testimony. During that trial Waters testified that when picking up some checks from Kilpatrick for payment due him, he was informed by Kilpatrick that one of the people present was Mr. Smith who was the manager of the Bank branch on which the checks were drawn. R. Waters' description of that individual during trial does *not* resemble Monte Smith. T.Tr. 311-12. In fact, at these hearings, commenting on Mr. Waters' somewhat unusual description of Monte Smith, one of the prosecutors admitted that at the time "[t]here was a real question as to whether or not it was the same person." K.Tr. 742-43. Despite the facts that Waters was not called as a witness before either grand jury, that the grand jurors were never informed that transcripts of taped interviews of Waters existed and that a "real question" existed as to the accuracy of Waters' identification, Mendrop was permitted to represent to the contrary that there was "considerable confirmation that Mr. Smith did actually come out here and visit with Mr. Kilpatrick." G.J.Tr. Mendrop, September 29, 1982, 9:32 a.m., at pp. 66-68.

(2) Mr. Ros

Raul Ros, a "chauffeur" for Mr. Kilpatrick, testified before the grand jury. He did not appear before the grand jury that returned the indictment; his tesimony was read to the second grand jury, G.J.Tr. Mendrop, September 9, 1981, 8:44 a.m., at p. 3. A year after Mendrop read his testimony to the grand jurors, Mendrop purported to summarize it. According to Mendrop, Ros' evidence confirms the testimony of Waters with regard to Monte Smith's appearance in Denver. G.J.Tr. Mendrop, September 29, 1982, 9:32 a.m., at p. 66. Mendrop indicated that Ros commented that during Smith's claimed visit to Denver, he and Kilpatrick discussed funding for the tax shelters. No such testimony can be found in Raul Ros' grand jury transcript. Mendrop gave absolutely no explanation of an alternative source, but rather erroneously led the grand jurors to believe that he was simply relaying information contained in the Ros testimony before the prior grand jury.

(3) Mr. Charles

Mendrop's "summary" also mischaracterizes the testimony of Barry Charles. Like Raul Ros, Charles testified before the first grand jury not the second grand jury. As he did with Raul Ros' testimony, Mendrop attributed "testimony" to Charles that the bank fulfilled virtually all of Mr. Kilpatrick's requests and that it "appeared" to Charles that the bank officers knew what was being done. G.J.Tr. Mendrop, September 29, 1982, 9:32 a.m., at p. 68. The "summary" given by Mendrop is at odds with Charles' testimony. G.J.Tr. Charles, June 2, 1981, 8:40 a.m. Again, Mendrop did not identify any alternate source for the comments attributed to Charles.

In his testimony before the first grand jury Charles indicated that he was not present during most of the transactions in the bank. Charles, who traveled to the Cayman Islands with Kilpatrick, Pettingill and O'Donnell, was the least involved in the group and observed less than Oliver Hemphill who himself testified that he had witnessed little of the banking activity. *See* G.J.Tr. Hemphill, May 5, 1981, 9:28 a.m., at p.12. Thus, Mendrop's suggestion to the grand jurors of the "evidence" to be gleaned from Charles "testimony" is contradicted by the actual testimony of Charles and others.

(4) Comments by the Prosecutor

In addition to presenting Mendrop's summary of the "important evidence" against the bank on the day before the indictment, the prosecutors also argued in favor of an indictment of the bank. Once again, the evidence against the bank on the essential issue of knowledge of the claimed object of the conspiracy was seriously mischaracterized by the prosecutor, who asserted:

[A]s my agents will tell you there is evidence that the Bank knew it was the IRS—*they were in fact told that it was the IRS they were defrauding.*

G.J.Tr. Remarks of Prosecutor, September 29, 1982, 8:52 a.m. at p. 13 (emphasis supplied). No such evidence was ever presented. Indeed, even the misleading summary of Mendrop provides no basis for such a statement.

F. Interrogation in Absence of Counsel

In February, 1983, during the period between indictment and dismissal of the charges against the Bank of Nova Scotia, one of the prosecutors departed from the traditional role of a government trial attorney in order to travel to Puerto Rico and engage in investigative activity. The prosecutor undertook his journey with the intention of interviewing bank employees concerning the whereabouts and reasons for transfer of another bank employee, Malcolm Haynes, who the prosecutor understood was the second in command at the bank's Cayman Island branch during the period covered by the indictment. No attempt had been made to talk to this potential witness before indictment. The prosecutor's purpose was to interview him concerning matters underlying the indictment. W.Tr. 642-49; 694; 709-10.

Although the prosecutor was fully aware that the bank, an indicted defendant, was represented by counsel, he did not feel constrained by the Supreme Court's dictates in *Massiah v. United States*, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964) to inform counsel of his intentions to interview high ranking bank employees.[17] Instead, he undertook this investigative exercise with the "hope" of eventually interviewing Malcolm Haynes "in the absence of Mr. Morvillo,"[18] firm in the belief that, if he committed a constitutional violation of the type identified in *Massiah*, the only likely sanction was the suppression of evidence in the government's case-in-chief. In the prosecutor's words, "no indictment has ever been dismissed because of [a *Massiah* violation)." K.Tr. 1114, 1122; W.Tr. 643, 693-94, 709-10.

The prosecutor also testified that he believed it was permissible to interview high ranking employees of an indicted corporate defendant because it was authorized in *Upjohn Co. v. United States*, 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981) and because, unlike *Massiah* he was not engaged in acts of "subterfuge."[19] W.Tr. 643, 693-94, 709-10; K.Tr. 1114-15.

When he arrived in Puerto Rico, the prosecutor and another investigator, Victor Torrez Perez, an IRS special agent, appeared without prior arrangement at the branch offices of The Bank of Nova Scotia and proceeded to interrogate several of its representatives. Among others, they questioned Malcolm Haynes' former secretary and his replacement, the branch's controller. They also interrogated other high ranking representatives of the bank—including Douglas Rector, the Puerto Rico area manager of The Bank of Nova Scotia and chief executive officer of the Bank's Puerto Rico subsidiary. W.Tr. 640-42, 696-99.

After leaving the bank, accompanied by Special Agent Torrez Perez, he searched out the school attended by Haynes' two small daughters, ages eight and ten, in order to determine the whereabouts of their parents. At the end of the school day, the prosecutor (who had already elicited information from the school's principal and the girls' teachers) followed the children on foot "by about a hundred yards." His purpose was to have the girls lead him to their mother. W.Tr. 642-45; 699-708.

The prosecutor's visit to Pureto Rico, however, did not end his endeavor to interrogate high ranking representatives of the defendant bank without notice to or leave of defense counsel. Shortly after his interrogation of Mrs. Haynes, he wrote a letter to her requesting that she use her efforts to have her husband speak with the government. Like his previous efforts this approach was made without informing defense counsel. Indeed, the prosecutor asserted that he "would have interviewed Mr. Haynes in the absence of Mr. Morvillo hopefully." W.Tr. 709-10.

G. Mistreatment of Witnesses

Professor Roland Hjorth, a tax law professor who Judge Winner observed "is a recognized expert who was employed by defense counsel" was permitted to testify before the grand jury that returned the indictment. His treatment by the prosecutor on the occasion of his appearance contrasts markedly with the treatment the prosecution afforded its own expert, Roger Schneider, who was passed off as an "agent of the grand jury."

As Judge Winner observed:

[Professor Hjorth's] views of tax law differed markedly from those of [the prosecutor], who bragged on frequent occasions that he had never taken a course in taxation and knew almost nothing about it. Nevertheless, Professor Hjorth was browbeaten and ridiculed by [the prosecutor], and some of the conversation so out of place for an ethical prosecutor took place during a recess in the hearing of some grand jurors.

575 F.Supp. at 333.

Indeed, the prosecutor's heated argument with Professor Hjorth was also overheard by witnesses scheduled to appear before the grand jury. W.Tr. 334. Moreover, the conduct was so shocking that Richard Slivka, a local attorney formerly employed by the Department of Justice and Colorado United States Attorney's Office, who was representing witnesses scheduled to appear and who himself observed the conduct, wrote a letter to Chief Judge Finesilver shortly thereafter reporting the incident. W.Tr. 317-27; 350-64. Professor Hjorth testified that the prosecutor's conduct was so abusive that he would never again appear as an expert witness in a similar proceeding.

Judge Winner concluded of the prosecutor's conduct that:

Intimidating witnesses by telling them that their testimony disgraces them and implying that the Tax Division of the Department of Justice will take after the witness and will complain to the University of

Washington Law School because an expert testified to his expert opinions does no credit to our government. . . . [s]eemingly, the professor's testimony isn't seriously contested. I hope that we haven't gotten to the point that disagreement with the legal concepts of the IRS provides grounds for attacks by that bureaucracy because sometimes the IRS is wrong. *U.S. v. Sells Engineering*, 463 U.S. 418, 103 S.Ct. 3133, 77 L.Ed.2d 743 and *U.S. v. Baggot*, 463 U.S. 476, 103 S.Ct. 3164, 77 L.Ed.2d 785.

575 F.Supp. at 333; *see also* K.Tr. 502-05.

CONCLUSIONS OF LAW

The government's position in this case is reminiscent of the common law defense of confession and avoidance in which, for the most part, the truth of the averments of fact are admitted, but argument is made which tends to deprive the facts of their ordinary legal effect or obviates them. Thus, it is said:

Just as there has never been a perfect lawyer, a perfect judge, or perfect trial, so has there never been a perfect investigation. Contrary to what one might expect, in view of the defense allegations, the transcripts of the grand jury proceedings do not reveal any conduct whatsoever by the prosecutors seeking to overreach or override the independence of the grand jury.

Government Memorandum, Government Response to The Bank of Nova Scotia's proposed Findings of Fact and Conclusions of Law, filed April 9, 1984, at pp. 3-4. The government's response to the defendants' several proposed findings of the facts is mainly a recitation of the number of instances in which its prosecutors did not violate the law.

As I view the present state of the law as it applies to this case, there are four analytical modalities which must be considered. In the first, specific violations of specific rules require dismissal. I view this form of analysis as essentially quantitative. There either is a violation or there isn't and the conclusion is ineluctable depending on the factual premise which is established. The second modality requires an evaluation of the totality of circumstances extant so that a qualitative assessment may be made. Finally, cases distinguish the third modality, the authority and duty of district courts to supervise the conduct of prosecutions and grand juries, from the fourth modality, the duty to enforce the mandates of the Constitution.

In articulating the conclusions of law I have reached in this case, I shall consider all four modalities in the order in which I have just expressed them. I shall begin with Rule 6, Fed.R.Crim.P.

A. Violations of Rule 6(d)

[7] As noted by Judge Winner, Rule 6, Fed.R.Crim.P. does not authorize grand juries to have agents. The creation of that role and its misleading description to the grand jury is an improper intrusion into the exclusive and independent province of the grand jury by government attorneys and investigators. The most important function of the grand jury is to stand between the government agents and the suspect as an unbiased evaluator of the evidence. *United States* v. *Dionisio*, 410 U.S. 1, 16-17, 93 S.Ct. 764, 772-773, 35 L.Ed.2d 67 (1973). "The purpose of the grand jury requires that it remain free, within constitutional and statutory limits, to operate "independently of either prosecuting attorney or judge." *United States v. Sells Engineering, Inc*, 463 U.S. 418, 103 S.Ct. 3133, 3141, 77 L.Ed.2d 743 (1983).

[8] Rule 6(d), Fed.R.Crim.P., delimits those who may be present in grand jury proceedings by the following explicit language:

(d) Who May Be Present. Attorneys for the government, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

After his usual thorough analysis of the relevant case law and with characteristic pungency, Judge Matsch, of our Court, stated in *United States v. Pignaticllo:*

A review of all these cases reinforces the conclusion that the only effective sanction for a violation of Rule 6(d) is dismissal without any further inquiry into the effects of that violation.

582 F.Supp. 251, 254 (D.Colo. 1984).

I conclude that events which occurred in the grand jury room while *soi-disant* agents of the grand jury were present and not under oath as witnesses under examination violated Rule 6(d) and therefore require dismissal of the indictment. As Judge Matsch carefully notes in *Pignatiello*, brief intrusions on the proceedings during which no testimony is taken nor questions asked nor statements made about the case by grand jurors such as the delivering of a note to the prosecutor by his secretary or the repair of a switch by a maintenance man are not included within the *per se* rule. In this case, there is no doubt that matters of considerable substance occurred while Rule 6(d) was being violated.

B. Violations of Rule 6(e)

[9] Courts have held that violations of the strictures of Rule 6(e), Fed.R.Crim.P., typically require the sanction of contempt rather than dismissal. *United States v. Hoffa*, 349 F.2d 20, 43 (6th Cir. 1965). However, where Rule 6(e) is violated recklessly and systematically, dismissal is appropriate. *United States v. Gold*, 470 F.Supp. 1336, 1352-56 (N.D.Ill.1979). Where knowing violations of Rule 6(e) prejudice and embarrass targets whose identities the government reveals, the government itself has recognized that the contempt remedy is *"not always* . . . wholly adequate." United States Attorneys' Manual § 9-11.370 (emphasis supplied).

(1) *Rule 6(e)(3)—Improper Disclosure and Use*

[10] Rule 6(e)(3) provides in relevant part:

(3) Exceptions.

(A) *Disclosure otherwise prohibited* by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand jury, *may be made to*—

(i) an attorney for the government for use in the performance of such attorney's duty; and

(ii) *such government personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce federal criminal law.*

(B) Any person to whom matters are disclosed under subparagraph (A)(ii) of this paragraph shall not utilize that grand jury material for any purpose other than assisting the attorney for the government in the performance of such attorney's duty to enforce federal criminal law. *An attorney for the government shall promptly provide the district court, before which was inpaneled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made.*

(emphasis supplied).

The prosecutors in this case permitted several violations of this rule. They relinquished to the IRS their responsibility to determine the persons to whom disclosure would be made. The IRS agents then failed to provide the "prompt" notification of such disclosure mandated by the rule. Moreover, the IRS representatives, in direct contravention of recent Supreme Court dictates, improperly manipulated the secret material and their novel roles as "agents of the grand jury" to obtain information and data for use during civil litigation that they knew would follow on the heels of the criminal case. *See United States v. Sells Engineering, Inc., supra, United States v. Baggot*, 463 U.S. 476, 103 S.Ct. 3164, 77 L.Ed.2d 785 (1983).

Rule 6(e)(3) provides that disclosure can be made to "such government personnel as are deemed necessary by an attorney for the government . . ." provided the "attorney for the government . . . promptly provide[s] the district court . . ." with notice of such disclosure. The instant record reveals not only that IRS representatives regularly took it upon themselves to determine to whom disclosure should be made, but also that in some cases the "attorneys for the government" were not notified of such disclosure until after it had occurred, if they were notified at all. Moreover, notices to the district court were not filed promptly but were prepared in some instances substantially after such disclosure, even after the investigation had concluded and the indictment was filed.

With regard to the delegation of the Rule 6(e)(3) responsibilities in this investigation by Department of Justice attorneys, Judge Winner noted:

I am troubled about testimony suggesting that authority to make the disclosure decisions was delegated to the IRS Special Agent/Grand Jury Agents/Prosecutor's helpers. Under common law rules of agency, this authority couldn't be delegated to a subagent, and especially it couldn't be delegated to an IRS agent whose fellow workers were aiming at the defendants from a different angle. My worry on this score is not lessened by an IRS letter in evidence saying that making a civil tax case under the administrative process would be difficult. *United States v. Sells Engineering and United States v. Baggot*, both *supra*, which settle the question of using a grand jury to collect taxes.

575 F.Supp. at 338 (1983).

The board delegation to the IRS of control over the course of the grand jury investigation is amply supported by the record. The extensive disclosure of grand jury material to IRS civil employees, the haphazard and *post hoc* method of identifying those to whom disclosure was made and the omission from the disclosure notices of numerous IRS employees privy to grand jury information clearly contravene the rule. It is fanciful to suggest that these IRS and civil employees will erase from their minds that material obtained as part of the grand jury's investigation.

In *United States v. Sells Engineering, Inc., supra*, the Supreme Court recognized that it is difficult or impossible to demonstrate the extent of improper disclosure and use of grand jury material made during the course of an investigation. *Id.* 103 S.Ct. at 3142. In the instant case a significant portion of the direction of the investigation was unrelated

to the federal criminal goals. As the Supreme Court observed:

[B]ecause the Government takes an active part in the activities of the grand jury, disclosure to government attorneys for civil use poses a significant threat to the integrity of the grand jury itself. If prosecutors in a given case knew that their colleagues would be free to use the materials generated by the grand jury for a civil case, they might be tempted to manipulate the grand jury's powerful investigative tools to root out additional evidence useful in the civil suit. . . .

Id.

In *Sells* the Supreme Court analyzed the grand jury process and the provisions of Rule 6(e) in deciding whether civil division lawyers in the Department of Justice should have automatic access to grand jury materials to assist them in civil litigation. The court denied such access for three reasons: (1) civil disclosure threatens to subvert the limitations otherwise imposed on the government's powers in civil and administrative discovery and investigation; (2) civil disclosure may tempt presecutors to manipulate the grand jury investigation to obtain evidence useful in civil litigations; and (3) civil disclosure increases the number of persons privy to grand jury matters thereby increasing the risk of inadvertent or illegal disclosure to others. *Id.* at 3142, 43. The IRS's participation in the grand jury investigation in this case achieved each of these illicit purposes.

As noted by Judge Winner, the genesis of the grand jury's inquiry was a belief by the IRS that it could not effectively investigate the facts underlying the subject tax shelters pursuant to its congressionally circumscribed administrative enforcement powers. Thus, the extraordinary powers of the grand jury were sought and usurped.

(2) *Rule 6(e)(2)—Secrecy Violations* Rule 6(e)(2), Fed.R.Crim.P. provides:

(2) General Rule Of Secrecy.—A Grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the government, or any person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of Rule 6 may be punished as a contempt of court.

Rule 6(e)(2) is a codification of the traditional requirement that matters occurring before the grand jury should be treated as confidential. Courts have consistently recognized that this traditional requirement exists to no small degree in order to protect the name and reputation of the targets during the pendency of the period the allegations are being investigated. *See e.g. United States v. Malatesta,* 583 F.2d 748, 752 (5th Cir. 1978), *cert denied,* 444 U.S. 846, 100 S.Ct. 91, 62 L.Ed.2d 59 (1979). Thus, courts have held that Rule 6(e) prohibits the government from publicly identifying the targets of a grand jury's inquiry. *See, In re Bart,* 304 F.2d 631, 637 n. 19 (D.C.Cir.1962); *Hawthorne v. Director of Internal Revenue,* 406 F.Supp. 1098, 1128-29 (E.D.Pa.1975).

During the course of this investigation the government repeatedly and systematically disclosed the identity of the targets to individuals and entities that the government acknowledged had a "business relationship" with the targets and to investors identified as customers of the targets. These numerous disclosures adversely affected the business activities of the targets at a time when the grand jury was charged with investigating whether any crimes may have been committed. The abuse of power is evident.

The violations of Rule 6(e)(2) do not end with the improper violations of the secrecy requirements. In order to gain a tactical advantage, prosecutors selected two witnesses and directed them not to disclose the fact or substance of their testimony. As Judge Winner held, this was done in direct contravention of Rule 6(e)(2):

[The imposition upon witnesses of secrecy obligations] is now verboten because of the language of the rule saying, "No obligation of secrecy may be imposed on any person except in accordance with this rule." This language has been uniformly interpreted to prohibit any instruction to a witness that his testimony is secret. *In re Langswager,* (1975) D.C. III. 392 F.Supp. 783; *In re Grand Jury Witness Subpoenas* (1974) D.C.Fla. 370 F.Supp. 1282; *In re Alvarez* (1972) D.C. Cal. 351 F.Supp. 1089; *In re Minkoff* (1972) D.C.R.I. 349 F.Supp. 154; *In re Investigation before April 1975 Grand Jury* (1976) D.C.Cir 531 F.2d 600; *In re Vescovo Special Grand Jury* (1979) 473 F.Supp. 1335, and many other cases. In spite of this express command of Rule 6(e), secrecy obligations were imposed on several witnesses, and, to make the violation more disturbing, secrecy obligations were imposed on lawyers called to furnish information concerning their clients. That makes the violation gravely beyond the pale, because of the impossible position the lawyer-witness is placed in, but that's what the grand jury transcript discloses. No "oath" of secrecy was administered, but an obligation of secrecy was imposed by instructions from government counsel to witnesses. This foolishness may or may not have been intentional, but ignorance of the law is not a defense available to a prosecutor. *This misconduct is established by the record, and it will prove difficult for the government to deny,* just as the government had to admit the attempted administration of an "oath" by Mr. Snyder. The government surprisingly defends the proven mishmash of functions of the IRS Special Agent/Grand Jury Agents/Assistants to the Attorney for the Government appointed under Rule 6(e), but maybe it thinks that admitting that this was error would confess the motion to dismiss.

575 F.Supp. at 331, 332 (1983); *see also United States v. Radetsky,* 535 F.2d 556, 569 (10th Cir.), *cert denied,* 429 U.S. 820, 97 S.Ct. 68, 50 L.Ed.2d 81 (1976); *Application of Eisenberg,* 654 F.2d 1107, 1113 n. 9(5th Cir. 1981); *In re Russo,* 53 F.R.D. 564, 570 (C.D.Ca 1971); *In Re Disclosure of Evidence,* 184 F.Supp. 38, 41 (E.D.Va 1960); *Arlington Glass Co. v. Pittsburgh Plate Glass Co.,* 24 F.R.D. 50, 52 (N.D.Ill. 1959).

As Judge Winner suggests, the only issue that could not be determined by the record before him was whether the secrecy obligations were imposed intentionally. The prosecutor's testimony during the hearings before me, however, leaves no doubt that the improper obligation was imposed deliberately, with full knowledge of the witness's relationship to the targets and in violation of the commands of the United States Attorney's Manual.[20] Moreover, no legitimate explanation for the activity was ever presented.

The numerous violations of Rule 6(e) by the Department of Justice attorneys ignore the rights of unindicted subjects of an investigation and the secrecy and independence of the grand jury itself. As I shall discuss later, a court's supervisory power to dismiss an indictment is appropriately utilized to ensure that governmental impropriety of a similar nature is not repeated in future investigations or prosecutions. *United States v. Owen,* 580 F2d 365, 367 (9th Cir. 1978); *United States v. Houghton,* 554 F.2d 1219, 1224 (1st Cir.), *cert, denied,* 434 U.S. 851, 98 S.Ct 164, 54 L.Ed.2d 120 (1977). Dismissal is particularly appropriate in order to hold all government prosecutors acting within this district to the same high standard of conduct that the United States Attorney demands of his own assistants. *United States v. Jacobs, 547 F.2d 772, 778 (2d Cir. 1976) (Organized Crime Strike Force attorney operating in the Eastern District of New York); United State v. Gold,* 470 F.Supp. 1336 (N.D. III. 1979) (Environmental Protection Agency Staff attorney appointed as Special Attorney in the Department of Justice); *see also United States v. Estepa,* 471 F.2d 1132, 1137 (2d Cir.1972).

As previously indicated, however, I hold that where violations of Rule 6(e) are intentional or reckless and systemic, the sanction of contempt is insufficient and dismissal of the indictment is warranted. Under such circumstances, it is not necessary for the defendant to show that he has been prejudiced by the violations. In the instant case, however, such showing of prejudice has been convincingly made.

C. Violations of Witness Immunity Statutes

Earlier in this opinion,[21] I indicated that I believe I was unduly diffident in describing so-called pocket immunity or "Letters of Assurance" as a "damnable practice." I believe I was wrong because I did not then have the benefit of the Supreme Court's opinion in *United States v. Doe.—U.S. —, 104 S.Ct 1237, 79 L.ED.2d 552 (1984).*

In *Anderson v. United States, supra,* I wrote:

The government, in this case, made extensive use of informal or "pocket" immunity. This is putative immunity granted to a witness by letter or oral representation of the prosecutor rather than ordered by a judge after satisfaction of the procedures of 18 U.S.C. §§ 6002 and 6003. Such immunity poses serious problems since it circumvents the statute and leaves an inadequate record of the scope of the immunity granted. *See, United States v. Quartermain, Drax,* 613 F.2d 38 (3rd Cir. 1980). The procedures established by Congress in 18 U.S.C. §§ 6002 and 6003 clearly indicate an intent to formalize, standardize and limit the use of immunity. The statute requires approval of a senior Justice Department official as well as application to and order of a United States District Court Judge before immunity is conferred. The procedure leaves no doubt as to the accomplishment of the grant, the particularized need of the witness and the scope of the immunization. It also leaves for Congress and the public a complete and definite record of the frequency, efficacy and reasons for the use of immunity. Informal immunity, apparently in widespread use by the Justice Department, accomplishes none of those goals. It is a damnable practice. No notice need be given to senior Justice Department officials or to a judge. The only record if any, is a letter by the U.S. Attorney or a transcript of an oral representation, if it was made on the record. Such informality has resulted in confusion over witnesses rights in the past, *Quartermain, Draz, supra,* 613 F.2d 38, and lends itself to excessive use of unchecked discretion. While

the immunity grant is always a matter of prosecutorial discretion, the procedures of §§ 6002 and 6003 subject it to the light of public, congressional and judicial scrutiny and insure that it is not invoked or revoked arbitrarily or capriciously.

In *United States v. Doe*, Justice Powell wrote:

As we stated in *Pillsbury Co. v. Conboy*, 459 U.S. 248, 74 L.Ed.2d 430, 103 S.Ct. 608 (1983), in passing the use immunity statute, "Congress gave certain officials in the Department of Justice exclusive authority to grant immunities." *Id., at* 253, 74 L.Ed.2d 430, 103 S.Ct. 608 [at 612]. 'Congress foresaw the courts as playing only a minor role in the immunizing process: . . .' *Id.*, at 254, n. 11, 74 L.Ed.2d 430, 103 S.Ct. 608 [at 613]. The decision to seek use immunity necessarily involves a balancing of the Government's interest in obtaining information against the risk that immunity will frustrate the Government's attempts to prosecute the subject of the investigation. *See United States v. Mandujano*, 425 U.S. 564, 575, 48 L.Ed.2d 212, 96 S.Ct. 1768 [1776] (1976) (plurality opinion). Congress expressly left this decision exclusively to the Justice Department. If, on remand, the appropriate official concludes that it is desirable to compel respondent to produce his business records, the statutory procedure for requesting use immunity will be available.

——U.S. at——, 104 S.Ct. at 1244-45, 79 L.Ed.2d at 562-63.

[11] It thus can be seen most clearly that Congress has vested exclusive authority to grant immunities in a few specified officials in the Department of Justice. Further, Congress has clearly and unequivocably set forth the parameters within which that discretion must be exercised. Ordinary statutory construction employing the principle of *expressio unius est exclusio alterius* and buttressed by the quoted language of Justice Powell leads to only one conclusion: Pocket immunity is illegal; when granting immunity, the Department of Justice must comply with the requirements of 18 U.S.C. §§ 6002 and 6003.

[12] I hold that the repeated use of letters of assurance or so called "pocket immunity" in the instant case violated the applicable statutes and tainted the grand jury indictment with its illegality.[22]

D. Violations of the Fifth Amendment

[13] Courts have consistently held that it is improper to call a witness solely for purposes of having that witness assert their rights under the Fifth Amendment when the prosecutor is aware of the witnesses' intention to do so. *See Namet v. United States*, 373 U.S. 179, 186, 83 S.Ct. 1151, 1154, 10 L.Ed.2d 278 (1963); *United States v. Ritz*, 548 F.2d 510, 521 (5th Cir. 1977); *United States v. Maloney*, 262 F.2d 535, 537-38 (2d Cir. 1959). The facts here demonstrated that the prosecutor hoped to take advantage of impermissible inferences that arise from invocation of the privilege. *See United States v. Maloney*, 262 F.2d 535 (2d Cir. 1959). The prosecutor's ploy "served no other purpose than calculated prejudice." *United States v. Samango*, 607 F.2d 877, 883 (9th Cir. 1979).

[14] Moreover, the improper efforts to prejudice the defendants by impermissible inferences flowing from the seven witnesses' assertions of their privilege against self-incrimination was compounded by the questioning concerning the payment of the witnesses' legal fees. No legitimate purpose for such questioning exists. Indeed, similar questioning before a grand jury has been held to be improper. *United States v. Gold*, 470 F.Supp. 1336, 1352 (N.D.III. 1979).

Dismissal of an indictment is not required *per se* by the deliberate contriving of a prosecutor to have witnesses invoke their Fifth Amendment privilege. Such conduct is, however, a factor to be considered in the totality of circumstances in determining whether a grand jury has been overreached or usurped.

E. Presentation of Misinformation

[15] The mischaracterization of the testimony before the grand jury and the unidentified use of questionable hearsay information with regard to vital issues intrudes upon the independent role of the grand jury. *See United States v. Samango*, 607 F.2d 877 (9th Cir. 1979). The court in *Samango* emphasized that such behavior, even if unintentional, causes "improper influence and usurpation of the grand jury's role." *United States v. Samango*, 607 F.2d at 882. Such a danger is particularly present where, as here, the misrepresentations could not be expected to be readily apparent to the second grand jury and related to material issues in the prosecution. *See id.* at 883; *United States v. Lawson*, 502 F.Supp. 158 (D.Md. 1980) (indictment dismissed where prosecutor's examination of witness created a false impression and misled grand jurors as to nature of the evidence); *United States v. Gallo*, 394 F.Supp. 310 (D.Conn. 1975) (indictment dismissed where grand jurors misled as to hearsay nature to testimony and misstatements).

F. Violations of the Sixth Amendment

[16] It is beyond cavil that, upon indictment, a defendant becomes an "accused" with a right to counsel guaranteed by the Sixth Amendment. *See Brewer v. Williams*, 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977); *Massiah v. United States*, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964). The guarantees of the Sixth Amendment apply to corporate defendants with the same forces as to individual defendants. *United States v. Rad-O-Lite of Philadelphia, Inc.*, 612 F.2d. 740, 743 (3d Cir. 1979); *see also Grandbouche v. Adams*, 529 F.Supp. 545, 547 (D. Colo. 1982). In order to give meaning to these guarantees, the Supreme Court has held that once a defendant becomes an accused, it is improper for a government official to question that defendant out of the presence of counsel. *Brewer v. Williams, supra; Massiah v. United States, supra.*

[17] In the instant case, the Department of Justice engaged in priecisely the type of interrogation proscribed by the Supreme Court.[23] Without notifying counsel for the indicted bank, the prosecutor along with a federal agent, impermissiby interrogated several high level bank employees in hopes of obtaining incriminating information. In several respects the instant conduct is even more egregious than that which occurred in *Brewer* and *Massiah*. The prosecutor's actions here were premeditated and prompted by the expectation that the worst that would become of his constitutional violations would be a limited suppression of evidence.[24]

The defendants have not, however, demonstrated any prejudice from the interrogations of bank employees in the absence of counsel. The bank's counsel has performed ably and adequately throughout the litigation. Under such circumstances, the Supreme Court has specifically rejected the remedy of dismissal based upon a prosecutor's violation of a defendant's Sixth Amendment rights. "[A]bsent demonstrable prejudice or substantial threat thereof, dismissal of the indictment is plainly inappropriate, even though the violation may have been deliberate." *United States v. Morrison*, 449 U.S. 361, 365, 101 S.Ct. 665, 668, 66 L.Ed.2d 546 (1981). *See also United States v. Drake*, 655 F. 2d 1025, 1027 (10th Cir. 1981); *United States v. Kapnison*, 743 F.2d 1450 at 1454 (10th Cir. 1984). As in *Morrison*, so it is here:

[Defendant] has demonstrated no prejudice of any kind, either transitory or permanent, to the ability of [its] counsel to provide adequate representation in these criminal proceedings. There is no effect of a constitutional dimension which needs to be purged to make certain that [defendant] has been effectively represented . . . .

449 U.S. at 366, 101 S.Ct. at 669. Accordingly dismissal of the indictment is an inappropriate remedy for the *Massiah* violations in this case.[25]

The Sixth Amendment abuses were, in some instances, undertaken by the prosecutors appearing before the grand jury. Thus, while not directly implicating actions by the grand jury, such actions do reflect upon the general abuses of the grand jury process practiced by the government. The *Massiah* violations must enter into my general qualitative assessments of the prosecutor's and grand jury's conduct.

G. The Totality of Circumstances Test

[18] As I stated in *United States v. Anderson*, 577 F. Supp. 223, 230 (1983):

The Tenth Circuit Court of Appeals has recently articulated the standards to be applied in cases where dismissal of an indictment is sought because of prosecutorial misconduct:

An indictment may be dismissed for prosecutorial misconduct which is flagrant to the point that there is some significant infringement on the grand jury's ability to exercise independent judgement.

Untied States v. Pino, 708 F.2d 523, 530 (10th Cir. 1983). While the remedy of dismissal is extraordinary, it may be used "to insure proper standards of conduct by the prosecution." 708 F.2d at 530. District courts are also empowered to dismiss indictments because of inherent supervisory powers which protect the integrity of the judicial system. 708 F.2d at 531. Isolated errors and improprieties do not require dismissal of the indictment. It is only when the government engages in deliberate conduct which interferes with the grand jury's independent function or damages the integrity of the judicial process that the remedy of dismissal becomes necessary. Because I find that the government engaged in a pattern of conduct calculated to infringe the grand jury's ability to exercise independent judgment, the indictments must be dismissed.

* * * * *

The grand jury is more than a symbol of the limitations the constitution places on the government's power. When the government usurps the grand jury and destroys its independence so that it looks and acts like an arm of the prosecution, the very essence of a government of limited powers is destroyed. *See, United States v. Dionisio*, 410 1, 17, 93 S. Ct. 764, 773, 35 L.Ed,2d 67 (1973); *Stirone v. United States*, 361 U.S. 212, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960).

In *United States v. Samango*, the Ninth Circuit said:

The Court's power to dismiss an indictment on the ground of prosecutorial misconduct is frequently discussed but rarely in-

voked. Courts are rightly reluctant to encroach on the constitutionality-based independence of the prosecutor and grand jury.[26] The Court 'will not interfere with the Attorney General's prosecutorial discretion unless it is abused to such an extent as to be arbitrary and capricious and violative of due process.' *United States v. Welch.* 572 F.2d 1359, 1360 (9th Cir.), *cert, denied,* 439 U.S. 842, 99 S.Ct. 133, 58 L.Ed.2d 140 (1978). Nevertheless:

On occasion, and widely-varying factual contexts, federal courts have dismissed indictments because of the way in which the prosecution sought and secured the charges from the grand jury. . . . These dismissals have been based either on constitutional grounds or on the court's inherent supervisory powers. . . . Whatever the basis of the dismissal, however, the courts' goal has been the same, to protect the integrity of the judicial process,' . . . particularly the functions of the grand jury, from unfair or improper prosecutorial conduct (citations and footnotes omitted.)

607 F.2d at 881 quoting *United States v. Chanen,* 549 F.2d 1306, 1309 (9th Cir.) *cert. denied,* 434 U.S. 825, 98 S.Ct. 72, 54 L.Ed.2d 83 (1977).

From the inception of the twenty-month grand jury investigation when the prosecutors divined the office of "agent of the grand jury" on the IRS agents through the time of the agent's improper "summaries" presented shortly before the indictment was returned, the conduct of the Department of Justice attorneys substantially undermined the ability of the grand jury to exercise independence. The numerous abuses and violations of rules and constitutional principles must be considered particularly serious because of the admissions in these hearings that, for the most part, the activity was undertaken knowingly and purposefully.

In addition to the abuses detailed in this memorandum opinion numerous other instances of misconduct are recounted by Judge Winner in his August 25, 1983 Opinion. In sum, the substantial departures of prosecutors in this case from established notions of fairness, from clearly articulated rules of law, from specific rules of procedure and, indeed from the Department of Justice's own manual and operating directives constitute systematic and pervasive overreaching. There is no doubt that the indicting grand jury was unsurped and that timehonored constitutional principles were sullied.

Some of the violations, standing alone, require dismissal. Others, while not singularly requiring dismissal, when combined with one another amount to travesty. What is perhaps most alarming is that even in the very last of so many hearings, one of the prosecuting attorneys continued to refer to the challenge to his and his colleagues' conduct as "silly" and "frivolous." K. Tr. 1137. The supervisory authority of the court must be used in circumstances such as those presented in this case to declare with unmistakable intention that such conduct is neither "silly" nor "frivolous" and that it will not be tolerated.

The government attorneys, who replaced the prosecutors whose activities are at issue, reluctantly acknowledge that with regard to *at least* two of the procedures employed in this investigation they were "technically inaccurate" and "should obviously not be repeated in the future." *See* Government Response to Defendants' Opening Brief in Support of Motions to Dismiss the Indictment, filed November 14, 1983, att pp. 11, 15. When all the "technically inaccurate" procedures and abuses which "should obviously not occur in the future" are accumulated, what emerges is a picture of an IRS investigation out of control and a grand jury which was converted into little more than a rubber stamp.

The Fifth Amendment guarantees that no person shall be held to answer for an infamous crime "unless on a presentment or indictment of a grand jury." The Supreme Court observed in *United States v. Dionisio,* 410 U.S. 1, 16-17, 93 S.Ct. 764, 772-773, 35 L.Ed.2d 67 (1973) that "[t]his constitutional guarantee presupposes an investigative body 'acting independently of either prosecuting attorney or judge,' *Stirone v. United States,* 361 U.S. 212, 218, 80 S.Ct. 270, 273, 4 L.Ed.2d 252, whose mission is to clear the innocent, no less than to bring to trial those who may be guilty." As a result of the conduct of the prosecutors and their entourage of agents, the indicting grand jury was not able to undertake its essential mission. That such is a significant and prejudicial deprivation of these defendant's constitutional rights to due process of law and personal liberty should require no further recitation of authority.

ORDER

Based on the foregoing I hold and ORDER as follows:

1. The indictment is dismissed because of the numerous violations of Rule 6(d), Fed. R.Crim.P.

2. The indictment is dismissed because of the numerous violations of Rule 6(e), Fed. R.Crim.P.

3. The indictment is not dismissed solely for the use of "pocket immunity" in contravention of 18 U.S.C. §§ 6002 and 6003.

4. The indictment is not dismissed solely for violations of the Fifth Amendment to the United States Constitution.

5. The indictment is not dismissed solely for the knowing and deliberate presentation of misinformation to the grand jury.

6. The indictment is not dismissed solely for violations of the Sixth Amendment to the United States Constitution.

7. The indictment is dismissed because of the totality of the circumstances which include numerous violations of Rule 6(d) and (e), Fed.R.Crim.P., violations of 18 U.S.C. §§ 6002 and 6003, violations of the Fifth and Sixth Amendments to the United States Constitution, knowing presentation of misinformation to the grand jury and mistreatment of witnesses.

FOOTNOTES

[1] The facts relied upon in this opinion are taken from voluminous transcripts of hearings before two grand juries, Judge Winner, and me and a trial before a jury. To aid the reader, the following citation form is used: references to the trial to the jury presided over by Judge Winner are cited as "T. Tr."; references to hearings on the motion for a new trial or acquittal and the motion to dismiss before Judge Winner are cited as "W. Tr."; and references to hearings on the motions underlying this order are cited as "K. Tr." Citation of the grand jury transcripts are captioned "G.J. Tr." and recite the relevant witness or declarant, the date and the time of the transcription. Defense and prosecution exhibits submitted on this matter are designated respectively "DX" and "PX."

[2] The government seeks to absolve the prosecutors of any misconduct by pointing to instances where the prosecutors themselves informed the grand jury of its independent and unbiased mission. *See, e.g.,* G.J. Tr. Remarks of Prosecutor, July 8, 1981, 8:39 a.m. at pp. 9, 11; October 6, 1981, 10:58 a.m., at pp. 2, 3; September 29, 1982, 8:52 a.m., at p. 8. Such admonishments, however, are not curative of actions taken at other times which constitute abuses of the system and impinge upon the grand jury's integrity.

[3] Agent Raybin testified that before Mr. Snyder gave him his oath as an agent of the grand jury, he was also sworn in by the foreman of the grand jury. K.Tr. 267.

[4] Snyder did suggest that the swearing in of grand jury agents was practiced in Atlanta, Georgia and the Southern District of Florida. He did not, however, testify as to what grand jury agents did in these other districts or whether the practices employed elsewhere were similar to those used here. K.Tr. 414-15.

[5] On some occasions Mr. Snyder referred to Raybin and Mendrop as his agents. G.J. Tr. Remarks of Prosecutor, July 8, 1981, 8:39 a.m., at pp. 9, 15, 18, 21, 23; July 8, 1981, 12:05 p.m., at p. 5; August 5, 1981, 3:50 p.m., at p. 5; September 9, 1981, 8:37 a.m., at p. 2; September 9, 1981, 10:00 a.m., at p. 2; October 6, 1981, 10:58 a.m., at p. 12; May 3, 1982, 9:15 a.m., at p. 5. Such references did not, however, clarify the ambiguous role of the grand jury agents. As noted, the IRS agents were often referred to as agents of the grand jury. The confusion over the agents' role is discernible from isolated statements made by the prosecutors to the grand jury. Snyder, for example, said that he would, "have my agents, when I ask them to be sworn as agents of the Grand Jury, analyze [the documents] and basically figure out what they mean." G.J. Tr. Remarks of Prosecutor, July 8, 1981, 8:39 a.m., at p. 21; *see also* G.J. Tr. Remarks of Prosecutor, July 8, 1981, 12:05 p.m., at p. 5. The agents worked, in form, for the grand jury; but, in substance, they worked for the prosecution.

[6] Mendrop and Raybin claim that they never introduced themselves to witnesses as agents of the grand jury. K.Tr. 243, 266-67, 366-67.

[7] *See supra* note 5 and accompanying text.

[8] The government claims that all prosecutorial decisions made by IRS agents were done in consultation with the prosecuting attorneys. K.Tr. 145-46.

[9] The occasional self-serving statements by prosecutors to the grand jury that use of grand jury information in IRS audits is improper does not absolve the improper disclosures but merely serves to highlight the seriousness of the misconduct. G.J. Tr. Remarks of Prosecutor, July 8, 1981, 8:30 a.m. pp. 12-13; Novermber 4, 1981, 9:12 a.m., at pp. 12-13; November 4, 1981, 9:12 a.m., at p.6.

[10] For examples, sec sections of this opinion entitled "Facts Established by the Record," F. and G.

[11] Both government attorney Snyder and agent Mendrop dispute Birchall's testimony. K.Tr. 423-36; 376-89.

[12] *See supra* note 20.

[13] As discussed later, *see supra* text accompanying note 21, I now believe I was unduly diffident in *Anderson.* The practice is not merely damnable: I believe now that it is clearly illegal.

[14] The government's brief, Government's Response to the Bank of Nova Scotia's Proposed Findings of Fact and Conclusions of Law, filed April 9, 1984, at p. 19 provides:

On February 2, 1982, Mr. Snyder advised the grand jury of his negotiations with Mr. Ballor [attorney for many of the witnesses], and again explained to the grand jury the difference between statutory immunity and letters of assurance. 2/2/82(1:07 p.m.) G.J. Colloquy 5-14.

The transcript for G.J. Tr. February 2, 1982, 1:07 p.m. presents the testimony of Gordon MacManus. The substance of the testimony consists entirely of an inquiry as to whether Mr. MacManus's attorney was being paid for by Realty Inc. and whether Mr. MacManus would invoke his right against self incrimination. Contrary to the government's assertion, the transcript reflects the prosecutor's attempts to prejudice the grand jury. *See supra* text accompanying not 15.

[15] *See supra* note 14.

[16] The government claims that the doubts about the accuracy of Water's description did not arise until after Mendrop testified. Nevertheless, even under the government's version, such doubts existed months before the indictment. K.Tr. 1067-68.

[17] The government argues that interviewing Haynes does not give rise to *Massiah* violations because he was only "a potential witness who had information as to the the bank's conduct concerning the events charged in the indictment." Government's Response to The Bank of Nova Scotia's Proposed Findings of Fact and Conclusions of Law, filed April 9, 1984, at p. 37. The government ignores *Massiah* because Haynes was not individually named as a defendant in the indictment. *id.* Nevertheless, the government does recognize that Haynes "was the number two man in the Cayman Island

branch of The Bank of Nova Scotia at the time of the events in question." *id.* quoting W.Tr. 653.

[18] Mr. Morvillo is the bank's lead defense counsel.

[19] *See supra* note 23.

[20] The United States Attorneys' Manual provides at §9-11.362:

Rule 6(e) specifically prohibits any obligation of secrecy from being imposed upon any person except in accordance with this rule.' Witnesses, therefore, cannot be put under any obligation of secrecy. *Application of Eisenberg*, 654 F.2d 1107, 1113 n. 9 (5th Cir.1981). This, however, should not prevent the grand jury foreman from requesting a witness not to make unnecessary disclosures when those disclosures or the attendant publicity might hinder an investigation.

[21] *See supra* note 13.

[22] The conventional remedy for illegal use of "pocket immunity" would, in most instances, take the form of a *post facto* grant of statutory immunity or the equitable enforcement of the pocket agreement, for the benefit of grand jury witnesses who relied on the prosecutor's promises. These concerns are not before me here. Still, the use of pocket immunity was so pervasive in this case that it reflects upon the general conduct of the prosecutors and the grand jury.

[23] The prosecutor's *post hoc* rationalizations attempting to demonstrate the propriety of his conduct do the opposite. *See supra* text accompanying note 18. *Upjohn Co. v. United States*, 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981) establishes that corporate employees of the kind interrogated here fall within the ambit of the attorney-client relationship and must be considered, in essence, the corporation for purposes of communications. Indeed, while the Supreme Court in *Upjohn* noted that instead of procuring interview notes of the corporation's attorneys, counsel for the government might themselves question employees about relevant events, the facts of that decision give no indication that questioning would be proper if conducted behind counsel's back. Rather, the opinion indicated that questioning would occur with appropriate procedural safeguards. Moreover, *Upjohn* was not a criminal case and the corporation had not been indicted. Thus, *Massiah* and its progeny, of course, were inapplicable. Indeed, the facts and relevance of *Upjohn* are so inapposite as to raise questions as to the sincerity of its invocation.

The prosecutor also relied upon *Diversified Industries, Inc. v. Meredith*, 572 F.2d 596 (8th Cir. 1977) as support for its position. That case too dealt with civil litigation and the question of attorney client privilege with a corporate client. The case did not concern post-indictment activity by prosecutors.

The prosecutor's second *post hoc* rationalization that *Massiah* did not restrict his interrogation because he did not employ subterfuge requires little discussion. The Supreme Court did not base it holding in *Massiah* upon the use of subterfuge. Rather, that opinion was premised on an accused's right to counsel. Thus, in *Brewer v. Williams*, the Supreme Court specifically noted that the fact that "the incriminating statements were elicited surreptitiously in the *Massiah* case, and otherwise here, is constitutionally irrelevant." *Brewer v. Williams*, 430 U.S. at 400, 97 S.Ct. at 1240.

[24] Unlike the situations in *Brewer* and *Massiah*, the interrogation of the bank's represcntatives was conducted not by an investigatory agent, but primarily by an attorney involved in the prosecution also calling into question a possible violation of that attorney's ethical obligations.

Disciplinary Rule 7-104 of the Code of Professional Responsibility provides in relevant part:

Communicating With One of Adverse Interest.

(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

See United States v. Thomas, 474 F.2d 110, 111-12 (10th Cir., cert. denied, 412 U.S. 932, 93 S.Ct. 2758, 37 L.Ed.2d 160 (1973). *Cf. Ceramco, Inc. v Lee Pharmaceuticals*, 510 F.2d 268 (2d Cir. 1975).

[25] The prosecutor's interrogation and surveillance here is precisely the type of deliberate governmental impropriety that should be discouraged. *See United States v. Owen*, 580 F.2d 365, 367 (9th Cir. 1978), *citing Elkins v. United States*, 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960); *United States v. Houghton*, 554 F.2d 1219, 1224 (1st Cir. 1977), *cert denied* 434 U.S. 851, 98 S.Ct. 164, 54 *L.Ed.2d 120*. Insofar as the prosecutor by his own admission was not deterred by the possibility of other available remedies, dismissal remains the only viable prophylactic tool. The Supreme Court has gone to great lengths to explain that the good faith efforts of law enforcement officials should not be overcome by technicalities beyond their control. *See United States v. Leon.*—U.S.—,104 S.Ct. 3430, 82 L.Ed.2d 677 (1984). The opposing proposition requires that effective sanctions be imposed to prevent deliberate constitutional violations by law enforcement officials. Constitutional protections are of little value if violations are permitted without the imposition of meaningful sanctions. See *Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081 (1961); Elkins v. United States*, 364 U.S. 206, 217, 80 S.Ct. 1437, 1444, 4 L.Ed.2d 1669 (1960). Here, the prosecutor's premeditated interrogation of bank employees behind the back of the bank's counsel plainly violated the Sixth Amendment protections outlined by the Supreme Court in *Massiah and Brewer*.

[26] In almost seven years on this bench this case and *United States v. Anderson, supra.* are the only two instances out of many cases in which I have felt constrained to dismiss an indictment.

UNITED STATES OF AMERCIA, PLAINTIFF,

v.

WILLIAM A KILPATRICK, ET AL., DEFENDENT [1]

No. 82-CR-222

United States District Court, D. Colorado

Aug. 25, 1983

Following jury verdict of guilty of obstruction of justice, defendent moved for dismissal or new trail with pending dismissal motions resting on accusations of Internal Revenue Service and prosecutorial misconduct during grand jury proceedings and during trial. The District Court, Winner, J., held that: (1) there was a more than adequate showing that grounds may have existed for motion to dismiss indictment and accordingly entire grand jury transcript dealing with indictment would be made available for study by defense counsel, and (2) one defendent was entitled to new trail.

Ordered accordingly.

1. Criminal Law ⚖627.6(6)

There was a more than adequate showing that grounds may have existed for motion to dismiss indictment because of Internal Revenue Service and prosecutorial misconduct during grand jury proceedings; accordingly, entire grand jury transcript dealing with indictment would be made available for study by defense counsel Fed. Rules Cr. Pro. Rules 6, 6(e)(3)(C), 18 U.S. C.A.

2. Witnesses ⚖

Lawyers cannot substitute themselves for the court to release a witness from subpoena.

3. Criminal Law ⚖919(1)

Defendant was entitled to new trial because of alleged improprieties including government counsel's releasing a witness from subpoena.

William Waller and Richard K. Rufner, Wagner and Waller, Englewood, Colo., for defendant Kilpatrick.

James L. Treece, Treece, Zbar, Webb & Kenne, Littleton, Colo., for defendant Declan O'Donnell.

James Nesland, Ireland, Stapleton & Pryor, Denver, Colo., for defendant Bank of Nova Scotia.

H. Alan Dill, Dill & Dill, P.C., Denver, Colo., for defendant Sheila Lerner.

Linda Surbaugh and Robert Miller for U.S. Atty's Office, D. Colo., Denver, Colo., and Charles J. Alexander, Dept. of Justice, Tax Div., Washington, D.C., for U.S.

WINNER, District Judge.

This case was started with a multiple count, multiple defendant indictment returned after an investigation spanning the lives of two grand juries. Judge Kane dismissed all except one count, which left a one defendant charge of obstruction of justice case to try. It was prosecuted by three attorneys employed by the Tax Division of the Department of Justice in Washington. The single remaining count of the indictment has absolutely nothing to do with tax law, and the trial could have been handled competenly and with aplomb by any assistant United States Attorney living in Denver, but the administrative decision of the Department of Justice was to send three lawyers from the Tax Division to try an obstruction of justice case a prosecution unrelated to their professed area of expertise.

I mention this fact for one very important reason. Following a jury verdict of guilty, defendant moved for dismissal or a new trial, and the pending dismissal motions rest on accusations of IRS and prosecutorial misconduct during the grand jury proceedings and during the trail. There is absolutely no suggestion of any improper conduct on the part of the United States Attorney for the District of Colorado or on the part of any of his assistants. Defense counsel carefully point out that neither they nor their client complain about anything other than acts of the IRS and Department of Justice Tax Division lawyers who ran the grand jury and tried the case. Based upon my review of the record and participation in the trial, I share their view that the Colorado United States Attorney's Office is absolutely blameless in this case so fraught with problems. Also, it should be emphasized that no one is critical of government counsel now handling the post trial motions.

To fully cover all of the headaches of this case would require a volume, and I don't plan to write that book for reasons which will appear presently. Instead, I shall highlight some of the things which occurred during the investigation and during the trial of the case. But, there are so many things to cover that this opinion won't be short. Many of the accusations are disputed by the accused government counsel and agents, but they are forced to admit a few instances of "mistake", and their denials of facts run contrary to testimony of a large number of witnesses. To accept the testimony of government witnesses at full value would require that I effectively decide that quite a few reputable lawyers and citizens of this community and other communities are guilty of perjury, and I make no such determination. The record made to date is incomplete. A full evidentiary hearing was scheduled, but, as will be explained later, present government counsel was not able to prepare for the first hearing, and the testimony of essential government witnesses was put over for three weeks. It was ordered that a summary of the testimony of government witnesses be furnished in advance of a hearing scheduled some three weeks later. The summary was furnished, but the government witnesses weren't called although I and defense counsel wanted them called. Therefore, at this point, all I have to rely on is the summary of proposed testimony, but

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[1] This opinion which was originally published at 570 F. Supp. 505 was withdrawn from the bound volume or order of the United States Court of Appeals for the Tenth Circuit that further publication be temporarily delayed. The order so providing has now been vacated by the Court of Appeals.

the witnesses have not been sworn nor have they been cross examined.

With that, then, I set the stage of some of the bizarre happenings in this case, and I do so by mentioning a frequently quoted case. In 1935, in *Berger v. United States* 295 U.S. 78, 55 S.Ct 629 79 L.Ed. 1314, Justice Sutherland, speaking of a unanimous court, criticized the misconduct of the prosecutor in that case. The prosecutor had injected his personal belief concerning the facts of the case (so did a prosecutor here) and he had unfairly cross-examined witnesses. That which the court said concerning reliance by a jury on a prosecutor's integrity is even more applicable to the reliance of a grand jury on a prosecutor. As to a prosecutor's duties, the Court said:

"The United States Attorney is the representative not of an ordinary person to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

"It is fair to say that the average jury, in a greater or less degree, has confidence that these obligations, which so plainly rest upon the prosecuting attorney, will be faithfully observed . . ."

Perhaps the thing which disappoints me the most is the forgetfulness of the grand jury itself in going along with having two IRS agents in charge of the IRS investigation sworn as "agents of the grand jury". Yet, I can understand, as Justice Sutherland said in *Berger v. United States*, that grand jurors rely on Justice Department lawyers for their legal advice. They should do this, because I empanelled the first of these two grand juries, I know what those jurors were told, and I strongly suspect that the second grand jury was told about the same thing. I orally, and on the record, stressed that a grand jury has a duty to protect the innocent and I emphasized that a grand jury is an independent body, separate and apart from investigative agencies and that grand juries are not an arm of the prosecution but instead, they have a duty to examine the government's case carefully. I didn't tell them that they couldn't appoint IRS agents as their own "agents", because it never occurred to me that there could be such a blurring of the "investigative agency", "prosecuting attorney" and "grand juror" functions. However, I did supply each grand juror with a copy of the recommended instructions to grand jurors authored under the auspices of the Judicial Center, and I urged each grand juror to read the instructions frequently to be sure that they adequately performed their duties. (I now urge that Justice Department prosecutors read them). Those instructions say in important part:

"You will recall from my earlier remarks that the grand jury developed in England as an entity independent from the king to protect a subject from an unwarranted prosecution. The king could not charge a subject with a serious crime without first submitting evidence and witnesses to a grand jury, which then decided whether to return an indictment against the accused person.

Just as the English grand jury was independent of the king, the federal grand jury under the United States Constitution is independent of the United States Attorney, the prosecutorial agent of the executive branch of the federal government. The grand jury is not an arm of the Federal Bureau of Investigation; it is not an arm of the Internal Revenue Service; just as it is not an arm of the United States Attorney's Office. There has been some criticism of the institution of the grand jury for allegedly acting as a mere rubber stamp approving prosecutions that are brought before it by government representatives. Similarly, you would perform a disservice if you did not indict where the evidence warranted an indictment.

As a practical matter, you must work closely with the government attorneys. The United States Attorney and his assistants will provide you with important service in helping you to find your way when confronted with complex legal matters. It is entirely proper that you should receive this assistance.

However, you must remember that you are not the prosecutor's agent. Your role is related to but clearly distinct from that of the government attorneys who will assist you, and it is important that you keep the distinction between the roles clearly in mind. Although you must work closely with the government, you must not yield your powers nor forego your independence of spirit.

These comments are meant to be cautionary in nature. The government attorneys are sincere men and women, and you will develop ordinary human feelings as you work with them during your term of service. If past experience is any indication of what to expect in the future, then you can expect candor, honesty, and good faith efforts in every matter presented by the government. However, it is because you may tend to expect such high quality from the government's agents that there is a potentially grave risk to your independence of thought and action, which may cause you to lapse into reliance when you should be dubious or questioning.

You should also remember that the government attorneys are advocates of the government's interests. They are prosecutors; you are not. While they will usually balance fairly the government's interest against the interest of a citizen's personal liberty, it is your responsibility to ensure that the proper balance is acheived in every case brought to your attention. You must exercise your own judgment, and if the facts suggest a different balance than that advocated by the government attorney's then you must achieve the appropriate balance even in the face of their opposition or criticism."

In the face of these instructions, the grand jury wasn't two minutes into its investigation when one of the Justice Department lawyers personally administered an "oath" to an IRS Special Agent, and that "oath" was:

"Mr. Mendrop, do you swear to carry out the duties as directed by the Foreman and Members of the Grand Jury, keep all proceedings and matters and documents which are received pursuant to your work with this grand jury secretive?" (sic).

In its brief the government says:

"The government concedes that Mr. Snyder had no authority to administer oaths to agents. However, Mr. Snyder will testify, and the record will reflect, that the agents were first given an oath by the foreman. It was only after they had been sworn in by the foreman that Mr. Snyder gave the agents what purported to be an additional oath directing the agents to maintain secrecy."

[As had been noted, this testimony hasn't been presented yet, and on the sworn record made to date, it is not clear who gave an oath to testify truthfully.]

The government then "quotes" from the transcript which shows that those were the facts. That's not what the transcript which was supplied to me shows and I am concerned about the validity of someone's transcript. It is true that other "oaths" administered by Mr. Snyder do appear to have followed an oath administered by someone to testify truthfully, but if any such oath was administered to Mr. Mendrop at the first session, it doesn't show up in my copy of the transcript.

Six months later, the Special Agents of the IRS were each sworn as an "agent" of the second grand jury, and if there could be any doubt as to the mingling of the investigative agency/prosecutorial/grand jury functions, the hash which results from the following proceedings eliminates that doubt. After a statement by government counsel that he wanted the agent sworn as an "agent of the grand jury", this job description was furnished by Mr. Snyder:

". . . when he interviews people and he looks at this stuff, he is not looking at it so much as a special agent of the criminal investigation division of the Internal Revenue Service, and he is looking at (it) as your agent and he is amendable to you and he is amendable to Rule 6. Do you recall Rule 6, the Grand Jury secrecy?

"*What it is, is very, very plain, and it states in what capacity he is operating in this investigation so there is no question about it.*

(The agent was then sworn as a witness by someone, and the transcript continues).

"Mr. SNYDER: Do you have the oath to make him a—they don't have the oath. Raise your right hand. Do you solemnly swear that the information and evidence which you receive pursuant to the Grand Jury you will keep secret to yourself *except as provided by the foreman of the Grand Jury* or federal judge? . . . In the course of your *duties as a special agent and also as an agent of a previous grand jury* have you conducted an investigation into the affairs of one William A. Kilpatrick?"

I don't know how it could be any clearer than in Mr. Snyder's eyes, the agent's investigation was a combined IRS and Grand Jury investigation conducted by a single "agent", and, of course, under Rule 6 he was the prosecuting attorney's little helper. That isn't what the stock instructions to grand jurors say should be done, and, although the government argues that other grand juries have had agents, it fails to come up with a case approving the practice and it fails to mention any case discussing the blurring of functions. The government relies on *United States v. Cosby*, (1979) 5 Cir., 601 F.2d 754. There, the court itself challenged the practice of appointing an "agent of the grand jury", but it "assumed" that the practice was proper because it reversed the case on other grounds. The opinion cites several cases where "the use of third parties to assist grand juries has been considered and approved," but it is to be noted that those cases were decided before

the amendment of Rule 6(e) which makes no mention of grand jury "agents" and which says that disclosure may be made to government lawyers for use in the performance of duty, and to other governmental personnel "as are deemed necessary by an attorney for the government to assist an attorney for the government, *in the performance of such attorney's duty to enforce federal criminal law.*" The rule does not permit the grand jury to have an "agent", and it categorically says that Rule 6(e) permits disclosure to non-lawyers for the single purpose of assisting the "attorney for the government". The rule doesn't mix up the separate functions of prosecutor and grand jury, and with Rule 6(e) clarified, those functions cannot be blended.

My thoughts on this score are in full accord with those of the Advisory Committee, because its note to the 1972 amendment to Rule 6(c) says:

"Federal crimes are 'investigated' by the FBI, the IRS, or by Treasury agents, *and not by government prosecutors or the citizens who sit on grand juries.*"

Here, the "Grand Jury Agents" investigated and they testified, all the while being special agents of the IRS, and, as will be detailed later, a government prosecutor "investigated" on the streets of Puerto Rico.

The government concedes the obvious. A lawyer employed by the Tax Division of the Department of Justice can't administer oaths, but, sworn or unsworn, I don't think that an IRS special agent can act in the combined capacity of IRS Agent, "Agent for the Grand Jury" and recipient of grand jury information supplied under Rule 6(e) for the sole purpose of helping out the prosecutor. This is a confusion not of apples and oranges. It is confusing apples, oranges and bananas.

Admitting impropriety in the conduct of counsel, the government's brief argues that the error wasn't serious and that it resulted from good motives of Mr. Snyder. The error may or may not be serious, and I express no opinion as to the gravity of the error. However, the government is playing with fire in arguing that good motive excuses making one's own law. I discussed my thinking of this argument at quite some length in *United States v. Best,* (1979) 476 F.Supp. 34, where I ruled that a belief that blocking some railroad tracks would save the world from nuclear devastation didn't excuse the offense, and the Tax Division has surely heard tax protestors say that their motives in refusing to obey the tax laws are pure as the driven snow. Mr. Snyder's good intentions don't excuse his arrogation of a power he didn't have. And, even if the illegal "oath" doesn't amount to serious error, it started the case downhill on a course of repeated excesses on the part of the prosecution. Good intentions or ignorance of the law don't make those errors go away. The creation of the "office" of grand jury agent is harder to excuse when the impartial jurors' "agent" is a chief investigator of the IRS case against the defendants and is receiving grand jury information under Rule 6(e) only to help out the attorney for the government charged with the supervision of presentation of the government's case to the grand jury.

What has been said thus far, and much of that which is to follow, bear in no way on the trial itself, and, therefore, those things can't enter into a decision of whether a new trial should be granted. That which took place during the grand jury proceedings and most of that which took place outside the presence of the jury couldn't poison the jury verdict, and these alleged transgressions are argued in support of the motion of dismiss because of prosecutorial misconduct and in support of claimed lack of professionalism of government counsel. Therefore, insofar as possible, I shall try to discuss the arguments bearing on the new trial motion in a separate part of this memorandum.

In a brief filed by trial counsel (not signed by present counsel for the government and not adopted by Colorado's United States Attorney whose typewritten signature does appear) the many accusations were described as "silly", but they aren't either silly or frivolous. Indeed, the brief filed by trial counsel was couched in language far different from that which the court is accustomed to reading. When asked, Mr. Scharf said that higher authority in the Justice Department Tax Division has approved the brief and its phraseology, and that higher authority thought the whole thing was a ploy of defense counsel. If that be so, the lawyers in the upper echelon of the Tax Division have adopted a style of brief writing markedly different from that Justice Department lawyers have filed with this court in the past and I have had my fair share of experience in dealing with Tax Division lawyers for whose ability and ethics I have the highest regard. And if the overlords of the Tax Division think this whole mess is just a ploy, I recommend that they take a second look.

Since I started this with the grand jury proceedings, I think that I should continue with them and with matters which occurred during the trial which don't impact on the new trial motion but which are aimed at the dismissal motion and lack of professionalism. I think that the place to start is with Rule 6(e), F.R.Cr.P. itself, because that is the rule which governs grand juries and it is the rule which was violated here. I quote from Rule 6(c) and I italicize the phrases in that section which are of importance to this case:

"(e) Recording and Disclosure of Proceedings.

"(1) All proceedings, except when the grand jury is deliberating, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding shall not affect the validity of the prosecution.

The recording or reporter's notes or any transcript prepared therefrom shall remain in the custody or control of the attorney for the government unless otherwise ordered by the court in a particular case.

"(2) A grand juror, and interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, *an attorney for the government, or any person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury* except as otherwise povided by these rules. *No obligation of secrecy may be imposed on any person except in accordance with this rule.* A known violation of Rule 6 may be punished as a contempt.

"(3)(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made made to—

"(i) an attorney for the government for use in the performance of such attorney's duty; and

"(ii) such government personnel as are deemed necessary *to assists an attorney for the government in the performance of such attorney's duty to enforce criminal law.*

(I don't know how it can be argued that this language permits disclosure to IRS agents to work as "agents for the grand jury" unless it is argued that the grand jury is simply an arm of the prosecutor's office, and if that be the argument, almost 800 years of history is going to have to be forgotten. The document King John signed at Runnymede contains no such concept, nor does our Constitution.)

"(ii) such government personnel *as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty* to enforce federal criminal law.

(It seems pretty clear to me that the IRS agents to whom disclosure was made were hired guns of the prosecutor and the IRS—not of the grand jury.)

"(B) . . . An attorney for the government shall promptly provide the district court, before which was empanelled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made. (The language of the rule is this clumsy.) "(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made.

* * * * *

"(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct."

I first mention something not raised by defense counsel, but defense counsel had no way of knowing anything about it. I found out about it from a scanning of the full file drawer of grand jury transcript. A while back, it was the practice to make grand jury witnesses take an oath of secrecy, and this is still the rule in some state court systems. Because of public outcry, the rule was changed, and, as has been seen, this is now verboten because of the language of the rule saying, "No obligation of secrecy may be imposed on any person except in accordance with this rule." This language has been uniformly interpreted to prohibit any instruction to a witness that his testimony is secret. *In re Langswager,* (1975) D.C.Ill. 392 F.Supp. 783; *In re Grand Jury Witness Subpoenas (1974)* D.C.Fla. 370 F.Supp. 1282; *In re Alvarez* (1972) D.C.Cal. 351 F.Supp. 1089; *In re Minkoff* (1972) D.C.R.I. 349 F.Supp. 154; *in re Investigation before April 1975 Grand Jury* (1976) D.C.Cir. 531 F.2d 600; *in re Vescovo Special Grand Jury* (1979) 473 F.Supp. 1335, and many other cases. In spite of this express command of Rule 6(e), secrecy obligations were imposed on several witnesses, and, to make the violation more disturbing, secrecy obligations were imposed on lawyers called to furnish information concerning their clients. That makes the violation gravely beyond the pale, because of the impossible position the lawyer-witness is placed in, but that's what the grand jury transcript discloses. No "oath" of secrecy was administered, but an obligation of secrecy was imposed by instructions from government counsel to witnesses. This foolishness may or may not have been intentional, but ignorance of the law is not a defense available to a prosecutor. This misconduct is

established by the record, and it will prove difficult for the government to deny, just as the government had to admit the attempted administration of an "oath" by Mr. Snyder. The government surprisingly defends the proven mishmash of function of the IRS Special Agent/Grand Jury Agents/Assistants to the Attorney for the Government appointed under Rule 6(e), but maybe it thinks that admitting that this was error would confess the motion to dismiss.

I come now to other accusations made by defendant and pretty much denied by the prosecutors and IRS agents. I make no finding as to whether most of the charges are proven or unproven, but I do find that as to all assertions made by defendant there is cause for concern that the prosecutor's conduct before the grand jury may require dismissal of the indictment. The accusations are made sincerely; there is some evidence to support all of them, and there is quite a bit of evidence to support some. However, before factual findings can be made, a further hearing permitting participation by all parties interested in the grand jury proceedings is necessary—something which will be explained later. Most importantly, of course, the testimony of government counsel is essential, and it is still missing although all three of the lawyers were in Denver during the last hearing.

Because that additional hearing is required, I shorten discussion of most of the claims of prosecutorial misconduct, but I shall comment briefly on them. Frequently I will phrase the charges as if the facts had been established, but I emphasize that I am not saying that the facts have been proven. I am just adopting the practice of the government in phrasing an indictment in language saying that thus and so are the facts. I am only phrasing the defendant's charges against the government in the same way the government phrases its charges against a defendant, and the fact that the charges are made is not evidence that they are true, nor do I find that they are.

Richard Birchall is a lawyer formerly with the Tax Division who practices in New Jersey and who did some work for defendant and his company. He was subpoenaed to testify before the grand jury, and he showed up in Denver pursuant to the subpoena. He says that he met Mr. Snyder and the agents in a bar and they downed a few drinks paid for by Mr. Snyder. During this session Mr. Snyder supposedly disregarded the secrecy rules and, having done so, he told Mr. Birchall he was a potential target. He added that there was testimony about a personal relationship of Mr. Birchall's, a comment which was bothersome to the witness because of marital problems of Mr. Birchall. These communications are of a nature (if they were made) designed to bring about hurried cooperation from a witness, and especially from a witness who is a former Tax Division lawyer practicing tax law in the private sector. While in Denver, Mr. Birchall was left in a room with some grand jury transcripts and material lying on a table in plain sight. Mr. Birchall scanned some of the material trying to locate that which dealt with the matters discussed by Mr. Snyder. Perhaps he shouldn't have done this, but this is a matter of morals while grand jury secrecy is a matter covered by Rule 6, and Mr. Snyder was under it, but Mr. Birchall wasn't. Moreover, Mr. Birchall testified that he thought that he was being treatened by Mr. Snyder, and he was reacting to the treats. I pass no moral judgment on what happened because that's not the question to be decided in this case.

This doesn't end the accusations made through Mr. Birchall's testimony. He said that Mr. Snyder tried to persuade him to breach his ethical duty of confidentiality and he attributed to Mr. Snyder a remark that even if the defendant wasn't guilty, the government would "break him" with the cost of the defense. These accusations got to the heart of our system of justice, and it was no ploy on the part of defense counsel to bring the accusations out for public scrutiny.

Professor Roland Hjorth teaches tax law at the University of Washington Law School, and he is a recognized expert who was employed by defense counsel on the recommendation of the professor or tax law at the University of Michigan. At the request of defendant, Professor Hjorth was permitted to testify as an expert before the grand jury. His views of tax law differed markedly from those of Mr. Snyder, who bragged on frequent occassions that he had never taken a course in taxation and knew almost nothing about it. Nevertheless, Professor Hjorth was brow-beaten and ridiculed by Mr. Snyder, and some of the conversation so out of place for an ethical prosecutor took place during a recess in the hearing of some grand jurors. The government's post trial brief says as to this breach of ethics and standards of common courtesy:

"It was poor judgment on the part of Mr. Snyder to carry on a conversation with Professor Hjorth while two grand jurors were present. However, the record fact is that there was no disclosure of Grand Jury material during the conversation."

I'm not so sure about that. The record shows that the argument and ridicule was as to that which Professor Hjorth had testified to, and that presons other than grand jurors could hear the argument. However, even if the government is correct in this statement, the fact is that the argument begs the real question. Professor Hjorth also testified that as a result of Mr. Snyder's conduct, he would never again appear as an expert witness. Intimidating witnesses by telling them that their testimony disgraces them and implying that the Tax Division of the Department of Justice will take after the witness and will complain to the University of Washington Law School because an expert testified to his expert opinions does no credit to our government. I think that the government's argument in its post trial brief is unconvincing, and, seemingly, the professor's testimony isn't seriously contested. I hope that we haven't gotten to the point that disagreement with the legal concepts of the IRS provides grounds for attacks by the bureaucracy because sometimes the IRS is wrong *U.S. v. Sells Engineering* (1983)— U.S.—, 103 S.Ct. 3133, 77 L.Ed.2d 743 and *U.S. v. Baggot*,— U.S.—, 103 S.Ct 3164, 77 L.Ed2d 785.

Peter Parrish is a former IRS agent who is now employed as an accountant and who worked for defendant. He said that when he responded to a subpoena, he was interviewed by Mr. Blondin and matters which took place before the grand jury were discussed. He also said that the discussions could be heard by outsiders. I don't approve this causual approach to witness interviews, but I think that the incident is picayune. It doesn't deserve discussion.

To further muddle the status of the Special Agent/Grand Jury Agent/Assistant to the Prosecutor matter, letters were written on the letterhead of the United States Attorney for the District of Colorado, and they were signed by the IRS agents with an explanatory line under their signature saying that they were "Special Agents". The letters were authorized by Justice Department attorneys, but they were not authorized by the United States Attorney in Colorado. Apart from the fact that IRS agents who claim to be "agents of the grand jury" shouldn't be using the U.S. Attorney's letterhead, the identity of the persons and the transactions which were under grand jury scrutiny shouldn't be disclosed to anyone by letter or otherwise, but these startling letters did precisely that. I can't fault the IRS agents for this because the government's brief says as to these singular letters:

"Mr. Blondin and Mr. Snyder on these occasions asked the agents to send out correspondence and to sign the letters for them, after having the contents of the letter read to them over the phone. On no occasion, did the agents who were acting under the direction and control of Mr. Snyder, Mr. Blondin and the United States Attorney's Office sign any such letters without advance authority from the government's attorneys."

The United States Attorney of the District of Colorado has disavowed the letters written on his letterhead, and he has seen to it that this won't happen again.

Thus, the disclosures were made with knowledge of Tax Division lawyers and the IRS agent signatures on U.S. Attorney stationery were approved by them. The government has cited no authority for this novel procedure by which the nature of that which was going on before the grand jury and the identity of a target was certified to in writing on the letterhead of the U.S. Attorney who was not running the investigation. Once more, I attribute no fault to the U.S. Attorney.

In recent years, the use of "pocket immunity" has become prevalent. The phrase, for the benefit of the uninitiated, refers to a practice of ignoring the Congressional mandate as to how immunity can be granted and instead of doing what Congress commands, informally substituting a "deal" struck between a prosecutor and a witness. The enforceability of the side agreement in the federal court is an open question, but I have never heard it even argued that federal pocket immunity applies to state court prosecution. However, when it is coyly suggested that a lawyer's client is a target of a grand jury inquiry and that the client can escape the range of fire by incriminating himself along with someone else, the carrot proffered by the prosecutor is hard to resist. Not unimportant, of course, is the fact that the pocket immunity need not be included in statistical reports showing the number of immunities granted in federal prosecutions. (These statistics have been of interest to Congess in the past, and I believe that they still are.)

The deal is a good one for both sides, but it skirts the law. It can be granted on a local level by lawyers not authorized to approve the grant of formal immunity, and no report of its use is required. Formal immunity would have required the approval of the United States Attorney and a designated Assistant Attorney General. But pocket immunity can be granted at the whim of any lawyer running a grand jury, and there is no public record of the side deal. Here, the United States Attorney didn't authorize nor did he approve the immunities. In fact, he didn't know anything about them, although statutory immunity requires his okay.

The history of immunity statutes, colonial, state and federal, is set out in footnotes to *Kastigar v. United States* (1972) 406 U.S.

441, 92 S.Ct 1653 L.Ed.2d 212, and the present immunity statute enacted in 1970 is there discussed, as is the Congressional intent in its enactment. The intent as to the formality of grants of immunity is quite plain 18 U.S.C. § 6002 effectively recognizes privilege against self-incrimination up to the point "the person presiding over the proceeding communicates to the witness an order issued under this part," to testify. The preliminaries to obtaining such an order are spelled out in 18 U.S.C. § 6003, and they are:

1. There must be a request for the order *made by "the United States attorney for such district.*

2. The request by the United States Attorney for the immunity grant *must then be approved by "the Attorney General, the Deputy Attorney General, or any assistant Attorney General."*

3. There must be a certification that the testimony may be necessary for the public interest and that the witness has refussed or is likely to refuse to testify because of his privilege against self-incrimination.

At that point, a district judge performs the ministerial act of signing the immunity order. *In re Corruglated Container Antitrust Litigation* (2nd Cir. 1981) 644 F.2d 70, *In re Daley,* (7th Cir. 1977), 549 F.2d 469. The order typically tracks § 6002 and says that "no testimony or other information compelled under the order . . . may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order." This was the statute which was in *Kastigar v. United States* (1972), 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212, in which the old case of *Counselman v. Hitchcock* (1982) 142 U.S. 547, 12 S.Ct. 195, 35 L.Ed. 1110, was explained and distinguished. In *Kastigar* it was held that the statute did not grant transactional immunity and that the grant was limited to use. "The statute, like the Fifth Amendment grants neither pordon nor amnesty. Both the statute, like the Fifth Amendment allow the government to prosecute using evidence from legitimate independent sources." When the statute is followed, there is a formal, understandable record of the immunity granted and its extent, but, with pocket immunity, no one is sure what the deal is, and there is no adequate record—statistical or otherwise. An underlying purpose of the statute is to reduce to written record the identities of persons granted immunity to permit necessary comparison at a later time of their relative guilt, as compared with persons not let off the hook. With the informal pocket immunity, only a few of the grants come to light, and clear Congressional purpose behind the law is defeated. The statute cannot be read to mean anything other than a limitation on immunity grants to requests made by a "United States Attorney", approved by "the Attorney General, the Deputy Attorney General, or any assistant Attorney General". Congress did not delegate to Tax Division Assistants any right to formally or to informally deal out immunity to the objects of their bounty, but here persons identified as targets of the grand jury were later bargained out of the case by Messrs. Snyder and Blondin. Whether there was any approval of the gifts of pocket immunity, and if so, by whom, I know not, but I do know that there was not compliance with 18 U.S.C. §§ 6002-6003, and I do know that the United States Attorney did not authorize the pocket immunities granted by Tax Division lawyers.

This is especially troublesome in this case in light of the record made concerning the witness Richard Bell who was allegedly targeted by the grand jury (or at least by Mr. Snyder and Mr. Blondin). Mr. Bell was represented by his brother, Malcolm, an attorney practing in New York City, and a witness I found to be straightforward, fair, convincing, and most generous to Mr. Snyder. Malcolm Bell succumbed to the carrot of pocket immunity for his brother, but, later he was told by Mr. Snyder that if Richard "testified for Mr. Kilpatrick, all bets are off." Maybe this meant that if Mr. Bell perjured himself he would be prosecuted for perjury, but if the immunity statute had been followed, the nagging question of the meaning of "all bets are off" wouldn't confront us. Under the statute, all bets weren't off if Richard Bell testified for Mr. Kilpatrick, although he could have been prosecuted for perjury if he testified falsely, but incriminating testimony given by him couldn't be used in a prosecution of the charges with which he was threatened. If the statute had been followed, the government couldn't welch on the bet of not using any incriminating testimony and I doubt that it can welch on that bet when the immunity grant is in pocket form. All too often, pocket immunities are carelessly granted, and sometimes they grant transactional immunity which Congress has not authorized. It is not surprising that there was uncertainty and misunderstanding in this instance. Grand jurors can't be expected to know the requirements of the concerning lawful immunity grants, that the prosecutor ignores the statute, the grand jury should be told that witnesses are testifying under a side deal made with the witness by the prosecutor. The nature and informality of the immunity grant might bear on a grand juror's evaluation of the credibility of a witness, especially if the grand juror knew of the short cut used by the prosecution.

James Treece is a former United States Attorney for the District of Colorado. He was representing one of the targets of the grand jury investigation, and he was served with a subpoena duces tecum to produce records before the grand jury. He told the IRS Special Agent/Grand Jury Agent/Assistant to the prosecutor who served him that he had no such records in his possession, to which the agent, speaking in which capacity I know not, responded, "You're a liar." I guess that at this point this "man of many occupations" decided to act as a grand juror and pass on credibility. That this was said is denied, but I cannot disregard the testimony. I have no knowledge that any such comment was communicated to the grand jury, but Mr. Treece was required to testify after being called a liar by the "grand jury agent", and although I doubt that Mr. Treece was intimidated, other witnesses may have been.

We have not one but two problems under *Massiah v. United States,* 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246. With full knowledge that he was represented by counsel, Declan O'Donnell appeared before the grand jury against the advice of his counsel, and the advice was known to the prosecutors. The government argues that O'Donnell was a lawyer and that he appeared voluntarily. I don't think that this is any answer to *Massiah,* although I concede that the case deals with an indicted defendant and O'Donnell was not then indicted. The government excuses its conduct saying it is permitted under *Edwards v. Arizona,* 451 U.S. 477, 478, 101 S.Ct. 1880, 1881, 68 L.Ed.2d 378. I don't think that *Edwards v. Arizona* is apposite. That case has to do with *Miranda* rights, and, although the government asks that I read footnote 9 of the opinion, I think that footnote 8 has more to do with the *Massiah* problem. I do not rule that there was or was not a violation of *Massiah* in the case of Mr. O'Donnel's testimony before the grand jury because such a ruling is not necessary to this memorandum, but defendant's argument isn't frivolous.

Robert G. Morvillo is a prominent lawyer practicing in New York City, and his testimony was taken by telephone. He represented the Bank of Nova Scotia, and he testified concerning the activities of Mr. Scharf in going to Puerto Rico to play cop in a further and total blurring of the distinction between prosecutor and investigator. In its brief, the government sees no impropriety in this conduct, but I remind of the Advisory Committee's comment that "Federal crimes are 'investigated' by the FBI, the IRS or by Treasury Agents and not by *government prosecutors* or the citizens who sit on grand juries." (They surely aren't investigated by "reviewers" something next to be discussed) In any event, I have no doubt that when a prosecutor turns cop, he loses his *Imbler v. Pachtman,* 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 prosecutorial immunity.

While in Pureto Rico, Mr. Scharf conducted a surveillance of some little girls and tailed them to their home. This let him question their mother as to the whereabouts of his prey who happened to be her husband, and who is a Bank of Nova Scotia employee. Of course, Mr. Scharf must have known that the wife couldn't have been compelled to testify to her husband's wereabouts, even under the lessened privilege adopted in *Trammel v. United States,* 445 U.S. 40, 100 S.Ct. 906, 63 l.Ed.2d 186. As an investigative technique tailing the little girls and quizzing the wife may have been briliant police work, but I am quizzical as to the propriety of a lawyer questioning someone he knows he couldn't question in court because of an absolute privilege which, according to *Trammel,* can be waived only with full knowledge of the incompetence to testify. It seems to me that whatever may be the obligations of an IRS agent, a prosecutor owes a duty not to question a wife about her husband's whereabouts unless *Berger v. United States,* 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314 has been overruled, and it hasn't been. Totally apart from the propriety of Mr. Scharf's actions in Puerto Rico under *Trammel,* the witneses were employees of the Bank of Nova Scotia, well known to Mr. Scharf to be represented by Mr. Morvillo. He says that interviews conducted by Mr. Scharf violate *Massiah;* the government says they don't, and I express no judgment as to who is right or wrong, but, undeniably, there is a problem, and I think that the problem was well known to Mr. Scharf when he visited Puerto Rico.

Next we come to still another confusion in who occupied what job. It seems that within the administrative procedures of the Department of Justice sometimes conferences can be arranged with "reviewers" who are higher ups in the Tax Division. Many lawyers are of the impression that the "reviewers" occupy a sort of quasi-judicial capacity to pass judgment on whether a case should be prosecuted, and that they are pretty much like the Appellate Staff on the civil side of the Tax Division. Experienced tax lawyers think that a "reviewer" is someone with whom compromise can be discussed.

Moreover, from time immemorial, lawyers have dealt with one another in trying to settle cases in the belief that they can be straightforward without having their words thrown back at them at time of trial. The IRS hasn't always shared this view, and problems with the IRS played no small part in the enlargement of the coverage of the common law rule by the enactment of Rule 408 of the Federal Rules of Evidence. That rule now provides, "Evidence of conduct or statements made in compromise negotiations is likewise not admissable."

During the troubled history of this case, some lawyers were and some were not afforded the luxury of a conference with a "reviewer". Experienced tax lawyers think that a conference with a Reviewer offers a last ditch opportunity to avoid a criminal prosecution through negotiation, and memoranda are submitted to the Reviewer to analyze defense counsel's legal position. Conferences are then set up, attended by IRS agents, trial attorneys for the government, and defense counsel to present arguments pro and con for more or less impartial consideration by the Reviewer. Counsel for some targets were and some were not favored with a conference with a Reviewer, but those who were so favored met with one Jared Scharf acting as the Reviewer. Something which was not disclosed to defense counsel was that he was a behind the scenes prosecutor, and, not only was he a behind the scenes prosecutor, he was actually an investigator in the case.

Rule 6(e) says that the grand jury transcript shall "remain in custody or control of the attorney for the government". The transcript of this grand jury was in the custody and control of the IRS. After the indictments were handed down, the transcript was stored away from the United States Courthouse in a room obtained from the General Services Administration by the Internal Revenue Service. It was a room assigned to the IRS, and, if the United States Attorney wanted in, he would have had to get a key from the IRS Special Agents. One cannot help fretting about this violation of the express language of the rule, and *United States v. Sells Engineering, Inc.*,— U.S. —, 103 S.Ct. 3133, 77 L.Ed.2d 743, coupled with *United States v. Baggot*, —U.S. —, 103 S.Ct. 3164, 77 L.Ed.2d 785, decided a few weeks ago, don't lessen the concern as to why the IRS retained custody of the transcripts which the rule unambiguously says should be under the control of the United States Attorney and only the United States Attorney.

There is testimony that Mr. Snyder threw his jacket on the floor and mouthed obscenities at me as I left the bench. I didn't see anything like that, and the conduct is denied. I don't know whether he did or didn't do any such thing.

When I recessed court one day, the players were in their usual positions. Mr. Snyder, Mr. Blondin, Ms. Surbaugh, and an IRS agent were seated at plaintiff's table. Mr. Scharf was in his bleacher seat, a couple of rows back in the spectator's section where he always sat while the jury was in the courtroom. It was only when the jury left the courtroom that he sat at the counsel table and became an active trial participant. Because of suspicions I had based on testimony in the case (suspicions enhanced by post trial testimony) I was concerned about possible violations of *Massiah*, and I cautioned one and all that I didn't want the rule violated. I started to leave the bench, and Mr. Scharf yelled at me (he says that he spoke in a loud voice, but, the dictionary I have suggests that the difference between a loud voice and a yell is quibble). Mr. Scharf's discourtesy amused me more than it offended me, but according to that which has been said in the post trial hearings, members of the public were distressed that a government lawyer would shout at the judge from the spectator's section of the courtroom. I thought that my court reporter's comment as we left the courtroom was discerning. She said that if her five year old son did something like that he would be sent to bed without his supper.

Rule 6(e) was amended to change the procedure for disclosure of grand jury information to "such government personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce the criminal law." No court permission for the disclosure is required, and the rule is complied with if the attorney for the government "promptly provide(s) the district court . . . with the names of the persons to whom such disclosure is made." As I read it, any "attorney for the government" can promptly provide the information, and any "attorney for the government" can make the decision to disclose. I have no fault to find with the paper trail left in this matter inosofar as the disclosure requirements are concerned. I am troubled about testimony suggesting that authority to make the disclosure decisions was delegated to the IRS Special Agent/Grand Jury Agents/Prosecutor's helpers. Under common law rules of agency, this authority couldn't be delegated to a subagent, and, especially it couldn't be delegated to an IRS agent whose fellow workers were aiming at the defendants from a different angle. My worry on this score is not lessened by an IRS letter in evidence saying that making a civil tax case under the administrative process would be difficult. *United States v. Sells Engineering* and *United States v. Baggot*, both *supra*, which settle the question of using a grand jury to collect taxes.

At the post trial hearing, Donald D'Amico, a witness called by the government, testified as to his appearance before the grand jury. He said that in the presence of the grand jury, Mr. Snyder threw his arm around his shoulder and whispered, "Don't let them cut you up." Then Mr. Snyder introduced him to the grand jury with a glowing recitation of Mr. D'Amico's war record and said, "We have a genuine war hero." After that, Mr. Snyder read off a list of names and asked if the witness would take the Fifth Amendment if inquiry was made concerning those persons. Upon receiving an affirmative answer, the witness was excused from further testimony, and it was not until the post trial hearing that Mr. D'Amico received oral pocket immunity. From what was said at the hearing I glean that counsel for Mr. D'Amico had discussed the grand jury testimony before the witness was called, and why he was called just to claim his privilege remains unexplained.

Bernard Ballor was called as a witness by the government. He is a lawyer of long experience with the Tax Division of the Department of Justice, and I was impressed with his knowledge and with his candor. He said that if a case is being prosecuted by a United States Attorney, it is not unheard of to have a Reviewer assigned to assist in a trial if the United States Attorney so requests, but that when a case is being prosecuted by Tax Division lawyers, it would be most unusual to have a Reviewer act as a trail attorney. He also summarized the security given grand jury material in a major case be handled, and that security was far greater than the security in this case. He made the statement that abuse of the grand jury process should bring about a dismissal of the indictment.

[1] I think that I have talked enough about the grand jury to explain why I think there has been more than an "adequate showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury." There is such motion, and, accordingly, I act under the provisions of Rule 6(e)(3)(C) which says that disclosure of grand jury matters may be made "when permitted by the court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury." The Advisory Committee note to Rule 6 requires a "preliminary factual showing of serious misconduct" and I am convinced that the requirement has been met. I guess that technically, the requisite "request" to examine the entire grand jury transcript hasn't been made, but in light of this memorandum, I am sure that it will be. I have scanned the transcript, but I haven't had time to study it, and, even if I had the time, nuances recognizable by counsel wouldn't be apparent to me. Because of the showing made as to the claims of prosecutorial conduct, and without finally ruling that there was or was not any such misconduct, I order that the entire grand jury transcript dealing with this indictment be made available for study by defense counsel. Defense counsel say that a grand juror who is also a lawyer, if permitted, would testify that Mr. Snyder oppressed witnesses before the grand jury and that he was overbearing and discourteous. I leave to another judge to decide whether this evidence should be received.

The rule says, "If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct." The conditions follow: Disclosure shall be made to counsel and only to counsel. Paralegals shall not be used as substitute lawyers, and only members of the bar shall examine the transcript. They shall hold secret matters they learn, and they shall discuss them with no one other than co-counsel, and, insofar as necessary to the preparation of their arguments, with their clients. Typists given direct or indirect information concerning the context of the transcript shall receipt for a copy of a written order commanding that they hold secret any information learned by them as to what took place before the grand jury, and those receipted orders shall be filed with the clerk. During the time a transcript is being used to prepare arguments in this case, counsel shall be personally responsible for its secrecy, and when not in actual use, the transcript shall be placed in locked storage to which only counsel have access. When need for the transcripts no longer exist, all copies of it shall be returned to the United States Attorney to remain in his custody and control. All briefs disclosing grand jury testimony shall be sealed.

I make this ruling because I think that disclosure of the transcript is necessary in the interest of justice, and I make it because of recent action by the United States Court of Appeals for the Tenth Circuit. I also have in mind that which I anticipate the future

holds in store for me. I noted earlier that Judge Kane has dismissed all except one count of the indictment, and the government has appealed his ruling. Because the prosecutorial misconduct, if proven, may result in a dismissal of the entire indictment, the Court of Appeals has ordered a partial remand to permit full development of the facts by all defendants. The remand is of such recent date that other defendants cannot be adequately prepared, and they should be permitted to participate in the matter to whatever extent they desire. They may be satisied with the record made, or they may want to expand on it. Even defendant Kilpatrick's lawyers may want to expand the record after reading the full transcript. I cannot, and I do not rule on the motion to dismiss. I earlier asked for suggestions as to remedy, and the government has said that such suggestions are premature. I think that is correct. Dismissal is a possibility under a theory of a totality of the circumstances, and it is because proof of repeated misconduct is necessary to order dismissal that I have discussed the many accusations. See, *U.S. v. Gold,* (1979) D.C.Ill. 470 F.Supp. 1336. But dismissal is a last resort seldom used. *U.S. v. Narciso* (1976) D.C. Mich. 446 F.Supp. 252. Contempt is a possibility, and it is the remedy usually suggested. See, *U.S. v. Hoffa* (6th Cir. 1965) 349 F.2d 20, *U.S. v. Dunham Concrete Products* (5th Cir. 1973) 475 F.2d 1241, *U.S. v. District Court* (4th Cir. 1956) 238 F.2d 713. Disciplinary proceedings are a possibility, and the government has advised that "all of the allegations under consideration have been referred to the Office of Professional Responsibility" of the Department of Justice. Our local committee on conduct would also have jurisdiction of some of the matters.

Because further hearings are essential to a ruling on the motions to dismiss, and, perhaps, because Rule 605 of the Rules of Evidence, but more importantly because I aim to quit the judging business before the hearings can be completed, I make no ruling on and I intimate no belief as to what should be done with the dismissal motions. This decision will have to be made by Judge Kane, as will all other decisions concerning remedy.

No defendant other than defendant Kilpatrick is interested in the motion for new trial, and I am the only judge who should rule on it because I was there and watched in amazement the trial's conduct. But little discussion is necessary to this ruling. I have talked about the testimony of Richard Bell and his brother. I heard that testimony outside the presence of the jury, and I wouldn't let the jury hear it. I think that was an error, and I don't think that I should put the parties to the expense of having the Court of Appeals tell me it was error. The witness was a key to the prosecution's case, and testimony as to the alleged pressures was important to an evaluation of his credibility. The pocket immunity and the circumstances of its grant bear on credibility. I initially thought that the testimony went only to prosecutorial misconduct which is for the court to determine, and I overlooked the credibility aspect of the implied threat coupled with the pocket immunity grant just as I overlooked the right of the jury to know that immunity wasn't granted the way Congress says it shall be. The jury should have heard the testimony and it might have changed some juror's mind. As a trial lawyer I didn't like the phrase "harmless error", and as a trial judge I don't use it when the error has any substance at all. This error has substance.

[2,3] One Wilson Quintela was subpoenaed by the government, and he was arrested as a material witness. The prosecutors exercised a power possessed only by the court, and they released the man from subpoena. He promptly returned to his home in Brazil. Lawyers can't substitute themselves for the court to release a witness from subpoena. *U.S. v. Sanchez* (2nd Cir. 1972) 459 F.2d 100. At the time of trial, the government admitted that their conduct was in error, and every effort was made to get the witness to come back from Brazil when defense counsel said that he was relying on the availability of the witness. After the trial started, the government said that the witness would return, but defense counsel said at that point he had developoed this trial strategy on the basis of the release of the witness from the subpoena. He may have correctly thought that an interruption of the trial to permit travel from Brazil would be detrimental. That the government was guilty of no evil intent I am sure, but that the defendant suffered no harm I am not sure. Standing alone, this is one mistake I might reluctantly say was "harmless error", but coupled with other things, I can't so rule.

If there is any one thing that Tenth Circuit has been vehement about it is expressions of personal opinions by counsel as to whose testimony they believe. That rule was violated here, and I suggest that a review of the grand jury transcript may show frequent violations of the rule during grand jury proceedings. My thinking on this score goes immediately to the appearance of Professor Hjorth before the grand jury. I jumped in during final argument to try to lessen the error of the comment, but I doubt that I cured it.

It is argued that in the presence of the jury one of the agents stared at and laughed at the defendant. The prosecution says that this didn't happen, and that if it did, I would have seen it. I didn't see it, but that doesn't mean that it didn't happen, because no judge sees everything which goes on in a courtroom. This is especially so because I was concentrating my attention on Mr. Scharf's glowering as he sat in the second row of the spectator's section, and I doubt that defense counsel could see him. I mention this only because it is one more tiny aspect of the atmosphere of the trial. It was an atmosphere of unfairness and overreaching illustrated in small degree by ex parte telephone calls to my law clerk made by government counsel inquiring through the back door to learn my thinking as to some legal situations in the case. (Colloquy about this appears in the record, and, consistent with their denials of what so many others say, government counsel deny my law clerk's statements as to the conversation.) The case is the only trial I have ever conducted in which the courtroom deputy complained about discourtesy on the part of counsel, and I suppose that it goes without saying that it was not defense counsel who were discourteous. (An apology by government lawyers was extended later.)

Other arguments are advanced supporting the new trial motion, but I don't think that I need extend this opinion by discussing them. I have taken them into account in my thinking. Usually, when a case goes to the jury, there are no more difficulties to be encountered, but that's not so in this ill-starred case which had its first questionable conduct during the opening two minutes of grand jury investigation and which had conduct suspect under the Canons of Professional Responsibility lasting into post trial hearings. While the jury was deliberating a note was received. I notified counsel on both sides, and a hearing was held in open court with the defendant present, defense counsel present. Ms Surbaugh of Colorado's United States Attorney's Office, and Mr. Blondin were there on behalf of the government. (Messrs. Scharf and Snyder didn't show up, although when the jury retired all counsel had been told to stand by for jury questions or a verdict). We discussed the answer which should be given to the jury, and we all agreed on it. The answer was written and a copy was given to both sides.

I was more than a little surprised when a telephone call from Mr. Scharf was received a few minutes later. He had decided that he wasn't satisfied with that which those who saw fit to come to the hearing all agreed to. He demanded a further hearing, and I told him we would have one right away. He then made the most ridiculous demand I have ever heard in the almost 50 years since I graduated from law school. Mr. Scharf directed that I instruct the jury to "cease its deliberations" until he could have his hearing. This direction was made on the telephone and it was obviously not made in the presence of defendant or defense counsel. To accede to this absurd demand would have created irretrievable error under Rule 43 and under *Rogers v. United States,* 422 U.S. 35, 95 S.Ct. 2091, 45 L.Ed.2d 1. That error I avoided because I told Mr. Scharf I wouldn't even consider obeying his command to instruct the jury to quit deliberating. We did have the hearing and it didn't take long. Exactly what was said at that time is part of the record in the case.

After the jury verdict, timely motions were filed, and it was apparent from a reading of them that Mr. Scharf, Mr. Blondin and Mr. Snyder were going to have to testify about matters raised in the motions. Their recognition of the factual dispute is clearly shown in the flippant brief filed in opposition to the motions. At the outset of the hearing I inquired concerning the ethical bind in which the prosecutors found themselves, and I asked if other counsel should not be handling the hearing. I admit to surprise when I was told that top lawyers in the Tax Division of the Department of Justice saw nothing wrong with the continued participation in the case of lawyers whose testimony was quite obviously going to be required. We started the hearing with participation by two of the lawyers who were essential witnesses. (One was said to be in trial somewhere else.) The hearing went for a little while, when, suddenly, there was a 180 degree change of direction, and government counsel announced that they wanted to withdraw. They were permitted to do so, and the hearing recessed. Mr. Alexander took over, and he has performed ably and ethically. However, he was handicapped by lack of time to prepare, and the hearing which I had hoped to complete weeks ago had to be continued for later testimony. We are still waiting for that testimony.

This brings us down to date. I have already explained that I cannot and I do not rule on the motion to dismiss, but I do grant the motion for a new trial. I deny the motion for judgment of acquittal, but I do so without intent that this is the "law of the case", and leave it to another judge to take a fresh look at the motion if the case is tried again.

ORDER

Rule 6 of the Federal Rules of Criminal Procedure provides that matter occurring before a grand jury shall be secret, subject to a few exceptions. One exception is that there may be disclosure when directed by a court in connection with a judicial proceeding. I have directed that there be some disclosure of grand jury matters, and undoubtedly, typists will have to learn what is contained in grand jury transcripts in the performance of their secretarial work for lawyers who read the transcripts. Accordingly, such disclosures as may be necessary to the accomplishment of secretarial duties is authorized, but any typist who so learns of any such grand jury matters is ordered to keep secret such information. Rule 6 itself provides that violation of the secrecy requirements of the rule may be deemed contempt of court, and violation of this order may be deemed contempt of court.

[In the United States District Court for the District of Maryland]

CRIMINAL NO. B-84-00101

UNITED STATES OF AMERICA V. OMNI INTERNATIONAL CORPORATION (FORMERLY KNOWN AS OMNI INVESTMENT CORPORATION), WAYNE J. HILMER, EVAN T. BARNETT, THOMAS A. WESTRICK, JR., AND JOSEPH P. BORNSTEIN

Filed: May 15, 1986.

J. Frederick Motz, Former United States Attorney for the District of Maryland; and Elizabeth H. Trimble, Catherine C. Blake, John G. Douglass, Ty Cobb, and Steven A. Allen, Assistant United States Attorneys; and John R. Maney, Jr. and Ronald Allen Cimino, Attorneys, Tax Division, United States Department of Justice: for the Government.

Paula M. Junghans and Garbis & Schwait, of Baltimore, Maryland: for defendant, Omni International Corporation (formerly known as Omni Investment Corporation).

Marvin J. Garbis and Garbis & Schwait, of Baltimore, Maryland: for defendant, Wayne J. Hilmer.

Cono R. Namorato, Bernard S. Bailor, and Gaplin & Drysdale, of Washington, D.C.: for defendant, Evan T. Barnett.

Brendan V. Sullivan, Jr., Barry S. Simon, and Williams & Connolly, of Washington, D.C.: for defendant, Thomas A. Westrick, Jr.

James E. Merritt, John W. Spiegel, and Morrison & Foerster, of Washington, D.C.: for defendant, Joseph P. Bornstein.

Black, District Judge.

On March 13, 1984 a grand jury returned a seven-count Indictment against Omni International Corporation, formerly known as Omni Investment Corporation, Wayne J. Hiller, Evan T. Barnett, Thomas A. Westrick Jr., and Joseph P. Bornstein. The five defendants each were charged with conspiracy to defraud the Internal Revenue Service, conspiracy to commit income tax evasion, five counts of income tax evasion for the years 1976-1960, inclusive, and aiding and abetting. The Government alleges that Hilmer was the majority owner of Omni and its chief executive officer, and president of Euro Air (a subsidiary of Omni), that Barnett was vice president of Omni and Euro Air, and that Westrick was president of Omni. The Government further alleges that Bornstein, a certified public accountant, prepared or supervised the preparation of the federal income tax returns for Omni.

The defendants promptly filed numerous pretrail motions. All defendants except Bornstein (hereinafter collectively referred to as the Omni defendants) filed motions jointly. Bornstein filed his own motions and also joined in the majority of the Omni defendants' motions. On April 27, 1984, the Omni defendants filed a motion to dismiss the indictment, disqualify government counsel and investigators, and suppress evidence based on violations of the attorney-client privilege (hereinafter referred to as the motion to dismiss). The Government answered this motion on May 11, 1984. Somewhat contemporaneously, Bornstein filed a related motion to dismiss the indictment based, in part, on governmental minsconduct. Additional supplemental memoranda have been received in connection with these motions.

A hearing—which would ultimately require twenty-eight days over an extended period—commenced on June 11, 1984 on all then-pending motions. The immediate focus of the hearing became the Omni defendants' motion to dismiss. Bornstein participated in the hearing in connection with his own motion. Following legal argument on June 11, proffers by the Omni defendants at that time in court and in their pleadings, and the testimony of two witnesses for the Omni defendants on June 12, the Court held an evidentiary hearing on the Omni defendants' motion to dismiss, with testimony before the Court as finder of fact occurring over the course of twenty-eight days between June 1984 and March, 1985. The record consists of hundreds of exhibits and over 5,500 pages of testimony.

During the course of the hearing the defendants repeatedly asserted that the Government had deliberately set out to breach the attorney-client privilege, and later tried to conceal its actions by misrepresentation, obstruction of justice, and perjury. According to the defendants, subsequent to the Indictment, an Assistant United States Attorney (AUSA) and two agents of the Internal Revenue Service attempted to thwart the Court's inquiry into their misconduct by creating, altering, and suppressing documents, by making misrepresentations to the Court and defense, and by repeatedly lying under oath. For this alleged deliberate, flagrant and repeated misconduct the defendants seek dismissal of the Indictment.

After the Court heard all testimony relevant to the proceedings which the litigants wished to present, proposed findings of fact and conclusions of law were submitted by the Omni defendants and the Government. Bornstein adopted almost all of the Omni defendants' submissions, as well as submitting his own. The Court heard oral argument on the motion to dismiss on June 25, 1985, and the matter was taken under advisement. This opinion constitutes the Court's findings of fact and conclusions of law.

I. ATTORNEY-CLIENT PRIVILEGE

The basis of the Omni defendants' motion, as originally filed and undoubtedly as originally contemplated by the defendants, was that the Government breached the attorney-client privilege in presenting its case to the grand jury and, thereafter, in preparing for the motions hearing and trial. The requested sanctions for the alleged deliberate breaches are dismissal, disqualification, or suppression. The Government has consistently disputed whether an attorney was even involved in the case, given the fact that the privilege related primarily to communications to defendant Bornstein and his dual role as a certified public accountant as well as attorney; whether any confidential communications were breached; and whether any defendant other than Omni is entitled to claim the privilege in any case. The Government has always maintained that the thrust of the motion relates solely to attorney-client privileges which defendants have failed to prove.

A. Background

In order to appreciate the arguments raised by counsel at this juncture of the proceedings, the Court will briefly discuss the underlying criminal tax case. Omni, a domestic corporation, buys, sells and leases aircraft world-wide. Hilmer is the majority owner and Chairman of the Board. Westrick, a certified public accountant, is President of the company, and Barnett, also a certified public accountant, is financial Vice President. Bornstein, an attorney as well as a certified public accountant, was Omni's outside counsel and tax advisor. For the years in question, 1976-1980, inclusive, Bornstein signed the relevant Omni tax returns.

The Government investigated Omni for a period of years prior to the return of the Indictment, considering various alleged crimes before focusing on tax issues. Enormous manpower and resources were devoted to the effort; the case consumed more than 2000 man-days and required the full-time attention of several investigators. The primary Internal Revenue agents who were involved in the investigation, especially in late 1983 and 1984, will be referred to throughout this opinion as the Special Agent and the Revenue Agent. This Special Agent directed the entire investigation as it drew to a close and prosecutorial decisions were being made. The primary function of the Revenue Agent was to assist the Special Agent. The IRS, through many agents, conducted interviews on three continents. The other principal Government representative involved is the Assistant United States Attorney (AUSA) who supervised the investigation and presented the case to the grand jury. This individual will be referred to as the AUSA throughout the opinion.

The investigation focused ultimately on Omni's wholly-owned Bermuda subsidiary, Euro Airfinance, Ltd (hereinafter referred to as Euro Air). The Government contends that income reported on Euro Air's information returns was properly taxable to Omni and that tax should have been paid in the year that the income was earned. According to the Government, the defendants evaded taxes by falsely reporting income in the name of Euro Air, when the income in fact belonged to Omni, a domestic corporation. Omni allegedly has not paid taxes on millions of dollars of income passed along improperly to Euro Air.

As the Government put its case together against Omni, the attorney-client privilege issue surfaced. Omni claimed the privilege based on its relationship with Bornstein. In particular, in the Fall of 1983 the Government sought production of Bornstein's invoices to Omni in order to trace expenses and tie Bornstein to particular transactions. Omni asserted that those invoices were not producible pursuant to subpoena because they were subject to the privilege. The AUSA filed a motion to compel their production. On November 8, 1983, Judge Joseph H. Young of this District ruled that there was a privileged attorney-client relationship between Bornstein and Omni and that the invoices need not be produced because "statements or correspondence showing the *nature* of the legal services performed are covered by the attorney-client privilege," and the invoices would reveal the

"type of work performed by Bornstein for the client and the particular legal matter which Bornstein worked on." (emphasis in original) This was the first—and only—ruling relative to the subject of attorney-client privilege in these proceedings. It is significant that Judge Young considered Bornstein to be an attorney and found that the invoices were privileged. The evidence before the Court is overwhelming that Bornstein acted as Omni's attorney.

At least from that point on, Omni vigorously asserted the privilege. Yet the Government recognized that discussions between Omni and its lawyers were significant with regard to the tax theory of prosecution and undertook to obtain all the information it could. The Government, particularly the Special Agent and the Revenue Agent, attempted to circumvent the privilege. In pursuing their goal, the agents interviewed numerous attorneys who had represented Omni. Notes taken by the agents prior to at least one interview reveal the agents' intent. The first page of notes taken before an interview of William Green shows that the agents planned to ask Green "what did they [Omni] present to him," and "what did he say to them about the law." [1] To ascertain whether Omni had obtained the advice of Green as to several aircraft transactions involving Euro Air, the agents presented the attorney with several "hypothetical" fact patterns, each based precisely upon an actual Euro Air aircraft transaction. The agents took the actual facts of transactions under investigation, converted them to hypotheticals, and asked Green whether or not he had heard these hypotheticals previously. The agents asked the attorney what tax advice he would give in response to the hypotheticals.

In addition to seeking privileged information from Omni attorneys, the agents sought information from former Omni employees. The Government granted informal "pocket immunity" to Samuel Russell, Omni's former assistant controller, and obtained from him letters written by William Green to Bornstein, summarizing tax advice regarding Euro Air. When Russell finally appeared before the grand jury, the AUSA asked questions which related to tax advice given by attorneys to Omni. The agents also granted informal immunity to Seth McCormick, a former Omni controller. Once again, the agents attempted to discover privileged information.

The two most significant events which relate to the attorney-client privilege, as it developed during the evidentiary hearing, involved Bornstein, directly and indirectly. Beginning in July, 1983, Bornstein was represented by the Washington, D.C. law firm of Steptoe & Johnson, specifically Gerald Feffer, James Bruton, and Greg Gadarian. Several meetings occurred between Bornstein's attorneys and the AUSA, with the attorneys attempting to learn what allegations were being made against their client. The investigation continued and the Government considered bringing charges against Bornstein.

Pursuant to Department of Justice regulations, the Tax Division must approve any criminal tax prosecution, with minor exceptions not applicable here. If requested, the Tax Division will provide potential defendants an opportunity to have a conference with an attorney from the Division. This attorney acts as a reviewer of the factual and legal position of the IRS and recommends to his superiors whether or not prosecution should be authorized. The purpose of the conference is to provide the potential defendant an opportunity to demonstrate why prosecution is unwarranted.

On October 31, 1983, a conference on behalf of Bornstein occurred at the Department of Justice. At that time Bornstein's attorneys attempted to convince the reviewing attorney at the Tax Division, Mark Friend, that the Government lacked a viable theory of prosecution against their client. The AUSA attended the meeting. The meeting was extremely unusual in its scope, length, and candid discussion of the tax issues. Bornstein's attorneys made a full factual and legal analysis during the conference, addressing each area that had been identified by the Government as a matter for concern. Immediately after the meeting, Friend told the AUSA that there was a question in his mind about the basis for proceeding in the case. Friend particularly expressed concern about the sufficiency of the evidence against Bornstein.

The AUSA thereafter contacted Bornstein's attorneys and stated that the IRS agents who had worked on the investigation for several years wished to hear the presentation that had been made at the Justice Department. The AUSA noted that, as a matter of fairness and because the agents had spent three years developing a case, the conference at Justice should be "replayed" for the agents. The request struck the attorneys as unusual in their collective careers, but they consented to a replay of the October 31st conference.

Such a meeting took place on November 18, 1983. Bornstein's attorneys began by presenting the reasons why they believed the Government's theory of the case against their client was legally untenable. Early in the meeting the IRS agents began arguing with the attorneys, questioning their interpretation of the law. The tone of the meeting became argumentative and heated. For the first time, the Special Agent raised issues concerning alleged documents in Bornstein's safe deposit box that could be used to blackmail Hilmer. If such documents existed, they would demonstrate Bornstein's knowledge of and participation in fraud being committed by his clients. Defense counsel were upset that a new allegation was being raised for the first time at such a late date. Bornstein's attorneys impressed upon the Government that it lacked any witness against Bornstein and thus a case in which the Government had to prove criminal intent would inevitably fail. Defense counsel responsed to the allegation of the safe deposit box by stating: "You don't have a witness that implicates Bornstein, you don't have a witness." The meeting ended acrimoniously.

On November 22, 1983, only two weeks after Judge Young upheld Omni's privilege claim with regard to the invoices, and two business days after the meeting occurred with Bornstein's attorneys, the Special Agent and Revenue Agent travelled to the residence of Sandra Poe Wilkins, a former secretary to Bornstein. The decision to interview Wilkins was made in response to challenges by Bornstein's attorneys that the Government was operating on innuendo and did not have a witness against Bornstein. The agents arrived unannounced, presented a grand jury subpoena to Wilkins that had been prepared on November 21, and offered Wilkins, in lieu of appearing before the grand jury, an opportunity to talk directly with the agents. Wilkins consented and the agents then interrogated her for at least five hours. The agents specifically questioned her about her knowledge of Bornstein's activities and what advice Borestein had given to Omni.

Subsequent to the interveiw the agents prepared a typewritten memorandum which purported to relate the substance of the matters discussed. According to the memorandum, which at this time was disseminated to anyone other than the AUSA and other IRS investigators, Borenstein clearly had knowledge of criminal activities undertaken by the Omni defendants. According to the memorandum, Bornstein told Wilkins that in the event anything ever happened to him, he had documents in a safe deposit box which would prevent Omni from pinning anything on him. Wilkins also made several statements that appear to be privileged.

Following the interview the AUSA informed Bornstein's attorneys that the interview had created serious problems for their client. The AUSA arranged a meeting for a Special Agent and the Revenue Agent to inform the attorneys of the evidence that Wilkins had provided to the agents during the interveiw. When the "debriefing" actually took place on December 15, 1983, the agents provided few details Bornstein's attorneys stated that there was no incrimnating documents in any safe deposit box. The Special Agent said that it was frustrating to deal with the attorneys, instead of directly with Bornstein. At the meeting, the agents did not volunteer the information about the Wilkins interview as Bornstein's counsel had anticipated. The Special Agent stated that he did not want to disclose the substances of the Wilkins interview and then said words to the effect: "I hope I am not stepping on any toes here [turning to the AUSA], but it would be really helpful to me to see Mr. Bornstein respond to these questions." Bornstein's counsel avoided the issue and asked further about the safe deposit box. The Special Agent later repeated his request to speak directly with Bornstein. The AUSA then also stated that "I thought we would get a chance to talk with Mr. Bornstein at some point."

To summarize this sequence of events, the desire of the AUSA, Special Agent, and Revenue Agent to talk with Bornstein intensified after the October 31st conference. Bornstein's attorneys had demonstrated a weakness in the case against their client. The AUSA Special Agent, and Revenue Agent knew that Friend had concerns about the case, particularly with the lack of evidence against Bornstein. They knew that information was needed if the case was going to go forward. Their witness would be either Wilkins or Bornstein himself.

On the advice of his attorneys, Bornstein consented to make a proffer as suggested at the December 15 conference. On December 23, 1983, Bornstein's attorneys filed an application with the Court for an order permitting an off-the-period proffer to the Government. The application sought permission to disclose attorney-client confidences and other information necessary to defend himself against the proposed criminal indictment. Authority for the proffer was found in a portion of the Code of Professional Responsibility, DR 4-101(C)(4), which permits an attorney to disclose confidential communications made to him by a client in the attorney's own self-defense: "A

[1] The sources of all quoted material in this opinion are either the exhibits or the hearing transcript unless otherwise indicated. However specific citations have been omitted because of the extraordinary volume of the record in this case.

lawyer may reveal . . . [c]onfidences or secrets necessary . . . to defend himself of his employees or associates against an accusation of wrongful conduct." This provision affects the limitations otherwise imposed on the attorney by the attorney-client privilege. The Omni defendants vigorously challenged Bornstein's right to make a proffer and requested the opportunity to intervene, to be heard with respect to the scope, if any, of the breach of the attorney-client privilege, and to limit the use of any privileged disclosures which may have been made.

On January 12, 1984, after hearing arguments from Omni, Bornstein, and the Government, Judge Young issued an opinion setting forth the procedures that he would require Bornstein and the Government to follow for the proffer. Judge Young, again recognizing that Bornstein was an attorney, allowed the proffer to proceed but only under certain conditions "which will ensure that the rights of the attorney's former clients are not compromised, or that, if they are compromised, the clients will be able to seek appropriate remedies." Judge Young ruled that.

The government will be ordered to submit to the Court for *in camera* inspection by January 16, 1984, a list of the questions and the general areas of inquiry it wishes to pursue with the attorney. The attorney will then have until January 23, 1984, to submit to the Court, again for *in camera* inspection, his responses to the questions propounded by the government. At that point, the Court will issue a ruling on the appropriate areas of inquiry, and the proffer of evidence may proceed, as long as the inquiry does not stray from the bounds set by the Court. The proffer of the evidence presented by the attorney will be stenographically recorded and the record will be sealed pending further order of the Court. The preliminary *in camera* inspection will afford the Court the opportunity to determine that the inquiry is relevant, and that the disclosure by the attorney does not exceed that allowed by Disciplinary Rule 4-101(C)(4).

Judge Young subsequently ruled on February 7, 1984 that "the purpose of the inquiry is for Mr. Bornstein to attempt to convince the government that he should not be indicted and that the questions asked of Mr. Bornstein, and his responses to those questions, are to be used for no other purpose."

The Omni defendants appealed Judge Young's ruling to the United States Court of Appeals for the Fourth Circuit. On February 8, 1984, argument before the appellate court concerned whether Judge Young's order should be stayed pending formal appeal. On March 5, 1984 the Fourth Circuit denied the stay. That Court approved the procedures enumerated by Judge Young, recognizing that Bornstein was an attorney, but that the procedures protected the confidentiality of the attorney-client privilege.

Bornstein, in fact, made a proffer to the Government on March 9, 1984. After the proffer the Government determined that Bornstein was not credible. Four days later the grand jury returned an indictment against Omni, Hilmer, Westrick, Barnett, and Bornstein.

B. Conclusions

The above-described events constitute the sum and substance of the major alleged breaches of the attorney-client privilege. Most of the alleged breaches—such as the statements of the two former controllers of Omni who allegedly revealed privileged information—were known to the Omni defendants even before the hearings began. Under close examination it is clear that the alleged breaches of the privilege do not rise to the level at which this Court would consider dismissal of the indictment or disqualification of the AUSA or the IRS agents. It is doubtful whether, in any event, dismissal of the indictment would be appropriate for breaches of the attorney-client privilege, no matter how flagrant the intrusion. *See United States* v. *Morrison*, 449 U.S. 361, *reh'g denied*, 450 U.S. 960 (1981); *United States* v. *Gatto*, 763 F.2d 1040, 1046 (9th Cir. 1985).

In light of the limited showings made by the defendants during the hearing, this Court need not address at length the law of attorney-client privilege. The purpose of the privilege is to encourage free consultation and the complete and unimpeded flow of information between clients and their counsel, thereby "promot[ing] broader public interests in the observance of law and administration of justice." *Upjohn Co.* v. *United States*, 449 U.S. 383, 389 (1981); *Fisher* v. *United States*, 425 U.S. 391, 403 (1976). Nonetheless, because the privilege "impedes the investigation of the truth," it "must be strictly construed." *United States* v. *(Under Seal)*, 748 F.2d 871, 875 (4th Cir. 1984). In the Fourth Circuit, the privilege "is not 'favored' and is to be 'strictly confined within the narrowest possible limits.'" *In re Grand Jury Proceedings (John Doe)*, 727 F.2d 1352, 1358 (4th. Cir. 1984).

With respect to every specific communication that is claimed to be privileged, defendants bear the burden of proving each of the following elements:

(1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceedings, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client.

United States v. *United Shoe Machinery Corp.*, 89 F. Supp. 357, 358-59 (D. Mass. 1950); *see United States* v. *Jones*, 696 F.2d 1069, 1072 (4th Cir. 1982). A recent Fourth Circuit decision, *United States* v. *(Under Seal)*, 748 F.2d 871, distinguishes between public and private transactions in a manner that impacts on the question of privilege: for public transactions, such as filings with the Securities and Exchange Commission, none of the underlying discussions are privileged, because the communications are presumptively made with the expectation of public disclosure; however, for unconsummated, private transactions, such as a potential commercial deal that the client ultimately decides not to pursue, all communications relating thereto remain privileged. As stated in *(Under Seal)*, communications that "relate to contemplated public actions . . . do not exhibit a reasonable expectation of confidentiality" and are not privileged. *Id.* at 877. The complexities inherent in this distinction need not concern this Court here.

Defendants have failed to meet the burden imposed on them. The proffer by Bornstein concededly did include matters which reveal confidential communications that ordinarily would be subject to the privilege. But Judge Young and the Fourth Circuit explicitly and specifically approved this procedure. And this procedure appears contemplated by the Code of Professional Responsibility. The Omni defendants do not contend that the Government strayed afar from Judge Young's mandate. The Government has never had access to the proffer. Moreover, the information obtained in the proffer cannot, by the terms of the proffer, be used against Omni at trial.

The other episode to which the parties have given much attention concerns the November 22, 1983 interview of Sandra Poe Wilkins. The Court will later discuss the propriety of the interview. *See United States* v. *Valencia*, 541 F.2d 618 (6th Cir. 1976). In the context of the motion, however, it is clear that Wilkins revealed no confidential communications. In their Proposed Findings, the Omni defendants identify only two items subject to the privilege. The first is that Bornstein advised Omni to file an amended tax return for an unspecified year, but that Omni refused to do so. The defendants show only the statement and do not show enough surrounding information for the Court to conclude that the statement is even privileged. Similarly, the defendants fail to show that Wilkins' statement that "Omni sought legal advice about the information of aircraft registry in Liberia" was privileged. Wilkins' own testimony at the hearing indicates that she divulged nothing of any significance. The Government certainly tried to breach the privilege in its interview of Wilkins, but it failed.

The Omni defendants also place great weight on the number of interviews undertaken by the IRS of various Omni attorneys. The mere fact of an interview of an attorney who rendered legal advice is not controlling. No authority has been cited to the Court for the proposition that it is misconduct for a Government agent to interview an attorney, and to ask questions which relate to legal advice. In fact, in *United States* v. *Rogers*, 751 F.2d 1074, 1080 (9th Cir. 1985), the Court found no misconduct in an interview of an attorney conducted by an IRS agent. In *Rogers*, the legal advice given by the attorney to the target of the investigation was the subject of the agent's questions.

Additionally Omni must demonstrate "not only that an attorney-client relationship existed, but also that the particular communications at issue are privileged and that the privilege was not waived." *United States* v. *Jones*, 969 F.2d at 1072. Omni has failed to do so.

Attorneys are cognizant of the limits of the privilege. Attorneys are better informed than investigating agents on the applicable law and particular facts presented to them to make judgments about compliance with the attorney-client privilege. Attorneys will not readily disclose confidential communications. This Court is confident that attorneys possess the ability to defend vigorously their clients' interests, even when interviewed by government agents. *See, e.g., United States* v. *Rogers*, 751 F.2d 1074; *United States* v. *Rasheed*, 663 F.2d 843, 854 (9th Cir. 1981), *cert. denied sub nom. Phillips* v. *United States*, 454 U.S. 1157 (1982); *IN re Walsh*, 623 F.2d 489, 495 (7th Cir.), *cert. denied*, 449 U.S. 994 (1980); *United States* v. *Wolfson*, 558 F2d 59, 66 (2d Cir. 1977). Therefore, when the agents asked a former Omni attorney questions in the form of hypotheticals, as opposed to direct issues, the attorney was fully capable of protecting

any privileged information and would have declined to answer the hypotheticals if an answer would have violated the privilege. The agents may have set out to breach the privilege, by asking the attorney about advice he gave his client, but it then becomes incumbent on the attorney either to refuse to discuss the matter in an interview or to testify before the grand jury, or to risk a civil suit against him for revealing confidential communications.

With respect to other interviews, in some situations the defendants have failed to identify what communications were even made. Alternatively, the nature of the matters discussed clearly falls within the ambit of *(Under Seal)*, and therefore is not privileged.

In sum, the extent to which the attorney-client privilege may have been violated, if at all, does not compel the conclusion that the indictment should be dismissed, or that Government prosecutors or investigators should be disqualified. Later in this opinion, *see infra* section III, the Court will discuss whether evidence should be suppressed.

II. PROSECUTORIAL MISCONDUCT

The Omni defendants' motion, which began as a not atypical pretrial motion to dismiss the indictment, changed as the hearing progressed; it became a motion to dismiss based largely on government misconduct committed before this Court during the hearing itself. Government misconduct, possibly rising to the level of perjury and obstruction of justice, became the real essence of the motion. At the outset of the hearing, the defendants brought into question the Government's conduct in the investigation, particularly focusing on various documents. During the course of the extended hearing, that conduct became the focus of the hearing and the most troubling matter to the Court.

There are three general categories of concern into which all relevant issues fall, albeit with some overlap: documents altered or created after the Omni defendants' motion was filed and the attorney-client privilege issue was raised; incorrect testimony before the Court, along with the criminal allegations of perjury and obstruction of justice, largely in connection with the documents referred to in the first category; and, a disheartening lack of candor in colloquies with and testimony before the Court.

A. Documents

The first area of grave concern to the Court involves the creation and alteration of documents which were subsequently turned over to the defendants in preparation for the hearing. Particularly troublesome is the timing of the preparation of the documents, namely after an issue was raised in litigation, and the failure of Government personnel to state candidly what had been done.

The Omni defendants filed their motion to dismiss on April 27, 1984. The motion, along with then-pending discovery requests, directed the Government's attention to possible violations of the attorney-client privilege. The Government then embarked on a project of generating documents which would respond to the issues. In so doing, the Government ultimately produced ten relevant documents. The memoranda relate to interviews conducted by Government agents with the following individuals on the following dates:

Defendants' Exhibit 4: Interview of William Green (a New York attorney who met with Bornstein at a public conference in 1980 and later met with Bornstein and certain Omni officers) on September 15, 1983.

Defendants' Exhibit 5: Interview of William Green on August 24, 1983.

Defendants' Exhibit 6: Interview of John Campbell (a Bermuda attorney and a director of Euro Air) on July 25, 1983.

Defendants' Exhibit 7: Interview of Sandra Poe Wilkins (Bornsteain's former secretary) on November 23, 1983.

Defendants' Exhibit 8: Interview of Sandra Poe Wilkins on November 22, 1983.

Defendants' Exhibit 9: Interview of Martin Redler (an accountant employed in Bornstein's accounting office) on September 7, 1983.

Defendants' Exhibit 11: Interview of Martin Redler on August 24, 1982.

Defendants' Exhibit 12: Interview of Samuel Russell (former controller of Omni) on February 23, 1983.

Defendants' Exhibit 21: Interviews of Seth McCormick (former controller of Omni) on August 20, 1981, November 5, 1982, and August 5, 1983.

Defendants' Exhibit 35: Interviews of David Candler (former controller of Omni) on April 28, 1982 and February 29, 1984.

At least nine of these documents, and probably all ten, were either created or altered by Government personnel after the defendants filed their motion and before the hearings began on June 11, 1984. The Government filed its answer to the motion on May 11, 1984. In that response the Government represented that it had "provided all defendants with all memorandum in its possession reporting the substance of those interviews". That representation was incorrect. After the filing of this answer the Government continued to generate and produce memoranda of interviews.

Between the time when the Omni defendants filed their motion and the Government filed its response, Government personnel altered a typewritten memorandum of the November 22, 1983 interview of Sandra Poe Wilkins (Defendants' Exhibit 8). A preexisting version of the interview memorandum, which eventually surfaced in various individuals' filed during the hearings, had been initially prepared by the Special and Revenue Agents the week after Thanksgiving, 1983. The document was certainly finalized before December 15, 1983. The final version was delivered to the AUSA in charge of the case and Mark Friend, the reviewing attorney at the Tax Division of the Department of Justice. The 1983 version of the memorandum mentions that Bornstein wrote memos to Omni concerning the taxability of controlled foreign corporations. it then states: 'The contents of those memos were not discussed due to the attorney/client privilege." The altered version of the memorandum, prepared between April 30, 1984 and May 8, 1984, states: "We told Wilkins that we did not want to discuss the contents of those memos due to the attorney/client privilege." The change from passive to active voice in this sentence made the agents appear sensitive to the very issues raised in the hearing.

A second document altered during this time frame was an interview memorandum concerning one of the attorneys contacted by the agents, William Green (Defendants' Exhibit 5). Reference has previously been made to this interview because, in the course of that interview, the agents posed "hypothetical" aircraft transactions. In the prexisting version of the memorandum prepared shortly after the interview on August 24, 1983, it is clear that hypotheticals posed to Green were actually based on five specific aircraft transactions that were the subject of the Government's investigation and which are encompassed in the Indictment. The memorandum suggests that Green was "hesitant" to discuss details of his conversations with Omni officials because of possible violations of the attorney-client privilege, and that he "therefore" provided general information. The memorandum indicates that the agents were interested in obtaining the specific information provided to Green by his clients, and the specific advice he would have provided in response.

In the altered version the memorandum states that during the "meeting" with Green, "he would not" discuss the details of his conversation because of the possible violation of the privilege. This modification attempted to put the conduct of Government personnel in a better light and the question of breach of the privilege during the interview in a different perspective. There is no reference to any particular aircraft in the altered version, which simply refers to "hypoethetical sales" described in general terms. The altered version also adds the sentence that Green "never stated an opinion as to whether the [hypothetical] sales were taxable or non-taxable." No corresponding statement exists in either the preexisting version of the memorandum of the handwritten notes of the interview.

A third altered memorandum is of an interview of Samuel Russell on February 23, 1983 (Defendants' Exhibit 12). A preexisting, nine page version of that memorandum was prepared in 1983. An altered, seven page version was prepared after April 27, 1984. The Government concedes that the changes are not merely grammatical corrections, but do involve matters of substance. First, the last paragraph of page three of the preexisting version describes a meeting between Omni personnel and Green. After a statement that Green spent about one day in Omni's office and discussed the foreign taxation laws, the memorandum states that "Russell said that Omni's officers appeared to be concerned and shaken by what they had heard." In the altered version, the phrase "appeared to be concerned and shaken by what they had heard" is deleted.

The pre-existing version also states:

Russell said that during all the conferences with attorneys and discussions concerning the foreign corporation he asked Bornstein how things had gotten so 'fouled up'. Russell said that by this he meant the several issues which he had noted during the course in New York and they had discussed previously such as the improper reporting of airplane sales on the books and records of Euro Airfinance.

This paragraph suggests more than one conference between Russell and Bornstein about matters getting "fouled up." It also specifically indicates that there were not only conversations during the conferences at New York, but also previous discussions concerning reporting of aircraft sales on the Euro Air books. The altered version states, by contrast:

Russell said that during the return flight from New York following the accounting course, he asked Bornstein how things had gotten so 'fouled up.' Russell said that by this he meant the several issues which he had noted during the New York course and discussed above such as the improper reporting of airplane sales on the books and records of Euro Airfinance.

The interview memorandum of Seth McCormick (Defendants' Exhibit 21), was certainly prepared after the indictment. In all likelihood the document was prepared after the attorney-client privilege issue was raised. After the motion was filed the AUSA instructed the agents to insert the three dates borne on the document. Without dates the defendants would have reasonably assumed that the memorandum was based on one undated interview. With the three dates, however, the defendants could reasonably have assumed that the compilation memorandum constituted all of the interviews of McCormick.

Although none of the above described changes are earth-shattering, they do involve matters of substance. The appearance of sensitivity to attorney-client privilege questions mattered greatly to the Government. Subtle shifts in tone, such as the statement that "We told Wilkins that we did not want to discuss the contents of those memos due to the attorney/client privilege" instead of "The contents of those memos were not discussed due to the attorney/client privilege," could have been significant to the Court. In any event, the Court condemns the practice of altering and revising documents once the matter is in litigation without disclosure that such an alteration had occurred. The impropriety was not corrected by providing the underlying notes and preexisting memoranda under pressure during the course of these proceedings; it was wrong for Government personnel to so act, and the Government's action was aggravated by its reticence in stating what had been done.

Compounding the major error in producing altered documents without an explanation of the alteration was the Government's failure to admit its mistake, to candidly inform the Court and defense counsel of the changes, and to minimize the harm done. If defense counsel in a criminal case received a subpoena and made "minor" modifications to the documents sought, allegedly to clarify errors in style and grammar, the Court is certain that the process by which such changes were made would be cause for major concern to the Government, and would probably lead to the threat of criminal prosecution. Whatever the intent might have been in such a hypothetical situation seems quite beside the point; such conduct is wrong and strikes at the heart of fundamental values in our adversary system of justice.

Justice cannot function in a system in which one side feels free to make even minor modifications which only aid its position slightly, without informing the other side of its actions. Trust and confidence in the system would be lacking. Minor modifications today could become significant alterations tomorrow, based on the judgment of the reviser. Prohibiting such action must be the rule whether the changes are made by defense counsel or government counsel. This must be true even when, as here, the underlying documents are finally produced. Our system cannot rely on lengthy evidentiary hearings in which a collateral document search is conducted and the true manner of preparation is exposed. The appropriate documents must be turned over at the outset and in unaltered form.

In addition to *altering* preexisting documents during this time frame, and producing said documents to defense counsel without a representation that alterations had been made, Government personnel *created* typewritten interview memoranda during this period. The typed memoranda were prepared from handwritten notes taken at the time of the interview, but the memoranda were only prepared after defense raised the issue of attorney/client privilege.

The Special Agent initially prepared an interview memorandum pertaining to Martin Redler (Defendants' Exhibit 9) on May 3, 1984, one week after the Omni defendants filed their motion to dismiss. The AUSA edited the document before it was pronounced to defense counsel on May 8, 1984. The memorandum was based on handwritten notes taken during an interview on September 7, 1983. It bears only the date of the interview and not the date of preparation. From the face of the document it would appear that the memorandum had been prepared in September, 1983, or soon thereafter. Creating this erroneous impression and, worse yet, not correcting the resultant misunderstanding, was wrong.

The IRS earlier had conducted another interview of Redler on August 24, 1982. The Special Agent initially dictated the typewritten memorandum (Defendants' Exhibit 11) once again on May 3, 1984. The AUSA again reviewed and edited the document before it was produced to the defendants on May 3, 1984. The typewritten version bears only the date of the interview and ordinarily one might assume from this date that the memorandum had been prepared contemporaneously with the interview. Once again, the Government failed to properly inform defense counsel that the document had been prepared months after the interview, after the attorney-client privilege issue had been raised. In connection with this document the Government produced during the hearings a draft typewritten version which could not have been initially prepared prior to May 3, 1984. The second page of the draft memorandum reflects that "to the best of Redler's knowledge, Windsor is either working in Las Vegas or Atlantic City at a gambling casino at the time of the interviews." The Special Agent changed this sentence to read, in the final version: "to the best of Redler's knowledge, Windsor is currently working in Las Vegas or Atlantic City at a gambling casino." This change could have been made either to clarify an awkward sentence, with the work "currently" inserted to refer to the August 24, 1982 date of the interview, or to suggest to the reader of the document that the memorandum had been prepared contemporaneously with the interview. In light of the Special Agent's credibility and demeanor as a witness, which will be discussed in greater detail below, the Court finds tht this change also was made in an attempt to obfuscate the date of preparation.

By letter to the AUSA dated May 14, 1984 the defense specifically sought information concerning when various memoranda were prepared and by whom, as well as the underlying handwritten notes. The Omni defendants mentioned Wilkins, Russell, Green, and McCormick by name. Following this notification the Government prepared other typewritten memoranda. These memoranda were created after defense counsel specifically inquired about when memoranda were prepared and who prepared them. The Government failed to admit that the documents were created at that very time, specifically in response to issues raised by defendants. One interview memorandum (Defendants' Exhibit 4), relating to a September 15, 1983 interview of William Green, contains statements not found in the handwritten notes of the interview. This memorandum also contains self-serving, editorial comments by the Special Agent which appear to show Government sensitivity to the very issues being raised by defense counsel. The typewritten version states

We told Green that it was our understanding that he had provided information to Bornstein and Omni for use in preparation of their income tax returns. It was our interpretation of the law that this would not constitute a violation of the attorney-client privilege, although we made several attempts to describe hypothetical situations, Green would not provide any information as to his advice or what advice he would provide to a client who had asked a question similar to the hypotheticals that we described.

The Special and Revenue Agents interviewed Sandra Poe Wilkins, the former secretary to Bornstein, on November 22 and 23, 1983. The alteration of the preexisting version of the November 22, 1983 interview memorandum (Defendants' Exhibit 8) has been previously described. The agents also created a typewritten memorandum, bearing no date of preparation, for the November 23, 1983 interview (Defendants' Exhibit 7). This document was prepared between May 14, 1984 and May 18, 1984.

After the return of the Indictment the Special Agent created a memorandum purporting to summarize discussions with David Candler (Defendants' Exhibit 35). The memorandum omitted Candler's disclosure that commission payments were discussed with an Omni attorney, which potentially would impact on the attorney-client privilege.

The last matter worthy of specific discussion by the Court involves a typewritten memorandum of an interview of John Campbell which had occurred on July 25, 1983 (Defendants' Exhibit 6). This memorandum was in fact prepared no earlier than May 29, 1984, and it bears only the date of interview. On May 24, 1984 the defense issued subpoenae *duces tecum* calling for documents relevant to the motion to dismiss. The subpoena specifically called for, once again, interview memoranda. On June 6, 1984, the Government filed a motion to quash the subpoenae. The Government represented that all witness statements arguably relevant had been turned over to the defendants. On that same day the Government sent to the defendants an interview memorandum for the Campbell interview. This memorandum was prepared after the motion was filed, the Government had answered the motion, and the defendants made additional specific requests for memoranda by serving subpoenae. Once again, the Government failed to indicate that the document was generated at the very time it was produced.

As was the case with the altered documents, the Court is shocked and dismayed by the Government's approach to document production. It was an egregious error for the Government to create documents and turn them over to defense counsel as if they had been prepared contemporaneously with the interviews. This impropriety was particularly acute because there existed a pending motion to dismiss and request for evidentiary hearing which would be based on the contents of the memoranda. While it may be appropriate in certain circumstances to create a typewritten memorandum of an interview after an issue is raised in litigation, it is inappropriate not to indicate that just that course of action has been followed.

To summarize, the Government created and altered at least nine, and probably all ten, relevant documents which were the source of the defendants' motion to dismiss after the attorney-client privilege issue surfaced. Production was made without acknowledging that the documents had just been prepared, even though from the face of the documents one could erroneously conclude that the documents were prepared contemporaneously. These errors were exacerbated by erroneous testimony at the evidentiary hearing given by the Special Agent, Revenue Agent, and AUSA, to which the Court now turns.

B. Testimony

The second major area of concern to the Court involves the repeated untrue and incorrect testimony which occurred during the course of the proceedings. The impact of such testimony to this Court, sitting as fact-finder for the evidentiary hearing, cannot be underestimated. Based on the erroneous testimony given, as uncovered during the hearing, the Court simply cannot put its complete trust and confidence in certain Government witnesses. Untrue testimony occurred in connection with the documents created and altered after the motion to dismiss was filed, discussed above. Untrue testimony also occurred in connection with the interview of Sandra Poe Wilkins on November 22, 1983, and with the use of the typewritten memorandum subsequently prepared. Other examples of such testimony will be set forth as the Court continues to make its findings of fact. The sheer magnitude of the erroneous testimony prejudiced the defendants and the Court.

The Special Agent who was in charge of the investigation beginning in the Fall of 1983 took the witness stand for the first time on June 12, 1984. This agent continued his testimony when the hearings resumed in September, 1984. The testimony was wrong in numerous respects. When the agent began to testify in June, the Omni defendants immediately sought to date the preparation of the ten documents. Many of these documents were dictated, prepared, or modified by the agent within the month prior to his testimony. He repeatedly and vociferously, without hesitation or doubt, indicated several of the documents had been prepared in 1983. This testimony was incorrect. The agent also was unwilling to testify as to the dates of preparation of other documents. The Court finds that the agent must have been able to recall documents he had prepared within several weeks of his testimony, and this testimony therefore was inaccurate, and misleading as well. As the evidence unfolded it became clear that at least nine, if not all ten, of the documents in question had been prepared no earlier than May, 1984.

Although tedious, it is necessary for the Court to recount some of the agent's untrue or misleading testimony with regard to the interview memoranda.

Defense counsel asked the Special Agent when Defendants' Exhibit 4, the memorandum of interview of William Green that occurred on September 15, 1983, was prepared. The agent responded: "I can't say exactly. It wouldn't have been within a day or two of the interview . . . I don't recall specifically when it was prepared." The questioning continued:

Q: Well was it prepared since the first of the year [1984]?

A: I believe that this one was . . . I believe that this particular memorandum was probably prepared sometime this year, but I can't be certain of that.

Q: Was it prepared since the return of the indictment in this case?

A: I believe it may have been, but again I can't say with certainty. . . .

Q: Was there a reason why this memorandum was prepared after the return of the indictment?

A: No, nothing particularly comes to mind as to why it would have been specifically after the indictment.

This testimony was wrong and incomplete; the agent prepared the memorandum in May, 1984.

Testimony was also incorrect with regard to the preparation of the memorandum of interview of Green that had occurred on August 24, 1983 (Defendants' Exhibit 5). When questioned about the date of its preparation, the Special Agent responded: "This memorandum, I believe, was actually prepared by [the Revenue Agent] and I am not certain when this one was prepared." In fact, the Special Agent played a significant role in the editing process along with the Revenue Agent when the document was revised in May, 1984.

Defense counsel asked the Special Agent about the preparation of the Campbell interview memorandum (Defendant's Exhibit 6), which was later proven to have been generated by the agent on May 29, 1984, only two weeks prior to his testimony:

Q: When was this memorandum prepared?

A: Again, I can't say with certainty, Mr. Simon, as to an exact date. In this particular interview, I even had a problem narrowing it down as to some time.

It would have been, let me explain it this way if I might, it wouldn't have been a day or two after the interview [which had been conducted on July 25, 1983]. It probably was several months after that, but I believe it was within say several months of that interview.

This testimony was repeated on several occasions.

Defense counsel inquired about the preparation of the second Wilkins interview memorandum (Defendants' Exhibit 7). The interview occurred on November 23, 1983. The agent testified wrongly about when the interview memorandum was prepared: "I think that this was [prepared] just prior to Thanksgiving weekend and that memorandum was dictated, I would say, the following Monday or Tuesday [November 28, or 29, 1983]." This particular document, in fact, was initially prepared between May 14 and May 18, 1984. Similar testimony was given with regard to the other Wilkins interview memorandum (Defendants' Exhibit 8), pertaining to the interview on November 22, 1983. When asked when the memorandum was dictated, the Special Agent testified: "Approximately the same time as the other memorandum [the November 23rd interview of Wilkins], I believe. This would have been within a couple of days of the following week. The memorandum was . . . I would say within approximately a week of that time the memorandum was prepared." Defendants' Exhibit 8, in fact, was revised in May, 1984 from a preexisting memorandum.

Similar misstatements were made with regard to the Redler interview memoranda: "[Exhibit 9] was prepared relatively soon after the interview itself, within a week or ten days [September 14-17, 1983]." Furthermore, Exhibit 11

A: would have been prepared probably at approximately the same time as [Exhibit 9] was prepared.

Q: So it was prepared approximately one year after the date of the interview [i.e., August 1983]?

A: I believe that is correct.

The Agent, in fact, dictated both memoranda in May 3, 1984.

Finally, the agent was asked by defense counsel about the preparation of the Russell interview memorandum based on a February 23, 1983 interview (Defendants' Exhibit 12). That memorandum was, in fact, prepared from a preexisting memorandum in May, 1984. Nonetheless, the testimony was as follows:

Q: When did you prepare that memorandum?

A: I couldn't say with certainty.

Q: Was that after the first of the year?

A: I don't believe so. I believe this memorandum was prepared prior to June of '83 and it is dated February 23, '83.

Q: Sometime prior to June but approximately June of '83?

A: No. I am saying between February and June of '83.

The agent further failed to inform the Court of preexisting memorandum.

The Government minimizes this testimony. According to the Government, the argument made by defendants is that the memoranda were "passed off" as contemporaneous. The Government states that this argument cannot be true. The Government supports its argument by noting that two of the memoranda show on their face that they are not contemporaneous and are, instead, compilations (*e.g.,*) Defendants' Exhibits 21 & 35). Although the Government likely did not intend to mislead defense counsel and the Court about the preparation, the simple fact is that no one knew when the documents were prepared. Moreover, when the defendants raised the issue, the Government was unable or unwilling to provide the answers. Even the Special Agent, in attempting to date the documents, stated on at least one occasion that the likely date of preparation related to the date typed on the face of the interview memorandum: in dating Exhibit 12, the Russell momorandum, the agent noted that he believed the date of preparation was "prior to June of '83 *and it is dated February 23, '83"* (emphasis supplied) The Court therefore rejects the Government's position. The reasonable assumption from the face of the document would be that it had been prepared at roughly the time stated on it.

The Special Agent's untrue testimony was not limited to document production issues. He gave such testimony relating to his diary. The Omni defendants asked the agent whether he kept a daily log or diary of his activities; the defendants were attempting to discover when the documents actually were created. The agent testified that his diaries contained only the number of hours that he worked in a day and did not indicate the substance of his activities. When the Court ultimately ordered relevant portions of the 1983 and 1984 diaries produced, it became clear that this testimony was untrue. The diaries, although sketchy, often indicate that the agent prepared for certain critical meetings, and generated certain interview memoranda at issue in these hearings on particular days.

The other IRS employee who testified at great length during the hearings, and did so falsely or wrongly on many occasions, was

the Revenue Agent involved in the case. As was the case with the Special Agent, this witness also had difficulty dating accurately when memoranda were prepared. The Revenue Agent's false testimony extended beyond dating the production of documents, however. One fact issue which arose during the hearings concerned a line in the agent's handwritten notes of the November 22, 1983 interview of Sandra Poe Wilkins. That line stated: "Not discuss contents, atty/client priv." This sentence, if taken to be true, would demonstrate government sensitivity to the privilege.

Defense counsel asked the Revenue Agent as he testified for the first time when this sentence was written. The agent testified adamantly that his notes followed the course of the interview exactly, and that he therefore wrote down the statement as it was spoken. This testimony was clear and unequivocal. It remained unshaken under intense examination by defense counsel. In fact, this testimony was false, and the agent later returned to the witness stand to recant it.

Disturbing, confliction testimony was also presented. With regard to Exhibit 5, one of the interview memoranda involving William Green, different IRS agents took responsibility for the document's alteration from a preexisting memorandum. The Revenue Agent testified forcefully, during two different appearances, that he alone made the changes without any input or consultation with any other person. According to this version, the changes were made in the Spring of 1984, before the defense motion to dismiss was filed. A different agent testified forcefully that he alone made the changes. This agent testified that the changes were made prior to October 1, 1983. In fact, the Revenue Agent made the changes with assistance from the Special Agent between May 8, 1984 and May 18, 1984.

The AUSA who directed the entire investigation and presented the case to the grand jury also gave incorrect testimony. For instance, defense counsel asked about the date of preparation of the November 22, 1983 Wilkins interview memorandum (Defendants' Exhibit 8). The AUSA stated on many occasions that it was prepared soon after the interview; in fact, it was not prepared until May, 1984. Another example of untrue testimony given by the AUSA concerned the use made of the Wilkins interviews in the decision to indict Bornstein. The AUSA testified on repeated occasions that Wilkins' potential testimony was put out of mind, was not presented to the grand jury, and was not part of the decision-making process. However, evidence in the record shows that the AUSA did consider the substance of statements allegedly made by Wilkins against Bornstein.

Perhaps the most flagrant, troubling aspect of the entire tax investigation occurred when the Government interviewed Sandra Poe Wilkins, Bornstein's secretary. The Government contends that there is no impediment, legal, technical, ethical, or otherwise, to an unannounced, uncounselled, surprise interview of a lawyer's secretary when the focus of the interview will be on what the secretary knows about the relationship between the lawyer and his client. Unlike lawyers, who can protect the attorney-client privilege, secretaries have no legal training and cannot be expected to make sophisticated judgments regarding the scope of the privilege. This Court is shocked and offended by such a procedure and condemns this investigatory tactic, especially in the factual situation presented here.

As has already been described in great detail, Omni asserted the attorney-client privilege before Judge Young. On November 8, 1983, Judge Young held that invoices sent by Bornstein to Omni were privileged. Although fully cognizant of this ruling, the Special Agent and the Revenue Agent travelled two weeks later to Wilkins' home for an interview. The AUSA knew such an interview was to occur. The interview also followed by only two business days the conference with Bornstein's attorneys, who had forcefully stated that the case against Bornstein was fatally flawed because the Government lacked a witness. The purpose of the meeting with Wilkins was clearly to find such a witness. In light of this purpose, the proper course of action would have been to subpoena Wilkins before the grand jury and allow Omni an opportunity to intervene.

The Special Agent testified that Wilkins was only interviewed because she was a "loose end", "for no particular reason", and as part of "unfinished business." This testimony was certainly misleading and probably false. Even the agent's diary reflects that he spent twelve hours on the day preceding the interview preparing for it.

Subsequent to the interview of Wilkins, the agents prepared a memorandum which purported to summarize statements made by Wilkins. As has already been detailed, the Revenue Agent added at least one line to his notes at a later point in time, to wit: "Not discuss contents, atty/client priv." At the evidentiary hearing Wilkins testified that the contents of the memorandum read like a novel to her and were largely false. Only at the hearing did it emerge that the agents had related certain facts to Wilkins which, according to the agents, Wilkins confirmed and, according to Wilkins, she denied. In either event the memorandum makes it appear as if Wilkins made certain statements which she did not.

The most damaging episode to Bornstein related in the memorandum consisted of statements to the effect that Wilkins had corroborated the allegation about the safe deposit box. According to the memorandum, Wilkins stated that Bornstein had a safe deposit box which held United Aviation Service documents. The documents purportedly demonstrated that Bornstein had properly advised his clients and that the clients ignored the advice. Paragraph 17 of Exhibit 8 states that if Omni "ever tried to pin anything on him [Bornstein], he had proof that he advised them the correct way to do it and they didn't." Wilkins denied these statements at the hearing. She testified that the only document known to her in Bornstein's safe deposit box was his will.

The significance of the memorandum is that it is not entirely and fully accurate. At the time, however, Bornstein's counsel did not know the true situation; they were unable to speak with Wilkins and they did not receive a copy of the memorandum.

Another issue that arose concerned who delivered a copy of the earlier version of the Wilkins November 22, 1983 interview memorandum to Mark Friend, the Department of Justice Tax Division attorney who reviewed the case. Friend testified that the document was brought to him at his office in Washington, D.C. by the Special Agent, Revenue Agent, AUSA, or some combination thereof. None of the three witnesses admitted to delivering the document during their extended testimony; all three denied doing so. Someone clearly gave the document to Friend, however, and it would appear that at least one of the witnesses testified falsely in that regard. When the memorandum was delivered, the person who delivered it made a comment to the effect that "this was really good stuff, it was really dynamite." From this statement, the Court finds that it appears most likely that the Special Agent delivered the memorandum. But it is not necessary to conclusively determine who actually delivered the item. The crucial fact is that there was, once again, false testimony.

On the basis of this continuous stream of incorrect, misleading and false testimony, the Omni defendants charge that the three individuals committed perjury and obstructed justice. It is neither the role nor the function of this fact-finder in the context of a pretrial motions hearing to make findings of criminal conduct. Throughout the lengthy proceedings the Government has focused its attention on the alleged breaches of the attorney-client privilege, and not on allegations of perjury and obstruction of justice. The Government has not "defended" the Special Agent, Revenue Agent, or AUSA against these charges; these three persons are not on trial for the alleged crimes in any case. Clearly it would be imprudent for this Court to draw the conclusions requested by defendants.

It would also be unnecessary to do so. The *motive* involved in this case is irrelevent to the court's disposition of the matter. The critical fact is that there was a considerable amount of false, wrong testimony. At issue here are not merely a few, isolated incidents that can be shrugged aside due to the passage of time and length of the hearings. The Court can easily understand innocent misrecollection. But the effect of this testimony and the obvious prejudice which resulted cannot be so easily dismissed. It will be evaluated *infra* in section III of this opinion.

Having reached these conclusions, the Court does express its view that the *AUSA* did not commit perjury and did not obstruct justice. The Court is left with a sufficient reasonable doubt on these criminal questions, even without a defense being mounted on behalf of the AUSA. The Court is statisfied that the AUSA had become so immersed in the prosecutorial role and so protective of the Government's handwritten interview notes that it was impossible for the AUSA to give proper attention to the enormity of what was being done. Testimony given by the AUSA certainly was untrue and wrong in certain places. However the criminal intent required by law has not been proven. The Court further notes that it makes no findings at all with regard to the criminality of testimony given and conduct undertaken by the *Special Agent* and the *Revenue Agent.*

C. Lack Candor

The third area of the Court's concern may be described as lack of candor. It is clear beyond any doubt that misrepresentations were made to the Court, from the beginning of the evidentiary hearing. Misrepresentations occurred in colloquies with the Court and in testimony by witnesses. The Court recognizes that events about which certain witnesses testified often occurred several years prior to the hearing. Nonetheless there was virtually a wholesale failure of recall of critical events by the relevant Government witnesses, and no such failure by the defendants' witnesses. At the least this failure consititutes a lack of candor. The primary (but not sole) offender is the *AUSA.*

At the outset of the hearing on June 11, 1984, extensive discussion concerned whether the agents' handwritten notes should be

produced to the defendants. On June 11th, the AUSA argued that the Government's motion to quash the Omni defendants' subpoenae should be granted because all memoranda had been produced and there was no need to obtain the handwritten notes. The AUSA did proffer the notes to the Court for *in camera* inspection. However, the AUSA did not inform the Court at that point that all memoranda had been prepared or altered within six weeks of the hearing. Nor was the Court informed that there were preexisting versions of some altered memoranda in the files. If the Court had been so informed, it undoubtedly would have ordered the immediate production of the underlying documentation. Instead, the Court reviewed the handwritten notes *in camera* that evening. On June 12, 1984, the Omni defendants called two witnesses to demonstrate the need for an evidentiary hearing. These witnesses addressed the typewritten memoranda pertaining to interviews to which they had been either a party or a witness, and they basically testified that the memoranda were false, misleading, and incomplete.

A crucial colloquy which evinces lack of candor began between the Court and the AUSA after the witnesses testified and the defendants renewed their request for handwritten notes:

The Court: Clarify for me, . . . if you will, first of all, under what circumstances did the Government give the typewritten statements to the Defendants? Was this in response to some Motion? Was it totally voluntary? Did you take the position that you didn't have to produce them but nevertheless were going to voluntarily? What were the circumstances under which they were turned over?

The AUSA responded that the purpose of the hearing was to give the defendants an opportunity to show that the privilege was breached:

AUSA: We realized that they could not make a factual showing . . . unless they had the actual statements that were made. Accordingly, we provided the memoranda which we believed were—which there couldn't be any questions that might have mentioned attorney/client dealings so that they could then make a factual showing to the Court. . . . But we provided the memoranda to them to enable them to prepare themselves for the hearings yesterday and today.

In this statement the AUSA did not indicate that the memoranda were given to the defendants precisely in response to the motion to dismiss or that all the memoranda had then been created or altered. The Court then naively asked a second question which addressed what became the critical issue concerning the preparation of the documents:

The Court: Well, now is there significance in themselves to the fact that they are typed, if one of these would have been handwritten, would you have taken the position that was not producible?

A candid answer would have fully apprised the Court of the activities that had recently been undertaken. The AUSA, however, gave a totally nonresponsive answer to the inquiry:

AUSA: Your Honor, it is a matter of practice within the Government, I assume, that the notes are taken, contemporaneous notes are taken by the agents as well as from time to time by the attorneys in the case during the course of an interview. And, then memoranda are prepared. These memoranda, I guess, are similar, if you are dealing with the Federal Bureau of Investigation, to the FBI 302's, with respect to the DEA they would be the DEA 6's. Underlying all those documents I think Your Honor is aware are the handwritten notes of the agents from which the documents were prepared and I believe the law in the Fourth Circuit is that those notes do not have to be produced, that the memoranda are what is——

The Court: Well, what I am asking you, what if under certain circumstances the government agent does not reduce it to a typewritten report, then would the government take the position because it was never typed up the handwritten one is not producible?

AUSA: No, Your Honor, we would provide the other side with whatever was the official document reflecting that particular interview. . . .

In this colloquy the AUSA failed to inform the Court that the Government had, in fact, been producing typewritten memoranda exactly because none had been prepared. The AUSA also failed to indicate that changes in preexisting reports had been made.

Later in oral argument on the issue of the production of the notes, the Court directed its attention to the Candler memorandum (Defendants' Exhibit 35). Testimony earlier on June 12, 1984 had revealed that certain conversations between the agents and Candler were omitted from the memorandum. The Court went so far as to ask:

The Court: Now I am at a loss to understand, unless these papers were prepared solely on the issue of attorney/client privilege, which I am confident is not the fact, how did the conversation get omitted?

The AUSA again failed to correct the obvious assumption made by the Court which was certainly in error, as the AUSA knew; the papers referred to had in fact been prepared solely in response to the attorney-client privilege motion.

The AUSA's failure to be fully candid could have had tragic consequences. The Court was faced with the issue of whether or not to permit an evidentiary hearing. If the Court had blindly relied on the AUSA's representations, no hearing would have been held.

Later in the same day the Special Agent took the witness stand and began his testimony. The Omni defendants immediately focused on the dates of preparation of the typewritten memoranda, item by item. The Special Agent testified either falsely or incompletely, as described earlier. Approximately forty-five minutes into the questioning, the AUSA made the following representation:

AUSA: Your Honor, as far as the Government is concerned, when this dispute was raised as far as the attorney-client privilege was concerned and we felt obligated to provide information to the other side so that they could be prepared for the hearings today, I did, in fact, ask the agents to change their original notes into memoranda so to the extent that it came from me and I knew the Motion had been filed, that is certainly true, and it didn't reflect on the agents at all, it reflects on me as opposed to them that we knew the material had to be turned over and we had to put it into typewritten form rather than handwritten notes.

Mr. Simon: That answers the Court's question earlier if these were prepared in connection with the Motion. Possibly we could find out which of the memoranda were in fact prepared on that basis.

AUSA: That may not be true for all of them. I told the agents to go through their notes and see who that applied to with respect to attorney-client and to the extent there weren't memoranda prepared they were prepared and produced to the other side.

This representation by the AUSA, along with the exchange with defense counsel, is significant to the Court in several respects. First, it shows that the AUSA was not fully candid in the earlier statements to the Court that if no memoranda existed the notes would have been produced. Secondly, it showed that the AUSA was involved directly in the creation and alteration of the documents. Thirdly, the representation along with the qualification finally made by the AUSA left the issue murky; even when the AUSA finally addressed the matter, there was not a full response to the issues.

The Government has consistently relied on these representations by the AUSA for the proposition that the record had then been made clear and the defendants then possessed all the knowledge relevant to the legal issues. Under examination it is clear that the statements in themselves are neither complete nor candid. The defendants sought to know exactly when documents were created and altered and by whom. At the time that these questions were originally posed, no one but the Government knew the answers. And, the Government throughout the hearings never gave the answers. The facts were made available to the Court only through extensive investigation on behalf of defendants and many days of hearings.

Without belaboring the lack of candor exhibited by several Government witnesses during the hearing, the Court does wish to note that the AUSA was not candid during portions of testimony given from the witness stand. The AUSA testified that there was never a possibility at the Department of Justice that the prosecution would be declined. This testimony was incorrect. Friend testified that not only did such a possibility exist but that he so informed the AUSA on December 15, 1983.

However significant the lack of candor with the Court may appear in this one interchange, the AUSA was less than candid in another, perhaps more significant way. One of the primary issues in the hearings involved the process by which Bornstein made his proffer to the Government, which has been discussed above. During these heaings Bornstein's former counsel testified credibly about the procedure. Bornstein became interested in making a proffer only after the Government reported that Sandra Poe Wilkins had given statements which were damaging to him.

In attempting to convince the courts that a proffer ought to proceed, the Government maintained that Bornstein sought the opportunity to make a proffer and that the Government, in the interests of treating all potential defendants fairly, wished to give Bornstein that opportunity. In its answer to the motion to dismiss, the Government implied that Bornstein virtually begged the Government for this option. The facts concerning the proffer are much more complex. For quite some time the Special Agent wanted to hear what Bornstein might want to say. Prior to the meeting of December 15, 1983, the AUSA clearly had always wanted to talk to Bornstein, because he was the return preparer. The Government was willing to make any efforts necessary because,

according to the AUSA, "[we] had to talk to him if we in any way could."

The desire to talk to Bornstein only intensified after the conference at the Department of Justice. Bornstein's counsel also hammered home the point on November 18, 1983, that the Government lacked a witness against their client. Both the AUSA and the Special Agent were frustrated in dealing indirectly with Bornstein's attorneys instead of directly with Bornstein himself. On December 15th, prior to the meeting with Bornstein's counsel, the AUSA had a discussion with Friend. According to Friend's notes of that conversation, the AUSA "is trying to figure a way to get testimony from Bornstein, . . . agree[ing] that we must know what he will say." At the December 15, 1983 meeting, the Special Agent on two occasions and the AUSA at one point both suggested the viability of a direct discussion between Bornstein and the Government.

Unlike the AUSA who refused or declined to relate candidly the Government's approach toward Bornstein, the Government investigator assigned to the United States Attorney's Office stated that "the key is Bornstein, if he flips and tells the truth, they're all dead, we plead this thing out, that kind of thing." If Bornstein did "flip", "it would be a cakewalk for the rest of the case."

The Special Agent, Revenue Agent, and especially the AUSA were less than candid in relating the proffer procedure and the Government's actual motive for the proffer. This Court does *not condemn* the Government's motive; it does, however, take issue with the manner in which the *real motive was obfuscated* before Judge Young, the Fourth Circuit, and this Court. True candor would have at least revealed the Government's mixed motives, as described above. The Court notes that none of the three Government representatives recalled the momentous meeting of November 18, 1983, at which time Bornstein's attorneys gave a replay of the Justice Department conference, at the specific request and for the benefit of the agents. The AUSA had virtually no recall of this meeting, beyond "being in the room." The Special Agent recalled nothing about a "replay" or of a meeting with Feffer in November, 1983, even though his diaries reflect that he spent thirty hours in preparation for the November 18th meeting on the three days prior to that meeting. The Revenue Agent also had no recollection of the meeting. This is particularly surprising because the tone of the meeting was acrimonious and heated, with voices raised and with some of the participants pounding on the conference table.

None of the three recalled the December 15, 1983 meeting, the purpose of which was to debrief Bornstein's attorneys on the statements allegedly made by Wilkins. The Special Agent could not recall the purpose of the meeting, nor of a meeting at which time the Wilkins memoranda was to be discussed. The Special Agent also stated he had no recollection of saying that he wanted to speak directly with Bornstein. The Revenue Agent purported to recall nothing of the meeting; he, however, did at least recall a statement that the Special Agent "would like to question Mr. Bornstein personally." The sum of the AUSA's testimony was lack of recollection at all.

The lapse of memory disappoints the Court and evidences a lack of candor by these three witnesses. Confirmation of these meetings and the events transpiring within was made by Bornstein's attorneys and the investigator in the United States Attorney's Office.

III. SANCTIONS

Having set forth at length the three principal areas of concern to the Court that occurred during the course of the hearings, namely the alteration and creation of documents, false and incorrect testimony, and a lack of candor, in colloquies with and testimony before the Court, the question becomes what sanction, if any, is appropriate. The Omni defendants request, in the alternative, dismissal of the indictment, disqualification of government prosecutors and investigators, and suppression of evidence. Each sanction will now be treated separately.

A. Dismissal

The issue of dismissal of the indictment is not an easy one. Federal courts have a general supervisory power with respect to the administration of justice in federal judicial proceedings. *See United States* v. *Hastings*, 461 U.S. 499, 505 (1983); *United States* v. *Payner*, 447 U.S. 727, 734-36, 735 n.8, *reh'g denied*, 448 U.S. 911 (1980); *McNabb* v. *United States*, 318 U.S. 332, *reh'g denied*, 319 U.S. 784 (1943); *see generally* Beale, *Reconsidering Supervisory Power in Criminal Cases; Constitutional and Statutory Limits on the Authority of the Federal Courts*, 84 Column L. Rev. 1433 (1984). The use of the supervisory power supports three institutional goals: deterring illegal conduct by government officials, protecting and preserving the integrity of the judicial process, and implementing a remedy for violation of recognized rights. *See United States* v. *Hasting*, 461 U.S. at 505; *United States* v. *Payner*, 447 U.S. at 735 n.8; Note, *The Exercise of Supervisory Powers to Dismiss a Grand Jury Indictment—A Basis for Curbing Prosecutorial Misconduct*, 45 Ohio St. L. J. 1077, 1084 (1984). Within limits, federal courts may formulate procedural rules not specifically required by the Constitution or the Congress. *United States* v. *Hasting*, 461 U.S. at 505.

Courts have dismissed criminal prosecution because of serious government abuse in the investigation leading to the indictment. *See United States* v. *Kilpatrick*, 594 F. Supp. 1324, 1352-53 (D. Col. 1984); *United States* v. *Lawson*, 502 F. Supp. 158, 170 (D, Md. 1980); *United States* v. *Dahlstrum*, 493 F. Supp. 966, 974-75 (C.D. Cal. 1980), *appeal dismissed*, 655 F.2d 971 (9th Cir. 1981), *cert. denied*, 455 U.S. 928 (1982). Moreover, courts have dismissed indictments because of serious government misconduct following the indictment. *See United States* v. *Pollock*, 417 F. Supp. 1332, 1348-49 (D. Mass. 1978); *United States* v. *DeMarco*, 407 F. Supp. 107, 115 (C.D. Cal. 1975); *United States* v. *Banks*, 383 F. Supp. 389, 397 (D.S.D. 1974), *appeal dismissed sub nom. United States* v. *Means*, 513 F.2d 1329 (8th Cir. 1975).

If the defendants demonstrate actual prejudice, the indictment can be dismissed under the supervisory power. *See, e.g., United States* v. *McKenzie*, 678 F.2d 629, 631 (5th Cir.), *reh'g denied*, 685 F.2d 1386 (5th Cir.), *cert. denied*, 459 U.S. 1038 (1982); *United States* v. *Nembhard*, 676 F.2d 193, 200 (6th Cir. 1982). Yet the defendants maintain that no showing of harm to them is required to justify dismissal pursuant to the supervisory power. The Government argues by contrast that actual prejudice must be shown, because even where violations of *constitutional* rights are at issue dismissal is inappropriate absent demonstrable prejudice to defendants.

The courts have not definitively resolved whether an indictment can be dismissed pursuant to the supervisory power absent prejudice to the defendant. The Supreme Court has not squarely addressed the issue. However, the Court made clear in *United States* v. *Morrison*, 449 U.S. 361, *reh'g denied*, 450 U.S. 960 (1981), that dismissal of an indictment is inappropriate under the sixth amendment even if the violation is deliberate, absent demonstrable prejudice or a substantial threat thereof. The recent pronouncements of the Court in *Payner* and *Hasting* imply a more limited use of the supervisory power, possibly including a requirement of actual prejudice for dismissal. *See United States* v. *Lehr*, 562 F. Supp. 366, 371 (E.D. Pa. 1983), *aff'd without opinion*, 727 F.2d 1100 (3d Cir. 1984). These decisions, however, leave intact the well-settled proposition that the supervisory power still exists for "truly extreme cases." *United States* v. *Broward*, 594 F.2d 345, 351 (2d Cir.), *cert denied*, 442 U.S. 941 (1970).

A review of circuit court decisions shows disarray on the requirement of prejudice, with the full significance of the *Payner* and *Hasting* rulings not yet evaluated. The Fourth Circuit has yet to speak on the question. The decision by the Ninth Circuit in *United States* v. *Rogers*, 751 F.2d 1074, 1077-79 (9th Cir. 1985), is representative of those circuits which suggest that prejudice must be shown: *United States* v. *Acosta*, 526 F.2d 670, 674 (5th Cir.), *cert denied*, 426 U.S. 920 (1976); *United States* v. *McKenzie*, 678 F.2d 629, *United States* v. *Crow Dog*, 532 F.2d 1182, 1196-97 (8th Cir. 1976), *cert denied*, 430 U.S.L 929 (1977); *United States* v. *Brown*, 602 F.2d 1073, 1076-77 (2d Cir.), *cert denied*, 444 U.S. 952 (1979). A contrary line of authority exists. The following courts have concluded that an indictment can be dismissed in the absence of prejudice, in extreme circumstances. *See, e.g., United States* v. *Serubo*, 604 F.2d 807, 817 (3d Cir. 1979); *United States* v. *McCord*, 509 F.2d 334, 349 (D.C. 1974), *cert denied*, 421 U.S. 930 (1975). The Eleventh Circuit has not yet determined whether prejudice is required. *See United States* v. *Pabian*, 704 F.2d 1533, 1540 (11th Cir. 1983).

In resolving the obvious divergence among the authorities, a few salient points emerge. The supervisory power may be invoked in a myriad of situations based on the peculiar circumstances presented. It should be exercised sparingly and only on a showing of demonstrated and longstanding prosecutorial misconduct, *see United States* v. *Adamo*, 742 F.2d 927, 942 (6th Cir. 1984), *cert. denied sub nom. Freeman* v. *United States*,—U.S.—105 S.Ct 971 (1985), just as reversals of convictions under the supervisory power must be approached "with some caution." *United States* v. *Hasting*, 461 U.S. at 506-07. *See also United States* v. *Artuso*, 618 F.2d 192, 196-97 (2d Cir.), *cert denied*, 449 U.S. 861, 449 U.S. 879 (1980); *United States* v. *Fields*, 592 F.2d 638, 648 (2d Cir. 1978), *cert denied*, 442 U.S. 917 (1979). Sparing use, of course, does not mean no use. Even "disfavored remedies", *United States* v. *Rogers*, 751 F.2d at 1076-77, must be used in certain situations. Exercising the inherent authority is most appropriate in particular fact situations that do not lend themselves to rules of general application. *United States* v. *Harrison*, 716 F.2d 1050, 1053 n.1 (4th Cir. 1983), *cert. denied sup nom. Wissler* v. *United States*, 466 U.S. 972 (1984).

A common thread underlying many decisions is that the magnitude of the misconduct affects the use of the supervisory

power, whether or not actual prejudice is shown. *See, e.g., United States* v. *Serubo*, 604 F.2d at 818 (prosecutorial conduct extreme; graphic and misleading reference by prosecution to Cosa Nostra hatchet men); *United States* v. *Hogan*, 712 F.2d 757 (2d Cir. 1983) (misconduct flagrant); *United States* v. *Fischbach & Moore, Inc.*, 576 F. Supp. 1384, 1396 (W.D. Pa. 1983) (isolated incident of misconduct). In determining the proper remedy pursuant to the supervisory power, the relief chosen should be directly related to the seriousness of the misconduct. *United States* v. *Banks*, 383 F. Supp. at 392. Repeated instances of deliberate and flagrant misconduct justify dismissal of the indictment. *See id.; United States* v. *Hogan*, 712 F.2d at 761; *United States* v. *Kilpatrick*, 594 F. Supp. at 1352-53; *United States* v. *Lawson*, 502 F. Supp. at 172.

Exhaustive research reveals no case in which Government personnel committed repeated misconduct in so many forms as has occurred here, at the preindictment stage, the discovery stage, and in hearings before this Court. In light of the Supreme Court's general statements concerning the purpose for which the supervisory power was created and that Court's sensitivity to the need to invoke the doctrine to promote fairness and assure justice, the supervisory power must be utilized in this case. Court decisions emphasize the unifying premise in all of the supervisory power cases—that although the doctrine operates to vindicate a defendant's rights in an individual case, it is designed and invoked primarily to preserve the integrity of the judicial system.*United States* v. *Leslie*, 759 F.2d at 372. The Court has particularly stressed the need to use the supervisory power to prevent the federal courts "from becoming accomplices to such misconduct." *United States* v. *Payne*, 447 U.S. at 744 (Marshall, J., dissenting). Utilization of the supervisory power remains a harsh ultimate sanction, but must be used for "conduct that shocks the conscience."*United States* v. *Baskes*, 433 F. Supp. 799, 806 (N.D. Ill. 1977) (quoting *Rochin* v. *California*, 342 U.S. 165, 172 (1952)).

Factually, the misconduct here is not isolated, but longstanding. Indeed untrue testimony and a lack of candor permeated the entire ten-month hearing. The Government did not proffer the truth about the creation and alteration of the documents during all that time. The misconduct here is as extreme as any found in the reported decisions reviewed by this Court. Defendants and the Court clearly suffered prejudice from the misconduct. Whether or not there is prejudice, the supervisory power to have any significance must be applicable to cases of repeated, flagrant governmental misconduct. In light of all the testimony adduced at the evidentiary hearing, it is clear that this case rises to the high threshold imposed for invocation of the supervisory power. The Court condemns the manner in which the Government proceeded, and cannot now stand idly by, implicitly joining the federal judiciary into such unbecoming conduct.

As reviewed in detail above, the Court is deeply troubled by the manner in which the Government handled the submission of documents to defense counsel and the Court, and in the evidentiary hearing before the Court. It simply is wrong for Government personnel to act as they have done here. This type of conduct cannot and must not be condoned; in fact, it must be strongly condemned. The Court has not set forth the details of the prosecutorial abuses lightly and without regard to the individuals involved.

When oral argument on the motion was held on June 25, 1985, the Government did concede that it was wrong to prepare memoranda as had been done. But the Government recommends almost a "harmless error" approach as a sanction for this egregious error, contending that no harsh remedy should follow because all underlying documents were finally produced to the defendants.

The Court rejects this notion. Absolutely no justification exists for revising documents that are being turned over to an adversary in litigation once the issue has been raised, particularly without notice of revision to the opposition. The Government offers no excuse, other than to maintain that the changes were made for the sake of accuracy. However, the unrevised documents were apparently sufficient for review by the Department of Justice as it decided whether or not to approve the prosecution. The only possible conclusion that the Court can reach is that changes were made to strengthen the Government's position at the hearing, even though the effect of the alterations was minimal. Similarly, there is no justification for creating documents during this time period, without indicating so, no matter what the motive.

The Government's argument overlooks one critical consequence that would have resulted if the Government's representations and the documents had been accepted at face value: There would have been no hearing, and the truth would have never been known. As tragic as are the events which transpired during the evidentiary hearing, it would have been even worse for the Court to have denied the defendants a hearing. The fact that all the relevant documents were finally produced only occurred because of the Omni defendants' strenuous efforts.

It is neither reasonable nor proper to change, alter, correct, modify, or create documents once a matter is in litigation, especially absent notice to opposing counsel. This rule must apply equally to the Government as it does to defendants. The rule applies irrespective of alleged good faith.

The Court is equally troubled by the consistent pattern of false testimony and lack of candor exhibited by various Government representatives who played prominent roles in this tax investigation. The details have already been recounted. This Court has considered carefully the large volume of disturbing testimony on a whole range of issues.

The Court finally is extremely disturbed by the Government's cavalier attitude with regard to a surprise interview of an attorney's secretary, when the purpose of the interview will be to discover communications between the attorney and his clients. If no legal precedent presently exists in reported cases to proscribe such outrageous conduct, one needs to be added at this time. This investigatory tactic is patently improper. A grand jury appearance would be a preferable approach; in any event, before such an interview is conducted, court approval should at least be obtained.

The case closest to this issue is *United States* v. *Valencia*, 541 F.2d 618 (6th Cir. 1976). In *Valencia*, a lawyer's secretary was also a paid government informant. The secretary had been present when various narcotics transactions occurred; she had also been instructed by her employer to take notes during that time for the purpose of defending one of the clients on smuggling charges. At trial, the secretary testified. After learning that the secretary had become a paid government informant during the investigation, the district judge dismissed the indictment as to four of the defendants, including the attorney. The basis for dismissal was the outrageous governmental intrusion into the attorney-client privilege. On appeal, this determination was affirmed: "We agree with the district court that it was improper for the government to have intruded into an attorney-client relationship by paying an attorney's secretary for information about his clients." *Id.* at 623. This was true even though the attorney was directly involved in a criminal conspiracy with his clients, because "the law in its majesty . . . [cannot] be equally slimy." *Id.* at 621 (quoting the District Judge).

The Court finds the Government's intrusion in the Omni investigation equally intolerable. This is not a situation in which a secretary cooperates with the Government in an investigation and informs the attorneys and clients involved to proceed accordingly at their own peril. *See United States* v. *King*, 536 F. Supp. 253 (C.D. Cal. 1982). *Valencia* also stands for the proposition that the secretary's testimony, when so obtained, cannot be admitted at trial. It follows that the testimony of Wilkins would be inadmissible at any trial involving Bornstein or his clients.

Thus, in exercising the supervisory power entrusted to it to ensure the smooth and proper administration of justice, the Court has determined that the indictment should be dismissed. Twenty-eight days of hearings produced example after example of conduct unbecoming to the Government. Innocent misrecollection by witnesses is a common occurrence and is excusable, but the cumulative effect of the evidence presented here adds up to more than innocent misrecollection. Defendants should not be forced to conduct lengthy hearings to learn the basic essential facts needed as a predicate to a pretrial motion. Courts should not be forced to question whether government witnesses are testifying truthfully and fully. The Government's conduct was patently egregious and cannot be tolerated or condoned. Its manner of proceeding shocks the Court's conscience. The indictment must be dismissed as a prophylactic sanction for the consistent course of entrenched and flagrant misconduct. *United States* v. *Birdman*, 602 F.2d 559 (3d Cir. 1979), *cert. denied*, 444 U.S. 1032, 445 U.S. 906 (1980).

However, the Court does not take lightly the fact that an impartial grand jury indicted these five defendants on serious criminal tax charges. This grand jury was completely untainted by and ignorant of the matters of significance to the Court. Therefore, the indictment will be dismissed without prejudice. Although defendants have certain rights which have been violated here, they have no concomitant right to bar forever investigation into their alleged criminal conduct. *United States* v. *Lawson*, 502 F. Supp. at 172. The Court recognizes that the passage of time may have caused the statute of limitations to run as to certain tax years charged in the Indictment. This fact does not affect the decision to dismiss the Indictment without prejudice.

B. Disqualification

In the event that the Government decides to seek another indictment in this matter, an issue undoubtedly will arise about whether any of the Government prosecu-

tors or investigators should be disqualified. Based on the misconduct described in detail throughout the opinion, this Court has determined that the Special Agent, the Revenue Agent, and the AUSA involved in this litigation must not participate further in the prosecution of the case.

C. Suppression

The last sanction requested in the Omni defendants' initial motion relates to the suppression of evidence. Had it not dismissed the indictment, the Court might have concern over what evidence ought to be suppressed. In light of the Court's disposition, the issues are greatly simplified, and will need to be addressed only in the event of reindictment.

The Bornstein proffer need not be suppressed because its use has already been limited by rulings of Judge Young and the Fourth Circuit. Statements made by Sandra Poe Wilkins need not be suppressed here; although the Court condemns the investigatory technique utilized to obtain the interview of Wilkins, her testimony during the hearings demonstrated clearly that the Government will be unable to use her as a trial witness. If Wilkins should be proffered as a witness at a future trial, the full ramifications of *United States* v. *Valencia*, 541 F.2d 618 (6th Cir. 1976), can be explored. All other issues relating to the suppression of evidence based on violations of the attorney-client privilege can be raised during a future trial, if then appropriate.

The Court will enter a formal order dismissing the indictment without prejudice.

WALTER E. BLACK, Jr.,
U.S. District Judge.

[In the United States District Court for the District of Maryland]

UNITED STATES OF AMERICA v. OMNI INTERNATIONAL CORPORATION (FORMERLY KNOWN AS OMNI INVESTMENT CORPORATION), WAYNE J. HILMER, EVAN T. BARNETT, THOMAS A. WESTRICK, JR., AND JOSEPH P. BORNSTEIN

ORDER

For the reasons set forth in the foregoing opinion, It Is, this 15th day of May, 1986, Ordered as follows:

1. That the Motion to Dismiss the Indictment, Disqualify Government Counsel and Investigators, and Suppress Evidence Based on Violations of the Attorney-Client Privilege (Defendants' Joint Pretrial Motion Number 3) (Paper 20), filed on behalf of defendants, Omni International Corporation, Wayne J. Hilmer, Evan T. Barnett, and Thomas A. Westrick, Jr.—being treated as a motion to dismiss indictment—Be, and the same hereby Is, Granted, and the indictment in this case as to said defendants Be, and the same hereby Is, Dismissed without prejudice.

2. That the Motion of Defendant Joseph P. Bornstein to Dismiss the Indictment on Grounds of Abuse of the Grand Jury Process and Governmental Misconduct, and seeking alternate relief (Bornstein Motion Number 4) (Paper 45)—being treated as a motion to dismiss indictment—Be, and the same hereby Is, Granted, and the indictment in this case as to said defendant Be, and the same hereby Is, Dismissed without prejudice.

3. That copies of the foregoing opinion and this Order are being transmitted to counsel of record for the parties to this action.

WALTER E. BLACK, Jr.,
U.S. District Judge.

[In the United States District Court for the District of Maryland]

CRIMINAL NO. B-84-00104

UNITED STATES OF AMERICA v. OMNI INTERNATIONAL CORPORATION (FORMERLY KNOWN AS OMNI INVESTMENT CORPORATION), WAYNE J. HILMER, EVAN T. BARNETT, THOMAS A WESTRICK, JR., AND JOSEPH P. BORNSTEIN

ORDER

Since April 27, 1984, the defendants herein have filed numerous motions which have not yet been scheduled for hearing, pending the Court's ruling on the Motion to Dismiss the Indictment Disqualify Government Counsel and Investigators, and Suppress Evidence Based on Violations of the Attorney-Client Privilege (Paper 20), filed on behalf of Defendants, Omni International Corporation, Wayne J. Hilmer, Evan T. Barnett and Thomas A. Westrick, Jr., and the Motion of Defendant Joseph P. Bornstein to Dismiss the Indictment on Ground of Abuse of the Grand Jury Process and Governmental Misconduct, and seeking alternate relief (Paper 45). By previous Orders of Court (see Paper 28 and Order entered immediately prior to this Order), the periods of time from April 13, 1984 to January 7, 1985 and from January 7, 1985 to June 25, 1985, have been determined to be excludable time within the meaning of the Speedy Trial Act, 18 U.S.C. § 3161. The time from June 25, 1985 to the date of this Order is also excludable under 18 U.S.C. § 3161(h)(1)(F) because of the pending motions.

Accordingly, it is, this 15th day of May, 1986, Ordered that the period of time from June 25, 1985 to the date of this Order shall be excludable time within the meaning of the Speedy Trial Act, 18 U.S.C. § 3161(h)(1)(F).

WALTER E. BLACK, Jr.,
U.S. District Judge.

[In the United States District Court for the District of Maryland]

CRIMINAL NO. B-84-0010

UNITED STATES OF AMERICA v. OMNI INTERNATIONAL CORPORATION, ET AL., DEFENDANTS

ORDER

This matter having come before the Court upon the Motion of the Omni defendants, Omni International Corporation, Wayne J. Hilmer, Evan T. Barnett, and Thomas A. Westrick, Jr. for a determination that the period of time from January 7, 1985 up until June 25, 1985 shall be excludable time within the meaning of the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A) (*see* Paper 135); defendant Joseph P. Bornstein having concurred, in his Statement (Paper 1 IT IS, this 15th day of May, 1986,

Ordered, that the period of time from the original trial date of January 7, 1985 up until June 25, 1985, the date scheduled for oral agrument on Defendants' Motion to Dismiss the Indictment, Disqualify Government Counsel and Investigators, and Suppress Evidence Based On Violations of the Attorney-Client Privilege (Defendants' Joint Pretrial Motion Number 3), shall be excludable time within the meaning of the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A). The ends of justice outweigh the interest of the public and the defendants in a speedy trial for the reasons that: the Motion to Dismiss in this multi-defendant, multi-court conspiracy case is unusual and complex. Establishing the evidentiary basis for the Motion has necessitated almost thirty days of testimony and hearings, spanning nine months and generating approximately 5500 pages of transcript and several hundred exhibits; and a detailed review of the evidence was necessary for the parties to submit proposed findings of fact and conclusions of law relevant to this threshold and potentially dispositive pretrial Motion.

WALTER E. BLACK, Jr.,
U.S. District Judge.

[From the Washington Post, May 16, 1986]

U.S. MISCONDUCT SPURS DISMISSAL OF CASE IN MARYLAND

(By Susan Schmidt)

A federal judge dismissed a multimillion-dollar tax fraud case against a Rockville-based jet leasing company yesterday because of "flagrant and repeated" instances of misconduct by the federal prosecutor and IRS agents, including the altering of documents and false testimony in court.

In an opinion dismissing an indictment against the Omni International Corp., Judge Walter E. Black of the U.S. District Court in Baltimore called the misconduct "outrageous" and "as extreme as any found in the reported decisions reviewed by this court."

Black agreed with Omni's claim that Assistant U.S. Attorney Elizabeth Trimble and two IRS agents altered or manufactured the summaries of key witness interviews to prevent dismissal of the case against Omni. Black also found that Trimble and the two agents subsequently provided "a continuous stream of incorrect, misleading and false testimony" about the documents during a 28-day hearing in his courtroom in 1984.

"The only possible conclusion that the court can reach is that the changes [to the documents] were made to strengthen the government's position . . . ," Black said in a 64-page opinion. "The government's conduct was patently egregious and cannot be tolerated or condoned. Its manner of proceeding shocks the court's conscience."

Trimble declined to comment on the judge's ruling. Her superior, Maryland U.S. Attorney Breckinridge Willcox, said, "We strongly disagree with the reasoning and conclusions Judge Black has come to.

"This whole matter has been and will be examined by the Office of Professional Responsibility at the Department of Justice," he said. "I am confident that when a review is made of these facts, the matter will be closed with no action taken against Liz."

A spokesman for the IRS said officials there had not had time to examine the opinion and would have no comment on it. The two agents, Donald Temple and Paul Mitchell, could not be reached for comment.

Omni, which sells and leases jets, was charged in March 1984 with conspiring to route millions of dollars in income to a subsidiary in Bermuda to avoid paying U.S. taxes. The indictment alleged that between 1974 and 1980, Omni recorded $16.8 million on the books of its subsidiary, Euro Airfinance. That company reported only $91,574 of that income on its U.S. tax returns, according to the indictment.

Black's opinion was issued in response to a 700-page brief filed a year ago by lawyers for Omni, who contended that Trimble and the agents created or altered 10 memos on witness interviews in an effort to save a weak case they had spent three years preparing.

The documents in question were turned over to Omni lawyers in spring 1984 in preparation for a hearing on Omni's request

that the indictment be dismissed. Lawyers for the company had sought dismissal on the ground that Trimble and the two agents had violated the attorney-client privilege of confidentiality by trying to persuade Joseph P. Bornstein, a former Omni attorney and accountant, and other witnesses to give them information about Omni's tax filing practices.

Omni contended that after a subsequent meeting with Justice Department superiors to discuss possible weaknesses in the case, Trimble directed the agents to create new interview summaries and alter existing ones to make it appear they had been careful not to violate the attorney-client privilege.

Black found that "at least nine of these documents, and probably all 10, were either created or altered by government personnel after the defendants filed their motion [for dismissal] . . . ."

Black said he was "shocked and dismayed" that the government then gave the witness summaries to defense lawyers "as if they had been prepared contemporaneously with the interviews." During a June hearing on the attorney-client privilege issue, Black said, the agents and Trimble repeatedly gave false testimony about dates on which the documents were prepared, in several instances testifying that interview summaries had been written the previous year when they had been written only weeks before.

An example of an altered document cited by Black was a summary of the IRS agent's interview with Bornstein's secretary, Sandra Poe Wilkins, who was questioned about memos her boss had written to Omni on tax matters.

The agents' original summary of the conversation, written Nov. 22, 1983, said in part, "The contents of those memos were not discussed due to the attorney-client privilege." The altered version was designed, Black wrote, to make the agents appear sensitive to the attorney-client issue. It said, "We told Wilkins that we did not want to discuss the contents of those memos due to the attorney-client privilege."

The government had contended it made those types of minor revisions to the documents to correct errors in style and grammar.

[From the Washington Post, May 28, 1985]

U.S. ATTORNEY DENIES PROSECUTION ERRED

INDICTED MARYLAND FIRMS SAYS SHE ALTERED DATA

(By Paul W. Valentine)

BALTIMORE, May 28.—The U.S. attorney's office here denied today allegations that one of its prosecutors orchestrated the fabrication and alteration of documents in a criminal case, contending instead that she ordered only minimal revisions to enhance the accuracy of the documents.

"Mistaken though that action may have been, it was not an obstruction of justice or any other form of deliberate misconduct," the court papers said.

In an angry response to the allegations made by attorneys for Omni Internationl Corp., a Rockville-based jet airplane trading company indicted in a multimillion-dollar tax-fraud case, the U.S attorney's office said the Omni lawyers had turned a routine pretrial motion into a "series of personal attacks" on the prosecutor, Assistant U.S. Attorney Elizabeth H. Trimble, and on IRS agents Donald Temple and Paul Mitchell.

Throughout the 144-page response signed by Trimble, U.S Attorney J. Frederick Motz and another assistant prosecutor John G. Douglass, the office maintained that its procedures in interviewing potential witnesses against Omni and preparing memos of those interviews were proper and acceptable in federal court.

"Paradoxically," they said, "the techniques employed by [Omni] are frequently characterized as classic abuses of prosecutorial power: intimidation of witnesses . . . bullying trial tactics and disclosure of information to the press in a manner calculated to destroy the reputations of those whom they accuse." The courts papers said that Omni attorneys had "broadcast" the allegations to lawyers not involved in the case and to "numerous officials in government" and, as well, "their personal attacks found their way to The Washington Post."

The Post first reported the Omni allegations on April 27.

Neither Motz nor attorneys for Omni would comment on the papers filed today.

The allegations and denials come as the government is preparing for trial aganist Omni, three of its corporate executives and its former attorney and accountant. The giant corporation is charged with siphoning millions of dollars in airplane sales and leasing income to an untaxed subsidiary in Bermuda. The defendants have denied all charges.

Last month, Omni attorneys filed a 700-page brief, claiming Trimble and IRS agents had altered or "created" at least 10 witness interview memos in a desparate effort to prevent dismissal of the case.

The attorneys said Trimble and the agents had unsuccessfully attempted to persuade former Omni attorney and accountant Joseph P. Bornstein to cooperate with the government by giving information about Omni's tax-filing practices in exchange for immunity from prosecution.

In an April 1984 motion to dismiss the case, Omni attorneys claimed that that effort, plus government interviews with other witnesses privy to information given to Omni by Bornstein, violated the attorney-client privilege of confidentiality.

Omni attorneys said that after Trimble was questioned by her bosses in the tax division of the Justice Department about possible weaknesses in the Omni case, she directed the IRS agents to alter existing interview memos or create new ones to reflect a heightened sensitivity by the agents in avoiding breaching the attorney-client privilege.

At an evidentiary hearing last summer before U.S. District Court Judge Walter E. Black Jr., a documents expert and other witnesses contradicted claims of IRS agents that several of the memos were written in 1983, prior to Omni's motion to dismiss. In fact, according to the testimony, the memos were prepared in the spring of 1984, most of them after Omni's motion to dismiss was filed on April 27, 1984.

In the government's reponse to day, prosecutors acknowledged that the language of some memos was revised to improve their accuracy. "It is a common practice," the response said," . . . . that memoranda are drafted, edited and revised until, in the agent's view, they accurately reflect the substance of an interview."

In the Omni case, according to the court papers, "there were revisions to several memoranda which took place after [Omni] filed their motion. Mistaken though that action may have been, it was not an obstruction of justice or any other form of deliberate misconduct. Any changes were made in good faith to make the memoranda accurate."

In one case cited by Omni attorneys, IRS agents said in an original memo based on an interview with former Bornstein secretary Sandra Poe Wilkins that the contents of certain documents relating to Omni's overseas tax status "were not discussed due to the attorney-client privilege." That language was changed in a superseding memo prepared five months later, according to court papers, to say, "We told Wilkins that we did not want to discuss the contents of those memos due to the attorney client privilege."

In their response today, the prosecutors acknowledged that Trimble had testified she believed the revised working was prepared in late 1983. While an Omni expert witness said a 1984 watermark on the memo stationery and other evidence showed it was not prepared until May 1984, after the Omni motion to dismiss the case was filed.

Trimble's "forthright" acknowledgement of this indicates she is not "covering up" or committing perjury, as Omni contends, the prosecutors said.

As for violating the attorney-client privilege, the prosecutors contended that agents are free to ask potential witnesses any kind of questions, including those that violate the privilege. It is up to the witness, they said, to invoke the privilege. Omni attorneys had argued in other court papers that a pretrial ruling by federal Judge Joseph H. Young barred such questions.

Prosecutors also maintained today that minor inconsistencies in memos and the testimony of IRS agents are not part of a massive cover-up," as claimed by Omni, but result from the massive paperwork generated by the five-year-long investigation into Omni activity. Agents "had only sketchy recollections of the dates particular memoranda were drafted," prosecutors said," hardly a suprising event in a case involving contacts with over 100 witnesses and documents filling three rooms."

INDICTED MD. FIRM ACCUSES IRS OF ALTERING DOCUMENTS; OMNI CORP. ALSO NAMES U.S. PROSECUTOR

(By Paul Valentine)

Attorneys for a Rockville-based jet airplane trading company indicted in a multimillion-dollar tax fraud case here have accused a federal prosecutor and several Internal Revenue Service agents of altering or "creating" documents to prevent dismissal of the case by a federal judge.

The unusual accusations, contained in a massive memorandum filed in court here this week by Omni International Corp., say that an assistant U.S. attorney and at least three IRS agents hid, altered or manufactured key witness interview summaries and then lied about their actions in court.

The U.S. Attorney's Office here vehemently denied the allegations today and said it will be filing a detailed written response next month.

Citing experts in handwriting, type sizes and watermarks on government stationery, Omni attorneys claimed it had evidence showing that the government tinkered with at least 10 documents and "embarked upon a sordid cover-up, a cover-up that entailed alteration of evidence, creation of evidence, suppression of evidence, destruction of evidence, misrepresentations, unethical conduct and repeated perjury."

The allegations, couched in unusually strong terms, come as attorneys on both sides prepare for the trial of Omni, three of

its corporate executives and its former accountant and attorney.

Neither U.S. Attorney J. Frederick Motz nor his assistant, Elizabeth Trimble, the prosecutor accused in the filing, would comment on specific allegations but denied any wrongdoing.

Motz, who is expected to be nominated soon for a federal judgeship by President Reagan, said in a formal statement: "We categorically deny that Ms. Trimble or any of the IRS agents committed perjury or obstructed justice. We will answer the specific allegations which have been made in due course in the proper forum."

Motz added, "We believe that it is improper for The Post to publish an article based upon the one-sided representations of the defendants before the government has had an opportunity to fully present its position to the court in the time frame estabished by the court. The damage which you will cause to the reputations of dedicated government employees by your premature article is incalculable and can never be repaired."

Obviously there's a whole other side to this story," Trimble said. . . . "Nothing is as simple as it sounds . . . . I think you're going to get a fairer picture when you read our response."

Trimble, a veteran of the U.S. Attorney's Office here, is considered by colleagues to be a competent and effective prosecutor.

The company, which has handled jet planes for corporate VIPs. First sheiks and such celebrities as singer Frank Sinatra and the late rock music idol Elvis Presley, is charged with conspiring to siphon off millions of dollars in income to its subsidiary in Bermude to avoid paying U.S. taxes.

According to the indictment, between 1974 and 1980, Omni transferred $16.8 million in airplanes sales and leasing income to the books of its Bermuda subsidiary, called Euro Airfinance at the time and now called Omni International, Ltd. The firm reported only $91,574 of that income on its U.S. tax returns, the indictment says.

Altogether, the indictment says, Omni reported $4.4 million in taxable income in the fiscal years between 1975 and 1980, though "the taxable income and tax of the corporation . . . were substantially greater than the amount disclosed."

Omni was indicted in March 1984 after an extensive investigation of the company's far-flung financial operations.

According to court papers, the allegations of prosecutorial misconduct originated when defense attorneys, including two former high-ranking Justice Department tax division prosecutors hired by Omni Vice President Evan T. Barnett, found government witness interview summaries that they said appeared to be altered or written long after witnesses said they were.

The two former federal prosecutors are Cono R. Namorato, who once served as deputy assistant attorney general for the tax division, and Bernard S. Bailor, who was a senior trial attorney in the division. Namorato is also a former IRS agent.

According to papers filed by the attorneys, Trimble and IRS agents had unsuccessfully attempted to persuade an attorney for Omni to cooperate with the government by giving information about Omni tax procedures in exchange for Immunity against possible prosecution. In an April 1984 motion to dismiss the charges, Omni claimed that that effort and interviews with witnesses privy to information given the company by its attorneys violated the attorney-client privilege of confidentiality.

This week's Omni filings further claim that Trimble was questioned about the strength of the Omni case by tax division lawyers at Justice Department headquarters in Washington. She directed IRS agents to alter existing interview summaries or create new ones to reflect a heightened desire by the agents to avoid breaching any attorney-client confidentiality, according to papers filed by Omni attorneys.

The attorneys' allegations focus on 10 summaries of interviews conducted by the government, contending that all were altered or written after Omni's motion to dismiss the indictment, not before, as several government witnesses claimed during and evidentiary hearing before U.S. District Court Judge Walter Black last summer.

At last summer's evidentiary hearing, Lyndal Shaneyfelt, a retired FBI documents expert called to testify by Omni's attorney, contradicted claims by IRS agents that the summaries were written in 1983 prior to Omni's motion to dismiss the indictment, according to the Omni papers.

He said watermarks on several of the summary sheets had the date 1984 impressed on them, and those sheets were not delivered to the U.S. Attorneys's Office in Baltimore from an Ohio printing plant until late April 1984, according to the Omni papers. Furthermore, they said, Shaneyfelt testified that Trimble's secretary had changed word processing disks during the course of the investigation, and that later disks produced a slightly different comma than the earlier ones, and could therefore prove when certain documents had been typed.

Omni attorneys contended in the papers that several documents said by the government to have been written before Omni moved to dismiss the indictment that actually had to have been written after that motion was filed.

□ 1230

Mr. MOYNIHAN. Mr. President, this resolution, in the main, I believe, arises from a request I made of the distinguished President pro tempore and chairman of the Judiciary Committee in the course of the impeachment proceedings which the Senate went through several weeks ago. On that occasion, as on previous occasions on the Senate floor, I questioned the activities of some of our law enforcement agencies in the executive branch in dealing with legislative branch.

The most celebrated of these was the so-called Abscam operations, which led the Senate, some 4 years ago, to establish a select committee to study undercover activities of components of the Department of Justice.

On the occasion to which I refer, I read an excerpt of the final report of that select committee, which was chaired by our distinguished and treasured colleague, the senior Senator from Maryland [Mr. MATHIAS], who, unhappily, is departing this Chamber at the end of this Congress. Having looked at the matter in an impartial, bipartisan manner, the Select Committee said: "Descriptive targeting occurred in Abscam on the basis of political party and on the basis of geographic location." This one sentence in essence, describes my concern.

Basically, the select committee referred to a point during the Abscam investigation at which the Department of Justice officials, in an understandable and organizational effort to appear impartial, frankly said: "We are getting too many Democrats; we need to get some Republicans." They quote an exhange between two of the people involved:

CRIDEN: That's what you would prefer, to have guys spread out all over the conutry?

DE VITO: Well, I would. I would. And I tell you what I would prefer, too: Like I have discussed with you, and I even mentioned it to Angelo [Errichetti], it would be nice to have some guys that are Republicans in here, too. Only for the fact that it doesn't look like the push would be comin' from just, ya know, one group. . . .

No one ever suggested any political motives on the part of the Department of Justice, but the dynamics of certain investigations can reach the point where you have events of this kind; and, basically, the questions arises of an invasion by the executive branch of the legislative branch—not intended, but nonetheless real.

I had hoped that we might look into this. The select committee set forth some guidelines for such investigative activities. It seems to me that the Judiciary Committee could very usefully, as an oversight measure, ask how those guidelines have been implemented, if they have been and whether they seem apt.

This is an altogether friendly inquiry but one that is of concern, and a serious one.

To give a few examples, of what I was referring to at the time of the impeachment I mentioned specifically a number of Senators in this body, and I was one, who through no fault of their own had been mentioned during Abscam. Apparently, at one point or another, someone allegedly asked: "See if you can get him. See if you can get this other person."

This is well known, but the aftermath is not well understood, and I hope these studies might reveal this.

I am particularly concerned that the superb memory of my dear colleague Jacob Javits be attended to in this regard, because he felt very hurt by this action, a man of impeccable integrity, to find himself caught up in this squalor, for no other reason but the dynamics of an organization.

Mr. President, in order that I might make clear what I referred to, I have some materials on this matter which I ask unanimous consent to have printed in the RECORD.

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

[From Newsday, December 13, 1980]

FBI LET EX-CON PICK BRIBE TARGETS

(By Anthony Marro)

WASHINGTON—FBI operatives, acting on nothing more than the word of an elderly ex-convict that he might be able to arrange a political fix, authorized large cash bribes during ABSCAM to three prominent New York politicians, and to a former U.S. Senator from Oklahoma who, at the time of the go ahead, had been dead for nearly 17 years.

No contact was ever made with the men, and no bribes were paid. But defense lawyers in the bribery conspiracy trial of Rep. Richard Kelly (R.-Fla.) and two other men returned to the tape-recorded scene several times yesterday, to persuade jurors that the Justice Department was targeting people for bribe attempts without solid evidence that they were anxious, or even willing, to be bribed.

The three New York politicians were Sens. Jacob Javits and Daniel Moynihan, and Rep. Norman Lent (R-East Rockaway). The man sent to bribe them was ex-convict William Rosenberg, 67, of Lynbrook, who had suggested to one of the undercover operatives that he already had made contact with all three, and thought they would be willing to perform favors for an anonymous Arab sheik.

In fact, defense lawyers said and Justice Department officials admitted, that Rosenberg hadn't been near any of the men, never made an approach to them and never passed any funds. At one point, he referred to Lent as "William," rather than Norman. And apparently neither he nor the FBI operatives realized that a fourth person targeted for an attempted bribe, former Sen. Robert Kerr (R-Okla), had died in January, 1963.

Javits could not be reached for comment yesterday. But Moynihan and Lent reacted angrily, saying they didn't know Rosenberg, and criticizing the FBI for setting him after them. Moynihan, who telephoned FBI Director William Webster yesterday to protest the action, later called it "contemptible and totally unwarranted behavior," and demanded an apology. Lent said he was sorry that "such irrelevant and scurrilous statements should be permitted to be aired in open court."

The authorization was made by Melvin Weinberg, the con man turned FBI snitch who was a central figure in ABSCAM, posing as a representative of a fictitious Arab sheik who was seeking official favors from political figures. At one point, he told Rosenberg: "Javits we would definitely like, and we'd like Moynihan." He said the going rate was $50,000 for a senator, and $25,000 for a representative, but in Javits' case it would be less than $50,000, because Weinberg was led to believe he wouldn't run for re-election.

"We'll buy him for two years then," he said, apparently thinking Javits was up for re-election in 1982, rather than 1980. "Tell him we realize it's only two years, so we cut the price down a bit."

Anthony Amoroso, the FBI agent who supervised Weinberg during ABSCAM, testified that "it didn't bother me" to let Rosenberg try to make such offers, because no investigation started unless one of the politicans agreed to a meeting. Asked by Kelly's lawyer, Anthony Battaglia, if the FBI hadn't, in effect, manufactured the crimes now being prosecuted, Amoroso replied: "We didn't create or manufacture anything. Whatever these people [such as Rosenberg] brought us, we took."

It was Rosenberg, a former securities dealer who was convicted of selling stock at inflated prices, who led the FBI operatives to the men who eventually led them to Kelly, who is charged with accepting a $25,000 bribe.

The references to Javits, Moynihan and Lent are only three of many in the ABSCAM tapes in which middlemen, hoping to get a cut of money paid to officials, overstate their supposed influence, trying to impress the sheik's agents of their worth. In this particular case, prosecutors argue that Rosenberg did produce a congressman, Kelly, who accepted a bribe.

Defense lawyers, however, are trying to show that there was no probable cause to think Kelly was corrupt, and thus to persuade the judge, if not the jury, that there was no reason to have targeted him for a bribe offer. Two weeks ago, a U.S. District Court Judge in Philadelphia threw out convictions of two city councilmen caught in ABSCAM there, saying, in part, that the FBI had gone after them without good cause to think they were predisposed to accept a bribe—and thus had overstepped the bounds of investigative activity.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, DC, January 27, 1981.

Re ABSCAM.

Hon. DANIEL P. MOYNIHAN,
United States Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: As you know, during the course of the ABSCAM investigation, an individual named William Rosenberg made certain false representations about contacts with you. These remarks were tape recorded, and after the indictment of Rosenberg and his co-defendants in the case involving Congressman Richard Kelly, the tapes were provided, among others, to counsel for the defendants.

When the Government interviewed Rosenberg in connection with his ultimate plea of guilty, he admitted that his statements concerning you were false. Thereafter, defense counsel and the court were fully advised that the statements concerning you were untrue, Indeed, during his opening statement, counsel for one of Congressman Kelly's co-defendants advised the jury that Rosenberg's statements on that tape were false.

Neither in the Kelly case nor in any other ABSCAM case has the Government sought to introduce the Rosenberg tape in evidence. However, defense counsel in the Kelly case introduced the tape during the cross-examination of a government witness, and this was the first public revelation of the tape.

We regret any inconvenience Mr. Rosenberg's remarks may have caused you, but it is quite common during any prolonged undercover operation to receive statements from targets which ultimately proved not to be true. There is, of course, no way to screen such statements in advance or to prevent even untrue statements from being made part of a public record when they are relevant to a criminal prosecution.

Sincerely,

CHARLES B. RENFREW,
Deputy Attorney General.

[This is a conversation between Melvin Weinberg and William Rosenberg, 9/10/79, JFK Hilton, New York (Q-19).]

WR—William Rosenberg.
MW—Melvin Weinberg.
BB—Bruce Brady.

WR. Hello Bruce.

BB. How are ya?

WR. How's the handsome young fella?

BB. Well, I'll let ya know . . .

WR. You're getting taller Bruce. Either you're getting taller or I'm getting shorter.

MW. . . . 6:30 . . . Yeah we gotta be there by ah 7:30 at the latest. It can't be no more than ten, fifteen minutes away right?

BB. Oh you mean goin to this airport over here?

MW. Yeah, Kennedy.

BB. Yeah, that should be no problem. I'm gonna leave my stuff here.

MW. All right. You need the keys to the other room or what?

BB. . . . I'll come in here . . . I got that key . . .

MW. Ok.

WR. So how ya feelin Mel?

MW. Good.

WR. I'm glad.

MW. So you have good news for me or what?

WR. Well I don't know whether I've got good news for ya or not. Yeah, I don't know whether I have good news for you or not. It's ah . . .

MW. Did ya reach out for them or what?

WR. Yeah. One guy Javits, doesn't know if he's going to run.

MW. When's his election come up?

WR. Well it'll be up ah in '80 or '82.

MW. Well that's all right.

WR. Moynihan wants to know if I have to register an a private agent, foreign agent representing a foreign corporation. Both of them and a fellow by the name of Norman Lent who's at the House of Representatives?

MW. Yeah.

WR. Ah he didn't say anything about this, Moynihan wanted to know whether I had to register as a foreign agent.

MW. No.

WR. Cause, I. Ya know I counldn't even identify the corporation that I was representing.

MW. All we want, all we want is that we call on him that he will put a bill in to sponsor him in the country.

WR. To sponsor X person in the country?

MW. Yeah. If . . . we may not even call on him.

WR. OK. The best way if this is to be fed into their hopper is as a political contribution. Neither one wants to talk to outsiders.

MW. Well what do ya mean by political contribution?

WR. As a political contribution to their re-election, where the corporation . . .

MW. I don't care, I don't care what they call it you fellow me? I want a one and one sit down with him. Let him and Tony, I don't have to be here, sit down with him and Tony will give him the fifty G's and, what he wants to do that's his business.

WR. All right, we have to, you know, it'll take another . . . We'll know after the end of October, early November what is the situation with both of them. With Lent I can get a little better action but he's in the House of Representatives.

MW. Now when you say House of Representatives.

WR. Yeah.

MW. What for state or the government?

WR. Oh no no no no, I'm talking federal government.

MW. That's all right, ok. That's all right, no problem.

WR. Ok, then I will be able to get to him in about two weeks. He's five minutes from my house.

MW. All he has to do is tell us that he will sponsor him when we call on him, that he will sponsor him to come into the country . . . Whatever he's gotta do, he knows what he's gotta do.

WR. And he's ah twenty-five, because he's a Representative?

MW. Huh?

WR. He's twenty-five because he's a Representative?

MW. What do you mean twenty-five?

WR. He's in the House of Representative.

MW. He gets twenty-five thousand?

WR. Yeah.

MW. Yeah.

WR. And the others are fifty?

MW. Fifty.

WR. How about outside of the state completely?

MW. I don't care where it is. We wanna get as much people behind him, that if the time comes that he has to leave his country that he can go and say here I got this political pull that these people are gonna back me up to come in.

WR. Ok.

MW. The more the better.

WR. The more the better all right. At the same figures?

MW. Yeah same figures.

WR. Can I mention any names as to who the person is?

MW. Yeah, you can mention the names. It'll be either Kambir Abdul Raman or Yassir Habib.

WR. And could you identify them for me so I can . . . Tell me exactly what you want me to tell them. Who are they? Are they part of the family that run the government? Are they part of the government? Are they independent?

MW. They're independent.

WR. . . . operators?

MW. Operators over there that . . .

WR. Petroleum operators?

MW. . . . that realize when the.

WR. Time comes.

MW. Time comes they have to get out and they would . . . need a clout to get into this country. Simple as that.

WR. Well.

MW. Who ya got in mind outside of the state?

WR. It's not so simple, and I know what you mean by it's simple as that for them to be sponsored, but they have to have a reason for being.

MW. No they don't If they're a refugee from their country.

WR. Well these guys are not refugees.

MW. They will be when they come . . . wanna come to this country.

WR. How soon will they want to move out?

MW. They may not move at all. They just want to prepare for the future they don't want the same trouble as Somosa and the Shah ran into, that the Shah put all his money on Nixon and Nixon can't do a freaken' thing for him. And Somasa after he made the deal with this government and they were gonna let him in this country turned around and they may throw him out. They're gonna extradite him. He just wants to make sure that when his country's overthrown and he gives to these people that he can call on them to help him. If they can't do nothing I mean, as long as then, they try to help him. He realizes that everybody can't help him but at least they can try to help him.

WR. This is a one-time deal?

MW. One time. And then if he calls on them then they get paid the balance of the money.

WR. Well how—what's the balance?

MW. It's worth a hundred grand.

WR. You get fifty down and fifty when they . . .

MW. Right.

WR. . . . deliver . . . Oh.

MW. It's as simple as that.

WR. As long as you spell it out for me so I know what I can say. I didn't know what the hell to say to them.

MW. Who, who are the other guys outta state ya got?

WR. Well, there's somebody in Oklahoma. There's somebody in California.

MW. Who in Oklahoma?

WR. A guy by the name of Kerr.

MW. Kerr? What's he, a Congressman or a Senator?

WR. Oh he was a Senator.

MW. Oh a Senator.

WR. Was his family. He no longer is Senator there now, but the family's been . . . He's been a Senator for twenty-five, thirty years . . . retired . . .

MW. Oh and . . .

WR. The family nows him well, I don't know the people. I have to go there. I may have to see them. The other people would be out in California and I don't know who I'll be able to call on there, but these are the connections that I have at this moment.

MW. Javits we would definitely like and we'd like Moynihan.

WR. Well I don't know whether Javits is going to continue. I'll have to see him in November.

MW. Well if he's, if he's not . . . what has he got to lose?

WR. He has nothin he has nothing to lose but he may not be a Senator, and he . . . do it under those circumstances. If you want a man to put in the word at the right time it could be five years down the line, it could be two years down the line, as you say it could be ten years down the line . . . You don't want a guy that's retiring at the end of this session.

MW. I mean ah. Let's not kid each other, ten years, I mean ah only a fool would think he's gonna go look for a favor . . . ten years they can be kicked out of office in four years.

WR. Well that's . . . ok ah.

MW. I mean that's his problem.

WR. He's not the kinda guy who'd take it on that basis. He would . . . you know what he has to deliver and he'll sponsor the thing, but I . . . if his time is limited ah . . .

MW. Well, we'll buy him for two years then. Tell him we realize it's only two years so we cut the price down a bit. Of we need him for two years he'll make a little bit less money. That's fair enough.

WR. I'll have the . . . I'll arrange for a meeting just between Tony and them within the next two months.

MW. All right, but I don't have to be there, let them . . .

WR. I don't have to be there, what the hell . . .

MW. . . . talk one and one and make the guy safe.

WR. Exactly right. I'll just give them the rough idea of what this is about. Because they asked me. They had, had to know whether or not I was working with a . . . ah . . . as a foreign agent.

MW. No.

WR. You know lobbying for . . .

MW. What, will you explain to them what it is.

WR. I will, I told them what it was but I didn't know how to handle it.

MW. We don't wanna wind up like the Shah with all . . . he put all his eggs in one basket.

WR. We're only talkin about two people now.

MW. Yeah, yeah. Whoever else you get, the more the merrier.

WR. No no. Two people to come out.

MW. One person . . . either one who wants, only one. If the other guy wants him, he gets paid again for the other guy.

WR. Oh I see. Yassir Habib or . . .

MW. Yeah, either one.

WR. All right, long as I have a clear idea of what I'm doin'.

MW. All right?

WR. Yep. Now, now. If I can't get the House of Representatives guy ok I'll let it go. I'll just work with the Senate.

MW. Now, what about that accountant you said that's . . .

WR. Ok. I spoke with him and he said that it is tougher to get the certificate than he thought. And he's gonna put some pressure to bear on them. They are not even . . . revealing the certificates or giving them to the people who are actually doing the purchasing of the gold and having it escrowed. He has had a great deal of trouble getting them. However, I spoke to him today and I said the folks were back in town, you tell me what's a good afternoon to make an appointment, how about Thursday? What's today—Monday?

MW. It is Tuesday, how about Wednesday?

WR. Wednesday is fine. Wednesday afternoon you want him here or go out to Smithtown?

MW. No. Let him come here.

WR. How is this hour? Earlier, later?

MW. Let's make it ah early in the afternoon.

WR. How about 3:30?

MW. 3:30? Ok. Wednesday at 3:30 is fine.

WR. Put it down in your book. Aah can I use . . . aah, no he won't be there. Well, maybe. Can, can I use your phone?

MW. Huh?

Wr. Can I use your phone?

MW. Yeah. Right there.

WR. Ok, and I'll call him. I'm gonna tell him what's what.

MW. Let me get my book.

WR. He may not be there at this hour. (Dialing of phone) Ash. Oh 77, ah 718. Right . . . Stan, hi. Ha ha, I knew you're not there I'm just telling ah Mel that you probably won't be . . . But I took a chance. All right. I'm over at the Hilton International it's on Van Wyck going to ah to Idyl . . . ah to Kennedy. How is 3:30 Wednesday afternoon? I'll meet you at this hotel, their room number is 718. . . This Wednesday, the twelth . . . It's probably ok? Good, 3:30, Room 718, You're gonna meet a man by the name of Mel Weinberg, if I should be a little late or ya know. And I'll, I'll try and be here a little before so we can do it and please make sure if you can about the other ah stock certificates . . . Ok? 3:30, Hilton, ah Hotel at the Van Wyck, you know how to come in off the service road? Fine, good, yeah, J . . . JFK . . . I beg your pardon? Yeah, yeah, yeah, I think they call it the Riviera now or something . . . It's the Hilton right on the corner . . . right next door to the Howard Johnson's. 718 at 3:30, we"ll see ya Wednesday. Yep. Ok, I'm sitting with him now so let's make it confirmed thing, all right? We're set. Now, if you can get a hold of your buddy on that other thing be sure you get it. Good, take care. Ok, we're set.

MW. All right.

WR. He will ah, he will, ah, try and get that certificate. Please tell me . . . ah, I'll make it my business to see him earlier, what do you want to use his services for? The certificate, number one . . .

MW. That's the gold certificates, he's got.

WR. That's all I'm taking about. Is there anything else you want to use his services for?

MW. Well speak to him, maybe he can come up with somethin'.

WR. He is a extremely bright, intelligent . . .

MW. . . . Let me ask you a question, you say he works for the boys right?

WR. He just came back.

MW. What boys does he work for? I ask ya . . . Ya know I hear a lotta bullshit guys workin for the boys.

WR. I can't. I don't . . . I can't mention names and I have never discussed it.

MW. Between me an' you . . .

WR. I can't mention names. I don't know some of the names.

MW. Well, who ya know, there's a reason I'm askin . . .

WR. I have, yeah. I have worked with a guy named ah Vinnie . . . I can't give ya his last name at this point. They've been in the trucking business out here on the Island. They've been friends with him. He is definitely one of the group. I don't know what group and what. But I know that he works very hand in glove with several in this thing. If he wants to talk, he'll talk. If he doesn't wanna talk he won't talk.

MW. Well ya know I hear a lotta bullshit the guys work for the boys and all this. . .

WR. Oh no, oh no. Hey Mel . . .

NW. When you say he works for the boy what does he do?

WR. I Mean . . .

MW. He handles it watches their money.

WR. He watches their money. He puts it in the proper places for them. I know he was in Switzerland, ah six months ago, where what his cut was about a quarter of a million dollars for taking care of money handled properly, so that they either work in a trust fund which was lost in the pile of continuities that they made. Or bearer bonds were secured which could be cleared through banks without the slightest bit of trouble, without an identification. And he knows all the ins and outs of taxes and manipulation on whatever has to be done when it's shady. I know this guy is good. I've worked with him for years.

NW. Well, cause I know quite a few of the boys out here.

WR. He'll mention the names if he wants to. I can't, I don't want to.

NW. I just wanta know if I'm gonna trust the guy with my money I like to know who. . .

WR. I trust him with mine and you, you check it out yourself.

MW. Well the only way I can check it out is you know if tells me who he works for.

WR. Be my guest. I vouch for him without hesitation.

MW. And what's he gonna get a sample of them, and then he'll get them printed up or what?

WR. He'll get the sample, then he'll have them printed up.

MW. All right.

WR. And maybe it'll work.

MW. Ok.

WR. . . . The ah. Now, here's what I secured for you in the way of some ideas. Couple of places that are outrageous. I'm talking about, you wanted a New York setup. Let me start with the best set up and the worst deal. It's the Waldorf Towers. They want $59,000 to a hundred and twenty thousand a year with one bedroom. But you could have the suite, you could have a girl there, and telephone service, all things set up, that's $5,000 to $10,000 a month.

MW. Nah, ten thousand a month is a 120 grand a year.

WR. That's what it is . . . That's what I'm tellin' ya.

MW. . . .

WR. That's what I'm tellin' ya. So, it's gonna be fifty-nine to a hundred and twenty thousand a year. They also have two-bedroom set ups from ninety to a hundred and fifty, so you're talking about ah seventy-five hundred to ah twelve-five or better . . . Ok, that's that's the top. Ok now at the Hampshire House on Fifty-ninth street, they have . . . have gone condo, so their suites would cost seventy thousand dollars furnished with a bedroom ah living room and two baths—about the fourth floor. There's one available October fifteenth. And the carrying charges would be fourteen sixty a month. In my opinion if you lay down 70 grand for the apartment as condominium, that property would never depreciate.

MW. . . . one bedroom aren't enough for . . .

WR. Ok. I'm just tellin ya what it is. But it's possible that you can get a two bedroom but this is what they have available October first. The New York Sheraton which is on Fifty-sixth and Seventh . . .

MW. Yeah, I know where it is.

WR. They are running sixteen hundred to twenty-eight hundred a month, one or two bedrooms, depending on the size. The Gotham. You see what I did I tried to get a couple of areas around town. The Parkland on Fifty-ninth Street doesn't have anything. I didn't bother with the Essex House cause I found that most of these prices were running pretty consistently outside of the Waldorf. The Gotham, on Fifty-Fifth Street and Fifth Avenue. One bedroom, twenty-eight hundred a month. But again we're talking suite and very nicely furnished and this of course would give you the facilities. If this is of interest to you, ah, take a look at them, check it out and I'll go further.

MW. All right, give me the list . . .

WR. It's all yours. And a couple of names there of people that you can contact, there's a Mrs. Holt at the Gotham there's a Mr. Vicerliny or something like that at the New York Park Sheraton, and ah the names . . . do what you please . . . If you want me I'll go there if you don't, you guys accommodate yourself.

MW. Well we're gonna be tied up uh, like we got a meeting tonight, yet. And we'll be tied up all day tomorrow, and ah Wednesday we'll see you at 3:30.

WR. Wednesday we'll see you at 3:30.

MW. And you work on aah . . .

WR. I will work on the other aspect because I have a clearer idea now of what you want. And if they say yes, ok . . . If they say no I'll tell you I can't make the appointment.

MW. Well what's your feeling so far?

WR. Oh there's an opportunity whether it's with these two guys or any other two. It will happen. What I'll do is I'll reach out for a few people and I'll ask . . . I wanta meet these people. I'm working on behalf of some friends and ah I'll lay it on the line for these. . . . And, also, I may not even spell out dollars and cents I may simply say very substantial fees, if when needed they can be called on to sponsor a bill to bring in Mr. Smith or Mr. Jones and I would like them to meet a man who is empowered to make the arrangements, and you and I will keep our nose clean. Make sense?

MW. All right.

WR. Is this the way to handle it?

MW. Well it's good to let them know the figure.

WR. All right, I'll bring it up. I'll tell them that they can pick up fifty grand, fifty grand when they're called on to deliver. Or twenty-five thousand, twenty-five thousand when they're called on to deliver. I assume that's the figures you want me to use . . .

MW. Right.

WR. Tell me, what's good with us.

MW. It's a matter of time. The banks said just to get the money out. That's a headache. Every time we go over to go over to get the money out the screwabll over there backs down. He's . . . not enough to get out. He's supposed to have it straightened out by next month. He gave his word . . .

WR. By next month you say?

WR. We should, by the end of this month even start really be movin.

WR. . . . wonderful.

MW. I spoke to Bill Eden.

WR. When?

MW. He called me. And I spoke to him, I called him back.

WR. I said nothing.

MW. Yeah. I told him exactly how it's goin'. And I says soon as it breaks he'll be the first one to know.

WR. Ok. I don't I don't think I've spoken to him since you work here. But before then . . . you run wherever you have to go.

MW. Yeah I got some tickets . . .

WR. Yeah, you run wherever you have to go. I don't say a word. That he . . . I told him a couple of months ago as soon as I hear right in line we'll take care of what we have to. And that's it. I said nothing and he probably told I didn't say anything to him.

MW. All right.

WR. That's it. What about the Chemical ah Bank aah the chemical plant in the . . . chemical plant . . . When do you think we can come to a conclusion on that?

MW. That should be sometime in November, should be closed. That should be definitely closed sometime in November . . . near the end of November.

WR. What's doin with your wife, did she go over?

MW. Huh?

WR. Is your wife over.

MW. Yeah, yeah, . . . yeah she went over.

WR. . . . help her.

MW. Oh, let's hope so . . .

WR. When are we supposed to sit down with those guys from the mine and chemical . . .

MW. Just as soon as the money comes in we're ready to close you'll be at the closing. All right? and I have . . . I told them already that your got a finder's fee coming.

WR. Your did tell 'em?

MW. Yes.

WR. Did you tell it to Errichetti?

MR. No I spoke to the attorney on it and there's no problem.

WR. And he says no problem?

MW. No. It worked . . . we'll work that out . . .

WR. Oh that's beautiful. Well, I can't ask for anything more than that.

MW. What they give ya I don't know. That, ya know.

WR. Well your got the figure in your mind.

MW. Oh I figure it's worth any where up to a hundred thousand for ya . . .

WR. We were talkin about half a million the last time . . .

MW. Well if we get it, I'm talkin the least they should give ya is a hundred . . .

WR. From each one?

MW. Huh?

WR. From each one?

MW. No, nor for the whole deal, but I think that they'll give ya more. I really do.

WR. Considering what ya said before that that's ah . . .

MW. Well, ah hey.

WR. We we're talkin about a half million.

MW. I said . . . well you're entitled to what, two points?

WR. All right it's a hundred million dollar deal. That's a hell of a . . .

MW. So, will argue over it . . . you'll have to open your mouth and talk. Tony and me will be in your corner fightin for you. All rightie? I wanna take a shower.

WR. Yeah, you go ahead. Now what else can I do as far as you . . . and where else do I belong in this picture?

MW. Well you work on the other thing which is very important to us.

WR. I'll do the best I can. Now what else can I do in this picture? When do you think something can be done with me here?

MW. Not to the first of the year, I told ya. As Tony told they're hiring around the first of the year. We'll see what we can do for ya . . . Fair enough?

WR. All right, that's it Mel.

MW. And we'll see you Wednesday at 3:30.

WR. 3:30 I'll be here.

NW. All rightie?

WR. Yep . . . Stay well.

MW. You can go out this way . . .

WR. Yeah sure.

MW. I'm waitin for Tony to come in here.

WR. Huh?

MW. I'm waitin for Tony to come in too.

WR. Tony's coming here?

MW. Yeah. All right?

WR. Yeah, take care.

MW. Now keep in touch with me, and I'll see ya Wednesday all right?

WR. Yeah . . . aah person to person.

MW. Well, we'll normally be here, so . . .

WR. Yeah . . .

MW. 746 7031. 7.

WR. 305?

MW. Yeah. 746 7031.

WR. Ok.

MW. Bye bye.

[A transcript of a conversation recorded between William Rosenberg, Mel Weinberg, and Tony DeVito on 10/21/79 at Hilton JFK. (Q–49)]

WR. William Rosenberg.

MW. Mel Weinberg.

TD. Tony DeVito.

WR. You guys been workin' hard, eh?

TD. Huh? Nah.

MW. Yeah.

WR. That's really something, what's the good news for us?

TD. Huh?

WR. What's the good news?

MW. What's the good news?

WR. Yeah.

MW. Well, we're, we got a place down in Atlantic City.

WR. Good.

MW. We got the apartment.

WR. Oh, that's good.

MW. And we're gettin' ready set to move. We deposited a million dollars in a bank down there, the Atlantic Bank.

WR. Where ya down at Ocean City?

MW. Uh

WR. Or are you right in the ci . . . in the . . .

TD. No, the, the townhouse is in Ventnor.

WR. Wha . . . da . . .

TD. Which Ventnor, right . . . ya know, just on the . . .

WR. Yeah, right next to, gee right next to . . .

TD. south, south part of, uh Atlantic City.

WR. Sure.

TD. Okay. And then, then we put in

WR. Very good.

TD. Uh, we talked to the, to the Mayor and he suggested that we put the, ah, th . . . for reasons, ya know.

WR. Oh sure.

TD. Give it to him. He . . . he wanted us to put the money

WR. Sure.

TD. Atlantic Bank. That used to be called Broad, Broadwalk Bank?

WR. I don't know what they were. I, I don't come over there

TD. They changed. Yeah, they changed over.

WR. I think he had a couple of friends who ran the bank.

TD. Yeah.

MW. Oh, yeah?

WR. Errichetti you're talking about?

TD. Yeah.

WR. Yeah sure.

MW. . . . Isn't that McDonald's bank?

WR. Yeah, I think that was the name, and, uh he thought that, uh . . . Oh, Jesus, this goes back seven, eight months ago. He thought . . . He had a couple of friends down there. He thought it would be a very feasible thing to set up a good line with guys like this because they were important in the town.

MW. Well, that's all taken care of so we're really uh . . . ya know, movin'.

WR. that's good.

MW. Next thing is, uh, we got an option on a piece 'a land . . . been secured.

WR. Next to where?

MW. W. . . . We got an option on a piece 'a land down there. Next thing is to secure the damn thing. Gocionni, pleased nothin's happenin' to it. They stopped work completely. Hotel is closed up.

WR. They just had an article in the Post two days ago that he was suing some trade magazine, I guess it's called Record or something like that, for twenty-five million because they said he had Mafia associations. And, uh, they mentioned that his casino was opening in December. And . . .

MW. In December

WR. (Laugh) I'm quoting it from the paper just as I saw it.

MW. No way in the world he's gonna open in December.

WR. I'm telling you what they quoted. My . . . as a matter 'a fact, uh, my wife who brought it to my attention. It was in the Post, two days ago. I don't think we got the copy of it. But if we do I'll clip it out and I'll save it for ya.

MW. Nah, it's not important.

WR. It doesn't make no difference.

MW. Now, what about those, uh, people ya spoke to me, what's the story there?

WR. Everything is set. The way you and I were talking about it is absolutely wrong. There is no way to do it that way.

MW. Well, how do they wanna do it?

WR. It could be done absolutely legitimately, openly, not uh, excuse me. I shouldn't say it that way. Any way in which the thing will be done will be done with legitimate contributions which can show, and they will be done with approximately ten to twelve members of the House of Representatives to start with. And it will all be funneled through the executive director.

MW. Oh

TD. Well, explain, I, I don't . . . follow what you're sayin'.

MW. I don't follow you either. What do you mean by the executive director?

WR. There is an executive director of the GOP. By the way, I didn't attempt to tackle the, uh, Democrats. There's gonna be a real knock down, dragged out fight here, nobody knows where the hell they're goin', they don't know how they're gonna be able to evaluate anything.

TD. Uh-huh.

WR. So I went to the Republican setup. And the Republican setup will be handled through the executive director of the Congressional Campaign Committee.

MW. Who's that.

WR. A fella by the name of *Stockmeyer.*

MW. Stockmeyer?

WR. You never heard of him and I never heard of him until I was put next to him. But he will designate all the people who are to receive campaign contributions. And they will, in turn, work on behalf of the people you have in mind. Uh, there is a bill currently being discussed on contribution allowances. It was passed with a very tight vote. I mean something like 217 to 198, and they are not sure it's going to stick as far as this session is concerned so if you guys wanna move, ya gotta move fast, and this is so that contributions can be allocated . . .

MW. All right, let me ask you a question.

WR. before the end of the year.

MW. Let's say this Stockmeyer says that, uh, what we want, he wants so much money.

WR. Right.

MW. How the hell we know that h . . . they're gonna keep their promise, that he's not . . .

WR. Well, the way they do it now is you will have about from six to twelve guys. Let's take ten.

MW. Yeah.

WR. They will be across the country. He will, when we, we get this thing moving properly.

TD. Uh-huh.

WR. Assure Tony. Let's say we, uh, bring Tony in touch with him. Well, they don't want anybody involved. They'd rather you wouldn't even get set up, but I said there will be one guy that I would like to meet. Uh, there is no absolute guarantee it will pass, but there is a God damn good ninety-five percent shot, that it will

MW. Well, you don't follow me Bill. Let's say he. Let's take a round figure a hundred thousand.

WR. Yeah.

MW. All right?

WR. Yeah.

MW. Or six, whatever it is. And he's gonna . . . that . . . when they call on hm to get in the country, he's gonna give us six candidates are gonna . .

WR. Oh, no. Oh, no.

MW. What?

WR. No, this is gonna be set up in advance where th the men who are running for re-election or who are on the, already in the House of Representatives.

MW. Yeah.

WR. will be directed that a bill is to be brough forth

MW. All right, but how do we know that they're gonna do this, Ya know, this guy could take the money . . .

WR. In the same way.

MW. and say, all right, it was a contribution

WR. Let me tell you this in the same way that labor organizations, business people,

uh, trade associations, make contributions and build up political good will. There is

MW. Yeah, are the contributions they make, they can write that off. We don't have a write-off problem.

WR. You will have to do it openly. It'll have . . . You definitely will have a write-off problem.

MW. Well, we

TD. So, wha . . . wha . . . what you're sayin' is the way, the way they want this

WR. We're going to set up is that John Smith is going to receive a donation from Abdul Industries.

MW. All right, will this guy Stockhouse or S, Whatever this

WR. Yeah.

MW. . . . name is, come up and speak to us how to set it up?

WR. I'm telling you he . . . he's speaking to me and has already set it up.

MW. Yeah, no

TD. Yeah, but . . . then, w . . . w . . . w . . . what we're doing' is we're just gonna give the, uh, uh, of one fat . . .

WR. You're going to make a political contribution

TD. To the

WR. To John Smith.

TD. For the, uh, Republican Party is what you're sayin'.

WR. Of the Republican Party who will be in Minnesota.

TD. All right. Now.

WR. You'll make a contribution to Tom Brown who will run in Colorado. You will make a contribution to, uh, uh, Joe.

MW. Yeah but this could be a big ripoff too.

WR. Well.

TD. In other words how . . . how is the money gonna be . . . What I'm . . . what I'm not totally, uh, sure of here is, how is the money gonna be dispensed with? Are we supposed to give it to the candidate himself or . . .?

WR. Absolutely, You put it through the party to the candidate.

TD. Oh, in other words, we have to give it to the party sayin' . . .

WR. . . .

TD. this is for, for the candidate.

WR. They will direct you to make this out to the organizing committee of Tom Brown.

TD. Okay.

WR. And he is running in, uh. . .

TD. But I thought that there were only, um, uh, maximums that you could contribute to a . . .

WR. Of course, there is.

TD. But, uh.

WR. There is a maximum, and that will be the maximum and that's it. At this point it's ten thousand dollars.

TD. Right.

WR. The bill will call for about six so you will have an expense, depending on the number of guys who will be running, of somewhere between seventy-two and a hundred and twenty thousand dollars to put this across. You won't need more than about ten guys, and I'm figuring it on the basis of ten, twelve guys.

MW. But, I mean it's un . . . what I don't understand, are we gonna met Stockel and he's gonna explain it to us, uh

WR. No, You won't . . . you won't meet anybody. I'll be your liaison man there.

MW. That's gonna be no good

WR. What you will do

MW. That's gonna be no good

WR. What you will do, listen to me.

MW. Yeah.

WR. What you will do is you will receive instructions to make out a check for candidate Robert Freezle wa . . . runing in Minnesota, and you will send him a check for six thousand dollars as a political contribution.

MW. Well how in the —— he knows what we're giving him the check for?

WR. Oh, the rest I'll take care of that.

MW. Yes, but what guarantee when we go to Yassir what can we say guarantee we got. He . . . No, he wants know did we meet with somebody, I'm gonna say I met with Bill Rosenberg he told me, and then . . .

WR. No.

MW. . . . gimme a hunderd and twenty thousand dollars?

WR. No, no, no, no.

MW. What?

WR. As this thing is made . . . as contributions are made . . .

MW. Yeah.

WR. There will be a meeting set up with you and Freezle of, uh, Minnesota, or you and Brown of Colorado, you and Jones of St. Louis. Whatever it is

MW. Now you told me on the phone there was three candidates, two from . . .

WR. Yeah

MW. . . . New York.

WR. . . . That's not the way to handle it. I been down twice. That is not the way to handle it. You will . . . you cannot bring it through from the Senate for this kind of bill. The third guy is a guy who is in the House. His name is Lent.

MW. Lent?

WR. William Lent. He's up and coming young man. He's been very active, and he's part of the GOP. But you will not be able to set up anything, and as far as a guarantee is concerned . . .

MW. Well, I know that.

WR. Let me tell ya this uh, Mel, you're not buying a house.

MW. No. I . . . I understand.

WR. Clearing title and . . .

MW. that I understand, but the only thing I don't like.

WR. Okay.

MW. a guy could sit down wi . . . Let Tony sit down with Lent one on one. All right? And say, *Lent*, this is what we want

WR. Oh, I'll have that.

MW. (Here's fifty G's, for ya.)

WR. Oh, no. No, no. You don't give fifty G's. There is nothing here that they looking to take under the table. They are . . . It's important enough for them to have contributions made where they stand a chance for local reelection. These are not big guy. These are not in the class with . . .

MW. All right . . . Lent come up and say to us . . .

TD. Well let me . . . Let's do this. I, I understand what you're sayin'

WR. You see it, ok.

TD. I think, and what . . . what I think, uh, I have to do is I have to . . . Let me talk to, uh, Yassir and see . . .

WR. Oh you got it now, I need, look, wait a minute. Not only this, you have to give me the resumes on both guys because they have to know their background . . .

TD. Right.

WR. . . . otherwise they won't even touch it. And, I will set up an appointment with you, Yassir and Abdul, is that the other man's name?

TD. Right.

WR. Uh, in Washington.

TD. Um

WR. And there will be a meeting with the guy who will direct the funds. Don't misunderstand. And it will be clearly understood what these funds are to be used for. You guys aren't in the . . .

TD. All right.

WR. . . . electric power business.

MW. I don't, I don't think it's a . . . would be a smart move to bring Yassir and, uh, Abdul in to meet these guys.

WR. I don't know whether Stockmeyer will ask for this or whether or not be will ask for just the resumes, but I gotta submit those.

TD. All right, well, look . . .

MW. Well, the resumes all right

WR. And he may be . . . ya know . . . Let me tell ya another thing, Mel. The answer to th . . . a lot of this stuff is not along will this thing be done. I already know the approximate timing of this thing. They will bring this thing and put these bills into hopper approximately January of 1981 . . .

MW. Well, we don't want 'em in yet, they don't wanna a, a

WR. They don't go in before January of 1981.

MW. You don't follow me . . . They only want the insurance that when the time comes that they have to get out and they wanna come to this country to stay, that they got the clout to stay and nobody's gonna bust their chops.

WR. Okay. And there's ah another much more important point than that. Once this stuff is proposed at that time, and it'll be proposed in January, 1981, it'll be part of a whole raft of bills so it doesn't . . . nothing is conspicuous. This is the way it'll be posed. When they take advantage of it is gonna be their business.

MW. Now you spoke to, uh . . .

WR. I was in . . . Washington twice.

MW. And who'd you meet there with?

WR. Stockmeyer once, and once prior to that I met with Javits and I met with Lent. And this is the way I was directed. And compared to some of the guys that they are . . . I . . . I never mentioned that there was anybody else involved. I never mentioned any other names. They don't know Errichetti from a hole in the wall. I never mentioned Harrison Williams whom I know is involved with a couple'a things because I had seen him. I never said a word. All I asked was how do we play this game. 'Cause these people have to be done. I, I will tell you one thing that you must get, and I can't even move until you do. I must have backgrounds on these two men. How they are in the country, what they're doing here. Are they here on visas? Are they here for a period of time.

MW. Well, when they come here, they come on visas.

WR. Okay. Are they gonna live, uh, in Miami or in St. Louis or wherever.

MW. I don't know if they even wanna live here.

WR—This . . . ultimately now. They . . . They've gotta be able to . . . There'll be a, uh, some kind of investigation into these guys. They don't want any . . . L . . . L . . . Look, I know you're not working for any terrorists, but they sure as hell don't want anybody like that in this country.

TD. Yeah.

WR. And there won't be a Chinaman's chance of getting it through.

TD. Yeah. All right. Well, why don't I . . . I . . . I think I got you . . .

WR. If you can give me . . .

TD. following what you're sayin'.

WR. If you can give me the resumes that you want, and, by the way, the suggestions was made to move before the first of the year. Quickly. Because bills are up now, one of which passed the other day and yet may not go through the Senate, and it may be

tied up with a filibuster. Let me tell ya what happened politically. Some years ago Presidential campaigns were modified and deductions were made from your income tax and yours for Presidential campaigns that candidates themselves could put in any money they wanted. If you wanted to run for President and you had fifty million bucks, you could spend forty-five of it if you wanted to. And nobody could stop you. But when it came to him making a contribution to you or me making a contribution we were limited.

TD. Right.

WR. Okay. This is the way they resolved the Presidential bid. When the Congress was to come up nothing was done, and so a bunch'a guys in the Congress have been pushing for various bills. They were . . . He quoted me some figures. I gather something li . . . in the neighborhood of forty-five to forty-eight million dollars is spent a year by businesses, by trade associations, by, uh, labor unions. All have various committees that they make contributions to. Uh, General Electric's union gets two bucks a piece from the guy and they make a contribution to somebody in Schenectady who should be pro labor instead of pro, uh, c . . ., uh company. On the other hand, General Electric itself makes a contribution to the same guy or to a guy who's for their . . .

TD. Yeah their point of view

WR. Particular political interest. And this is the way it goes. Now, the change is right now. And they don't know whether the senate will approve of what the House did because the vote was almost a flat tie. It just was twenty votes made the difference in reducing the amount. The guys in the House are reducing the amount. They're bringing it down from ten thousand to six thousand. But these contributions, by the way, for whatever purpose you use, is absolutely legitimate. You don't have to hide anything. You issue your check as a political contribution to the guy that is designated to handle this particular thing. Now, if you're getting men running for House of Representatives, and they win elections or they are reelected, and the guys'll be, uh, directed to be, uh, fellas who at least stand a chance to be part of the party because these contributions are important. Sometime in the next couple 'a years these fellas are gonna have to take advantage of this. Otherwise the money they're putting out will be wasted. So if it is in their mind that somewhere around '81, '82, '83 they wanna come into the country as, whatever the designation will be, favored status, refugee control from their own country which they couldn't possibly write into that kind 'a bill. There may be other things that may arise. Me. These guys . . .

MW. Well, Bill, Stackhouse is . . .

WR. These guys . . .

MW. . . . the, uh, GOP.

WR. Let me tell ya something. Wait a minute. Let me finish and then you ta . . . ask me any questions. If I can answer 'em I will. I . . . I'll try. I'm trying' to give ya the whole substance of everything that was discussed with me. From time to time, some of these guys who are admitted, who are very wealthy, make contributions to universities, to, uh, social welfare program of some kind, whatever it may be. Generally speaking, once this thing is established them it's up to this guy, with his own public relations, to make, uh, hay in the country if he wants to, but he's in the country. He's an accepted, uh, citizen of the country, and if he's making investments in real estate, in, uh, the chemical company, in the mines, and so on, fine, he's a substantial, upstanding citizen. And all of these things work. You cannot guarantee anything. But ya got a hell of a shot. And I wouldn't discuss this with ya over the phone for that reason. You got a ninety-five percent shot that these fellows will be accepted.

MW. Now . . . Stackhouse, was he the GOP fundraiser?

WR. Yeah, this is all through the GOP fundraiser. He . . . He doesn't raise funds. Actually, he directs the funds that people are . . . are ready to make contributions to.

TD. Yeah. A lot of people contribute to the party as opposed to candidates and then . . . Yeah.

TD. . . . the party has to disburse . . .

WR. Then he disburses . . .

TD. Has to disburse the . . .

WR. But in this particular case, I think the technique will be he'll tell you where to put the funds.

TD. Right. Which candidates to . . .

WR. Which candidates and . . .

TD. . . . direct that to.

WR. Uh, I didn't know what . . . You said, uh, y . . . you'd like a little surety on this thing, considering the amount of money and what you thought you would like to spend. I said figure roughly we'd need about ten, twelve guys. And if the limit is six thousand, it'll cost about sixty thousand. If the limit is ten, it'll cost a hundred to a hundred and twenty depending on what the limits are.

MW. And what did Javits say to ya?

WR. I can't hear ya.

MW. When you spoke to Javits what did he say?

TD. Mel, why don't you take the cigar out of your mouth when you talk to him.

WR. Aah

MW. (Laughter) Why?

TD. So he can hear ya.

MW. He's gettin' too old.

WR. Yeah, I'm getting a little old in one ear, on the left side. He was the one who directed me into this thing. This is nothing. You can't buy him. He is at the tail end of his political life. He doesn't know how long. He doesn't even know he's gonna run again. The papers are picking him for the fact that he may go for reelection, but . . . And he's a hail and hardy guy. But he's not sure and this is not the way to do it, and he wouldn't put his reputation on the line for any amount of money that you could come up with. Whether it was fifty thousand or a hundred and fifty thousand or five hundred thousand. He just wouldn't do it. But he directed me on how to handle this. He won't oppose it, don't misunderstand. And if anything comes through and it has to be approved, it'll, ya know, uh . . . He's a . . . Favors, ya . . . I never ask these guys for anything. I never look out for anything at all, and if I need a favor for something like this and there's somebody ready to pay like you fellas are for this task, we would have been all wrong to have gone the other route.

MW. How 'bout Lent?

WR. Lent could be part of the, uh, contributions that will be received.

MW. Was he a Congressman?

WR. You'll meet Lent. There'll be no problem with Lent.

MW. Is he a Congressman, Lent, or what?

WR. Yeah. Yeah.

TD. All right. I'll tell ya what. I think what I'll do is . . . The next time I have to go over there I'll sit down with them . . . and discuss with them just what you said . . .

WR. Fine.

TD. . . . and see if they're . . . if they're interested how a, a . . . handlin' it that way, and, uh if, if they . . .

WR. They may have another technique. But this . . .

TD. . . . If they are . . .

WR. This is the least trouble.

TD. Uh, if they are, maybe that would be a good idea bringing both of them over here, uh, if I can ever get them both together well . . .

WR. They may . . .

TD. Maybe one at a time.

WR—And they may not be necessary.

TD. Right.

WR. The only guy necessary may be you.

TD. Right. All right.

WR. But if we have the resumé and background of these guys, and this can be authenticated either by the State Department, who permit them to come in in the first place, which I assume can be gotten.

TD. Yeah. Yeah, we . . . that's no problem.

WR. And a little bit of their background and what they are planning to do here, uh . . . They . . . As I say they're not looking to start a terrorist . . .

TD. Yeah.

WR. . . . organization.

TD. Right.

WR. They're looking . . .

TD. All right.

WR. . . . to make s . . . contributions to the county.

TD. A . . . All right. Let me put it out to them that way and see . . .

WR. That's all.

TD. . . . uh, see . . .

MW. What I don't understand is how could they, uh, go down and meet with this guy and then give a contribution and ask for a favor. Wouldn't that look funny?

WR. They don't . . . They may or may not meet the guy. They will meet the executive director who will make their contribution, if it's necessary. Otherwise we'll meet with Tony. They may not show up at all.

MW. I meant . . . it looks . . .

WR. It just . . .

MW. . . . kind 'a funny wouldn't it, them meetin' with them, givin' 'em the contribution an' this guy's . . . want these politicians give him a favor.

WR. I wanna tell you something. When the CIO . . . AF of L, CIO's Political Action Committee makes contributions to these guys, there's a guy who directs it in the . . . in the Labor Union and he dispenses the money. And the treasury makes the dough, and . . . what do you think he does? He spends twelve months a year doing nothing but this kind 'a thing.

MW. I can understand that.

WR. That's the difference.

MW. There's a lot 'a difference.

WR. General Electric want certain bills safeguarded in New York State or in Scheectedy, an . . . I . . ., uh, I . . . I mean in, uh, Connecticut or Jersey, they have their guys who . . . that know they can, uh, be reached for a contribution. The guy himself doesn't have to come out of the woodwork and say I want the contribution. He had somebody in his office who does it for him. As long as the funds are made out to the candidate of the party, and it is made as a contribution to that, and the check clears, they got it back and they take it off their income tax, it's perfectly legitimate. Listen, I . . . I'm not saying that some of these guys don't get paid in the dark and under the table, but I don't know. And this is not

the kind 'a thing that has to be done that way.

MW. Wha . . . What happened with Monahan ya said?

WR. Never got back to him. Never got back. He was the coldest of the three.

TD. All right, Why do . . . Why don't I run it by them this way, the way you . . .

WR. See if they like it.

TD. . . . propose it and see what they say.

WR. That's all.

TD. Uh, ya know, I think, uh, they're here every so often in Washington and arrange a . . .

WR. It may not even . . . They may not even be required to come in . . . But what the . . .

TD. Yeah.

WR. . . . the hell do they have to lose? They come in . . . come here for a cultural visit.

TD. Yeah. Well, like I say, they're always here on business every so often, ya know, so I can . . . let me . . . When I go over there let me run it by them.

WR. If you can, great.

TD. Or if you go over ahead of me . . .

WR. I know that the thing's a very serious matter for them in order to achieve, and this is the best information I have to be able to do it that way. And to do it legitimately, Mel. That's the best part. Because nobody can, uh, criticize these contributions. There is always the underlying factor, what the hell is, uh, a labor union making contributions politically to a candidate. The answer's very simple. He favors labor legislation. Just like there are guys who are favoring oil decontrol, while other guys oppose it. Just like anybody and . . . All the vested interests in the country are attacking these things almost on an individual basis for an individual goal. This is the word that these guys dub it. They . . . they . . . One of the big stinks in Congress today is the fact that there is so much of this, which is done, just for those special privileges to be gathered from. Because of the way they make the contributions. This is the only way they got political clout. But it's getting to the point where it's beginning to raise stinks in the newspapers. You'll see it.

TD. All right, let's leave it at that.

WR. All right?

TD. I'll present the package to them that way.

WR. Good.

TD. See what they think.

WR. Now, tell me something good. When the hell am I gonna see some dough from you, Egypt?

MW. We hope by the first a the year.

TD. 'Course nothing is guaranteed by the first a the year. We'll have . . .

Huh?

TD. We'll set up an office and everything. We'll set, finish settin' up the office here by the first 'a the year.

WR. Are you talking about me here . . .

TD. Yeah.

WR. . . . in the office?

TD. Yeah.

WR. Oh, no, no. I'm talking about the money from, uh, abroad.

TD. Oh, oh okay. I'm sorry. I'm . . . I . . . I misunderstood.

WR. You . . . you weren't involved in that.

TD. I know. I know that. That was with him and that was when, uh . . .

WR. Those were letters 'a credit and CDs that I prepared. When the he . . . We . . . we gotta ton of dough in there.

MW. Well, by the first 'a the year should be in.

WR. Is there anything that can be done in advance, as an advance on this deal?

MW. Yeah, you wanna go . . .

WR. These guys want the kind 'a thing I'm af . . . ready . . . to ah . . . to . . . bring to their, uh, benefit. And let me tell ya, Mel . . . I think ya got a better chance of establishing this thing for them, than not. I think that these guys play for real. I think when you talk money to these fellows, which means their own livelihood and their own status in the community because of reelection, I think ya got yourself a . . . a setup where nobody'll give ya a written guarantee, like you will take title to a house for example, but they'll . . . you'll surely get a hell of a shot at it to be able to achieve it and . . . Look, I'm tellin' ya, I think you're better than ninety percent home with a thing like this. And if this is what they want, because of what may happen abroad in the future, you can't put a price on it. Now, I know I can deliver this. I have made many contributions to some of the things that you're talking about, so far. Let me see some life on this thing.

MW. Well, the first 'a the year we should have it.

WR. Yeah, but . . . I . . . I . . . I'm . . . I'd rather you wouldn't say the first of the year. I understand what you wanna do for the first of the year, which is great. How 'bout between now and the first of the year? How about something where I can do something. I wanna buy a condominium down in Palm, uh, just in the ah Northern part of Palm Beach.

MW. The only way we can do that for ya, all right . . .

WR. You tell me

MW. . . . is we gotta to Abdul or to Yassir an' ask 'em.

WR. I wish you would

TD. Well. . . .

WR. . . .

TD. why don't I do this. Why don't I ask them when we . . . uh, when I bring this package over to discuss with them about . . .

WR. Tony, I have given them the ways of pulling in a tremendous amount of money. I laid that out. We got ya involved in Atlantic City, certainly advantageous. Uh, ya got involved in this mine and this, uh, chemical company, certainly advantageously. How about a little up-front dough to me? And, by the way . . .

TD. Uh, why don't . . . Okay. Let me see.

WR. Will you do it?

TD. Let me say this. I'm s . . . When I go over and talk to them about this thing, okay? I'll see if I can get somethin'. All right? I wasn't involved in that other thing.

WR. I know you weren't.

TD. But let me . . . let me see if I can get somethin' out of 'em, all right?

WR. Don't you think it's fair?

TD. I . . . I . . . I agree with ya.

WR. It's a year.

TD. I agree with you.

WR. It's a year's time.

TD. Le . . . Let me . . . I'm . . . I'll be over there. I'll have . . . within thirty days I'll have an answer. All right?

WR. Okay.

TD. And I'll, I'll . . . I'm gonna go over there, like I say, to present this package to them as what you said, and we can get anywhere from six to . . . to twelve people . . .

WR. Oh, yeah, that you can.

TD . . . depending on . . . on what they want, and . . .

WR. That you can.

TD. . . . and see . . .

WR. And, by the way, we don't have to limit it to that . . .

TD. Right

WR. . . . if you don't want to. Ah, I personally don't see any sense to go on beyond twelve people . . .

TD. Yeah. I agree with ya. I agree with ya.

WR. Ya gotta core and it'll operate for you.

TD. All right. Let me present it to them that way and then I'll . . . I'll put in a pitch, ya know, showin' what you've uh, what you've been responsible for and tell 'em how 'bout comin' up with somethin' I, uh . . .

WR. Great.

TD. All right?

WR. Now, what do ya want me to do with a guy like Stan? You know, uh, I . . . I . . . I was surprised that you'd never got back to him, or me for him.

MW. Well, we've been so damn busy.

WR. Ah, bull shit, You know what we can take care of for ya. We can get the ground work set.

MW. See, ya gotta understand our situation . . .

WR. I . . .

MW. . . . we just can't . . .

WR. I don't, ya know, I don't . . .

MW. We just can't take money and do somethin' without their okay. Ya know, we got somebody holding our purse strings.

WR. I assume . . .

MW. How . . .

WR. . . . that you do have a list of priorities.

MW. How can I go tell Yassir that, uh . . . give me money I wanna buy a gold certificate to give to you so you can print them up, ya know? I just can't tell him that.

WR. Why?

MW. Why?

WR. Yeah. Ain't that what he's interested in. Or is this your idea?

MW. He, uh . . . No. He doesn't wanna know where I get 'em from.

WR. Okay. All right then, all I can tell you is that if you wanna move in that direction, and you wanna make a deposit in the bank and get a gold certificate representing it and move further with it, I got everything set up for ya. Don't waste time. Ya know, uh, you strike while the iron is hot. This guy, I told you before, was absolutely perfect for many things that you fellas would be concerned with.

TD. Uh-huh.

WR. He's as brainy a CPA as you'll run into in your . . . all your associations. I don't care who the hell they are. And he has the connections among the legal talent to direct you to what you want. I . . . I think you were impressed with the guy, weren't you?

TD. Yeah. I was.

WR. Okay. I'm trying to make, uh, ya know, I'm trying to move into a family here a . . . and to prove myself . . .

MW. Hey . . .

WR. . . . every way I can.

MW. We . . . We . . . Don't ya feel we've grown quite a bit, and we're doin' more than we ever did.

WR. I'm sure of it.

MW. All right? And, uh, ya know, it takes time to get everything set up . . .

WR. Mel, okay.

TD. Let me do this. Let me . . . Let me work on that other thing first.

WR. All right.

TD. . . . gettin' you somethin', all right? I . . . I . . . ya know, I feel bad that you've been in a position like that now, and, uh . . .

Let me . . . Let me get you taken care of first.

WR. Okay.

TD. Okay? I think . . .

WR. Okay.

TD. I think, uh, ya know, to show our good faith we better get used to taking care of it . . .

WR. Fine.

TD. . . . so let me get over there an' present him with this . . . with . . . what you told me about . . .

WR. Where do you have to go? You gotta go to the Middle East?

TD. I'll probably go to London.

WR. Oh.

TD. I'll see him in London. That's . . . That's usually . . . I hate to go to there. I hate to go to that other place. London is a lot better . . .

WR. You want me to tell ya something?

TD. . . . for me.

WR. I've been here twice this morning. My daughter just got off a plane. She spent two weeks in Cairo . . . in, uh, Egypt . . .

MW. In Egypt?

WR. They were . . . yeah. She, my sister and brother-in-law, and my niece, the four of 'em went on a trip to Egypt for two weeks. And my sister says last night after you've been to five of these, uh, pyramids, where the hell are ya goin'? Two weeks there was crazy. She said it was so hot that every night when my brother-in-law would come back he t . . . he took his shirt off, he was just . . . was just watery.

MW. An' they don't have decent hotels over their either.

TD. I, um, d . . .

WR. They had 'commodations in Cairo, some place I don't know where, but they were on a ship that went down the Nile and where they stopped . . . all the way down . . . they went as far down as Aswan . . . And they had quite a time. My daughter had a ball. She loved it.

TD. Well . . .

WR. But I just picked them up this morning at five o'clock.

TD. Ya know, it's one thing goin' over there for a little vacation . . .

WR. Yeah.

TD. . . . once in a while. I . . . I personally . . .

WR. . . .

TD. What I do is I . . . I find . . . I call an' find out when he's gonna, ya know . . . They always work out 'a London, all right? I find out when he's gonna be there and that's where I go an' meet him because for me, ya know, I'd rather be there then, uh, then . . .

WR. Okay.

TD. And . . .

WR. One more thing.

TD. Yeah.

WR. When do you . . . what do you have in mind to set up in New York for a guy like me? What can I do there?

MW. I don't think there's anything that can be done before the first 'a the year.

WR. . . . that part, that part I'm not concerned

TD. . . .

MW. Let me explain why, Bill, let me explain why. I just gettin' Atlantic City squared away.

WR. Yeah.

MW. We just moved in this week down there.

WR. Yeah.

MW. All right?

WR. It's been a year.

MW. And I . . . it's . . . it's a bitch to even to get places. Know how long we looked.

WR. I don't know.

MW. I mean it isn't like . . . you know you can get a lotta dumps there, but decent places are hard to find. So we just gettin' set up there now, right? Now they just gave us a limousine which was 'sposed to be delivered this week, now they gonna be the next week. So it takes time.

WR. Oh, yeah.

MW. And, ya know, uh unfortunately we have other things 'n closings we gotta take care of outside of this area and, uh, we're only up here certain times an' take care of it.

WR. Sure.

MW. And, ya know, they move at a slow pace. Before we do anything it's gotta be okayed by them. They have to sign it an' release it, and ta get them to sign 'n release it, that takes time.

WR. Oh, yeah.

MW. An' so before ya know it, the months roll by.

WR. When is the, uh, closing on the, uh, mine and the . . .

MW. That's the fir . . . Uh, everything is set for the first 'a the year on that.

WR. Really?

MW. Yeah.

WR. Are ya gonna . . . pushed that for . . .

MW. Unless we run into problems. So far no problems.

WR. All right. Now, once more. When do ya think that all the funds will be in from abroad?

MW. We got a problem gettin' the funds out of Iran. They are not keepin' their word to us at all. Every time that we set a deal up with them they screw us up more. And, uh, it's . . . it's to a point that it's aggravating as hell and ya can't believe a word they say. Uh, I thought they all be in already, that would be released, and they haven't released nothin'. They got one shipment out and that was it.

WR. Okay.

TD. Who ge . . . Y . . . You're talkin' about this other deal that ya . . .

MW. Talkin' 'bout the CDs . . .

TD. Yes.

MW. . . . and stuff.

TD. Uh . . . I, uh . . . Like I say, when I get over there, let me see if I can get you a percentage anyway of what . . . what you're supposed to get on that. Ya know, somethin'.

WR. Right.

TD. All right, just ta . . . just ta keep you . . . you goin', all right? I . . . Like I said, I . . . I feel that I moved into this spot and I feet obligated.

WR. Right. . .

TD. Ya know, to do somethin' for ya, and let me, uh, let me talk to him about at least giving you some kind of percentage of . . . of what ya got comin', uh . . .

WR. Okay.

TD. . . . on that thing.

MW. I know ya . . . 'member what the hell . . . ya got comin'?

WR. Yeah, I know.

MW. I know you know. I've forgotten.

WR. You forgot?

MW. I got it written down.

TD. Well, he's got a reason, he's got it written down.

WR. I gave ya a million, a billion two, and I'm supposed to collect seven percent that's eighty-four million, and you were getting half.

MW. Right.

WR. And if anything comes through, by the way, ya know . . .

TD. Well, le . . . let me see if I can . . .

WR. I have two silent partners, uh, on anything.

TD. Let me . . . let me see if I can get you at least a percent on it, uh, ya know . . .

WR. Great.

TD. . . . u . . . up front, uh, okay? Let me talk to him about that . . .

MW. I don't even know th . . . w . . . why, an' I gotta get over there ta see where the hell his, uh, status is, is, ya know . . . where they're comin' through 'cause . . .

WR. All right. We are . . . we are also supposed to maneuver with some land in Atlantic City, and I was supposed to be up in front and take care of your interest and Mel's. So if a piece 'a land costs twenty-five and we're payin' thirty, the five million I was supposed to be able to handle for us. Now I'm being . . . uh, aware of that. This mine and the chemical plant, I'm supposed to get a piece 'a that in cash.

MW. And he's also promised . . . ya might as well tell him now . . . he's also promised the, uh, concessions . . .

WR. Yeah.

MW. . . . in the casino we open by Jack.

WR. . . . I was. On every . . .

TD. On the one that we open, ya mean?

WR. On everything that was . . . you opened. Everything that we were involved with. At least to head it up so that there would be an income flowin' for it.

TD. All right, I . . .

MW. I . . . I can . . .

TD. . . . I can . . . I can s . . . Let me say something now, all right . . .

MW. I, I didn't hear this, an' didn't know it til you told me.

WR. Yeah, I remember in the, ah, you were in the . . .

TD. All right, I . . . I . . .

WR. . . . uh, you were in the room when I . . . I . . .

MW. No, no.

WR. . . . mentioned it. Uh, you had just walked out. Don't you remember?

MW. I walked out, but I . . .

WR. Yeah.

MW. . . . didn't . . . when you told me I says I couldn't believe Jack told you.

WR. No we started with Errichetti and brought him into the picture so that it would be meaningful to you. He said to us, you be the business manager, to Bill and myself, and whatever has to be done fine, and, we set it up with McCloud, Errichetti, Pete, and myself. Now I want ya to understand this. The Atlantic City stuff, the funds from abroad on these CDs. The mine and the chemical plant and everything like this, I ha . . . have to give a piece . . . half of mine to Bill.

TD. All right.

WR. I haven't spoken to Bill now for a month or two. I think he's trying his best to get himself reestablished. He went off on a bender by . . . on his own. It cost him seventy grand, and I backed away from it. On this stupid commodity thing.

TD. Yeah.

WR. Which is ridiculous. But I will fulfill this obligation. However, I have never said, as you asked me to, one word to him about what's going on. If he calls, I simply say nothing has come through yet, Bill, as soon as they invite me down to the closing, I will tell Mel, expect something.

TD. All right. L . . . Let me say somethin' now, uh, and, um

MW. . . .

TD. . . . As far . . . w . . . all these other things that you say are . . . are okay, as far as I'm concerned. Okay? There's one

. . . one . . . only one thing I . . . I s . . . I'm gonna have a problem with, and that's givin' you the concessions at the casino. I can probably do somethin' for you along the lines of maybe giving you out right maybe . . . one 'a the concessions or

WR. Ok

TD. makin' ya overseer a . . . as far as a . . . a p . . . job position is concerned for them. But in order to do business with a lot

WR. Ya gotta take care of them, hey, Tony I understand this 'a different people the concessions are gonna have to be given to wise guys. Apparently . . . Ya know what I mean?

WR. I, I, I. fully appreciate it so you put me on the books as the, uh . . .

TD. Okay.

WR. . . . Supervisor

TD. All right.

WR. Ok.

TD. I can . . . That . . . That I can do for ya, but, ya, but, ya know, like I say, Jack said you can have all the concessions. Well, I gotta give the concessions away to . . . to stop problems that would arise normally.

WR. Absolutely. I know what you're saying.

TD. All right? So . . .

WR. I know absolutely, what you're saying.

TD. All right, so . . . I . . . I . . . I'll handle ya in another way by puttin' ya on their . . .

WR. Fine. Fine.

TD. . . . in that capacity.

WR. So you put me on there for, uh, a substantial fee, and that's it. I don't have to be down . . .

TD. Al right. Okay. That I can do for ya. The other one I'd be lyin' to ya if I said could. Uh, ya know, I could handle it that way.

WR. Tony, I wanna tell you something. Mel, uh, you've worked with me for about a year? Have you ever found me to say anything that wasn't legitimate

MW. No.

BR. . . .

MW. Yeah, I didn't doubt your word you said that. But . . .

WR. And secondly . . .

MW. But I did say that

WR. Have ya ever . . . Huh?

MW. 'member I did say to ya, I said I don't know he can promise ya that.

WR. Oh, oh. I been talking about that, petifically . . . specifically. I just want you to know that I'd like to be a part of what you guys are doing because it sounds stimulating and alive.

TD. Yeah.

WR. Ya know?

TD. And profitable.

WR. You can trust me in . . . pl . . . uh, and profitable. You can trust me implicitly. If I work with ya, I work with you and with him.

TD. All right.

WR. Period. And that's it.

MW. What're you doin' now?

WR. I got involved in an electronic field, and, by the way, this might be very worthwhile in Atlantic City because they're gonna open up a setup. I was in, I used to have my own brokerage firm, and I . . . which I headed. Any you know I got myself into a little trouble there on conspiracy charge and I sold the business, walked away. One of the setups we . . . were involved in was Graphics Scanning, and they took over a company called Radio Relay. These guys now place with doctors, with anybody who has to be in communication with a central point. If you guys are down in Atlantic City and you're not in your office, and you want somebody to reach you, a very simple thing is a . . . a radio beep. You carry a thing about as big as that deck 'a cards and when they want you they put a number into a . . . the telephone and when the thing starts to beep and you call the office. What's the message? You get 'em. You stay in touch with everybody that way.

MW. . . .

WR. They now have . . . these with the voices where you can put a ten cent . . . second message so you can give this out to fifteen guys instead of just one from your home base. And the message can say, Mel, this is Bill, call me at 599-1949. Ya hang up.

MW. That's a radius of so many miles though, right.

WR. It'll stay . . . It'll give you coverage around sixty miles around New York right now. And I can reach anybody in Westchester or any part 'a Long Island, any Borough in New York, Manhatten, Brooklyn, Staten Island, and it'll go south to about, well around Newark or so

TD. If it'll go sixty, if it'll go sixty miles from New York, it should go a lot further some place else 'cause you haven't got the buildings and . . . and . . . and interference.

WR. To, ta, but ya gotta put up transmitters . . .

TD. Yeah.

WR. . . . ya see. And what happened with these transmitters is ya gotta win an area. And that's what I been doing. I been marketing the thing. I got involved in the thing. And, uh, it keeps me busy.

MW. I gotta . . . I gotta beeper.

WR. Pardon?

MW. I have a beeper system now.

WR. You got a beeper now?

MW. Yeah.

WR. Same thing. Who gave it to you? Radio Relay or

MW. I had it a long time.

WR. Sure. You bought it.

MW. But the only trouble is . . . yeah . . . seventy-five dollars you pay for it, you can rent for twenty years.

WR. Oh no no. Not any more.

MW. Twenty-one dollars a month.

WR. Yeah. Yeah, they're around that.

MW. Yeah. But the only problem is ya can't . . . mine, uh . . . distance ain't that great.

WR. Well, if you were to set up a place in New York and you needed to reach a staff, all around the city there'd be nothing to it. Absolutely nothing to it. Sixty miles around. The voice won't be as clear in that distance because of what it is but this is what I got involved in, and I like it. Keeps me busy. Listen, all I wanna do is, uh, use my brains and use my talent for what I, aah

MW. What, do you sell 'em?

WR. I'm managing the thing. I'm marketing it . . . Uh, appointments at hospitals for the guys, or for myself. And I'm out, uh, hustling that stuff, I like it very much. Makes a living, you know, and, uh, this is, uh, the way the thing is at this time.

TD. All right. Well

WR. All right

TD. why don't we just go ahead and, uh . . . Let me . . . Let me get over there an' see him. Do that, and

WR. You'll be back, middle of November?

TD. Yeah.

WR. That's good.

TD. Yeah, that's a good . . . That's good. Yeah.

WR. Is there any place you want me to get in touch with you in Atlantic City from now on

MW. Oh, you won't be back, you won't be back until December.

TD. No, around Thanksgiving. When's Thanksgiving?

WR. End of the month, about the twenty-fifth.

MW. I don't think we'd be back Tony. I don't think we'd be back until sometime in December.

TD. Well, I plan on bein' back thereafter.

MW. Because their schedule . . . came over the telex yesterday . . . They're not gonna be over there until the end of November.

TD. Well, I . . . I'll get here. I . . . I'll . . . I . . . I . . .

WR. Tony, I have complete faith...

TD. Around Thanksgiving, all right?

WR. Fine.

TD. Give or take a little bit, all right?

WR. Very good. Where do I reach you in Atlantic City if you want it.

MW. Uh, you got that number

WR. I . . . I won't do anything further on what I done until I hear from you.

TD. Yeah.

WR. Whatever remains to be dome

TD. Eight . . . eight, two, three . . .

MW. 0, 3, 9, 9 . . .

WR. Gimme a pencil. What 'a you got, a . . . an answering service like ya do?

MW. No.

TD. No. We di . . . We didn't put the thing on there yet, that hafta handle . . .

MW. We just got in.

TD. . . . We just got in there

MW. We ain't had a chance ta do anything.

WR. Oh, great. All right. Give me a number so I'll reach you. Call me if you want something done. You gonna be headquartered down there now?

TD. Oh yeah.

WR. Will that be your main spot?

MW. Not yet . . .

TD. . . . I, you know what will be my ma, my main spot'll be a hotel room some place. Uh, you know.

WR. All right. Please do this. If ya need anything done in New York, give me a buzz.

TD. All right.

WR. Tell me what to do and I'll do it.

TD. Yeah, it's 8, 2, 3 . . .

WR. Hey, I don't have to go on the payroll until the first 'a the year, but just start use me.

TD. That's it, 8, 2, 3 . . .

WR. Ya got a pencil, uh . . .

MW. Oh . . .

WR. Pen?

MW. Yeah.

WR. Was it 6, 0, 9?

TD. Yeah.

WR. All right.

TD. . . . 8, 2, 3, 0, 3, 9, 9.

WR. 8, 2, 3, 0, 3, 9, 9.

TD. Yeah.

WR. Do you want me to use, uh, the Florida number if, uh, I wanna reach you?

TD. Oh . . .

WR. . . . that's still going to be in operation or ya givin' it up?

TD. Yeah.

MW. Yeah, use that number.

WR. Okay. I'll just call down there and set one up. And if you prefer I don't get involved with this number for whatever reason I don't know.

TD. No. We . . . uh, you know, if ya don't get as at, uh, one, uh, you always get him through Florida number, uh . . .

MW. Florida number's . . .
TD. I gotta . . .
MW. . . . the best because . . .
TD. I gotta put the, uh, an answering service on that thing. We haven't had time yet. I gottta send Bruce, uh, down there to do that.
WR. On the other thing. All right, that's good. By the way, you know part 'a this electronic setup I got involved in, we can put a receiving set down there for ya and a call diverter where the call, the message . . .
TD. Yeah, well . . .
WR. . . . will go to you wherever you are . . .
TD. Right.
WR. . . . and if he's in San Francisco, he can reach you if you're in Oshkosh.
MW. How's that work?
WR. Huh?
TD. The phone company has that
WR. Do they have the forwarders?
TD. Yeah.
WR. . . . for this?
TD. Yet . . . What do you, is you dial in . . . in, uh, another number and . . .
WR. Yeah.
TD. . . . it forwards the calls, uh . . . i . . . calls that way. In fact I was (laugh) . . . I was talkin' to a bookmaker, right. And the guy said this is the greatest thing that ever came down the pike for bookmakers. You know why, right? What they do is they go rent an apartment some place.
WR. OK, so that all their calls
TD. an' have a phone put in. They go from that phone they dial another number and every day they can change the number . . .
WR. Sure.
TD. . . . and move around and use it from one location.
WR. Absolutely.
TD. How's that for, uh . . .
WR. That's right.
TD. How's that for an operation?
WR. And that little machine, by the way, you put the two things in tandem, and you can put 'em up for about twenty-five hundred bucks. You don't even need an answering service, anything . . .
TD. All right, let me see if Bruce is in the other room. I wanna have him check everything out? Bruce, do me a favor . . .
WR. All right tootsie?
MW. Okay.
WR. Did a good job for ya? Ya owe me some money. who's paying me? . . . Tony? All right. By the way, I flew down there again for an hour. I didn't take anybody out. I spent about, uh, about three hundred dollars. I spent three-twenty and another hundred. Shall I ask him for it now?
MW. Yes. Speak to him.
WR. All right.
MW. I don't know if he has it on him, but see what he says.
WR. You happy?
MW. Huh?
WR. Are you happy or are you worn out?
MW. Well, I . . . I mean . . .
WR. Okay.
MW. I . . . I really can't answer that. I don't know.
WR. Just workin' . . . You're so damn busy wi . . . workin' you . . . Tony, I laid some dough out.
TD. Uh, excuse me Bill.
WR. Yeah.
TD. Uh, he's in, uh . . .
WR. Boy, this is a beautiful case.
MW. Huh?
WR. This is a beautiful . . .
TD. I'm sorry, Bill . . .
WR. Uh, I laid some dough out. Can I collect it?
TD. Ah . . .
WR. Have to go through channels. I laid two-twenty and then I flew down again. I laid out three-twenty in all . . .
TD. Okay. I tell ya what, uh . . .
WR. You tell me what to do.
TD. . . . se . . . send . . . send a bill to the . . . to the office. Okay?
WR. Sure.
TD. Write . . .
WR. just tell me where to do it.
TD. To, uh, what is it? What's the address there? Four, uh . . .
MW. Forty-two, fifty Vets Memorial Highway.
WR. You want me to address it to you? To Abdul . . . How do you want me to do it?
TD. Yeah, Abdul. Send it . . . ad . . . address it to Adbdul.
WR. Abdul Industries.
TD. Right.
WR. And what is it?
TD. Forty . . .
MW. Forty-two, fifty . . .
WR. Forty-two, fifty . . .
MW. . . . Vets Memorial Highway.
WR. Veterans Memorial Highway? Way the hellout here?
MW. Yeah.
WR. Well, I know that one. I thought you gave it up.
MW. No we still got it.
WR. Are ya involved in a lease?
MW. I really don't know.
TD. In fact, I tell ya what. Don't even send it there. Send it . . . send it to the Jersey place, allright? 'Cause I'm having Bruce move down there Let me give ya the address in . . . in, uh, in New Jersey. I'll have'n him . . .
MW. Fifty-two hundred Boardwalk, ain't it?
TD. Yeah.
WR. What is it?
TD. Uh . . . Let me make sure. let me give it to ya.
WR. It will be Abdul Industries?
MW. No.
TD. Just address it to Bruce Bradley, B-R-A-D-L-E-Y . . .
WR. Okay.
TD. Fifty-two hundred . . .
WR. Okay.
TD. . . . Broadwalk, Apartment eight F. Ventor . . .
WR. Apartment . . .
TD. Eight F.
WR. Eight F?
TD. Right. Ventor, New Jersey.
WR. V-E-N-T-O-R?
TD. Right.
WR. What's the, uh, zip?
TD. Uh, I knew you'd ask me somethin' I didn't know. I don't know what it is.
WR. You got it?
MW. I don't know . . . No.
WR. Don't use the name Abdul on it.
TD. No. It's a . . . it's a f . . . Ya know, i . . . it's a private residence, uh, an', uh, th . . . if you do that, then they're not gonna . . . they're not gonna get it. The apartment's in Bruce's name.
WR. Okay.
TD. Uh, the town . . . the condominium is in his name.
WR. Okay. Right. So you want me to ignore this Veterans Highway?
TD. Yeah. Yes. The hell with that, 'cause we're not . . .
WR. How do you want me to show this? Just, uh, mark it trip to Washington?
TD. Yeah. Just put a little squib in there of . . . of . . . of whatever, uh . . .
WR. Meet . . . Necessary meetings.
TD. . . . uh, . . . In connection with, uh . . .
WR. Necessary meetings.
TD. Yeah.
WR. Okay. That's all right.
TD. All right?
WR. I'll do that.
TD. I'll have him get a check out to ya.
WR. Anything else I can do for you fellas?
TD. Uh. . .
WR. I think we've covered everything.
TD. . . . no, I don't think so now. Let me see what I can do for you, more important.
WR. That'd be great.
TD. All right,
WR. I appreciate it.
TD. Okay.
WR. Mel . . . be well.
MW. All right.
WR. Wife came back all right?
MW. Yeah.
WR. She's in good shape?
MW. I guess so.
WR. Are you kidding? You mean you haven't seen her since she's back?
MW. How the hell can I see her, I've been all over.
WR. (Laughter).
TD. That's why it's good not to be married.
WR. Oh, you're not?
TD. No.
WR. Well, that's good. Do you have a lady?
TD. I can't find anybody that'd . . .
WR. Would tolerate what you do.
TD. Well, not only that . . . that . . . who's company I could stand for more than a week at a time.
WR. (Laughter).
TD. I may think differently a few years from now, but right now . . .
WR. All right . . . This is the way you wanna live . . . Take care fellas.
MW. Okay, Bill.
WR. All right. I think we did a . . . a good job for what they're after. And this, of course, is serious stuff for them and I think it will work
TD. Okay.
WR. Cheerio. . . .

Mr. MOYNIHAN. Mr. President, I do hope that the Judiciary Committee will take this assignment in the spirit in which it is presented.

What the President pro tempore has said he will do, he always does. I thank the President pro tempore for this and for his openness to the concerns of other Members. And I thank him for his absolutely unshakable concern that justice and equity be done in all our proceedings.

I thank the Senator from Colorado, who is associated with me in this matter.

The PRESIDING OFFICER (Mr. ARMSTRONG). The Senator from South Carolina.

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

Mr. MOYNIHAN. I yield.

Mr. THURMOND. I assure the able and distinguished Senator from New York that the investigation will be held in a fair and just manner, and no holds will be barred. All the facts will come out, and I think the Senator will be well pleased with what is done.

Mr. MOYNIHAN. I cannot think otherwise.

Mr. HECHT. Mr. President, the hour is late, and I do not wish to delay the Senate, except to extend the concerns that the senior Senator from Nevada [Mr. LAXALT] expressed as he left Washington. He wanted very much to have this resolution passed, as I do, and I thank the Senator for its consideration.

Mr. DANFORTH. Mr. President, I should like to share with the Senate my concern about what we are doing.

Several years ago—1982, as I recall—when Senator Williams' case was before the Senate, a number of allegations were made to the Senate about the propriety of the actions of the Department of Justice. As the Williams case proceeded, Senator Williams resigned from the Senate. He was subsequently convicted of a felony and sentenced to prison.

The Senate set up the select committee to investigate the alleged overreachings of the Deparment of Justice. That select committee was in existence, I believe, for about a year, and it issued a report of some 1,000 pages—give or take some pages.

A week or two ago, we had before the Senate the unfortunate case of a U.S. district court judge who had been convicted of two counts of tax fraud, and we tried his impeachment in the Senate, and we removed him from office, having found him guilty of three counts that were before us.

□ 0040

At the time of those proceedings, general allegations were made about overreachings on the part of the Department of Justice and again a move was afoot to investigate strike forces of the Justice Department, and so on.

The original version of the resolution that was prepared by most of those who have cosponsored this resolution constituted more or less an indictment of Federal law enforcement efforts.

Mr. President, I have asked the Federal Bureau of Investigation for whatever numbers they have, and for the calendar year 1985 the Department of Justice reported 1,182 indictments and 997 convictions resulting from Federal investigations of corrupt public officials. At the same time, no reports were received at FBI headquarters in which a court suppressed evidence or criticized FBI practices in public corruption cases.

Mr. President, I am not suggesting that Federal strike forces or the Justice Department or the Treasury Department are perfect. They are not perfect. And certainly in law enforcement there will be from time to time overreaching by law enforcement personnel and improper conduct by law enforcement personnel.

But it is also true, Mr. President, that every inmate as far as I know in every prison in this country believes that the reason that he was convicted was because he got a raw deal from Government officials or from law enforcement officials or someone targeted that person or someone was out to get that person. The business of protecting the public is one which constantly requires a balance in which the civil liberties of individuals are protected but at the some time enforcement of the laws is vigorous.

Now, the figures that were given by the FBI are amazing; 1,182 and 997 convictions of corrupt public officials. And, Mr. President, it is sad to say but it is true there is corruption in public office. And my concern, and I have expressed this to the distinguished Presiding Officer and to the Senator from New York and others, my concern is that the U.S. Senate should not indicate, in effect, by passing resolutions that whenever there is an investigation of a public official whether he is a Senator or a judge that comes before this body we automatically are going to respond by investigating the investigators.

So my hope is that the ensuring effort by the Judiciary Committee is not of an investigative nature at all, not sensational, not a media event, but instead that it be an effort to analyze those procedures that exist and those procedures that should exist to make sure that the balancing of civil liberties versus the interests of the public in protection against crime is carried out in a just way and in a way which is in keeping with our American traditions.

I hope that this is not going to be a Kefauver-type hearing. I hope this is not a public effort to call on the carpet law enforement in the United States but that instead it is an orderly business like, sober, serious, and indeed fair-minded effort to teach those rational conclusions that I think the cause of justice demands.

I just wanted to share those concerns with the Senate. I do not believe that we should be engaging in a broadside against law enforcement. I think that we should use a rifle shot at the real problem and not a broadside against problems based primarily on anecdotes rather than the statistics. I think whatever we do, it should not be an effort either to demoralize good law enforcement or to create in any way the impression that anyone who brings to the Senate a charge or corruption in public office is immediately going to be the target of some sort of an investigation of himself.

Mr. MOYNIHAN. Mr. President, will the Senator allow me to make one comment?

Mr. DANFORTH. I yield the floor.

Mr. MOYNIHAN. Mr. President, I would simply like to say to the Senator from Missouri, I agree with each and every word he has said. I will say it once more. I agree with each and every word he has said.

The PRESIDING OFFICER (Mr. STEVENS). The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, you know the statement that has been made by the Senator from Missouri is really illustrative of a very special gift that he brings to the work of this Senate. There is a lot of times around here when Senators are running around like chickens with their heads cut off and everybody is getting wrought up. At a critical moment the Senator from Missouri, JACK DANFORTH offers the kind of broad-gauged perspective of these things that really helps us keep our balance and it is a fact that his statement tonight serves that purpose and indeed the language of the resolution is language which either he wrote or was written at his direction and is a bit less flamboyant than the eariler language, although I was comfortable with the earlier language, let me say to my friend from Missouri.

So, he has done a real service. I want to associate myself with his call for a serious, sober, thoughtful, judicious kind of investigation. But I want to make this point: Do not anybody go home thinking that what we are talking about is some public official who has come around yelling that "I have been the subject of targeting" and it is some unfounded isolated case. We are talking about the findings of courts. Findings of abuse of the grand jury process, of altering evidence, of encouraging people to pry into and break into the mails which is a Federal crime. That is not something that is just rumored, that is what courts in different cases may have found, and that is serious business.

We are also, let me say to my friend from Missouri, in my own case talking about a Senator who has tried to come to grips with this issue by dealing with the Justice Department in a thoughtful, sober, serious, low key, way.

I think they stonewalled me. Let me say to my friend from Missouri that I am ready to have a review of this by the Judiciary Committee which results in a clean bill of health by the Judiciary Committee, but the reason I am interested in this is that I gave them that opportunity for 3 days before the Finance Committee and they came in and convinced me that there was more wrong than what I knew, not by anything I said or anything I can prove, but by their manner.

I suppose the Justice Department will read this transcript; maybe the Attorney General or someone over there will read it, and I hope they will approach the Judiciary Committee of which I am not a member and subcommittee of which I do not expect to be a

member or wish to be a member in a different spirit than they approached Senator GRASSLEY and me when we held these hearings in the Finance Committee. If they do, my guess is we will have a result that will not be inflammatory that will not be a circus, but if they do not, by gosh I hope the Judiciary Committee gets tough with them because this is an important issue and it deserves to have that kind of treatment.

Mr. President, I think we are ready for the vote on the resolution.

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

The resolution was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 514

Whereas our system of justice requires both firm defense of individual liberties and vigorous enforcement of the law, and

Whereas it is the responsibility of Congress to assure that the zeal of the Executive Branch in enforcing the law is always balanced against the rights of citizens under the Constitution, and

Whereas it is in the interest of justice for procedures to exist within the government to assure that the rights of citizens are protected against improper investigative and prosecutorial practices, now therefore be it

Resolved, that the Committee on the Judiciary, appropriately funded, shall hold hearings, exercising full Committee powers as necessary, on procedures for protecting citizens against improper investigative and prosecutorial practices and report its findings and recommendations to the Senate on or before September 1, 1987.

MAINLAND TOUR BOAT FACILITY FOR FORT SUMTER NATIONAL MONUMENT

Mr. THURMOND. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2534.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2534) entitled "An Act to authorize the acquisition and development of a mainland tour boat facility for the Fort Sumter National Monument, South Carolina, and for other purposes", do pass with the following amendment:

Page 5, after line 15, insert:

SEC. 6. (a) Not later than 45 days after the date of enactment of this Act, the Secretary of the Interior shall receive, consider, and act on the application of Mr. and Mrs. J. W. Wells of Waynesboro, Mississippi, for a patent for the land described in subsection (c) of this section under the Act entitled "An Act to authorize the Secretary of the Interior to issue patents for lands held under color of title" approved December 22, 1928 (43 U.S.C. 1068 et seq.), notwithstanding the requirement of that Act that a tract of public land be held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units.

(b) Any patent issued pursuant to subsection (a) shall be without any mineral reservation to the United States, and all mineral interests of the United States in and to the land described in subsection (c) shall be transferred to Mr. and Mrs. J. W. Wells without consideration.

(c) The land referred to in this section, comprising approximately 160 acres, is the NW¼ of Section 21, T. 10 N., R. 8 W., St. Stephens Meridian.

Mr. THURMOND. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER (Mr. ARMSTRONG). Is there further discussion?

Mr. STEVENS. Mr. President, the bill has been cleared by the majority leader.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from South Carolina.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

TRIBUTE TO SENATOR CHARLES McC. MATHIAS

Mr. DODD. Mr. President, in a moment not unusual for our retiring colleague Senator MATHIAS, he said at a recent dinner that what he would miss most about being an eminent public leader would be the ability to "pick up the phone and do something for someone's life." Well MAC MATHIAS has done just about as many great things for people's lives as any one man can do in a lifetime. He may leave this body with the peace of mind that only comes with having accomplished one's noblest ambitions.

Senator MATHIAS has brought to this Congress a sense of public service that he derives from his deep reverence for the rights and liberties provided in our Constitution. His longstanding championship of civil rights can be traced clear back to the early stages of his public career. For instance, Marylanders may recall when as municipal attorney in Frederick he desegregated a local theater—in the early 1950's. In the Congress, it was often he who, aligning himself with more liberal Members despite party pressures, assured the approval of major civil rights legislation in the years when it was moving through the Judiciary Committee.

Senator MATHIAS always transcended partisan labels and contrived ideological alignments. He strove instead to uphold personal and national principles with a startling sense of independence. I had the privilege of seeing this quality, along with his intelligence and political savvy, first hand when we worked extensively together on the Foreign Relations Committee to strike an agreement on the issue of Central American policy. He is truly one of the most intelligent and thoughtful men I have worked with—never someone to rely on the expertise of others on the stage of political combat. His diligence and dedication to this work was always reflected in his formidable knowledge and command of the agenda he believed in.

He leaves us for the noble pursuit of transmitting to his students what his long and illustrious career has given him. His devotion and ability will be missed greatly in this Chamber. We can only envy his students the opportunity they will perhaps never quite appreciate fully until they, too, have taken on the challenges he overcame with dignity, scholarship, and commitment in this institution.

FAREWELL TO SENATOR GARY HART

Mr. DECONCINI. Mr. President, we are soon to part with several of our colleagues who are retiring from this body, and I rise to acknowledge the unique contributions of one of them, my colleague from the Great American West, the senior Senator from Colorado, Senator HART.

In his two terms in the U.S. Senate, GARY HART has witnessed great changes in both the institution and the Nation it serves. And he has had the vision to recognize these changes for what they are—precursors of a new era, full of challenge and hazard and opportunity.

GARY HART, perhaps more than any other Senator, has made this realization the theme of his service to his country. He has channeled his energies toward preparing America for its new age. He is a man of ideas who has faced the complex challenges of the Nation and translated those challenges into constructive solutions.

Last winter, I was pleased to cosponsor one product of GARY HART's energy—the budget alternative that he and other Budget Committee Democrats offered for fiscal 1987. I supported him in that effort, because I share his belief that we can have fiscal responsibility in this country without mortgaging our national future. In fact, we cannot have it any other way.

Moreover, I share his belief that true responsibility means providing for the education of our young and investing in our future commerce and industry. GARY HART never shrank from the truth in framing the policy questions before us. It is our generation that must prepare for the generations to come, with investment and also with sacrifice.

Nothing is more essential to our national future than our national security. And in his work on the Armed Services Committee, GARY HART demonstrated a commitment to the Nation's defense that was second to none. He joined the Navy Reserve and cofounded the military reform caucus. He became a leading national advocate for a leaner, meaner defense that plans for the future—not the past—and spends its money accordingly. While GARY and I may have differing views on how to achieve our passionate and mutually shared objective of a peacful and nuclear-free world, GARY's indepth knowledge and analysis of military and nuclear issues will be sorely missed. In the world's most prestigious deliberative body, GARY HART ranks among the premier debaters in its history. It is difficult to imagine a debate on arms control without GARY being a major participant. His thoughtful and informed voice will be especially missed in those discussions.

GARY HART's concern for the future shone through as clearly in his work on the Environment Committee. The natural resources of America are the basis of our prosperity and the heart of our national legacy. As a Senator from the Nation's still-unspoiled West, GARY carried a special concern for this legacy with him when he came to Washington. It was this concern that motivated GARY to help expand wilderness designations to a magnificent and unprecedented 2.6 million acres. But GARY HART's concern went beyond his home State.

He arrived here when national awareness of the environment was stirring as never before. He played a critical role in developing some of the landmark environmental legislation of the 1970's: the Clean Air Act, the Clean Water Act, and the creation of Superfund. In the current decade, he has worked to renew and broaden and strengthen all of these laws.

He served as Chairman of the National Commission on Air Quality and delivered an early warning against the threat of acid rain. He served as chairman of the Nuclear Regulation Subcommittee and as chairman of the Senate investigation of the Three Mile Island nuclear accident, identifying himself with heightened protections for citizens and consumers and greater performance accountability for the nuclear industry.

Again and again, GARY HART has taken tough positions on behalf of future generations. For a decade, he has fought an often lonely fight against our dependence on foreign oil—so that Americans in the 1990's and beyond will have the energy they need.

He has taken a principled stand against contributions from PAC's—political action committees—even as such contributions have become the centerpiece of political fundraising.

And he has been willing not only to take a stand, but to lead the fight, no matter what the odds. The Senate will remember his battle against Gramm-Rudman and his long struggle on behalf of arms control.

GARY HART was here when I first came to the Senate, and it's hard for me to imagine the Senate without him. At the same time, I know that GARY will not really be gone. He may be passing into the Senate's history, but he will remain a part of the Nation's present and the Nation's future—for as long as he chooses.

GARY is one westerner who has never ridden off into the sunset. He is still riding into the dawn.

I want to join my colleagues in thanking GARY for his dedicated service to this Chamber, to the Nation, and to the people of Colorado, and to wish him a fond farewell and every good wish as he rides into the dawn.

Mr. President, Senator HART's staff has compiled an impressive and detailed summary of GARY's achievements during his tenure as a U.S. Senator. The thickness of the document bears witness to the imprint that GARY has left on this Chamber. I believe it merits review by the Members of this body, by Senate staff and by the American people, and I ask unanimous consent that the full text be printed at this point in the RECORD.

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

LEADERSHIP

In the last twelve years, the Senate has dealt with a variety of challenging issues—issues that were exceptional because they were complex, politically difficult or emotionally charged. It is significant that, in the face of these challenges, the Senate turned to Gary Hart:

Appointed to Select Committee to Investigate the Intelligence Community; Chairman of National Commission on Air Quality; Adviser to SALT II Geneva Talks; Chairman of Senate Three Mile Island Inquiry; Coauthor of Armed Services Committee Study on Strategic Warning System; Chairman of Senate Budget Committee Task Force on Synthetic Fuels; Founder of Military Reform Caucus; and Co-Chairman of Democratic Budget Task Force.

Senate Select Committee to Investigate the Intelligence Community (1975). Formed under the Chairmanship of the late Senator Frank Church to investigate abuses by the intelligence community, effort and recommend reforms.

Hart: Key role in investigation and drafting of Committee findings.

Elected Chairman, National Commission of Air Quality (1978). The panel was created by Congress with the passage of the 1977 Clean Air Act amendments to study the implementation of the new statute and to recommend ways to improve environmental regulation.

The Commission had 13 representatives of the environmental, scientific, and business communities, Republican and Democratic Members of Congress, state government and Indian tribes.

After two and one-half years of study, the Commission published a comprehensive report, "To Breathe Clean Air," that contained 433 findings and 109 specific recommendations.

Appointed advisor to SALT II arms control talks in Geneva. Urged approval of the Treaty during Senate reelections campaign in spite of intense, conservative opposition to the Treaty.

Chairman, Senate Investigation of the Three Mile Island nuclear reactor accident (1979). As Chairman of the Senate Environment and Public Works Subcommittee on Nuclear Regulation, Senator Hart led an extensive and difficult inquiry into the accident at Three Mile Island. At the conclusion of study, Hart convinced the Senate to approve a series of significant reform measures to:

1. Require each State with a nuclear powerplant to have the evacuation plan approved by the Nuclear Regulatory Commission;

2. Accelerate the assignment of NRC inspectors at each nuclear powerplant and increasing the number of such inspectors being trained;

3. Improve the training, retraining and licensing of nuclear plant operators;

4. Require the NRC to propose a plan to respond to emergencies; and

5. Require the President to develop a national contingency plan to ensure a coordinated Federal response to future emergencies.

Coauthor, with Senator Barry Goldwater, of 1980 Senate Armed Services Committee report on Command, Control, and Communications strategic warning system. In addition to recommending ways to modernize the NORAD facility, the inquiry revealed that during an eighteen-month period, the warning system had registered 151 false alarms—one of which lasted a full six minutes, half the time it would take a Soviet submarine launched ballistic missile to reach its target in the United States.

Hart authors comprehensive proposal [Strategic Talks on Prevention] to prevent the triggering of a nuclear conflict by miscalculation:

Creation of jointly staffed US-Soviet crisis prevention centers;

Steps to prevent nuclear proliferation;

Reductions of nuclear war-heads and missiles, particularly MIRVs.

Chairman, appointed by then-Senator Edmund Muskie, of Senate Budget Committee Task Force on Synthetic Fuels (1980):

Played the decisive role in scaling back the Carter-proposed $88 billion synthetic fuels program to a more reasonable, two-phased $20 billion effort;

Fought suspension of environmental standards and won adoption of amendment requiring Congressional approval if there were attempts to spend more than $20 billion on the program;

Proposed alternative tax credit for production approach to massive price support subsidy.

Founder, Congressional Military Reform Caucus (1981):

With Republican Congressman William Whitehurst of Virginia, founded Caucus dedicated to promotion of military reform;

Caucus now boasts membership of 130 Members of Congress from both sides of the aisle. Caucus has led the fight to:

Terminate the DIVAD air defense weapon;

Win Congressional approval of an Independent Testing office for weapons under development in the Pentagon.

Authored, with William S. Lind, American Can Win, a book to educate the American public on the principles of military reform.

Co-Chairman, with Senator Lawton Chiles, Democratic Task Force on Alternative Budget (1985–1986, appointed by Minority Leader Robert Byrd):

Led floor against enactment of Gramm-Rudman-Hollings "I";

Coauthored, with Senator Chiles, "budget principles," adopted unanimously by Democratic Conference in January 1986;

Coauthored, with Senator Chiles, alternative budget to FY1987 budget resolution (final Conference Agreement on budget resolution included $400 million from Hart-Chiles amendment to improve math and science education).

Led successful effort to prevent enactment of Gramm-Rudman-Hollings "II" in the wake of Supreme Court decision striking down automatic budget cutting procedure in Gramm-Rudman-Hollings I.

Opposing Bad Policies; Proposing Alternatives

It takes courage to resist the political stampede when others engage in a march of folly. In the Senate, Gary Hart opposed bad policies and offered alternative solutions even when it was in his political interest to go along:

	Position	Hart approach
Economic Policy		
Chrysler land guarantees.	Opposed	Industrial Modernization Agreements
1981 budget and tax cuts.	Opposed	Offered comprehensive alternative: tax cuts to equal not exceed spending cuts; indexing of personal rates.
Gramm-Rudman I/II	Opposed	Led opposition. Offered legislation to repeal. Wrote alternative budget.
Domestic Content and Textile quotas.	Opposed	Introduced first comprehensive trade bill.
Energy Policy		
Oil import fee	Initiated 1977	Supported Carter effort in 1980. Brought proposal to a vote in 1985 and 1986.
Gasoline tax	Supported	
Synthetic fuels	Opposed	Won approval to scale back program from $88–$20 billion. Drafted alternative plan using tax credits instead of price subsidies.
National Security		
Salt II	Supported	Served as advisory to the talks; won 1986 approval of "no undercut" resolution.
MX Missile	Opposed	Led opposition and filibuster.
Reagan build-up	Opposed	Criticized both size and composition. Formed Military Reform Caucus in Congress and offered military reform budget.
Foreign Policy		
Grenada invasion	Opposed	Author of resolution to invoke the War Powers Act.
U.S. troops in Lebanon.	Opposed	
Reagan doctrine	Opposed	Criticized both Contra war and weapons for Savimbi, offered alternative policy "Enlightened Engagement" in three-part Georgetown lecture series.
Middle East		Authored comprehensive economic policy tied to peace plan.

Specifics

Reaganomics

In 1981, Hart resisted the political stampede, voting against the Reagan budget and tax plans.

One of twenty Senators to oppose passage of Reagan budget resolution. Senate version and Conf. Report.

One of fifteen Senators opposing passage of the 1981 Omnibus Budget Reconciliation measure (enforces cuts in budget resolution)—Senate bill and Conf. Report.

One of eleven Senators opposing passage of the so-called "Economic Recovery Tax Act" of 1981.

Alternatives. Introduced measures to:

Make tax cuts contingent on achievement of a balanced budget

Require sunsetting of tax expenditures

Provide for a capital budget.

Anticipating tides. In October of 1978, Hart introduced comprehensive legislation providing tax cuts and equivalent spending reductions. He criticized Kemp-Roth, a thirty-percent across the board tax cut (seeing it as inflationary and running the danger of creating deficits). The Hart legislation:

Provided a 20% reduction in personal taxes and cut taxes for business:

Cut spending by an equivalent amount, holding transfer payments and discretionary programs to levels below the current budget baseline;

Indexed personal tax rates against inflation.

Tax Reform

The movement for comprehensive reform of the tax code began more than a decade before President Reagan's conversion. Gary Hart campaigned for the Senate beginning in 1973 on a platform stressing tax reform and never wavered from his commitment to that goal.

During consideration of the 1976 tax bill, Hart won unanimous approval from the Senate for his amendment providing for the establishment of a Commission on Tax Simplification and Modernization.

In 1977, Hart introduced legislation providing for the "sunset" of 80 tax expenditures.

In 1978, Hart offered a non-inflationary, deficit-neutral alternative to the so-called "Kemp-Roth" tax bill, providing for:

A phased, 20-percent reduction in personal taxes and business tax cuts;

Reductions in federal spending equivalent to the tax reductions he proposed; and

Indexation of personal tax rates.

He offered a similar plan in 1980 during consideration by the Senate Budget Committee of the FY1981 budget resolution.

In 1981, he was one of only 11 Senators to oppose the extravagant, $750 billion Reagan tax give-away program.

In 1983, he endorsed Senator Bill Bradley's Fair Tax proposal and, in 1984, urged Democratic Presidential nominee Walter Mondale to make comprehensive tax reform a key element of the Democratic Platform.

In 1985, Hart won passage by the Senate Budget Committee of his Sense of the Congress resolution urging passage of comprehensive tax reform.

In 1986, he was the *only* Senator to vote against every substantive change in the Bradley-Packwood tax reform bill.

Reagan Build-Up

From the beginning of his service on the Senate Armed Services Committee, Hart fought to change the debate on defense from "more is better" to "better is better." This meant fighting for specific amendments to delete large aircraft carriers, build greater numbers of less expensive submarines, and fighting costly and destabilizing weapon systems.

It also meant campaigning for the adoption of the SALT II Treaty in 1979—an extremely unpopular position for a Senator up for reelection the next year to take. (Hart won adoption by the Republican-controlled Senate of legislation urging the President (in 1986) to continue to abide by the SALT II Treaty.

To recruit new voices to the military reform movement, Hart founded the Military Reform Caucus in the Congress in 1981. Co-chaired by Rep. William Whitehurst, the Caucus grew to boast a membership of Republican and Democratic Members now totalling more than 130.

On the Senate Budget Committee, Hart fought the extravagant increases asked by Defense Secretary Weinberger. In addition, he offered a comprehensive military reform budget in 1983, a budget which:

Reduced Pentagon spending by a net $12 billion over two fiscal years; approximately $27 billion in cuts and $14 billion in military reform additions;

Boosted needed investments in soldier pay, operations and maintenance and readiness; and

Terminated the Bradley fighting vehicle, the DIVAD air defense gun (subsequently killed by the Pentagon under pressure from Congress), the MX missile and B1 bomber.

Hart launched a filibuster against the MX missile in 1983. He cosponsored an amendment, approved by the Congress, which slowed the development of the missile. In 1985, he was the floor leader for the Democrats in a fight to delete all funding for the MX from the 1986 defense budget. Later that year, he joined a compromise effort to limit to 50 the number of MX missiles procured by the Administration—which initially asked for 200. In 1986, he won approval from the Republican controlled Senate Armed Services Committee for his language establishing a permanent cap on the 50 missiles—after the Administration indicated it would renege on the 1985 agreement.

Protectionism

Since President Reagan took office, the country has seen a dramatic reversal in its once commanding trade posture. For the first time in nearly a century, we are now a debtor nation. Where we once enjoyed a trade surplus, we have unprecedented triple-digit trade deficits, now threatening to exceed $175 billion. Even in the agriculture sector, which once enjoyed a commanding trade surplus, we are now a net importer of food.

Once the party of free trade, Democrats moved in 1983 to become the Party of protectionism. Support of domestic content legislation, for example, became a litmus test for Presidental candidates in the primaries. Hart resisted that tide, campaigning against protections for automobiles in the industrial heartland.

In 1985, this trend worsened. Certain key leaders in the Democratic Party introduced legislation to impose a surcharge on imports. Had this legislation been adopted, the United States would have imposed tariffs in 1985 higher than those required under the Smoot-Hawley bill in the 1930s—legislation which prolonged and deepened the Great Depression. Also introduced in the same session of Congress was legislation to impose strict quotas on textile and apparel im-

ports—legislation which would break 34 international agreements the United States had signed. Hart's opposition to both bills was significant.

Unwilling simply to criticize, Hart introduced the first comprehensive trade alternative that promoted competitiveness in lieu of protectionism. His legislation, the Comprehensive Trade Reform Act, identifies both the source of trade problems and proposed comprehensive solutions to deal with them:

Value of the dollar: preparation of agenda for approval by Congress for a "New Betton Woods."

Collapse of overseas markets; revives the Cooley Loan Program to sell surplus U.S. commodities for LDC local currencies.

Coordination of US economic policy: Creates an economic counterpart to the NSC.

Reform of trade laws to encourage end of violations: *Reform of GATT* including trade in services, ag., intellectual property; end unfair practices by talks or competitors to face penalties stronger than in current law.

Reforms for industrial competitiveness: Contains reforms in the areas of trade in services, export promotion, antitrust reform;

Educating students: improvements in elementary, secondary, and college courses in math, science, computers, and foreign languages to provide students with competitive skills.

Strengthen and improve trade adjustment assistance program.

GRAMM-RUDMAN

In October of 1985, Senate Republicans tried to rush approval without debate of the most sweeping changes in Congressional budget policy in a decade: the deeply-flawed Gramm-Rudman-Hollings legislation. The bill provided for arbitrary across-the-board cuts in Federal programs; exempted "big-ticket" military hardware; put tax increases "off-limits" for deficit reduction; and, in defiance of the constitution, charged an unelected federal bureaucrat with the responsibility of making the deep reductions.

In spite of the political popularity of the measure—it won on the first day of introduction over 40 Senate sponsors—Hart resisted the tide. He forced the Senate to debate the measure. In an extraordinary Saturday session, he used over 2 hours of debate time. In questions posed to Senate sponsors, he uncovered a series of "mistakes" and drafting problems in the legislation (including the fact that military contracts were excluded from the cuts). Hart asserted the measure was unconstitutional.

House Democrats did not have a strategy for dealing with Gramm-Rudman. Hart's dissent layed the groundwork for nine days of Senate debate buying time for the House. At the end of the first Senate debate, he was one of only 24 Senators to oppose Gramm-Rudman.

In 1986, Hart introduced legislation to repeal Gramm-Rudman. He offered a comprehensive budget alternative to the first Senate budget produced under Gramm-Rudman constraints. When the Supreme Court declared the measure unconstitutional, Hart again led a floor fight against Gramm-Rudman-Hollings II. In August, 1986, he was able to prevent the Senate from adopting the measure as an amendment to the debt ceiling legislation.

ENERGY POLICY

Hart first came to the Senate during the first "oil crisis," and became a leader on energy policy. He fought for conservation, incentives for independent oil and gas producers, in favor of vertical divestiture, of the industry, and on behalf of strict regulation of nuclear energy. In 1977, he first proposed a fee on imported oil.

In the midst of the Iranian oil cut-off, there was a political stampede to do something, "anything," to deal with the energy crisis. Hart, who was involved with the debate over energy policy from the beginning of his first Senate term, played a leadership role—opposing key elements of the unwise Carter proposal and proposing alternatives.

Synthetic Fuels. Hart opposed the creation of a massive $88 billion synthetic fuels program. He proposed a less costly alternative:

Instead of an independent Energy Security Corporation, an Office of Energy Security within the Department of Energy. The Office would be directly responsible to the Secretary of Energy. Rather than guaranteeing funding in advance, Hart proposed a limited annual budget determined by Congress each year based on the actual amount of price guarantees and purchase contracts let.

The ESC, reconstituted as the Synthetic Fuels Corporation, turned out to be a disaster. It was mismanaged. The principal officers were paid extravagant salaries. The office of President changed hands numerous times, and many of the few projects it actually supported folded, because the big energy companies running them determined the projects would never be financially viable.

Hart was appointed Chairman of the Senate Budget Committee Task Force on Synthetic Fuels. In that capacity, he successfully led the fight to scale down the Administration's $88 billion request to a more reasonable $20 billion amount.

Windfall Profits tax. During Senate consideration of the Windfall Profits tax legislation, Hart offered an alternative to the proposed tax on newly discovered oil (which he criticized as a disincentive to exploration). He proposed a tougher measure, opposed by the major oil companies, asking a 100% tax on unearned profits from the sale of old oil which had been decontrolled by President Carter.

Energy Mobilization Board. Hart led the Senate opponents of this measure, creating a panel with extraordinary powers to overturn environmental regulations over nonnuclear energy facilities.

Fee on imported oil. In 1980, Hart was one of only thirteen Senators to vote in support of President Carter's fee on imported oil. In the years that followed, he introduced legislation providing a $10 per barrel fee on imported oil, with consumers receiving rebates through Social Security payroll tax reductions and increases in the low-income energy assistance program. In 1985 and again in 1986, he offered variations of this proposal.

REAGAN MIDDLE EAST POLICY

After taking office in 1981, the Reagan Administration was unable to build on the progress started by Camp David to move toward a comprehensive Middle East Peace. It effectively abandoned work on the so-called Reagan Peace Plan of 1982, and committed American troops to Lebanon in 1983—a move Hart opposed.

Once the U.S. Embassy was destroyed by a terrorist's suicide truck bomb, killing over 250 American troops, the US retreated and failed to exercise a role in the region.

After visiting the Middle East in 1986, as leader of a study mission authorized by the Senate Armed Services Committee, Hart unveiled a comprehensive economic proposal—to be complemented by strong, hands-on diplomatic efforts by the Administration, to renew progress in the peace process. The central components of the package are:

Increased aid to Jordan to provide quality of life improvements on the West Bank;

Debt relief for Egypt;

Proposals to increase and improve military cooperation between the United States and Israel.

HART HIGHLIGHTS—99TH CONGRESS

The Senate adopted:

Veterans Judicial Review, S. 367;

Improvements in Department of Labor "job bank";

Interagency study on US-Soviet verification capabilities;

Payments to sugar beet producers; and

Investigation of defense contractor fraud; 6-month day of Interior Department patenting on oil shale claims to prevent land- and resource give-away.

Committees adopted:

Budget Committee approves Hart tax reform amendment to FY1986 Budget resolution;

Environment and Public Works Committee approves Hart citizen suit provisions of Superfund;

Armed Services Committee adopts Hart amendments retaining cap on MX missile production and urging the Administration against undercutting SALT II; and

Environment Committee accepts Hart language increasing nuclear plant liability limits ten-fold.

FLOOR ACTION AND SPONSORSHIPS

Economics and Budget:

Leader of Senate opposition to Gramm-Rudman-Hollings I.

Appointed to chair a Senate Democratic Task Force on Alternatives to the President's budget by Senate Minority Leader Robert Byrd. Hart-authored principles to guide Democratic planning for FY1987 budget adopted unanimously by Senate Democrats.

Introduced legislation, cosponsored by Senator Daniel Patrick Moynihan of New York, to repeal the Gramm-Rudman law. Urges "New Contract of Cooperation," an agreement to restrain defense spending, increase revenues, and finance increased investments in programs critical to the nation's future with measured domestic spending reductions.

Authored a comprehensive budget alternative to the President's 1987 spending plan: urges new investments in education, retraining, economic growth, and new opportunities for employment and self-sufficiency for the nation's poor.

Although the amendment was rejected, a $400 million math and science initiative, a fundamental part of the plan, was adopted by the Congress as part of the final conference agreement on the budget on June 26.

Led the fight against Gramm-Rudman-Hollings II (Senate declined to accept this amendment during debate on the debt ceiling legislation, August 1986.

Recognized as the only Senator, during the debate on tax reform, to have voted against every amendment to weaken the bill approved by the Senate Finance Committee.

Testified before the House Commerce Committee on behalf of his Competitive America Trade Reform Act, the first com-

prehensive Democratic proposal to rewrite the nation's trade laws.

Introduced legislation designed to make risk and long-term capital available to new, young and small businesses. [National Entrepreneurship Act.]

FOREIGN POLICY AND ARMS CONTROL

Won approval by the Republican-controlled Senate Armed Services Committee of the first Congressional statement supporting SALT II after the Administration announced its decision to abrogate the Treaty.

Won approval by the Senate Armed Services Committee for language opposing plans by the Administration to expand the production of the MX missile.

Introduced legislation to prohibit the use of funds for the production of chemical weapons.

Pushed passage by the Senate Armed Services Committee of significant, new legislation to reform the Joint Chiefs of Staff system.

Introduced legislation, following reports of widespread election fraud in the Philippines, to put aid to that country into a "Trust Fund for Philippine Democracy," pending a transition to democratic rule.

Introduced amendment to delete funds for the MX Missile program. Amendment not agreed to by 42-56 vote.

Introduced amendment, agreed to in Senate, to require a study to examine the verification capabilities of the U.S. and the Soviet Union and possible avenues for cooperation.

Introduced amendment, agreed to in Senate, to express the sense of the Senate that the Federal government audit and investigation defense contractor billing practices.

Introduced legislation praising South Africa's Bishop Tutu for his courageous work on behalf of peace and equality in that country.

ENERGY/ENVIRONMENT

Introduced bill imposing $10/bbl import fee on crude oil and petroleum products. Pushed for Senate votes in 1985 and 1986. Testifies before Senate Finance Committee in support of fee. Hart's alternative FY1987 Budget included fee and gasoline tax in revenue component.

Introduced bill to repeal Price-Anderson Act and force nuclear industry to demonstrate its safety and economic efficiency by obtaining its own insurance against third-party claims.

Environment and Public Works Committee adopted the Hart amendment raising ten-fold the amounts nuclear power plant operators and held liable if an accident occurs.

Introduced bill requiring the DOE to weigh the effects of transporting highly radioactive waste before siting the permanent repository for such waste. Also requires DOE to assess transit routes and pay for safety improvements.

Introduced bill designating an additional 770,000 acres of wilderness in Colorado (bill stalled by objections from Armstrong over water diversion rights). Sense of the Senate amendment urging protection of these areas pending the outcome of the legislative process defeated on a narrow vote in the Senate.

After public disclosure of a move by the Interior Department, conveying resource rich lands to private interests at $2.50 an acre, the Senate adopted a Hart amendment barring approval of such claims by Interior for a six month period. Adoption of the amendment stopped the permit approval in the case leaked to the press.

Co-sponsored bill to give states the standards and funding to fight groundwater contamination such as that around Rocky Mountain. Will have hearings and mark-up in '86.

EDUCATION

Introduced legislation, cosponsored by 20 Senators, to provide incentives for elementary and secondary schools to improve math, science and foreign language education. Testified on the bill before the Senate Subcommittee on Education. (American Defense Education Act.]

Introduced legislation to encourage partnerships among private industry, state government and educational institutions to strengthen science, engineering and technical education. [High Technology Morrill Act.]

Testified before the House Subcommittee on Elementary and Secondary Education on behalf of legislation to provide assistance to states for encouraging educational excellence and increasing opportunties for underserved populations. [School Excellence and Reform Act.]

COMMUNITIES AND FAMILIES

Introduced legislation to establish a Select Commission on National Service Opportunities to examine policy questions relating to national service. The Commission would examine how to establish incentives and opportunities for our young people to provide useful service to the nation.

Introduced legislation to provide grants to support family day care providers. [Family Day Care Provider Act.]

Introduced bill to reduce the deduction for business meals and earmark the savings for school lunch programs.

WORKER RETRAINING AND ADJUSTMENT

Introduced legislation to establish a system of retraining accounts founded by voluntary, tax-deductible contributions by employers and employees. [National Individual Training Account Act.]

Introduced legislation and provide unemployed workers with opportunities to create their own jobs. Legislation establishes a demonstration project to allow unemployed workers to use their UI benefits for income support while starting their own jobs. [Self Employment Opportunity Act.]

Introduced amendment, now signed into public law, to improve the operations of the national interstate job bank system so that workers can be more efficiently matched with available jobs. Legislation requests the Department of Labor to study the costs and methods of computerizing the job bank system.

OTHER SIGNIFICANT ACTIVITIES

Introduced the National Infrastructure Act to provide for Federal investment in highways, bridges, transit systems, sewers, and water treatment facilities. Includes unique mechanism to leverage new spending.

Introduced comprehensive veterans' rights legislation (principal provisions: provide access to Federal Courts to appeal adverse benefit decisions and repeal $10 limit on attorneys fees), agreed to in Senate.

Introduced legislation to provide emergency credit relief to financially strapped farmers. Targets small- and medium-sized farmers.

Cosponsored amendment offered by Senator Tom Harkin (D-Iowa) urging speed-up of payments to farmers, enabling them to afford spring planting payments, equipment and mortgage costs.

Endorsed passage of a mandatory supply management program as part of the wheat referendum being conducted by the Department of Agriculture. Enactment of such a program would improve farm income, lower costs to the governments, and aid American agricultural exports.

Introduced legislation to close "the Deaver loophole," to stop former White House officials from lobbying other offices within the Executive Branch and skirting the application of the Ethics in Government Act.

Authored the "Fair Foundations Act," the first legislation introduced in the Congress requiring political leaders with educational foundations to disclose their contributors and expenditures.

FAREWELL TO SENATOR RUSSELL LONG

Mr. DECONCINI. Mr. President, as the 99th Congress draws slowly to a close, we are all deeply saddened by the loss of many of our colleagues who have chosen not to seek reelection to their seats in the Senate. Of all our colleagues who have decided to either retire or pursue new career challenges, perhaps the individual we will miss the most is the esteemed senior Senator from Louisiana, RUSSELL LONG.

Senator LONG comes from a distinguished Louisiana political family which has served the State of Louisiana and the country for as long as I can remember. The name Long is synonymous with Louisiana politics. RUSSELL LONG has served in this body since 1949, having been elected one day prior to his 30th birthday. During his 38 years of distinguished service, RUSSELL LONG has earned a reputation as one of our most respected, revered, and beloved colleagues. He is by any standard of measure, a Senator's Senator. He is the model by which each of us can measure our own effectiveness as legislators. In short RUSSELL LONG is a leader among leaders—a giant in the annals of the history of the U.S. Senate.

RUSSELL LONG is both a master of Senate rules and procedures and a master of the United States Tax Code. Because he has been a student of the rules and of the issues that fell under the jurisdiction of the committee on which he has served, RUSSELL LONG became an accomplished legislator. If our computer systems went back 38 years, I am certain that the printout of RUSSELL LONG'S legislative accomplishments would be thicker than for any other Member of this Chamber. Among his monumental legislative achievements are the landmark 1972 and 1976 revenue-sharing laws; the 1975, 1977 and 1978 tax cuts; changes in the Social Security and Medicare benefit systems which have moved most of the Nation's aged, blind, disabled and truly needy out of poverty and made them eligible for medical care; his successful campaign for em-

ployee stock ownership plans; and the dollar checkoff on tax returns for presidential campaigns.

Because of his extraordinary in-depth knowledge of a myriad of issues, RUSSELL LONG could easily have ignored his colleagues' wishes and ramrodded legislation in which he had a special interest through this body. But that was not RUSSELL LONG's style. He is a student of politics as well as of issues, and he knew better than most that the true art of politics is compromise. RUSSELL LONG always tried his best to accommodate the views of his supporters as well as his opponents in shaping legislation. He very patiently, calmly and quietly tried to build a consensus and in the process, he treated each Senator with equal kindness, consideration and deference. That is a legacy for all to envy.

From his days as a student body president at Lousiana State University, to his service as a naval officer in World War II to his nearly four decades of service in the Senate, Senator LONG has exhibited leadership and a rare dedication to the tasks he has undertaken. He will be missed by this Senator and by every colleague, past and present, who has had the pleasure of serving with him.

I want to bid RUSSELL LONG a fond farewell and wish him the very best that life has to offer as he returns to his beloved State of Louisiana. I want to thank him for the time and energy he has devoted to this body and to the Nation. Louisiana's gain is our loss. RUSSELL, we will miss your skills as a legislator as we will miss your wit and humor.

God bless.

SENATOR CHARLES McC. MATHIAS, JR.

Mr. JOHNSTON. Mr. President, it is altogether fitting that Senator CHARLES MCC. MATHIAS should have represented the State and people of Maryland in the U.S. Senate for the last 18 years. He is the embodiment of the virtues of tolerance, graciousness, respect for the past, and diversity which characterize that great State. I don't know where his talents will be most missed—on the Foreign Relations Committee, where he was a leader in drafting antiapartheid legislation; on Judiciary, where he has scrutinized closely but fairly the credentials of those who will sit on our courts; or on Rules and Administration, whence he led the Senate, over my sometimes heated objections, into the television era. His greatest legislative legacy may well turn out to be the Chesapeake Bay on whose rehabilitation he has worked for 15 years. It is certain, however, that the poor and disenfranchised on whose behalf he sponsored civil rights, voting rights, and fair housing legislation have reason to be grateful to him for his untiring efforts on their behalf.

Like Sir Christopher Wren, his monuments are all around us, so we are not likely to forget him. I am sure that he will continue to be active on behalf of his State and its citizens in the years to come.

SENATOR THOMAS F. EAGLETON

Mr. JOHNSTON. Mr. President, Harry Truman, another Senator from Missouri, once said that democracy was based on the conviction that man has the moral and intellectual capacity to govern himself with reason and justice. I suspect that TOM EAGLETON took that as his motto a long time ago. It is clear that in his 18 years in the U.S. Senate, Senator THOMAS F. EAGLETON has devoted himself to ensuring that Government operates with both compassion and efficiency. The inspectors general legislation he sponsored have saved the taxpayers many millions of dollars, but even more important, have conveyed to the Nation the urgent sense of responsibility the Congress feels for the upright administration of Government.

Senator EAGLETON in going home to Missouri to practice law, to teach and to write. We know that he will do all of these well, because we know him as one of those rare Senators who, by the power of a single speech, can change the direction of thought in the Senate. This is not only because of his eloquent delivery, the cadence, the timbre of voice, the cogent and persuasive reasoning; in the end what convinces us is the force of character of the man. He has earned our admiration and affection, and we wish him well.

SENATOR GARY HART

Mr. JOHNSTON. Mr. President, last year the Senate was pleased but not surprised to discover that Senator GARY HART had unveiled yet another talent. His best-selling novel, "The Double Man," demonstrated his ability both to shine in a new genre, and to work successfully with a colleague from the other side of the aisle. It is clear that, both as a Senator and a writer, he is a man for all seasons.

Since he came to the Senate in 1972, Senator HART has shown a capacity for hard, meaningful work. His eloquence in debate on critical defense issues reflects both his mastery of detail and the long thought which has gone into the shaping of his positions. In his 14 years in this body, we have learned to recognize and appreciate his subtle sense of humor and the strength of his character. He is his own man, never following the polls or going with the flow, but consistently defending the national interest as he sees it. Like the mountains of Colorado, he stands up straight and tall. We will miss him.

SENATOR RUSSELL B. LONG

Mr. JOHNSTON. Mr. President, at the end of this Congress, my very good friend RUSSELL LONG is going home to Louisiana. I will miss him very much. He has been in every way the perfect Senate colleague.

Since the first day I came here, he has been more than generous in giving me credit for matters we jointly worked on, and this generosity has been reflected in the way our staffs have cooperated—no rivalry, no jealousy, no envy of the other's success.

RUSSELL LONG is one of the country's great raconteurs. He has an incredible store of anecdotes, many about Uncle Earl, which he can recall at will to suit the occasion. Time after time, I've seen him in serious, intense debate bringing out the perfect story to illustrate the silliness of his opponent's arguments. His designation by his colleagues a few years ago as the "Best Senate Debater" was due in no small measure to his ability to tell the right story at the right minute.

His command of legislative procedure and substance is remarkable; I've never seen him read a speach. Even more important, his sense of timing in debate is without parallel. He knows when to delay and when to ask for a vote. He hs a sixth sense about the mood of the Senate.

His humor and affability are contagious. He is equally at home regaling hundreds with an after-dinner speech or sharing a joke with two or three Senators at lunch. One of his more endearing characteristics is the way he laughs at his own stories as he tells them.

RUSSELL LONG was born into a political family. In their tradition, he enjoys politics and is a consummate politician. One secret of his effectiveness has been his candor. If there is a Louisiana interest involved in a piece of legislation he is handling, he not only doesn't try to hide it, he lets it be known up front. The casual observer might mistakenly dismiss this openness and realism as pork-barrel politics, but Senators know better. RUSSELL does not stoop to subterfuge, and I've never known a public servant who has a higher sense of the national interest.

One of the clearer examples of this was the controversy over the Panama Canal treaties. As the debate progressed, it became obvious that the treaties were terribly unpopular in Louisiana. A man who valued prudence over principle might have ducked the issue. RUSSELL chose to vote his conscience and suffer the consequences; happily for him and for us, he has outgrown them, and, if there is

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anywhere he is better loved and appreciated than in the U.S. Senate, it is in Louisiana.

Polonius advises us to be true to ourselves so that we will not be false to others. In his 38 years in the Senate, RUSSELL LONG has been true to himself, and to the best interests of his State and his country. You cannot say more—or better—about a public servant. We will miss him.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. JOHNSTON. Mr. President, the end of a Congress inevitably brings loss to the Senate. It is always hard to say goodbye to friends and colleagues who have shared legislative experiences, but especially so when your friend is also your tennis partner. So let me express my profound hope that PAUL LAXALT's retirement will not take him out of the city.

Senator LAXALT brought to the Senate the candor and congeniality characteristic of the West. Secure in himself and in his judgments, he "tells it like it is," and, in so doing, has earned bipartisan respect and affection. He has the confidence of the President, and has carried out the diplomatic efforts entrusted to him with a frank honesty which, in the case of the Philippines, may have averted disaster and great loss of life. Being an ombudsman is often a thankless task, but Senator LAXALT has worked long and loyally for his party and his President. I am sure that I speak for my colleagues on both sides of the aisle when I say how much we will miss him.

TRIBUTE TO SENATOR BARRY GOLDWATER

Mr. JOHNSTON. Mr. President, when Emerson said that there is no history, only biography, he was anticipating Senator BARRY GOLDWATER. It is not possible to imagine the last 35 years in American politics or the last 50 years in American aviation without him, and American political writing would be much blander in the absence of his blunt, pithy aphorisms.

The Nation, not just his electorate in Arizona, owes him a vote of thanks for his Senate service. To the Senate Armed Services Committee he has brought knowledge, practical experience, critical judgment, and the invaluable ability and courage to tell the truth and shame the devil. He embodies the conscience of a true conservative, and the courage of the air transport pilots with whom he flew in World War II. I honestly cannot imagine the Senate without him.

TRIBUTE TO SENATOR THOMAS EAGLETON

Mr. INOUYE. Mr. President, as the 99th Congress draws to a close, we will be saying goodbye to many friends who will be leaving the Senate. I wish to take this opportunity to bid a fond aloha to a dear and trusted friend, TOM EAGLETON.

I have had the privilege to serve with TOM in the Senate since 1968, and in these 18 years of service TOM has been a leader, and served with pride and dignity.

I have been the ranking member and past chairman of the Senate Appropriations Subcommittee on Foreign Operations, and in this capacity, I have found TOM's expertise in foreign relations invaluable. TOM has been a member of the Senate Foreign Relations Committee and has been a valuable adviser to his colleagues on that committee.

TOM is respected by his colleagues here in the Senate, and admired by his staff and his constituents. He has served the people of the United States and his constituents of Missouri well. They can be pleased in their decision to have TOM represent them in this body.

I wish him well in his future endeavors.

TRIBUTE TO SENATOR BARRY GOLDWATER

Mr. DODD. Mr. President, after a political career that has spanned four decades and after 30 years in this body, Senator BARRY GOLDWATER will retire at the end of this Congress. As his colleagues, we will miss his intensity, his candor, and his independent thinking.

His political career has been spectacular by any standards. He stormed onto the national political scene in 1964 with a Presidential candidacy that sparked his party to life. Many in his party, including our President, acknowledge their debt to Senator GOLDWATER. His inspiration and leadership encouraged them to pursue their own political careers. Although we are often on opposite sides on an issue, I have learned to respect and admire Senator GOLDWATER's fierce loyalty to his values and his willingness, or more accurately, his insistence on speaking his mind.

Besides his role as a national spokesman for conservative policies, Senator BARRY GOLDWATER has been a significant legislative force on many fronts in the U.S. Senate. His Senate career has been highlighted by important work in establishing national telecommunications policy as chairman of the Commerce Committee's Subcommittee on Telecommunications. As chairman of the Intelligence Committee, he provided diligent and responsible leadership. His adamant insistence on proper congressional oversight and his criticism of the administration's covert operations proved that underneath all the tough talk, there was a man well aware of the legitimate uses and limits of force.

Finally and most recently, as chairman of the Armed Services Committee, he undertook the monumental task of reforming our military bureaucracy. The final product was the Armed Services Reorganization Act designed to alleviate the chain-of-command and service rivalry problems which have dogged our military for years. Only a man of Senator GOLDWATER'S stature and unquestioned commitment to our national security could have carried it off, and for this we will remember Senator GOLDWATER for a long, long time. This carefully crafted legislation may well be Senator GOLDWATER'S greatest contribution to the defense of liberty. I wish the Senator well in his new career as a private citizen.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. DODD. Mr. President, to the media, PAUL LAXALT is known as Ronald Reagan's best friend in the Senate but to his colleagues in the Senate he is known as a loyal public servant, an able legislator, and a good friend. After 12 years of service in this body, PAUL LAXALT has chosen to retire.

PAUL'S tenure in the Senate has been marked by loyal service to his constituents and his conservative political goals. Although I am often at odds with PAUL on policy issues, I have grown to admire and respect his integrity, his courage, and his independence. PAUL has also served as an able spokeman for the Western States, arguing for low water-user fees for westerners and leading the successful effort to quash the MX missile "racetrack" basing proposal. In addition, PAUL has also ably served the President, advising him on many fronts, from up-to-the minute reports on the political pulse of this body to sensitive defense and foreign policy issues. Recently, we saw PAUL serving as the President's special envoy to the Philippines and advising Ferdinand Marcos to relinquish power.

It is with great fondness and reluctance that I say goodbye to Senator PAUL LAXALT. His cool-headed leadership has served this country well and I wish him all the luck in the world. I am sure we have not seen the last of PAUL LAXALT.

TRIBUTE TO SENATOR GARY HART

Mr. DODD. Mr. President, it is with considerable regret that I rise now at

the occasion of the retirement of Senator GARY HART. At the peak of his career, he takes from this institution his rare energetic and optimistic spirit, his inspirational and ambitious hopes for bettering our society, and a comprehensive understanding of military and environmental issues, among others, which has provided immeasurable benefit to this body through 12 or our Nation's most uncertain years.

It is common to say that GARY HART is a visionary. He is a man who has dedicated himself not to the minutiae of the present, but to seeking long-term legislative, economic, and military strategies for charting America's future. But in accomplishing that, the resources he drew upon and the bold and often startling new policies he advanced were far from common or conventional. Rather, GARY HART has brought to the Senate a battery of impressive initiatives that evidence his formidable intellect and know-how, his integrity as a man, and his faith in the future of this country as a just society and world power.

It has been a pleasure to have had the opportunity to work with a man who cares as deeply about this country as GARY HART. In environmental issues, for instance, he is unmatched in his devotion to preserving the quality of our lives. Whether he was fighting for the protection of our air or water, or that of our children from the risks of nuclear power, Senator HART always went after permanent, effective solutions. Yet through those efforts, he was always tremendously realistic—GARY HART is an achiever, not a zealot. He was always as quick to tell the most ardent not only what they could accomplish, but what they would not, and in the tradition of great leaders, he defined his goals with an acute sense that incorporated his own vision with a deep understanding of the possible in America.

In his tenure in the Senate, GARY HART never shrank from taking on the most firmly entrenched ideas or institutions. He surprised us and shook up many in the defense establishment when he outlined his strategy for the congressional "military reform" movement. He brought understanding of warfare and defense policy to this body that few were able to apply to this difficult issue.

Senator HART's departure will be a great loss to the U.S. Senate. But we all know he will continue to be a prominent figure in the national political debate. Although he leaves many friends and admiring colleagues here, I am sure the American people will continue to benefit from his service. We look forward to his continued presence on the national scene.

TRIBUTE TO SENATOR THOMAS EAGLETON

Mr. DODD. Mr. President, a catalog of the accomplishments of the retiring senior Senator from Missouri, THOMAS EAGLETON, will record the most profound moments in the last two decades of American history.

Senator EAGLETON took upon himself the burden of the most salient, formative issues of our time. Anyone who has had the opportunity to engage him in debate, especially on an issue that truly moved him, knows that neither florid rhetoric nor fancy rationales ruffled his feathers or penetrated his firm sense of right and wrong. This body saw no Senator who could so quickly and so economically drive to the heart of an issue, and his were the issues that have fundamentally shaped our Nation in the 1970's and 1980's.

A staunch opponent of the war in Indochina, he took the lead in the Senate as a first-term, junior Senator by successfully advancing the amendment that cut off funding for the bombing of Cambodia. But recognizing more quickly than anyone the vital historical lessons of that war, he wrote his convictions into national principle by drafting a great part of the War Powers Act which redefined Presidential power to exercise American might. As on all issues he truly cared for, he was a diligent, powerful advocate of that bill, but he displayed his true stuff when, feeling that the final format was insufficiently restrictive, even after the considerable time, dedication, and sweat he poured into it, he withdrew his support.

More recently, I personally found Senator EAGLETON across the fence on an issue that was extremely delicate, significant, and morally difficult for both of us. That was the determination of the final format of the United States-United Kingdom Supplementary Extradition Treaty. Mr. President, I need only say that any one who has locked horns with THOMAS EAGLETON can only have increased respect for his intellectual powers and his professional capabilities. He is a formidable advocate and a principled man, and he has demonstrated that time and time again in this institution.

His contributions have been many, and in his pursuits as a legal scholar, I am certain he will continue to produce great things, and move many minds in his productive years ahead. His departure will be a great loss to this body, but we can take satisfaction in knowing that that loss will be his students', and ultimately society's, gain.

RETIREMENT OF SENATOR GOLDWATER

Mr. MATTINGLY. Mr. President, I rise to pay tribute to a distinguished colleague, a valued friend and a political godfather of mine, Senator BARRY GOLDWATER.

The 1964 Goldwater Presidential campaign—crusade, perhaps, is a better word to describe that exhilarating effort—was a catalyst that resulted in the political activism of millions of Americans; one of whom was a businessman in Georgia who became increasingly intrigued with the message of the Arizona Senator and who, more than 20 years later, has the high honor of serving in the U.S. Senate with him.

The results of the 1964 campaign, for those of us who believed that more government is not necessarily better government, were disappointing to say the least. Indeed, at the time, his defeat in the Presidential contest was so overwhelming, apparently so final, that many viewed that effort, that crusade, as having ended in failure.

But with the advantage of hindsight and the benefits of the passage of more than two decades, we are able to view that electoral outcome in a somewhat different perspective and recognize that it was not the end of the effort to inform public policy and public offices with the conscience of conservatism, but merely the beginning of what was to become one of the most enormously successful political revolutions that our Nation has ever seen.

I find it irony of the highest order that during that 1964 campaign BARRY was pilloried as some sort of throwback, a man with one foot planted in the 19th century, his gaze firmly fixed on the 18th.

Well, Mr. President, if he was a throwback it was not to the 19th or 18th centuries but to the 14th because if ever there was a true renaissance man, it is BARRY GOLDWATER.

Here is a man, Mr. President, who has served with distinction in the U.S. Senate; obtained his party's nomination and ran for the highest elective office in our land. He has flown every aircraft in the Air Force inventory, and, I suspect, some that are not. He is a magnificent photographer. He is probably an electronic genius. He is a family man who has never lost sight of what truly is important in our daily lives.

Mr. President, time does not permit me to go on at the length that I would like and that would be required to even begin to detail the accomplishments of this extraordinary man.

Those who have been fortunate enough to serve in this body with this man have been truly blessed. It will not take long for those who return next year to lament the loss of his presence.

His Senate seat will be filled—but not his shoes.

Mr. President, with deepest respect and affection, I will conclude only by

noting, that in our hearts, we always knew he was right.

RETIRING SENATORS

TRIBUTE TO SENATOR TOM EAGLETON

Mr. CHILES. Mr. President, the State of Missouri has sent some superior men to the U.S. Senate, from Thomas Hart Benton and Carl Shurz, to Stuart Symington, and Harry Truman. To that distinguished roster, Missouri added the name of TOM EAGLETON in the autumn of 1968. And, as he leaves the Senate now, he also leaves behind him the record of a man as young in spirit as the 39 year-old former Missouri attorney general who took his seat here 18 years ago.

Each person, I believe, possesses two key qualities. One is a sense of fairness. The other is the ability to discern right from wrong. In TOM EAGLETON, both those qualities are honed to a fine edge.

I have seen him toss niceties aside and cut right to the core of judgment on some very difficult issues. I have been with him in hearings where sentiments and emotions were tightly strung. In those times, while so many others wrestled with their own prejudice, I have seen TOM EAGLETON set down the facts, make the case clear, and help his Senate colleagues see the right and the wrong of a question.

TOM EAGLETON—like Senator TOM EAGLETON— is true to his own feelings. In the grain of his life, it is a strong sense of justice and courage that has guided him through a career of honor and good will.

What it comes down to is TOM EAGLETON is a decisive man. There is a cost in that. We all pay a price for making up our minds. But TOM EAGLETON has not spent his Senate tenure defending his personal balance sheet. He has acted out of concern for his country and personal commitment to doing what's best.

He has been a champion of older Americans, an enemy of waste in Government, and as the former chairman of the Senate Appropriations Subcommittee on Agriculture, he has been a constant friend of farmers throughout this country.

Senator EAGLETON has always been a faithful Democrat, a man to look hard choices straight in the face, and do what he thought necessary and best for his country and his party.

TOM EAGLETON returning, now, to the practice of law teaching and journalism, is not a man to be still about the course of his country. He has poured 18 years of his life into this Nation, but the contributions have many years yet to flow.

I extend to him and to his family my best wishes, in friendship and respect, for a short rest, and a long career as a Missourian with new youth and plenty more to give his country.

TRIBUTE TO SENATOR GARY HART

Mr. CHILES. Mr. President, more than half a century ago, Antoine de Saint Exupery wrote "Night Flight." And in it, he said this: "in life there are no solutions. There are only motive forces, and our task is to set them acting—then the solutions follow."

In his two terms in the U.S. Senate, GARY HART has "set the motive forces acting." Across a broad range of national issues— from better education to international trade, from clean air, to skies free of radioactivity, to a world free from the nuclear arms race—he has been an inventive voice for change in a stubborn world.

I have served with GARY HART on the Senate Budget Committee, where his deliberate, thoughtful manner belied the passion of his beliefs. GARY HART has vision, but he is a practical man. He knows the kind of America he wants us to become, but is willing to immerse himself in the hard policy choices to get us there.

As a candidate for the Democratic Presidential nomination in 1984, he was relentless in the search for fresh thinking to shake the Nation from what he saw as a lethargy induced by dodging one more economic bullet. He saw the economic recovery as an opportunity for the country to make plans for the future.

Senator HART understands better than most that this country is on the seam between what we were and what we hope to become. His belief is that the days of comfortable domination in international affairs are over. We can no longer depend on our economy as an automatic savior.

But rather than viewing these affairs as a setback or a loss, he sees them as the inevitable consequence of a world which has patterned itself to so great a degree on the American example. In that respect, these new challenges are an opportunity for this Nation to set a new example and a still higher standard.

That, it seems to me, is the message GARY HART leaves as his legacy to the Senate and to the Nation. None of us can know the future. But all of us can influence its direction.

GARY HART knows that, and it's certain that his influence will be felt for many years to come.

TRIBUTE TO SENATOR BARRY GOLDWATER

Mr. CHILES. Mr. President, many years ago someone asked Harry Truman about his habit of giving people hell. The former President said, "I never give people hell. I just tell them the truth and they think it's hell."

In the 30 years BARRY GOLDWATER has served in the U.S. Senate, he has dished out a lot of truth to all of us, and some have left singed in the aftermath.

He is blunt, honest, impatient, wise, and generally unimpressed with testimonials. A native born son of Arizona, BARRY GOLDWATER speaks the common sense language born of a lifetime among the rivers, canyons, and deserts of the Southwest.

He ran for President in 1964, took his defeat in stride, and 4 years later returned to the Senate where he's spearheaded the reconstruction of American defense readiness.

When Major General GOLDWATER retired from Air Force duty in 1967, he was a seasoned, hands-on expert in the frontiers of military aviation. He's been in the cockpit of Thunderbolts, Lightnings, Warhawks, and Mustangs. He's flown Sabre Jets, Starfighters, Flying Fortresses, B-52's, and our frontline helicopters. He made his first solo flight in 1929, and has flown the most modern, high-performance planes in our inventory.

The aircraft he's flown—too numerous to list—and the impact he's had on aviation, led to his induction into the Aviation Hall of Fame in 1982, and to the Harmon Trophy for lifetime achievement in aviation.

BARRY GOLDWATER has been a vital part of this country's advance into the era of high technology. And, perhaps most important of all, he has been on the ramparts of national defense throughout his years of public service.

His skilled leadership that produced this year's reorganization of the military, is a tribute to his insight, vision, and patriotism.

I really can't say enough about the quality of BARRY GOLDWATER's service to this Nation, but he would probably protest that I've said more than enough already. But it must be said that he's a man of deep conviction, and an authentic statesman.

Each of us in this body knows we sometimes snarl ourselves in bickering to the neglect of straight-ahead movement on key issues. And in those times, we have been able to count on the Senior Senator from Arizona to get us back in the saddle.

We will miss that in this body with the departure of Senator GOLDWATER. But the record of candor and achievement he leaves written on the pages of our history mark him as a man who knows America. He knows our genius and he knows our shortcomings. And he knows, so much better than most, the virtue of a stiff push when it's needed most.

He now leaves the Senate and returns to Arizona. But his work and wisdom will influence this Senate and this Nation for years to come.

TRIBUTE TO SENATOR RUSSELL LONG

Mr. CHILES. Mr. President, after 38 years, the Senate without RUSSELL LONG will be a reduced institution. For 14 of those years, he was chairman of the Senate Finance Committee. His

expertise on tax policy is legendary. His stewardship over Social Security, and his involvement in the birth and development of Medicare are achievements to fill the memoirs of several Senators.

In fact, that is what Senator LONG has been. He was a stalwart on energy policy during the Arab oil embargo. He has been assistant majority leader. But more than anything else, he has always been formidable.

Regardless, of the issue, RUSSELL LONG, could sit in this chamber and listen. I have seen the Senate inundated with conflicting arguments, charts, statistics, and lofty phrases. I have seen us locked in frustration and raw tempers. And I have seen RUSSELL LONG, ask for the floor, and boil down the choices. He had the special ability to force the Senate to understand.

RUSSELL LONG is a brillant man, with an amazing memory. He will rise to his feet in the Senate, the picture of apology for intruding upon debate. He tells a folksy story and Senators smile. He will pause, go off in a different direction, then go off in another. He injects an anecdote. He shuffles some papers on his desk. There is a look on his face that can be read by the unknowing as a question. But it is really the look of the fox inviting the chicken to dinner.

When RUSSELL LONG asks you a question, he already knows the answer, what his reply will be, that your response to that will be and how the question will be decided. He knows people, their strength, their weakness, and their ways.

He has been at the center of national economic debate for nearly four decades. His inventory of experience has proven to be a source of caution in times of doubt, and leadership when the Senate was at a standstill.

Senator LONG has held a unique place in this body. He, in fact, has been a one-man institution, spinning plans, ideas, and reason into the mainstream of American affairs.

Lousiana is a State rich in political tradition, and those who serve after RUSSELL LONG goes back home will be quality folks. But the LONG magic is part of history. And it is in our future. The work he turns over to others will bear the stamp of RUSSELL LONG for generations to come.

I strongly suspect he will miss the Senate to the same degree that the Senate will miss him. But in the archeology of national affairs, RUSSELL LONG has left sizable prints. They will be studied for years as the historians try to unravel the years that took us from the industrial surge to the threshold of high technology. To all that, RUSSELL LONG was more than a witness, more even than a principal. He has been a shaper of the course and a giant in the Senate.

TRIBUTE TO SENATOR CHARLES MC C. MATHIAS

Mr. CHILES. Mr. President, it is a well-known maxim that the Senate is a continuing body. But the practical source of that continuity are those people with the long view of events, those who work hard to fashion the workable agreements. Senator MATHIAS has been that kind of craftsman.

He has strong views of his own. He never relents in his efforts to do what's best for Maryland. But it is not his style to let partisanship rule his judgment, nor to put his preferences ahead of the national interest.

It has been my good fortune to serve with him on the Senate Committee on Governmental Affairs. His affability, and temperate approach to thorny matters has always been instrumental in whatever progress we make.

By training, he is an attorney, and that training together with his patience has made him a respected voice on the Judiciary Committee. His work on the Foreign Relations Committee reflects his own decency and compassion for all people throughout the world.

CHARLES MATHIAS is a man of discernment and courage, a reasoned force for deficit reduction and sensible economic policy. He is a softspoken man, who takes the time to listen, to survey the options, weigh them, and cast an informed vote despite the pressures of politics.

He has been a widely popular Senator, able to earn votes across the party spectrum because his fellow citizens always believed his only aim was to do what was right.

The Senate will miss him as much as his State will miss his service. He was and remains a man of his word, a strong and determined Senator doing the best he can.

I wish him the very best, and hope he will not be a stranger to the Senate as he takes up a second career.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. CHILES. Mr. President, earlier this spring, I read a newspaper article in which PAUL LAXALT talked about deciding to retire from the Senate. He said, "There is life outside the U.S. Senate . . . If I can work on the outside and keep my hand in public service, it would be the best of both worlds."

By his own admission, Senator LAXALT has not been especially fond of the plodding pace of the legislative process. In some ways, the long hearing and markup sessions have left him with a sense of confinement.

But that is not surprising considering his affection for the hills of his native Nevada. I have heard him say on many occasions how much he loves the solitude of the hills where he spent so many summers herding sheep with his father. And he has taken his own grandchildren to those same hills to let them develop a feeling for the beauty and strength of nature.

On two occasions PAUL LAXALT has had to make difficult decisions about his career in Government. Although a popular and respected Governor, he turned down the opportunity to seek another term. Although a popular and nationally respected Member of the Senate, he has decided to lay that aside. He has made it clear there are things in his life more important than public acclaim, and we must respect his wishes.

Certainly, PAUL LAXALT has been a dependable lieutenant of Ronald Reagan throughout the President's tenure in office. He has been steadfast in supporting the White House positions on the broad range of issues, and has often taken to the White House sometimes unwelcome but always realistic assessments of events in Congress. Yet Senator LAXALT also took that same message from President Reagan to Ferdinand Marcos when it became clear the former Philippine leader no longer had the support of the American people.

Senator LAXALT, throughout his Senate career, has had a feel for the big-picture side of the issues. His contribution to the Senate has been solid, genuine and worthy. He certainly has my heartfelt good wishes for his retirement years, which I trust will continue to be active in service to his native State.

FAREWELL TO SENATOR GARY HART

Mr. DECONCINI. Mr. President, we are soon to part with several of our colleagues who are retiring from this body, and I rise to acknowledge the unique contribution of one of them, my colleague from the great American West, the Senator from Colorado, Senator HART.

In his two terms in the U.S. Senate, GARY HART has witnessed great changes in both the institution and the Nation it serves. And he has had the vision to recognize these changes for what they are—precursors of a new era, full of challenge and hazard and opportunity.

GARY HART, perhaps more than any other Senator, has made this realization the theme of his service to his country. He has channeled his energies toward preparing America for its new age. He is a man of ideas who has faced the complex challenges of the Nation and translated those challenges into constructive solutions.

Last winter, I was pleased to cosponsor one product of GARY HART'S energy—the budget alternative that he and other Budget Committee Democrats offered for fiscal 1987. I supported him in that effort, because I share his belief that we can have fiscal re-

sponsibility in this country without mortgaging our national future. In fact, we cannot have it any other way. Moreover, I share his belief that true responsibility means providing for the education of our young and investing in our future commerce and industry. GARY HART never shrank from the truth in framing the policy questions before us. It is our generation that must prepare for the generations to come, with investment and also with sacrifice.

Nothing is more essential to our national future than our national security. And in his work on the Armed Services Committee, GARY HART demonstrated a commitment to the Nation's defenses that was second to none. He joined the Navy Reserve and cofounded the Military Reform Caucus. He became a leading national advocate for a leaner, meaner defense that plans for the future—not the past—and spends its money accordingly. While GARY and I may have differing views on how to achieve our passionate and mutually-shared objective of a peaceful and nuclear-free world, GARY's indepth knowledge and analysis of military and nuclear issues will be sorely missed. In the world's most prestigious deliberative body, GARY HART ranks among the premier debaters in its history. It is difficult to imagine a debate on arms control without GARY being a major participant. His thoughtful and informed voice will be especially missed in those discussions.

GARY HART's concern for the future shone through as clearly in his work on the Environmental Committee. The natural resources of America are the basis of our prosperity and the heart of our national legacy. As a Senator from the Nation's still-unspoiled West, GARY carried a special concern for this legacy with him when he came to Washington. It was this concern that motivated GARY to help expand wilderness designations to a magnificent and unprecedented 2.6 million acres. But GARY HART's concern went beyond his home State.

He arrived here when national awareness of the environment was stirring as never before. He played a critical role in developing some of the landmark environmental legislation of the 1970's—the Clear Air Act, the Clean Water Act and the creation of Superfund. In the current decade, he has worked to renew and broaden and strengthen all of these laws.

He served as chairman of the National Commission on Air Quality and delivered an early warning against the threat of acid rain. He served as chairman of the Nuclear Regulation Subcommittee and as chairman of the Senate investigation of the Three Mile Island nuclear accident, identifying himself with heightened protections for citizens and consumers and greater performance accountability for the nuclear industry.

Again and again, GARY HART has taken tough positions on behalf of future generations. For a decade, he has fought an often lonely fight against our dependence on foreign oil—so that Americans in the 1990's and beyond will have the energy they need.

He has taken a principled stand against contributions from PAC's—political action committees—even as such contributions have become the centerpiece of political fundraising.

And he has been willing not only to take a stand, but to lead the fight, no matter what the odds. The Senate will remember his battle against Gramm-Rudman and his long struggle on behalf of arms control.

GARY HART was here when I first came to the Senate, and it's hard for me to imagine the Senate without him. At the same time, I know that GARY won't really be gone. He may be passing into the Senate's history, but he will remain a part of the Nation's present and the Nation's future—for as long as he chooses.

GARY is one Westerner who has never ridden off in to the sunset. he's still riding into the dawn.

I want to join my colleagues in thanking GARY for his dedicated service to this Chamber, to the Nation, and to the people of Colorado, and to which him a fond farewell and every good wish as he rides into the dawn.

SENATOR HART'S ACHIEVEMENTS

Mr. DECONCINI. Mr. President, Senator HART's staff has compiled an impressive and detailed summary of GARY's achievements during his tenure as a U.S. Senator. The thickness of the document bears witness to the imprint that GARY has left on this Chamber. I believe it merits review by the Members of this body, by Senate staff and by the American people, and I ask unanimous consent that the full text be printed in the Record.

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

I.—LEADERSHIP

In the last twelve years, the Senate has dealt with a variety of challenging issues—issues that were exceptional because they were complex, politically difficult or emotionally charged. It is significant that, in the face of these challenges, the Senate turned to Gary Hart:

Appointed to Select Committee to Investigate the Intelligence Community;

Chairman of National Commission on Air Quality;

Advisor to SALT II Geneva Talks;

Chairman of Senate Three Mile Island inquiry;

Coauthor of Armed Services Committee Study on strategic warning system;

Chairman of Senate Budget Committee Task Force on Synthetic Fuels;

Founder of Military Reform Caucus; and

Co-Chairman of Democratic Budget Task Force.

LEADERSHIP

Senate Select Committee to Investigate the Intelligence Community (1975). Formed under the Chairmanship of the late Senator Frank Church to investigate abuses by the intelligence community, report and recommend reforms.

Hart: Key role in investigation and drafting of Committee findings.

Elected Chairman, National Commission on Air Quality (1978). The panel was created by Congress with the passage of the 1977 Clean Air Act amendments to study the implementation of the new statute and to recommended ways to improve environmental regulation.

The Commission had 13 representatives of the environmental, scientific, and business communities, Republican and Democratic Members of Congress, state government and Indian tribes.

After two and one-half years of study, the Commission published a comprehensive report, "To Breathe Clean Air," that contained 433 findings and 109 specific recommendations.

Appointed advisor to SALT II arms control talks in Geneva. Urged approval of the Treaty during Senate reelection campaign in spite of intense, conservative opposition to the Treaty.

Chairman, Senate Investigation of the Three Mile Island nuclear reactor accident (1979). As Chairman of the Senate Environment and Public Works Subcommittee on Nuclear Regulation, Senator Hart led an extensive and difficult inquiry into the accident at Three Mile Island. At the conclusion of study, Hart convinced the Senate to approve a series of significant reform measures to:

1. Require each State with a nuclear power plant to have an evacuation plan approved by the Nuclear Regulatory Commission;

2. Accelerate the assignment of NRC inspectors at each nuclear power plant and increasing the number of such inspectors being trained;

3. Improve the training, retraining and licensing of nuclear plant operators;

4. Require the NRC to propose a plan to respond to emergencies; and

5. Require the President to develop a national contingency plan to ensure a coordinated Federal response to future emergencies.

Coauthor, with Senator Barry Goldwater, of 1980 Senate Armed Services Committee report on Command, Control, and Communications strategic warning system. In addition to recommending ways to modernize the NORAD facility, the inquiry revealed that during an eighteen-month period, the warning system had registered 151 false alarms—one of which lasted a full six minutes, half the time it would take a Soviet, submarine launched ballistic missile to reach its target in the United States.

Hart authors comprehensive proposal [Strategic Talks on Prevention] to prevent the triggering of a nuclear conflict by miscalculation:

Creation of jointly staffed US-Soviet crisis prevention centers;

Steps to prevent nuclear proliferation;

Reductions of nuclear war-heads and missiles, particularly MIRVs.

Chairman, appointed by then-Senator Edmund Muskie, of Senate Budget Committee Task Force on Synthetic Fuels (1980):

Played the decisive role in scaling back the Carter-proposed $88 billion synthetic fuels program to a more reasonable, two-phased $20 billion effort;

Fought suspension of environment standards and won adoption of amendment requiring Congressional approval if there were attempts to spend more than $20 billion on the program.

Proposed alternative tax credit for production approach to massive price support subsidy;

Founder, Congressional Military Reform Caucus (1981):

With Republican Congressman William Whitehurst of Virginia, founded Caucus dedicated to promotion of military reform;

Caucus now boasts membership of 130 Members of Congress from both sides of the aisle. Caucus has led the fight to:

Terminate the DIVAD air defense weapon;

Win Congressional approval of an Independent Testing office for weapons under development in the Pentagon.

Authored, with William S. Lind, *America Can Win,* a book to educate the American public on the principles of military reform.

Co-Chairman, with Senator Lawton Chiles, Democratic Task Force on Alternative Budget (1985–1986, appointed by Minority Leader Robert Byrd):

Led floor fight against enactment of Gramm-Rudman-Hollings "I";

Coauthored, with Senator Chiles, "budget principles," adopted unanimously by Democratic Conference in January 1986;

Coauthored, with Senator Chiles, alternative budget to FY 1987 budget resolution (final Conference Agreement on budget resolution included $400 million from Hart-Chiles amendment to improve math and science education).

Led successful effort to prevent enactment of Gramm-Rudman-Hollings "II" in the wake of Supreme Court decision striking down automatic budget cutting procedure in Gramm-Rudman-Hollings I.

II.—Opposing Bad Policies; Proposing Alternatives

It takes courage to resist the political stampede when others engage in a march of folly. In the Senate, Gary Hart opposed bad policies and offered alternative solutions even when it was in his political interest to go along:

	Position	Hart approach
Economic Policy		
Chrysler loan guarantees.	Opposed	Industrial Modernization Agreements.
1981 Budget and tax cuts.	Opposed	Offered comprehensive alternative: tax cuts to equal not exceed spending cuts; indexing of personal rates.
Gramm-Rudman I/II	Opposed	Led opposition. Offered legislation to repeal. Wrote alternative budget.
Domestic content and textile quotas.	Opposed	Introduced first comprehensive trade bill.
Energy Policy		
Oil import fee	Initiated 1977	Supported Carter effort in 1980. Brought proposal to a vote in 1985 and 1986.
Gasoline tax	Supported	
Synthetic fuels	Opposed	Won approval to scale back program from $88—$20 billion. Drafted alternative plan using tax credits instead of price subsidies.
National Security		
Salt II	Supported	Served as advisor to the talks; won 1986 approval of "no undercut" resolution.
MX Missile	Opposed	Led opposition and filibuster.
Reagan build-up	Opposed	Criticized both size and composition. Formed Military Reform Caucus in Congress and offered military reform budget.
Foreign Policy		
Grenada invasion	Opposed	Author of resolution to invoke the War Powers Act.
U.S. Troops in Lebanon	Opposed	
Reagan Doctrine	Opposed	Criticized both Contra war and weapons for Savimbi, offered alternative policy "Enlightened Engagement" in three-part Georgetown lecture series.
Middle East		Authored comprehensive economic policy tied to peace plan.

SPECIFICS

Reaganomics

In 1981, Hart resisted the political stampede, voting against the Reagan budget and tax plans.

One of twenty Senators to oppose passage of Reagan budget resolution. Senate version and Conf. Report.

One of fifteen Senators opposing passage of the 1981 Omnibus Budget Reconciliation measure (enforce cuts in budget resolution)—Senate bill and Conf. Report.

One of eleven Senators opposing passage of the so-called "Economic Recovery Tax Act" of 1981.

Alternatives. Introduced measures to:

Make tax cuts contingent on achievement of a balanced budget;

Require sunsetting of tax expenditures;

Provide for a capital budget.

Anticipating tides. In October of 1978, Hart introduced comprehensive legislation providing tax cuts and equivalent spending reductions. He criticized Kemp-Roth, a thirty-percent across the board tax cut (seeing it as inflationary and running the danger of creating deficits). The Hart legislation:

Provided a 20% reduction in personal taxes and cut taxes for business;

Cut spending by an equivalent amount, holding transfer payments and discretionary programs to levels below the current budget baseline;

Indexed personal tax rates against inflation.

Tax Reform

The movement for comprehensive reform of the tax code began more than a decade before President Reagan's conversion. Gary Hart campaigned for the Senate beginning in 1973 on a platform stressing tax reform and never wavered from his commitment to that goal.

During consideration of the 1976 tax bill, Hart won unanimous approval from the Senate for his amendment providing for the establishment of a Commission on Tax Simplification and Modernization.

In 1977, Hart introduced legislation providing for the "sunset" of 80 tax expenditures.

In 1978, Hart offered a non-inflationary, deficit-neutral alternative to the so-called "Kemp-Roth" tax bill, providing for:

A phased, 20-percent reduction in personal taxes and business tax cuts;

Reductions in federal spending equivalent to the tax reductions he proposed; and

Indexation of personal tax rates.

He offered a similar plan in 1980 during consideration by the Senate Budget Committee of the FY1981 budget resolution.

In 1981, he was one of only 11 Senators to oppose the extravagant, $750 billion Reagan tax give-away program.

In 1983, he endorsed Senator Bill Bradley's Fair Tax proposal and, in 1984 urged Democratic Presidential nominee Walter Mondale to make comprehensive tax reform a key element of the Democratic Platform.

In 1985, Hart won passage by the Senate Budget Committee on his Sense of the Congress resolution urging passage of comprehensive tax reform.

In 1986, he was the *only* Senator to vote against every substantive change in the Bradley-Packwood tax reform bill.

Reagan Build-Up

From the beginning of his service on the Senate Armed Services Committee, Hart fought to change the debate on defense from "more is better" to "better is better." This meant fighting for specific amendments to delete large aircraft carriers, build greater numbers of less expensive submarines, and fighting costly and destabilizing weapon systems.

It also meant compaigning for the adoption of the SALT II Treaty in 1979—an extremely unpopular position for a Senator up for reelection the next year to take. (Hart won adoption by the Republican-controlled Senate of legislation urging the President (in 1986) to continue to abide by the SALT II Treaty.

To recruit new voices to the military reform movement, Hart founded the Military Reform Caucus in the Congress in 1981. Co-chaired by Rep. William Whitehurst, the Caucus grew to boast a membership of Republican and Democratic Members now totalling more than 130.

On the Senate Budget Committee, Hart fought the extravagant increases asked by Defense Secretary Weinberger. In addition, he offered a comprehensive military reform budget in 1983, a budget which:

Reduced Pentagon spending by a net $12 billion over two fiscal years; approximately $27 billion in cuts and $14 billion in *military reform additions;*

Boosted needed investments in soldier pay, operations and maintenance and readiness;

Terminated the Bradley fighting vehicle, the DIVAD air defense gun (subsequently killed by the Pentagon under pressure from Congress), the MX missile and B1 bomber.

Hart launched a filibuster against the MX missile in 1983. He cosponsored an amendment, approved by the Congress, which slowed the development of this missile. In 1985, he was the floor leader for the Democracts in a fight to delete all funding for the MX from the 1986 defense budget. Later that year, he joined a compromise effort to limit to 50 the number of MX missiles procured by the Administration—which initially asked for 200. In 1986, he won approval from the Republican controlled Senate Armed Services Committee for his language establishing a permanent cap on the 50 missiles—after the Administration indicated it would renege on the 1985 agreement.

Protectionism

Since President Reagan took office, the country has seen a dramatic reversal in its once commanding trade posture. For the first time in nearly a century, we are now a debtor nation. Where we once enjoyed a trade surplus, we have unprecedented, triple-digit trade deficits, now threatening to exceed $175 billion. Even in the agriculture sector, which once enjoyed a command-

ing trade surplus, we are now a net importer of food.

Once the party of free trade, Democrats moved in 1983 to become the party of protectionism. Support of domestic content legislation, for example, became a litmus test for Presidential candidates in the primaries. Hart resisted that tide, campaigning against protections for automobiles in the industrial heartland.

In 1985, this trend worsened. Certain key leaders in the Democratic Party introduced legislation to impose a surcharge on imports. Had this legislation been adopted, the United States would have imposed tariffs in 1985 higher than those required under the Smoot-Hawley bill in the 1930s—legislation which prolonged and deepened the Great Depression. Also introduced in the same session of Congress was legislation to impose strict quotas on textile and apparel imports—legislation which would break 34 international agreements the United States had signed. Hart's opposition to both bills was significant.

Unwilling simply to criticize, Hart introduced the first comprehensive trade alternative that promoted *competitiveness* in lieu of protectionism. His legislation, the Comprehensive Trade Reform Act, identifies both the source of trade problems and proposed comprehensive solutions to deal with them:

Value of the dollar: preparation of agenda for approval by Congress for a "New Betton Woods."

Collapse of overseas markets; revives the Cooley Loan Program to sell surplus U.S. commodities for LDC local currencies.

Coordination of US economic policy: creates an economic counterpart to the NSC.

Reforms of trade laws to encourage end of violations: *Reform of GATT* including trade in services, ag., intellectual property; end unfair practices by talks or competitors to face penalties stronger than in current law.

Reform for industrial competitiveness: Contains reforms in the areas of trade in services, export promotion, antitrust reform;

Educating students: improvements in elementary, secondary, and college courses in math, science, computers, and foreign languages to provide students with competitive skills.

Strengthen and improve trade adjustment assistance program

Gramm-Rudman

In October of 1985, Senate Republicans tried to rush approval without debate of the most sweeping changes in Congressional budget policy in a decade: the deeply-flawed Gramm-Rudman-Hollings legislation. The bill provided for arbitrary across-the-board cuts in Federal programs; exempted "big-ticket" military hardware; put tax increases 'off-limits' for deficit reduction; and, in defiance of the constitution, charged an unelected federal bureaucrat with the responsibility of making the deep reductions.

In spite of the political popularity of the measure—it won on the first day of introduction over 40 Senate sponsors—Hart resisted the tide. He forced the Senate to debate the measure. In an extraordinary Saturday session, he used over 2 hours of debate time. In questions posed to Senate sponsors, he uncovered a series of "mistakes" and drafting problems in the legislation (including the fact that military contracts were excluded from the cuts). Hart asserted the measure was unconstitutional.

House Democrats did not have a strategy for dealing with Gramm-Rudman. Hart's dissent layed the groundwork for nine days of Senate debate *buying time for the House.* At the end of the first Senate debate, he was one of only 24 Senators to oppose Gramm-Rudman.

In 1986, Hart introduced legislation to repeal Gramm-Rudman. He offered a comprehensive budget alternative to the first Senate budget produced under Gramm-Rudman constraints. When the Supreme Court declared the measure unconstitutional, Hart again led a floor fight against Gramm-Rudman-Hollings II. In August, 1986, he was able to prevent the Senate from adopting the measure as an amendment to the debt ceiling legislation.

Energy Policy

Hart first came to the Senate during the first "oil crisis," and became a leader on energy policy. He fought for conservation, incentives for independent oil and gas producers, in favor of *vertical divestiture,* of the industry, and on behalf of strict regulation of nuclear energy. In 1977, *he first proposed a fee on imported oil.*

In the midst of the Iranian oil cut-off, there was a political stampede to do something, "anything," to deal with the energy crisis. Hart, who was involved with the debate over energy policy from the beginning of his first Senate term, played a leadership role—opposing key elements of the unwise Carter proposal and proposing alternatives.

Synthetic Fuels. Hart opposed the creation of a massive $88 billion synthetic fuels program. He proposed a less costly alternative:

Instead of an independent Energy Security Corporation, and Office of Energy Security *within the Department of Energy.* The Office would be directly responsible to the Secretary of Energy. Rather than guaranteeing funding in advance. Hart proposed a limited annual budget determined by Congress each year based on the actual amount of price guarantees and purchase contracts let.

The ESC, reconstituted as the Synthetic Fuels Corporation, turned out to be a disaster. It was mismanaged. The principal officers were paid extravagant salaries. The office of President changed hands numerous times, and many of the few projects it actually supported folded, because the big energy companies running them determined the projects would never be financially viable.

Hart was appointed Chairman of the Senate Budget Committee Task Force on Synthetic Fuels. In that capacity, he successfully led the fight to scale down the Administration's $88 billion request to a more reasonable $20 billion amount.

Windfall Profits tax. During Senate consideration of the Windfall Profits tax legislation, Hart offered an alternative to the proposed tax on newly discovered oil (which he criticized as a disincentive to exploration). He proposed a tougher measure, *opposed by the major oil companies,* asking a 100% tax on unearned profits from the sale of old oil which had been decontrolled by President Carter.

Energy Mobilization Board. Hart led the Senate opponents of this measure, creating a panel with extraordinary powers to overturn environmental regulations over nonnuclear energy facilities.

Fee on imported oil. In 1980, Hart was one of only thirteen Senators to vote in support of President Carter's fee on imported oil. In the years that followed, he introduced legislation providing a $10 per barrel fee on imported oil, with consumers receiving rebates through Social Security payroll tax reductions and increases in the low-income energy assistance program. In 1985 and again in low-income energy assistance program. In 1985 and again in 1986, he offered variations of this proposal.

Reagan Middle East Policy

After taking office in 1981, the Reagan Administration was unable to build on the progress started by the Camp David to move toward a comprehensive Middle East peace. It effectively abandoned work on the so-called Reagan Peace Plan of 1982, and committed American troops to Lebanon in 1983—a move Hart opposed.

Once the U.S. Embassy was destroyed by a terrorist's suicide truck bomb, killing over 250 American troops, the US retreated and failed to exercise a role in the region.

After visiting the Middle East in 1986, as leader of a study mission authorized by the Senate Armed Services Committee, Hart unveiled a comprehensive economic proposal—to be complemented by strong, hands-on diplomatic efforts by the Administration, to renew progress in the peace process. The central components of the package are:

Increased aid to Jordan to provide quality of life improvements on the West Bank;

Debt relief for Egypt;

Proposals to increase and improve military cooperation between the United States and Israel.

III.—HART HIGHLIGHTS—99TH CONGRESS

The Senate adopted:

Veterans Judicial Review, S. 367;

Improvements in Department of Labor "job bank";

Interagency study on US-Soviet verification capabilities;

Payments to sugar beet producers;

Investigation of defense contractor fraud; and

6-month day of Interior Department patenting on oil shale claims to prevent land-and resource give-away.

Committees adopted:

Budget Committee approves Hart tax reform amendment to FY1986 Budget resolution;

Environment and Public Works Committee approves Hart citizen suit provisions on Superfund;

Armed Services Committee adopts Hart amendments retaining cap on MX missile production and urging the Administration against undercutting SALT II; and

Environment Committee accepts Hart language increasing nuclear plant liability limits ten-fold.

FLOOR ACTION AND SPONSORSHIPS

Economics and Budget:

Leader of Senate opposition to Gramm-Rudman-Hollings I;

Appointed to chair a Senate Democratic Task Force on Alternatives to the President's budget by Senate Minority Leader Robert Byrd. Hart-authored principles to guide Democratic planning for FY1987 budget adopted unanimously by Senate Democrats;

Introduced legislation, cosponsored by Senator Daniel Patrick Moynihan of New York, to repeal the Gramm-Rudman law. Urges "New Contract of Cooperation," an agreement to restrain defense spending, increase revenues, and finance increased investments in programs critical to the nation's future with measured domestic spending reductions;

Authored a comprehensive budget alternative to the President's 1987 spending plan: urges new investments in education, retraining, economic growth, and new opportunities for employment and self-sufficiency for the nation's poor;

Although the amendment was rejected, a $400 million math and science initiative, a fundamental part of the plan, was adopted by the Congress as part of the final conference agreement on the budget on June 26;

Led the fight against Gramm-Rudman-Hollings II (Senate declined to accept this amendment during debate on the debt ceiling legislation, August 1986;

Recognized as the only Senator, during the debate on tax reform, to have voted against *every* amendment to weaken the bill approved by the Senate Finance Committee;

Testified before the House Commerce Committee on behalf of his *Competitive America Trade Reform Act*, the first comprehensive Democratic proposal to rewrite the nation's trade laws;

Introduced legislation designed to make risk and long-term capital available to new, young and small businesses. [*National Entrepreneurship Act*]

FOREIGN POLICY AND ARMS CONTROL

Won approval by the Republican-controlled Senate Armed Services Committee of the first Congressional statement *supporting SALT II* after the Administration announced its decision to abrogate the Treaty;

Won approval by the Senate Armed Services Committee of language *opposing plans* by the Administration *to expand the production of the MX missile;*

Introduced legislation to prohibit the use of funds for the production of chemical weapons;

Pushed passage by the Senate Armed Services Committee of significant, new legislation to reform the Joint Chiefs of Staff system;

Introduced legislation, following reports of widespread election fraud in the Philippines, to put aid to that country into a "Trust Fund for Philippine Democracy," pending a transition to democratic rule;

Introduced amendment to delete funds for the MX Missile program. Amendment not agreed to by 42-56 vote;

Introduced amendment, agreed to in Senate, to require a study to examine the verification capabilities of the U.S. and the Soviet Union and possible avenues for cooperation;

Introduced amendment, agreed to in Senate, to express the sense of the Senate that the Federal government audit and investigate defense contractor billing practices; and

Introduced legislation praising South Africa's Bishop Tutu for his courageous work on behalf of peace and equality in that country.

ENERGY/ENVIRONMENT

Introduced bill imposing $10/bbl import fee on crude oil and petroleum products. Pushed for Senate votes in 1985 and 1986. Testifies before Senate Finance Committee in support of fee. Hart's alternative FY1987 Budget included fee and gasoline tax in revenue component;

Introduced bill to repeal Price-Anderson Act and force nuclear industry to demonstrate its safety and economic efficiency by obtaining its own insurance against third-party claims;

Environment and Public Works Committee adopted the Hart amendment raising ten-fold the amounts nuclear power plant operators are held liable if an accident occurs;

Introduced bill requiring the DOE to weigh the effects of *transporting highly radioactive Waste* before siting the permanent repository for such waste. Also requires DOE to assess transit routes and pay for safety improvements;

Introduced bill designating an additional 770,000 acres of *wilderness* in Colorado (bill stalled by objections from Armstrong over water diversion rights). Sense of the Senate amendment urging protection of these areas pendng the outcome of the legislative process defeated on a narrow vote in the Senate.

After public disclosure of a move by the Interior Department, conveying resource rich lands to private interests at $2.50 an acre, the Senate adopted a Hart amendment barring approval of such claims by Interior for a six month period. Adoption of the amendment stopped the permit approval in the case leaked to the press.

Co-sponsored bill to give states the standards and founding to fight *groundwater contamination* such as that around Rocky Mountain. Will have hearings and mark-up in '86.

EDUCATION

Introduced legislation, cosponsored by 20 Senators, to provide incentives for elementary and secondary schools to improve math, science and foreign language education. Testified on the bill before the Senate Subcommittee on Education. [*American Defense Education Act*]

Introduced legislation to encourage partnerships among private industry, state government and educational institutions to strengthen science, engineering and technical eduaction. [*High Technology Morrill Act*]

Testified before the House Subcommittee on Elementary and Secondary Education on behalf of legislation to provide assistance to states for encouraging educational excellence and increasing opportunities for underserved populations. [*School Excellence and Reform Act*]

COMMUNITIES AND FAMILIES

Introduced legislation to establish a Select Commission on National Service Opportunities to examine policy questions relating to national service. The Commission would examine how to establish incentives and opportunities for our young people to provide useful service to the nation.

Introduced legislation to provide grants to support family day care providers. [*Family Day Care Provider Act*]

Introduced bill to reduce the deduction for business meals and earmark the savings for school lunch programs.

WORKER RETRAINING AND ADJUSTMENT

Introduced bill to establish a system of retraining accounts funded by voluntary, tax-deductibe contributions by employers and employees. [*National Individual Training Account Act*]

Introduced legislation to provide unemployed workers with opportunities to create their own jobs. Legislation establishes a demonstration project to allow unemployed workers to use their UI benefits for income support while starting their own jobs. [*Self-Employment Opportunity Act*]

Introduced amendments, now signed into public law, to improve the operations of the national interstate job bank system so that workers can be more efficiently matched with available jobs. Legislation requests the Department of Labor to study the costs and methods of computerizing the job bank system.

OTHER SIGNIFICANT ACTIVITIES

Introduced the *National Infrastructure Act* to provide for Federal investment in highways, bridges, transit systems, sewers, and water treatment facilities. Includes unique mechanism to leverage new spending.

Introduced comprehensive veterans' rights legislation (principal provisions: provide access to Federal Courts to appeal adverse benefit decisions and repeal $10 limit on attorneys fees), agreed to in Senate.

Introduced legislation to provide emergency credit relief to financially strapped farmers. Targets small- and medium-sized farmers.

Cosponsored amendment offered by Senator Tom Harkin (D-Iowa) urging speed-up of payments to farmers, enabling them to afford spring planting payments, equipment and mortgage costs.

Endorsed passage of a mandatory supply management program as part of the wheat referendum being conducted by the Department of Agriculture. Enactment of such a program would improve farm income, lower costs to the governments, and aid American agricultural exports.

Introduced legislation to close "the Deaver loophole," to stop former White House officials from lobbying other offices within the Executive Branch and skirting the application of the Ethics in Government Act.

Authored the "Fair Foundations Act," the first legislation introduced in the Congress requiring political leaders with educational foundations to disclose their contributors and expenditures.

TRIBUTE TO SENATOR HART

Mr. STAFFORD. Mr. President, will the Senator yield for an observation with respect to Senator HART?

Mr. DECONCINI. I am glad to without losing my right to the floor.

Mr. STAFFORD. Mr. President, I appreciate the Senator's yielding. I just want to say it has been my privilege to serve with the Senator for almost 16 years now on the Environment and Public Works Committee.

I really consider him a true friend of the environment, a true friend of this Senator. I have enjoyed working with him. I think his contributions on that committee through the years have been outstanding. I frankly wish he were staying on the committee. I wish him well in most of his future aspirations, and I regret the fact he will leave. I wish he were staying with us.

I thank the Senator for yielding.

Mr. DECONCINI. Mr. President, I join my friend from Vermont. Senator HART has contributed a great deal to the State of Arizona and its environment in passing the wilderness legislation and other things.

FAREWELL TO SENATOR RUSSELL LONG

Mr. DECONCINI. Mr. President, as the 99th Congress draws slowly to a close, we are all deeply saddened by

the loss of many of our colleagues who have choosen not to seek reelection to their seats in the Senate. Of all our colleagues who have decided to either retire or pursue new career challenges, perhaps the individual we will miss the most is the esteemed senior Senator from Louisiana, RUSSELL LONG.

Senator LONG comes from a distinguished Louisiana political family which has served the State of Louisiana and the country for as long as I can remember. The name Long is synonymous with Louisiana politics. RUSSELL LONG has served in this body since 1949, having been elected one day prior to his 30th birthday. During his 38 years of distinguised service RUSSELL LONG has earned a reputation as one of our most respected, revered, and beloved colleagues. He is by any standard of measure, a Senator's Senator. He is the model by which each of us can meaure our own effectiveness as legislators. In short, RUSSELL LONG is a leader among leaders—a giant in the annals of the history of the U.S. Senate.

RUSSELL LONG is both a master of Senate rules and procedures and a master of the U.S. Tax Code. Because he has been a student of the rules and of the issues that fell under the jurisdiction of the committees on which he has served, RUSSELL LONG became an accomplished legislator. If our computer systems went back 38 years, I am certain that the printout of RUSSELL LONG's legislative accomplishments would be thicker than for any other Member of this Chamber. Among his monumental legislative achievements are the landmark 1972 and 1976 revenue-sharing laws; the 1975, 1977 and 1978 tax cuts; changes in the Social Security and Medicare benefit systems which have moved most of the Nation's aged, blind, disabled, and truly needy out of poverty and made them eligible for medical care; his successful campaign for employee stock ownership plans; and the dollar checkoff on tax returns for Presidential campaigns.

Because of his extraordinary in-depth knowledge of a myriad of issues, RUSSELL LONG could easily have ignored his colleagues' wishes and ramrodded legislation in which he had a special interest through this body. But that was not RUSSELL LONG's style. He is a student of politics as well as of issues, and he knew better than most that the true art of politics is compromise. RUSSELL LONG always tried his best to accommodate the views of his supporters as well as his opponents in shaping legislation. He very patiently, calmly, and quietly tried to build a consensus and in the process, he treated each Senator with equal kindness, consideration and deference. That is a legacy for all to envy.

From his days as a student body president at Louisiana State University, to his service as a naval officer in World War II to his nearly four decades of service in the Senate, Senator LONG has exhibited leadership and a rare dedication to the tasks he has undertaken. He will be missed by this Senator and by every colleague, past and present, who has had the pleasure of serving with him.

I want to bid RUSSELL LONG a fond farewell and wish him the very best that life has to offer as he returns to his beloved State of Louisiana. I want to thank him for the time and energy he has devoted to this body and to the Nation. Louisiana's gain is our loss. RUSSELL, we will miss your skills as a legislator as we will miss your wit and humor.

God bless.

TRIBUTE TO RETIRING COLLEAGUES

SENATORS BARRY GOLDWATER, PAUL LAXALT, CHARLES MATHIAS, RUSSELL LONG, THOMAS EAGLETON, AND GARY HART

Mr. HATCH. Mr. President, it is always with mixed emotions that we rise to pay tribute to our departing colleagues—with sadness at the loss we feel in losing their company and with gratitude for their contributions to their country and to this body.

That is especially true this year—when the retiring Senators represent such a wealth of experience and achievement.

For example, Mr. President, perhaps once in a generation, or even less often than that, there comes an individual who is so forthright, so courageous in taking a stand, however unpopular it may be, that he is able to sway an entire Nation.

I have had many great honors and blessings during my career—but one of the greatest of them is to be able to say that I served with such a man, our retiring colleague, BARRY GOLDWATER.

In fact, such has been the character of the man that this will be the first and last time that it will ever be said of him that he is "retiring." Retiring Senator GOLDWATER was not.

He was never afraid to speak the truth on an issue—as difficult as that might have been.

His ideas and courage launched a vanguard of young conservatives dedicated to the principles from which he never waivered. It ushered in the career of the greatest conservative politician of this century, the only true conservative to ascend to the Presidency in this century. And it stirred the hearts of citizens everywhere to rethink the direction our country was going—and stirred many to action to reverse that direction.

All the principles Senator GOLDWATER stood for—fiscal responsibility—a defense capability second to none—a resolute stand against communism—and most of all, the freedom of the individual in the face of the unrelenting growth of the modern superstate—have been not only fully vindicated, but adopted by both parties as guiding policies.

And along with these principles, Senator GOLDWATER has rightfully assumed the role of respected elder statesman of his party and this body. And this Senator, for one, will miss not only his sage observations and salty humor, but his guidance on principle as well.

As we bid this great hero a fond adieu, it is fitting to recall the slogan of his 1964 Presidential campaign. It was, as my colleagues may recall, a clever play on his political orientation as well as his outspokenness: "In your heart you know he's right."

Mr. President, we've always known that Senator GOLDWATER was right—and still is right—and today, all America knows and acknowledges it as well. And in our hearts he will always be right—because he, and the principles on which he stood, will always remain in our hearts, long after he has gone home to the rugged West he loves and symbolizes.

Just as in every generation there may rise one who will sway an entire nation, in every body of distinguished men and women, there are some who rise above the crowd—not necessarily because of ringing oratorical skills, although they may possess them, and not because of their actions, however mighty they may be.

This type of individual rises above the masses because he or she possesses one essential, intangible quality: leadership. And no Senator more completely exemplifies this class of individual more than our distinguished colleague from Nevada, PAUL LAXALT.

Outside this body, Senator LAXALT may be known as the President's man. But in this body, we know him to be his own man—a son of Basque immigrants, a son of the West who came to cast his own mastery over this Capital City by the force of his powerful personality.

I remember when I first came to Washington and Senator LAXALT was a member of the Labor and Human Resources Committee—the lone conservative on that committee of free-spending liberals. He called it "purgatory"—and when I got here, he left and consigned me to purgatory.

Yet PAUL LAXALT endured that purgatory—he answered the call as he did whenever duty called him, whether to take on the liberals in the Labor Committee, or to wage the nearly victorious fight on the Panama Canal, or to be the point man for the President's program early in his administration, or to take the helm of his party when we were in the throes of the most serious recession since the Great Depression, or to take on the delicate diplo-

matic task of nudging an aging and stubborn strongman to accept his country's yearning for democracy.

Yes, in each of these circumstances there was a mismatch involved—because there never could be enough liberals or dire enough circumstances to daunt PAUL LAXALT standing alone.

And the reason this is so is because PAUL LAXALT never stood alone, in the Labor Committee or in Manila. He always had his principles and the quiet strength of his character with him—and together, they overcame whatever odds and opposition lay ahead of him.

Now the Senate and his party are saddened at the prospect of losing the quiet leadership of this great Senator—this man who rose above the crowd and above the odds to win at least a moral victory in any fight he took on. But somehow, I don't think we've heard the last of him.

Perhaps we will see Senator LAXALT enter the crowded field vying for his party's Presidential nomination—and if we do, I wouldn't be surprised to see him rise above the crowd once again. Perhaps we will see him take on another great political or diplomatic task for his President or his party—and if he does, we will see him rise above his fellows again.

Mr. President, Senator GOLDWATER and LAXALT are not the only elder statesmen of our party retiring this year. We are also losing a colleague who I believe holds a truly unique place among our leadership.

More than just about any Member of this body, I believe you can sum up the entire distinguished career of our departing colleague from Maryland, Senator MATHIAS, in two words: integrity and intellect.

I will admit that I didn't always agree with the Senator, even though we were Members of the same party. But I can say I always knew where he stood—and that he had gotten there on the basis of well-reasoned and principled considerations.

Our Nation, our body and our party owe the Senator from Maryland a great debt: Our Nation because of his tremendous contributions to civil rights and foregin affairs; this body because of the example he set with his sterling integrity and shining intellect.

And our party owes Senator MATHIAS a great debt because he forced us to examine our positions—to consider all sides in the deliberate manner he did—to defend our positions with the intellectual vigor he brought. I believe that the kind of deliberation and debate Senator MATHIAS brought strengthens a party and its principles. If we didn't have him—we'd have had to invent him.

Fortunately, the people of Maryland lent us Senator MATHIAS for a season—all too short a season. As he returns to them, our loss is undoubtedly their gain. But I comfort myself in the certainty that his close geographic proximity will allow him to return to this body and allow us to share benefits of his wisdom and moral character.

Unfortunately, our party is not alone in losing its elder statesmen in this body. And Mr. President, I want to do my part to correct a developing injustice about one departing elder statesman. I want to help prevent history and conventional wisdom from remembering our friend and colleague, Senator RUSSELL LONG of Louisiana, for one pursuit—and one famous statement.

In keeping with that mission, I am not even going to repeat that statement—although it involved taxes and trees.

But Mr. President, although Senator LONG was known for his mastery of the Tax Code—he represented so much more than that. Senator LONG stood for the Senate as a great deliberative body, civilized not just by a strict set of rules but by a rigorous code of conduct.

And Senator LONG always played by the rules—mostly because he knew the rules better than just about any of us here. He is a master of parliamentary procedure—a student of its nuances—and a great teacher of its principles.

But he also has stood for a standard of courtly behavior—a respect not just for colleagues but for the institution that has led him not only to fight the intrustion of television into our Chamber but to question the abuse of the rules and procedures as well.

I was pleased to see him question, in an interview with the Wall Street Journal, why Members would hold up the business of the Senate except on matters of overarching principles.

I will recall respectfully how on big issues, in times of crisis, or on matters of principles, he played by the old rules and put partisanship aside.

Mr. President, as this Senate remains here almost 2 weeks beyond the time we planned to return home, maybe it's time to honor Senator LONG by heeding his advice and returning to the code of conduct and the principles of bipartisanship he battled to defend.

Perhaps by doing that, we could correct the narrow place in history—as a tax technician—that some seem ready to prepare for him. Instead, we should include among the names of the giants of the Senate in this century—Richard Russell, Everett Dirksen, Jim Allen, John Stennis, Carl Hayden—the name of RUSSELL LONG.

Mr. President, the same kind of respect I hold for Senator LONG I feel for another of my colleagues across the aisle, even though some have said that Senator EAGLETON and I never really agreed on much of anything.

We never agreed on how much to spend on the programs that came through our Labor and Human Resources Committee—except that we both wanted to make sure we spent enough to meet people's real needs.

We never agreed on the degree to which Government should be involved in people's lives—except that we both knew that Government had an obligation to make sure that people had access to good nutrition, to adequate health care, to equal justice and to equal opportunity.

We never agreed on how the people benefiting from these programs should be treated—except that we both wanted them treated with fairness and compassion.

We never agreed on how the Government programs under our jurisdiction should be run and who should run them—except that they should fulfill the mandate given them by Congress to the maximum and that the individuals running them should meet the highest standards of integrity.

The fact is, on the essentials of good Government, TOM EAGLETON and I agreed on everything—and that's why, in the long run, he and I and the other members of the committee were ultimately able to work together to meet the needs of Americans while making our programs leaner and more efficient.

That's why I'm thankful that I was able to serve these years with a Senator of TOM EAGLETON'S moral leadership and compassion. We cared—about the people we served and about each other.

And, Mr. President, as TOM EAGLETON leaves this body, I will continue to care about him—to cherish the times we agreed and disagreed and to wish him the very best as he returns to the "Show-Me" State and his beloved St. Louis Cardinals. Who knows—maybe there's a baseball commissionership out there for him yet.

And maybe there's another executive post waiting for another of our retiring colleagues.

Most Americans associate the name of GARY HART with the 1984 Presidential campaign and his slogan of "new ideas." But to those of us who have known him for more than a decade, the ideas weren't new with that campaign at all. They were the fruits of Senator HART'S relentless pursuit of the truth since he arrived here 12 years ago. In a sense, they are really just another way of pursuing old goals. What sounds like new and different is just his way of searching for something that works.

I don't always agree with the conclusions Senator HART reaches. But I have the greatest respect for the intellectual vigor with which he tackles new concepts and his willingness to cross political boundaries to seek allies for his causes.

Now Senator HART is preparing again to apply the talents and chal-

lenging notions he brought this body to the pursuit of a new goal, the Presidency of the United States. Even those of us who will not support him in achieving that goal can only wish him the best in taking on that challenge—and be grateful that he will bring the spark of a tireless and searching mind to the usually dulling sameness of the campaign trail.

All these colleagues have left their indelible marks on this body and on Government as we know it today. We won't be alone in remembering them as their colleagues—because history will remember them for their contributions, past, present and future, to American politics as well.

THE IMPORTANCE OF HYMNS IN OUR LIVES

Mr. HEFLIN. Mr. President, not long ago, I was asked if I had a favorite hymn. While considering this, I realized that though some may take hymns for granted, they are actually a very important part of our lives.

The hymn is often considered as simply a part of a church service. Yet, in reality, it is so much more. Even as a part of the service, the hymn allows a congregation to join together, united, in their praise of God. It allows people and families to join voices in song of praise and thanksgiving. In this way, friends, families and sometimes strangers are bound together in mutual worship, often accompanied by music which can be both inspiring, as well as pleasing to the ear.

The importance of the hymn outside of church is very often overlooked. In times of difficulty, hardship, solitude or sadness, a hymn that is sung to oneself, or out loud, provides that singer with added strength or fortitude. The tune could bolster a soul against the challenges of the day. The words could provide guidance in times of trouble. Those who are weak or weary can gain hope and encouragement.

Indeed, many people in the history of our Nation have derived such strength from hymns. Teddy Roosevelt often used to sing "Nearer, My God, To Thee." However, an acquaintance of his said that he, "had to laugh because it would be hard to imagine anything further from 'Nearer, My God, To Thee' than the tune Mr. Roosevelt was singing. I have heard him sing that tune scores of times," the acquaintance continued, "but never anything like the real tune, and never the same way twice."

Mr. Roosevelt was not the only President who indicated a favorite hymn. Abraham Lincoln chose "When I Can Read My Title Clear" as his favorite. William McKinnley, like Teddy Roosevelt, favored "Nearer, My God, To Thee." Herbert Hoover's favorite was "Rock of Ages," and Franklin D. Roosevelt's favorite hymn was "Eternal Father, Strong To Save." While Harry Truman chose "Faith of Our Father," Dwight D. Eisenhower was credited as having two favorities, "O God, Our Help in Ages Past," and "Lead Kindly Light."

Recounting the choices of former Presidents brings me back to my friend's question—what was my favorite hymn. I had originally narrowed my choice to "Onward Christian Soldiers," and "How Great Thou Art." Each hymn has a long history, and each is very beautiful to hear, stirring to sing, and heartening upon which to reflect. For example, Winston Churchill asked that "How Great Thou Art" be played at his funeral—no doubt because of the influence of his American mother. "Onward Christian Soldiers," perhaps one of the best known hymns in existence, has been a favorite among countless people for many years. Recently the United Methodist Church attempted to eliminate it from the hymnal because it was too militaristic. However, I was pleased to see that a grassroots movement among Methodists throughout the Nation raised their voices to proclaim their support for "Onward Christian Soldiers." Recently, at the United Methodists' conference in north Alabama, it was decided by an overwhelming vote to recommend the continuation of "Onward Christian Soldiers" in the hymnal. Yet, after much thought and deliberation, I must announce that my favorite hymn is "How Great Thou Art."

In closing, I thought that my colleagues may wish to see the words of both so they may make a judgment of their own. I hope they will, likewise, gain added strength and hope from these hymns.

HOW GREAT THOU ART

O Lord my God! When I in awesome wonder Consider all the worlds thy hands have made, I see the stars, I hear the rolling thunder, thy pow'r throughout the universe displayed,

Then sings my soul, my Savior God to thee; How great thou art, how great thou art! Then sings my soul, my Savior God to thee; How great thou art, how great thou art!

When through the woods and forest glades I wander And hear the birds sing sweetly in the trees; When I look down from lofty mountain grandeur And hear the brook and feel the gentle breeze;

Then sings my soul, my Savior God to thee; How great thou art, how great thou art! Then sings my soul, my Savior God to thee; How great thou art, how great thou art!

And when I think that God, his Son not sparing, Sent him to die, I scarce can take it in; That on the cross, my burden gladly bearing, He bled and died to take away my sin;

Then sings my soul, my Savior God to thee; How great thou art, how great thou art! Then sings my soul, my Savior God to thee; How great thou art, how great thou art!

When Christ shall come with shout of acclamation And take me home, what joy shall fill my heart! Then I shall bow in humble adoration And there proclaim, my God, how great thou art!

Then sings my soul, my Savior God to thee; How great thou art, how great thou art! Then sings my soul, my Savior God to thee; How great thou art, how great thou art!

ONWARD, CHRISTIAN SOLDIERS

Onward, Christian soldiers, Marching as to war, With the cross of Jesus Going on before! Christ, the royal Master, Leads against the foe; Forward into battle, See His banner go!

Onward, Christian soldiers, Marching as to war, With the cross of Jesus Going on before!

At the sign of triumph Satan's host doth flee; On, then, Christian soldiers, On to victory! Hell's foundations quiver At the shout of praise; Brothers, lift your voices, Loud your anthems raise!

Onward, Christian soldiers, Marching as to war, With the cross of Jesus Going on before!

Like a mighty army Moves the church of God; Brothers, we are treading Where the saints have trod; We are not divided; All one body we, One in hope and doctrine, One in charity.

Onward, Christian soldiers, Marching as to war, With the cross of Jesus Going on before!

Onward, then, ye people, Join our happy throng; Blend with ours your voices In the triumph song; Glory, laud, and honor, Unto Christ the King; This thro' countless ages Men and angels sing.

Onward, Christian soldiers, Marching as to war, With the cross of Jesus Going on before! Amen.

RETIREMENT OF SENATOR BARRY M. GOLDWATER

Mr. MITCHELL. Mr. President, when the 100th Congress convenes next year, it will be lacking one of the most prominent Senators of this century, the senior Senator from Arizona, Senator BARRY GOLDWATER.

Senator GOLDWATER has given 30 years of service to the U.S. Senate. But even 30 years do not adequately reflect the influence he has had on this body, on the Nation, and on his political party.

For more than two decades, Senator GOLDWATER has been a symbol to millions of Americans of what constitutes the "conscience of a conservative."

Senator GOLDWATER's conservatism has contributed to the national political debate by broadening its scope, not channeling it into narrowmindedness. His conservatism challenged those who did not share it to reexamine their premises, not to abandon the debate. His conservatism is of the kind that seeks to preserve the Constitution, not undermine it.

In his Senate duties, Senator GOLDWATER has worked indefatigably for the goals toward which his principles point. He has worked for Armed Forces that are effective and efficient. He has worked to reinstill a spirit of partiotism and duty in the defense sector of the economy. He has always recognized that it is the spirit and morale of our fighting men that is the ultimate defense of our Nation, and he has stood up for them.

Recently Senator GOLDWATER remarked that the Senate's approval of this Defense Reorganization Act was his most important contribution to public policy. I respectfully disagree with him. Senator GOLDWATER's most important contribution to the public life of his country is the example he has set in his own career of dedication to principle, of patriotism, and of unswerving adherence to the constitutional principles on which this Nation is founded.

It has been an honor to serve with him and to learn from him.

RETIREMENT OF SENATOR PAUL LAXALT

Mr. MITCHELL. Mr. President, The retirement of Senator PAUL LAXALT of Nevada signals the end of a unique Senate career.

Senator LAXALT himself says he entered politics "because I wasn't smart enough to be a good sheepherder." But in his service to his President and his Nation last year, Senator LAXALT demonstrated those qualities of patience and good faith that have won him the strong support and affection of Nevadans throughout his political career.

Senator LAXALT's voyage to the Philippines in behalf of the President and the outcome of that voyage, which helped avert what could have been a terrible civil conflict, were not the customary duties of a Senator, but they represent the unique role Senator LAXALT has played as the President's close friend in the Senate.

He visited Manila, he spoke with President Marcos and he brought back from his visit the conviction not only that Marcos was isolated from his people and dangerously so, but he brought back a willingness to face the facts when it became evident the Philippine election outcome was tainted by illegality. Most importantly, he was willing to share that conviction with President Marcos and to stand behind it.

As a leader of the Western Coalition of Senators who seek to represent the problems and needs of the Western States here in the Nation's Capital, Senator LAXALT has worked to ensure that the more sparsely settled States receive the same kind of careful consideration as the populous part of the country.

He has retained his close association with the outdoors, an association growing out of his father's life in the Sierras and one he is passing on to his grandchildren. And throughout his Senate career, he has demonstrated by his commitment of time and effort the strong concern for preserving the American family which is the legacy of this own strong family background.

Senator LAXALT is one of the first-generation Americans who make more than a mark on this country—they help shape the nature of the country and its future. His has been a decisive shaping hand here in the Senate, and we are all regretful to see him leave.

CALL TO CONSCIENCE: THE PLIGHT OF SOVIET JEWS

Mr. MITCHELL. Mr. President, a spirit of cautions optimism exists around the world that the relationship between the superpowers is changing for the better. At this time it is important that we keep firmly in mind the cause of those for whom this development holds great personal meaning. For thousands of Jews in the Soviet Union seeking emigration visas, changes in superpower relations could means the opportunity to reunite with family in Israel and the freedom to practice their religion.

This year I have had the honor to coordinate the Congressional Call to Conscience Program for Soviet Jews. During the 2d session of this 99th Congress more than half of the Members of the Senate carried their concern for human rights in the Soviet Union to the floor and delivered statements outlining many refusenik cases. I would like to thank those of my colleagues who joined me in this effort to highlight the desperate situation of refuseniks. Only by persistantly continuing such efforts can we hope to obtain their freedom.

Participating members were: Hon. JAMES ABDNOR, Hon. BILL ARMSTRONG, Hon. MAX BAUCUS, Hon. DAVID BOREN, Hon. RUDY BOSCHWITZ, Hon. BILL BRADELY, Hon. DALE BUMPERS, Hon. QUENTIN BURDICK, Hon. JOHN CHAFEE, Hon. LAWTON CHILES, Hon. ALAN CRANSTON, Hon. ALFONSE D'AMATO, Hon. JOHN DANFORTH, Hon. DENNIS DECONCINI, Hon. ALAN DIXON, Hon. CHRIS DODD, Hon. ROBERT DOLE, Hon. PETE DOMENICI, Hon. JAMES EXON, Hon. JOHN GLENN, Hon. ALBERT GORE, Hon. SLADE GORTON, Hon. PHIL GRAMM, Hon. CHARLES GRASSLEY, Hon. TOM HARKIN, Hon. GARY HART, Hon. ORRIN HATCH, Hon. MARK HATFIELD, Hon. PAULA HAWKINS, Hon. JOHN HEINZ, Hon. GORDON HUMPHREY, Hon. DANIEL INOUYE, Hon. BENNETT JOHNSTON, Hon. EDWARD KENNEDY, Hon. JOHN KERRY, Hon. FRANK LAUTENBERG, Hon. PAUL LAXALT, Hon. PATRICK LEAHY, Hon. CARL LEVIN, Hon. RUSSELL LONG, Hon. MACK MATTINGLY, Hon. HOWARD METZENBAUM, Hon. DON NICKLES, Hon. LARRY PRESSLER, Hon. DAN QUAYLE, Hon. DON RIEGLE, Hon. JAY ROCKEFELLER, Hon. PAUL SARBANES, Hon. PAUL SIMON, Hon. ARLEN SPECTER, Hon. BOB STAFFORD, Hon. PAUL TRIBLE, Hon. JOHN WARNER, and Hon. PETE WILSON.

In letters from several constituents in Cape Elizabeth, ME, and in a note from an Israeli Knesset member, the cases of two refussenik families were recently brought to my attention. Alec and Galina Abramovich of Bendary and Lev and Inna Elbert of Kiev have been waiting years for permission to emigrate. Both families have suffered terrible hardships during this period and their cases deserve the prompt attention of Soviet authorities. It is my hope that like Yuri Orlov and Natan Scharansky they too will be allowed to reunite with family in Israel.

In an effort to be of assistance to them and the thousands of other Soviet Jews wishing to emigrate I regularly have sent copies of our our Call to Conscience statements to General Secretary Gorbachev, Ambassador Dubinin, and the State Department.

This year 631 Jews have been granted emigration visas. That is not enough. We must redouble our efforts, until the day arrives when emigration visas are granted as a matter of course, rather than as public relations ploys which are, in reality, exceptions to the Soviet Union's iron-fisted rule.

On an August night in Moscow last year I had the opportunity to meet with several refuseniks as a member of the Senate delegation to the Soviet Union. This experience touched me deeply. After listening to their harrowing stories until late into the night we left our newfound friends promising to bring their cases to the attention of General Secretary Gorbachev. They felt strongly that this was one of the most effective ways to improve their situation.

As the delegation finally took its leave, drained and exhausted, I experienced a strange mixture of sadness and relief. In a few days we would be back in America, free; they, however, would be in the Soviet Union, continuing their struggle. As I turned around for a last goodbye, and saw their strong but tear-stained faces, I realized they were thinking the same thing.

In the spirit of that meeting I look forward to continuing my work on behalf of these brave individuals and urge my colleagues to do the same.

TRIBUTE TO SENATOR BARRY GOLDWATER

Mr. HOLLINGS. Mr. President, at the end of this session, we will bid farewell to the senior Senator from Arizona, BARRY GOLDWATER. After countless legislative wars and brilliant

service to his country, the Senate will decommission its premier battleship.

For 36 years, BARRY has been a distinctive voice in this body: blunt spoken, courageous, often unpredictable, ever the maverick. From his service in the Army Air Corps during the Second World War through his distinguished chairmanship of the Armed Services Committee for the last 2 years, his foremost concern has always been the strength and competence of our Nation's military.

Indeed, BARRY has been the best kind of friend and patron to our armed services. He has fought doggedly to win them the best in weapons and resources, yet never hesitates to take them to task for faults or excesses. He is what we call down in South Carolina "a hawk who flies with his eyes open."

In Korea and again in Vietnam, he had a special appreciation for the difficulties of waging war on behalf of a fickle, impatient democracy. It was a Frenchman who said that war is too important to be left to the generals. BARRY GOLDWATER would counter that war is too important to be left to the politicians.

Throughout his career, he has held fast to the traditional conservative convictions: that Government should not interfere with the economy, and that the State should not intrude in citizen's private lives and personal decisions.

BARRY GOLDWATER closes his Senate career a man of many paradox—which is a measure of his intellect and independence. Dismissed as "extreme" in the 1964 Presidential campaign, his ideas on the economy, society, and personal freedom are now in large measure the conventional wisdom. A lifelong champion of military strength, he questions many of the Pentagon's sacred cows. Founder of the modern conservative movement, he takes issue with the "New Right's" penchant for deficit spending and intrusive social legislation.

BARRY has been a valued personal friend. For more than three decades, he has stood out as one of the Senate's most respected leaders. Indeed, he is a man with a loyal following across the length and breadth of our Nation.

We will miss BARRY GOLDWATER here in Washington. We wish him the best. And we trust that his voice will be heard in affairs of State for many years to come.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. HOLLINGS. Mr. President, for 12 years now, Senator PAUL LAXALT has been the indispensable lubricant of an institution whose gears and cogs are notoriously cranky. He has been a bridge between Democrats and Republicans, a committed practitioner of the maxim that political differences should never become personal differences. He is not just the President's best friend on Capitol Hill, he is the dear friend of many of us in this body. His departure from the Senate at the end of this session will be a great loss to all of us.

Perhaps the key to PAUL's success is that his strong ideological convictions have been matched with an equally strong commitment to civility and fellowship. This has allowed him to wear many hats: statesman, Republican Party partisan, diplomat, and honest broker. The President has sent him on sensitive missions abroad. Likewise, the Senate has sent him on sensitive missions to the opposite end of Pennsylvania Avenue. Time and again, he has acquitted himself with skill, tact, and firmness.

PAUL LAXALT's is the quintessential success story. The son of immigrants, he rose to be Governor of his State and then U.S. Senator. I hasten to add that the final chapters in this story have yet to be written, and they may well turn out to be the best of all.

I am sure my colleagues join me in wishing PAUL the very best of luck. The Senate will miss him greatly.

TRIBUTE TO SENATOR RUSSELL B. LONG

Mr. HOLLINGS. Mr. President, at the end of this Congress, we will bid farewell to our colleague, RUSSEL LONG. The political scientists and pundits will note that the Senate is losing a legend, a Senator of historic impact and accomplishment within this body. His colleagues do not argue with that assessment, but forgive us for regretting, above all, the departure from the Senate of one of our best and most beloved friends.

RUSSELL came here in 1948 as a colt of only 30 years, the offspring of a famous sire, but without an extensive track record. In the 38 years since, he has built a formidable reputation in his own right. We will remember him best for his decade and a half at the helm of the Finance Committee. He continued the line of strong chairmen and served as mentor to the current chairman. He was both a master strategist and a fair-minded, skillful manager.

It is possible that another Senator has greater knowledge of Senate rules and parliamentary procedure than RUSSELL, though I doubt it. But, without question, he has no peer in his mastery of the Tax Code.

Tax bills always end up as legislative Christmas trees, and RUSSELL was a natural in the role of Father Christmas. He must have been amused by our efforts, last month, to dress up the tax overhaul bill in the rhetoric of reform and simplification. As he observed on more than one occasion, a loophole is "something that benefits the other guy. If it benefits you, it is tax reform."

Maybe RUSSELL's ultimate achievement is that, after nearly four decades in the Senate, he is leaving here young of heart and spirit. I wish he would stay on to reclaim his finance gavel next January, but we must accept his decision to move on. He has served his State and Nation brilliantly, and in the process he has done great service to the Senate as an institution. We will miss him very much.

STATEMENT OF SENATOR GARY HART—THE CONFUSION OVER ICELAND INCREASES EVERY DAY

Mr. HART. Mr. President, with every passing day, the dimensions of the confusion at Iceland are compounding.

This week, this administration should be devoting its energies to clarifying the state of United States-Soviet relations regarding nuclear weapons. Instead, we have seen an administration engaged in its most bizarre—possibly even cynical—effort to create political reality, out of thin air.

In the vain hope it can avoid a rendered verdict of failure, it is making the preposterous assertion that progess was made in Iceland. Equally ominously, the administration is racing to convert the forthcoming elections into a referendum on SDI. It is elevating politics over national security and debasing serious national debate.

Planning for an adult summit in the United States was the ostensible purpose of the meeting in Iceland. It was further assumed these discussions would yield clear instructions for the arms control negotiators in Geneva. Had President Reagan and General-Secretary Gorbachev reached an agreement on either issue, arms control and the effort to manage this critical relationship would have remained on track.

It is manifestly clear—regardless of the calculus one might apply—that these talks failed. The talk of progress on both sides is nothing more than rhetoric.

First, arms control negotiations in Geneva have been left in a state of total confusion. It is bad enough that no new instructions came from the leaders in Iceland. It is worse that neither side seems clear about what was actually proposed, and discussed.

General-Secretary Gorbachev has determined that no progress can be made in the area of strategic or intermediate range missiles unless the deadlock is broken on SDI. The principal Soviet negotiator in Geneva be-

lieves that progress on INF is still possible.

The President's Chief of Staff reported this week that all nuclear weapons would have been eliminated under the President's offer in Geneva. Yet, the White House press secretary reports the arms control offer in Iceland included only ballistic missiles.

Where do we actually stand? If these basic and vital facts are subject to interpretation—and political manipulation—we are in for a truly perilous period. Basic strategic decisions must still be made before negotiations can proceed.

Second, the talks in Iceland have placed the continued viablity of the ABM Treaty in jeopardy. The negotiators in Geneva must deal with a treaty about which there is now fundamental disagreement over its scope and interpretation.

Less that a year ago, a minor official at the State Department unilaterally produced a new interpretation of the ABM Treaty. This interpretation has been disputed by the U.S. negotiators who crafted this singularly important document. Since that time, this Senator has been joined by leading members of the Senate Armed Services Committee in an effort to gain access to the negotiating record.

For months, we struggled in vain to receive this record from the administration. The administration acted with arrogance and in defiance of the Constitution as it resisted the efforts of the U.S. Senate to review this critical record. By stonewalling the Senate, it became increasingly evident the administration was shielding the record to protect a warped, political reading of the record simply to permit the development and deployment of SDI in defiance of the ABM Treaty.

Upon its return from Iceland, the administration characterized this position as a strengthening of the treaty. In fact, Mr. President, such an interpretation would void ABM. And it enabled the Soviet Union to claim that its position on ABM—ruling out basic research on laser technology, for example—was consistent with the treaty. There is dispute on the Soviet interpretation as well.

Third, Mr. President, the Iceland meeting will have produced a staggering setback for arms control if all agreements are held hostage to the President's program on strategic defenses.

A myriad of theoretical and practical problems must be overcome before we can even begin designing a realistic strategic defense system. Indeed, experts estimate that the spaced based approaches needed to fulfill even a portion of President Reagan's vision could not be developed before the second decade of the next century. Even this distant target date is uncertain.

Progress has not been made at Geneva. Indeed, it is impossible to recorrect a point in the history of superpower arms control negotiations when there was more confusion about who said what to whom, what offers were made, who rejected what, what our Government's present policy is, what—besides SDI research—is or is not negotiable.

In just 25 days, the President will decide whether to violate the SALT II limits. At that time, the 131st B-52 bomber will be equipped with an air-launched cruise missile. Compensating measures can be taken to accommodate that modernization without breaching the limits of SALT II. Should those measures not be taken, arms contol will be—for all intents and purposes—dead.

An amendment I offered in the Armed Services Committee and which was adopted—calling upon the President to respect the SALT II Treaty—has now been approved by the Congress of the United States. This amendment was enacted as a substitute for substantially more restrictive measures called for by the House. The House of Representatives included in its defense bill absolute funding cutoffs for systems which, if put into place, would force the United States out of compliance with SALT II. I supported those stronger provisions. But Members of the House agreed to remove them to untie the President's hands before the Iceland meetings.

If the President is unable to demonstrate a commitment to arms control—by abiding, for example, with the SALT II Treaty limits—he should anticipate new and even more restrictive arms control language from the Congress of the United States.

Mr. President, today, I am sending a letter to the President urging him to honor this congressionally enacted language and refrain from exceeding the limits under SALT II in the fundamental security interest of our Nation.

The President's political advisers apparently believe that politicising arms control, converting the forthcoming elections into a referendum on SDI, will somehow provide him some benefit. It will not. It will enshrine this President in the posture in which he finds himself today as the man who choose as his legacy a technological fantasy called SDI over the possibility of the most sweeping arms control agreement in the nuclear age. That will be not only his tragedy but a burden that all of us will carry.

AMBASSADOR BARNES RETURNS TO CHILE

Mr. HELMS. Mr. President, Ambassador Harry Barnes is scheduled to return to Chile this weekend after an absence of several weeks. Ambassador Barnes left Chile for leave in the United States on September 1, a few days after the discovery of the last of 10 separate arms caches in various parts of the country, and only a week before a group of highly organized assassins attempted to kill President Augusto Pinochet.

Both the arms caches and the assassination attempt have been traced to the Manuel Rodriguez Patriotic Front [FPMR], a terrorist group that constitutes the armed wing of the Communist Party. In addition, the Movement for the Revolutionary Left [MIR]—an Allende group which went underground when Allende's movement collapsed—was also a recipient of the arms. Both cases make clear that the FPMR and the MIR are organized and supported from outside of Chile.

Mr. President, Ambassador Barnes owes an apology to the people of Chile. The FPMR and the MIR were the most prominent of the Marxist and Marxist-Leninist groups which dominated the funeral of Rodrigo Rojas. It was the MRPF to which I referred when I said that Ambassador Barnes had planted the American flag in the middle of a Communist rally. It was widely known that the FPMR had called for the violent overthrow of the constitutional Government of Chile.

But less than a month after Ambassador Barnes had made common cause with the FPMR, the first of the 10 weapons caches was discovered. And 2 months to the day after Ambassador Barnes joined the Stars and Stripes with the hammer and sickle in a broad propaganda effort against the constitutional Government of Chile, his comourners at the funeral were attempting to assassinate the constitutional President.

Mr. President, it was not a mere coincidence that Ambassador Barnes appeared at the funeral of Rodrigo Rojas with the representatives of the extreme and violent left. The 2 day demonstration during which Rojas lost his life had been planned by a coalition which is seeking to overthrow the democratic constitution. The present constitution was approved by a vote of two-thirds of the Chilean people in 1983. The constitution includes the present process under which a democratic system is being reconstructed, with a country-wide vote in 1989. President Pinochet signed into law the system for electoral registration on September 11, and will shortly do the same for law establishing political parties. He told me in July that he would take these steps, and he has kept that promise.

There are those in Chile who are dissatisfied with this process, even though a majority of Chilean voters have approved it. They are arguing for immediate elections, without preparation. They hope to destabilize the democratic process, not strengthen it.

They hope that in the confusion a weakened government will be established that will be a push-over for the Marxist-Leninists. In this case, even the so-called democratic left is not in fact democratic. Recalling Chile's experience with Allende, we should call this part of the political spectrum pre-Marxist, not democratic. It is pre-Marxist because it abrogates the rights of a free society, making the transition to Marxism inevitable.

Ambassador Barnes is apparently willing to work both with the Marxist-Leninists, and with the pre-Marxist left. He is willing to support those who would tear down the democratic system, rather than those who would build it up. Those who want a Castro/Allende style Government in Chile are obviously in the minority, and can't win in a democratic system. By opting to show solidarity with the FPMR and the MIR, Ambassador Barnes is working to overthrow the Chilean Constitution.

Mr. President, I know that most Chileans will find it difficult to believe that Ambassador Barnes could be working toward an outcome in Chile that is either Marxist or pre-Marxist. After all, isn't Chile a staunch friend of the United States? Hasn't Chile been building a strong economy based upon freedom for the productivity of the Chilean people? Isn't Chile strongly opposed to Socialist and Communist designs throughout the world? Hasn't Chile been cooperating with the United States in every area where the United States needed Chile's help?

The answer is that these policies of Chile are the policies of the American people, but they are not the policies of the elite diplomats in the U.S. Department of State. Didn't the U.S. State Department prefer Mao Tse-tung over Chiang Kai-shek? Didn't the U.S. State Department prefer Castro over Batista? Didn't the U.S. State Department prefer Mugabe over Bishop Muzorewa? Didn't the U.S. State Department prefer the Sandinistas over Somoza? Isn't the U.S. State Department working to normalize relations with Communist Mozambique, and repelling the attempts of the Mozambique feedom fighters who now control the majority of the country's territory? Is not the U.S. State Department working to install the Communist-controlled African National Congress as the next legitimate Government of South Africa?

The fact is that the elite planners in the U.S. Department of State, and Ambassador Barnes as their representative, are working to bring about a government in Chile that is either Marxist or pre-Marxist. If pressed, they would say that they would prefer a pre-Marxist government, but they would tolerate a Marxist government so long as it in the Yugoslavian or Czechoslovakian style.

The only government that they will not tolerate is one that is based on free-market principles, open opportunity, and traditional values. Instead of helping Chile to perfect its present system, they prefer to install the system that has failed in every country where it has been tried. In all of Latin America, only Chile has the established basic components that make democracy possible: Respect for private property, a free-market economy, a universal education system, a revitalized agriculture, a diversified export maket, a reduction of external debt. Moreover, the elimination of government corruption, drug trafficking, and pornography make a decent society possible. No other country in Latin America has come near these achievements.

The Chilean people must be very realistic in evaluating United States policy as expressed by the United States State Department. It was no accident that Ambassador Barnes publicly endorsed an event organized by those who would destroy the Chilean Constitution. I have no doubt that Ambassador Barnes' cooperation with these antidemocratic elements extends to a wide extent of subversive contacts. In short, I believe that Ambassador Barnes was engaged in a calculated plan to use the antidemocratic revolutionary elements to destablize the political process in Chile, in cooperation with the international campaign being waged by Communist and socialist movements of the world.

Therefore, I call upon Ambassador Barnes to state explicitly whether he supports the Chilean Constitution as approved by the Chilean people, including the timetable for the reconstruction of the democratic process as put forward in that document and in the recent actions of the Chilean Government. Ambassador Barnes owes it both to the American people and to the Chilean people to put it on public record exactly where he stands. If he does not wish to do this, he should return to Washington as soon as possible.

TRADE DEFICIT INACTION

Mr. BINGAMAN. Mr. President, as we approach the closing hours of the 99th Congress, I would like to point out again to my colleagues that we in the Congress are about to adjourn without acting in any significant way to one of the most acute problems this Nation faces: our very serious trade problem.

There has been much empty rhetoric about our trade problems, but very little real action. Although major reform legislation has been passed by the House, the Senate has failed to bring to the floor the trade modernization legislation that has been ready for months. The President has often talked about the importance of our trade relations, but the reality is that our trade deficit is larger each time we look at it. For the first 7 months of this year the deficit has already reached $82.3 billion and it is expected to top $170 billion for the year.

Virtually no domestic industry escapes harm in this situation. Nearly everyone faces severe foreign competition. And competition has manifested itself in decreased real wages—now below 1963 levels; rising unemployment, decelerating GNP growth, debt growing at a rate six times faster than the GNP, business consumer and Government debts at post 1920's highs, as a nation that is now the world's largest debtor. Investment and productivity are slowing, and even our education achievement compared to other developed nations is near the bottom.

The administration says it is combatting the trade deficit by addressing the exchange rate. However, we find that despite some apparent success in lowering the value of the dollar relative to other currencies, the trade deficit has grown worse. There are a number of explanations for this phenomenon. Perhaps the most plausible is the one described by Lawrence Silk of the New York Times. In an October 8, 1986 column he cites recent indexes prepared by Rinfret Associates that show that the dollar declined only 8.9 percent on the import side and only 4.7 percent on the export side, despite the Federal Reserve's claim of a 32.5 percent drop. Mr. Silk writes that:

> According to this analysis, the United States trade deficit has not improved materially because the dollar has not declined significantly against the currencies of some of the principal countries with which the United States does business, including Canada, Latin America and the newly industrialized countries of East Asia.

Without objection I ask that the entire Silk column be printed in the RECORD following my remarks.

Mr. President, the time has come for our Nation to face up to these challenges, which are already hurting on our standard of living, relative to other nations.

Japan, one of our most fierce competitors, is experiencing growth rather than decline, largely at our expense. The Japanese have a high personal savings rate, and they have raised the percentage of their GNP that is exported. According to Harvard University Prof. Ezra F. Vogel, the Japanese economic success is immense. In a letter to the editor in today's Wall Street Journal, Professor Vogel says that "our standard of living on the average is not yet suffering greatly because we are becoming indebted to Japan. But consider the implications for the future." I also ask unanimous consent that Professor Vogel's letter to the editor from today's Wall Street

Journal be inserted in the RECORD following my remarks.

Mr. President, Professor Vogel's observations are enlightening and troubling. And they are echoed by many others. I hope my colleagues will review these views and take them to heart.

The Senate has had the opportunity to begin to address the trade and competitiveness problems we face, and has instead chosen not to take action on House-passed trade modernization. I am disappointed by this failure to act. I hope next year we will rectify this serious failure. The American people deserve action on this critical issue.

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

[From the Wall Street Journal, Oct. 8, 1986]

ECONOMIC SCENE—DANGERS OF U.S. TRADE DEFICIT

(By Leonard Silk)

The need to shrink the huge United States trade deficit, now running at about $200 billion a year, is the main reason the Administration has put so much pressure on West Germany and Japan to accelerate their economic growth. But during last week's annual meetings of the International Monetary Fund and World Bank, the Germans and Japanese pointed to a report by I.M.F. economists to support their contention that faster growth by their countries would have little effect on the American trade deficit.

The fund's economists estimated that an increase of one percentage point in the domestic growth rate in Japan and West Germany, maintained over three years and with allowance for induced effects on growth in other countries, would alter the American trade balance by no more than $5 billion to $10 billion. This year the United Stats trade deficit, including the cost of insurance and freight, could hit $200 billion.

The I.M.F. estimate is in line with an analysis for the Joint Economic Committee of Congress, which found that an increase of one percentage point in German and Japanese growth would reduce the United States trade deficit by only $9 billion to $12 billion. The committee's report warns that trade deficits averaging even $100 billion from 1987 to 1989 could push the cumulative American external debt past $1 trillion by the end of this decade and close to $2 trillion in another eight or nine years.

Despite the decline of the dollar against the yen, the mark and many other currencies since February 1985, the American trade deficit has stayed high, holding at 2.9 percent of gross national product in 1986, the same level as in 1985. The I.M.F. forecast that the American trade deficit would narrow only slightly, to 2.7 percent of G.N.P. in 1987. Japan's current-account surplus, which was 3.7 percent of G.N.P. in 1985, is estimated by the I.M.F. to rise to 4.1 percent this year, before declining to 3.3 percent in 1987. West Germany's surplus, 2.1 percent of G.N.P. in 1985, will, according to the I.M.F., reach 3.4 percent this year, before dropping to 1.6 percent in 1987.

Some economists believe the improvement in the American trade position following the dollar's decline has been slower than expected because the dollar has actually come down less than implied by the widely used Federal Reserve trade-weighted dollar index. The Fed's index has the dollar falling 32.5 percent against 10 major currencies from February 1985 to late September 1986.

However, Rinfret Associates, an economic consulting concern, has prepared two separate dollar indexes, one weighted by the main countries the United States exports to and the other weighted by the main countries it imports from. The Rinfret indexes show that the dollar declined only 8.9 percent on the import side and only 4.7 percent on the export side.

According to this analysis, the United States trade deficit has not improved materially because the dollar has not declined significantly against the currencies of some of the principal countries with which the United States does business, including Canada, Latin America and the newly industrializing countries of East Asia. The currencies of many of these important trading partners have been pegged to the dollar or even dropped against it.

Other economists insist that, even if the dollar were to sink much lower, this would not come close to eliminating the trade deficit, because of the great imbalance between savings and investment in this country. For example, Ronald McKinnon, a professor of economics at Stanford University, contends that the huge Federal budget deficit, now estimated at $230 billion for the 1986 fiscal year, creates a shortage of savings in the American economy that is being met by borrowing abroad, thereby making a trade deficit inevitable. Capital inflows and trade deficits are mirror images.

If capital inflows and the trade deficit were both curtailed arbitrarily, Professor McKinnon says, American real interest rates would have to climb sharply because of the shortage of domestic savings. The consequences would probably be a slump in investment and a steep fall in the economy.

And the dollar would probably fall a great deal further. But, Professor McKinnon maintains, "no exchange rate exists that would balance U.S. foreign trade with an ongoing fiscal deficit of $200 billion a year."

Until now the United States has managed to handle its growing foreign debt without a decline in its standard of living; foreigners have financed the trade deficit and made it possible for Americans to consume more than they have been producing.

But if external financing dries up, or even slows down, as foreign investors grow leery of holding so much of their debt in dollars, the United States would have to start financing its foreign debt by generating trade surpluses. As the Joint Economic Committee report points out, this poses two difficult problems: First, United States living standards would suffer and, second, swinging from a $200 billion trade deficit to a surplus of at least $20 or $30 billion would impose a wrenching adjustment on the world trading system. We shall look at those problems in another column.

[From the Wall Street Journal, Oct. 17, 1986]

JAPAN AND THE UNITED STATES: GROWTH AND DECLINE

As the author of "Japan as No. 1" I read your Sept. 2 editorial "The 'Japan as No. 1 Myth" with more than the usual interest.

Your editorial does have kernels of truth. Japanese do have a high savings rate. The percentage of Japanese GNP being exported, while low by European standards, has risen, as has that of most countries. The average size of dwellings is still below that in America although it has been rising at a much more rapid rate. Japanese car ownership lags behind America's although the purchase of new cars has accelerated more rapidly, and the state of repair of cars is far better than ours. Given that Japan's 120 million people live in an area smaller than California, one might argue that car ownership of slightly more than one per household (Japan's rate of 370 cars per 1,000 people has already surpassed the U.K.'s) combined with a public transportation system far superior to ours is not a bad mix.

A fundamental error in your editorial is the view that the Japanese "aren't allowed to enjoy" Japan's economic success. As one who began doing family household investigations in Japan in 1958 and has returned there every year for over 20 years to investigate families, villages, factories, offices, labs and commercial establishments, I can testify that the people have profited immensely from economic growth. In 1958 few Japanese could hope to buy TV sets, they did not have modern kitchens, and few could afford more than charcoal for localized heating. The rate of diffusion of most electric appliances now surpasses that in the U.S., entertainment for weddings and public occasions makes America's pale by comparison, and Japanese travel abroad more in absolute numbers than Americans, with half the population. Japanese housing was devastated by World War II, but for the last 20 years Japan has averaged about 50% more housing starts per household than has the U.S.

Although it is unlikely that your editorial writer will visit enough Japanese homes to get a significant sample, might I suggest that before he writes articles about Japanese consumers' inability to profit from economic growth he interview Japanese about the standard of living they had 30 years ago and the one they enjoy today? I suggest that he visit Japan, starting with 15 or 20 of Tokyo's largest department stores. If he doesn't want to leave New York, might I suggest that as a minimum instead of looking only at savings rates he look at the rates of diffusion of various kinds of material possessions over the last 30 years and that he compare housing starts over the same period. Who, after all, is perpetrating "myths"?

I am concerned that the complacency generated by such editorials among people who know little about Japan endangers the future of our country. To be sure, our standard of living on the average is not yet suffering greatly because we are becoming indebted to Japan. But consider the implications for the future.

Nomura Securities forecasts that Japan by 1995 will have net assets around the world of $1 trillion. In the early 1980s when American net assets around the world peaked, we had net assets of about $250 billion, about one-quarter of what Japan will have nine years from now. We are acquiring additional foreign indebtedness of more than $150 billion a year. The implicit argument of your editorial, that we are better off for being borrowers than the Japanese are for being lenders, ignores development over time by which Japanese standards of living will continue to rise and ours will fall as we try to pay off debts with the few competitive exports we then have left. It is our children, not the Japanese, who will suffer.

EZRA F. VOGEL,
Harvard University.

HALLMARK CARDS CONTINUES ITS TRADITION OF LEADERSHIP

Mr. EAGLETON. Mr. President, Hallmark Cards, Inc., and First Chicago Venture Capital agreed to purchase the Spanish International Communications Corp. [SICC] in July of this year. SICC, a privately held corporation, owns and operates the largest group of Spanish-language format television stations in the United States. Full power, UHF television stations are located in New York [WXTV], Los Angeles [KMEX-TV], Miami [WLTV], San Antonio [KWEX-TV] and Fresno [KFTV]. The metropolitan areas of Denver; Philadelphia; Austin, TX; Hartford, CT; and Bakersfield, CA, are served by low power television stations.

Some questions relating to the sale process had been raised by other parties. Many of these concerns were addressed in a recent order signed by Judge Pfaelzer of the U.S. District Court for the Central District of California. The order is a powerful statement concerning the facts relative to the sale. The judge states that based on the record before the court, there was no disputed issue of material fact relating to the sales process or the disposition of SICC and further "the sales process was fairly and reasonably conducted." Judge Pfaelzer further states that the selection on July 18, 1986, of the proposal to acquire SICC by the Hallmark group was fair and reasonable and that no basis has been shown for contesting that selection. I ask unanimous consent that a copy of the judge's order be printed in the RECORD.

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

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Fouce Amusement Enterprises, Inc., and Metropolitan Theatres Corporation, Plaintiffs, v. *Spanish International Communications Corporation, et al.,* Defendants, and related cases.

[No. CV 76 3451 MRP]

Order on motion by TVL Corporation for leave to intervene; on motion by the Hallmark Group for affirmation of July 18, 1986 Order, or in the alternative, for conditional intervention; and on application by defendants for affirmation of July 18, 1986 Order. Hearing: October 6, 1986, Time: 10:00 a.m.

Andrew W. Robertson, Lillick, McHose & Charles, 725 S. Figueroa Street, Los Angeles, California. Attorneys for Defendants, Spanish International Communications Corporation, Reynold V. Anselmo, Emilio Nicolas, Sr., and John Pero

Ronald L. Fein, James H. Berry, Jr., Scott D. Bertzyk, Jones, Day, Reavis & Pogue, 355 South Grand Avenue, Los Angeles, California. Special Counsel for Spanish International Communications Corporation.

On October 6, 1986, the following motions and application came on for hearing before the Court: (1) The motion by TVL Corporation ("TVL") under Federal Rule of Civil Procedure 24 for leave to intervene in this action; (2) The motion by Hallmark Cards, Incorporated and First Capital Corporation of Chicago (collectively, "the Hallmark Group") for affirmation of the Court's July 18, 1986 Order ("the July 18 Order") approving the sale of Spanish International Communications Corporation ("SICC") to the Hallmark Group, or, in the alternative, for conditional intervention in this action; and (3) The application by defendants for affirmation of the July 18 Order.

In connection with the foregoing motions and application, the defendants, Special Counsel for SICC, TVL, and the Hallmark Group have submitted comprehensive memoranda of points and authorities, 36 declarations from participants in the sales process for the disposition of SICC, and other materials concerning the sales process and related proceedings pending before the Federal Communications Commission ("FCC"). In addition, extensive oral argument was presented at the October 6 hearing. After carefully reviewing and considering the written submissions and the additional argument at the hearing, and after consideration of all proceedings had in this action, and being fully advised, the Court finds and concludes as follows:

1. The sale of SICC was conducted pursuant to a private settlement agreement in order to resolve this lengthy stockholders' derivative action and pending FCC proceedings relating to SICC. SICC and its stockholders were not obligated to sell SICC to any particular prospective purchaser.

2. Under the terms of the settlement agreement among the parties to this action and other signatory stockholders, SICC was to be sold to a party selected by a Sales Committee appointed by holders of 94% of SICC's stock upon such terms and conditions as the Sales Committee might establish. In the event that the Sales Committee failed to agree unanimously upon a buyer for SICC, the settlement agreement provided that the Court would select the buyer.

3. Pursuant to the sales process established by the Sales Committee in accordance with the settlement agreement, TVL and the Hallmark Group, among others, submitted offers to acquire SICC on various terms and conditions. The Sales Committee failed to reach unanimous agreement selecting any one offer, and the matter therefore was referred to the Court for decision on July 18, 1986. After having been fully informed by the Sales Committee and its legal and financial advisers, the Court selected by its July 18 Order the proposal of the Hallmark Group for the acquisition of SICC, subject to the delivery of a fairness opinion by the Sales Committee's financial advisers, Bear Stearns & Co., Inc. ("Bear Stearns"), and to the negotiation of an acquisition agreement satisfactory to the Sales Committee.

4. In making its July 18 Order, the Court concluded that the Hallmark Group's proposal should be accepted for several reasons, including:

A. The Hallmark Group had (and has) a net worth more than sufficient to consummate its offer, whether or not it chooses to obtain any financing, whereas TVL was a newly-formed corporation having no substantial assets and had not received firm commitments for the financing on which it was required to rely in connection with its offer to purchase SICC.

B. The offer of the Hallmark Group provided unlimited liability for breach backed by the net worth of the Hallmark Group, which substantially exceeded the proposed purchase price, whereas TVL's offer provided no guarantee of performance by or recourse for breach against a financially responsible party (other than the proposed agreement of Citicorp to sign the TVL acquisition agreement if its liability were limited to $15 million in liquidated damages).

C. By its terms, the Hallmark Group's offer was to expire as of the end of the day of July 18, 1986 and the Court, therefore, could have no assurance that the Hallmark Group offer (or any other offer) would be available in the event that the uncertainties in TVL's offer could not be remedied. In that connection, the Court was aware that in May 1986, a financially responsible offeror had made an offer for SICC higher than that of TVL or the Hallmark Group; that the principal SICC stockholders instead chose to pursue the sales process in the hope of obtaining an even higher offer; and that that offeror thereafter did not make an offer in the sales process. The Court therefore did not deem it appropriate or desirable to subject the SICC stockholders and the settlement of this action to continued uncertainty or to expose the stockholders to the risk of having no buyer and being forced to return again to the marketplace.

5. In accordance with the July 18 Order, a definitive acquisition agreement satisfactory to the Sales Committee was executed by SICC and the Hallmark Group, after delivery of the Bear Stearns fairness opinion, on July 19, 1986.

6. TVL filed an application for leave to intervene in this action on August 12, 1986 for the purpose of filing a complaint seeking an order vacating the proposed sale of SICC to the Hallmark Group and requiring SICC to be sold to TVL.

7. TVL's only interest in this proceeding is that of one of several unsuccessful offerors for SICC and, as such, TVL has no legally protectable interest in acquiring SICC and no stake or other interest in this stockholders' derivative action. Accordingly, TVL may not intervene in this action of right under Federal Rule of Civil Procedure 24(a).

8. Intervention by TVL at this late stage of the proceedings, after settlement of this lengthy and complex derivative action, would not further the interests of justice, would disrupt the orderly resolution of the action, would be adverse to the interests of SICC's stockholders, and would be contrary to the public interest in the settlement of disputes, both in the courts and before the FCC. Accordingly, TVL should not be permitted to intervene in this action under Federal Rule of Civil Procedure 24(b). Moreover, TVL has offered no independent jurisdictional basis for intervention under Rule 24(b).

9. Based on the record before the Court, there is no disputed issue of material fact relating to the sales process for the disposition of SICC. The sales process was fairly and reasonably conducted. The sales process was not biased or tainted so as to prejudice TVL's participation in the process, to hinder TVL's ability to acquire SICC, or to favor unfairly the Hallmark Group. TVL's claims that the sales process was unfair or biased are without legal merit or factual basis.

10. The selection on July 18, 1986, of the proposal to acquire SICC by the Hallmark Group was fair and reasonable. No basis has been shown for contesting that selection. Even if the Court were to accept TVL's allegations as true, the Court still would affirm the July 18 Order for the reasons set forth in paragraph 4 above.

In accordance with the foregoing, the Court ORDERS as follows:

The application by TVL for leave to intervene in this action and the motion by the Hallmark Group for conditional intervention are denied. Although this Court has denied intervention under Rule 24, it has reviewed the declarations and other submissions of TVL and the Hallmark Group and has permitted them to be heard on the merits of TVL's claims and on defendants' application to affirm the July 18 Order, to the extent deemed necessary to assure the Court that its July 18 Order was well-founded. Having done so, the Court, for the reasons set forth above, affirms its July 18 Order in all respects. Court has reviewed TVL's proposed order and has concluded that this order accurately reflects the Court's conclusions

Dated: October 9, 1986.

MARIANA R. PFAELZER,
U.S. District Judge.

Mr. EAGLETON. Mr. President, Hallmark Cards, Inc. is a community and national leader in America. This transaction provides the opportunity for a substantially stronger and more meaningful Spanish television network and, thus, will clearly serve the Hispanic community, as well as the overall public interest.

Furthermore, Hallmark's president and chief executive officer, Irvine O. Hockaday, is publicly committed to continuing SICC's Spanish-language format and the highest quality of programming for the Hispanic community.

Finally, I would like to note that on Friday, October 3, the Federal Communications Commission Review Board also recommended that the full Commission approve the license renewals and permit transfer of the SICC stations.

ELIE WIESEL: A WORTHY RECIPIENT OF THE NOBEL PEACE PRIZE

Mr. PROXMIRE. Mr. President, on Tuesday the Nobel Committee announced its selection of Elie Wiesel as the 1986 recipient of the Nobel Peace Prize. Having nominated Elie Wiesel twice for this honor, I salute the Nobel Committee for their excellent choice.

This is an award which Mr. Wiesel clearly deserves Who else in our time has dedicated his life to peace with the tenacity that Elie Wiesel has? Through his writings, his lectures and his moral example, he has served as a symbol, a living monument, to those who perished in the mindless horror of the Holocaust.

The Nobel Committee in its citation captured the essence of what Elie Wiesel has stood for throughout his life:

Wiesel is a messenger to mankind. His message is one of peace, atonement, and human dignity. His belief that the forces fighting evil can be victorious is a hard-won belief.

Wiesel's commitment, which orginated in the sufferings of the Jewish people, has been widened to embrace all repressed peoples and races.

And what a messenger he has been. An uncomfortable reminder of a painful chapter of history that the world would much rather forget. But he has not let us forget.

He has not permitted us to forget that fateful day in April 1944 when the 10,000 Jewish residents of his hometown of Sighet, Romania, were sent by cattle car to Auschwitz.

Or the months of harsh labor at his father's side in that terrible camp.

Nor the 42-mile death march to Buchenwald. The daily death watch once they arrived.

Time and again, checkpoints were passed. Time and again, the decision recurred with frightening monotony: Who shall live? Who shall die?

Elie would survive the arbitrary choices, the toss of the coin. But millions would not. His own father would die of dysentery just 3 short months before Buchenwald's liberation.

A decade would pass before Elie Wiesel began to speak out. In the ensuing years, his voice gathered strength. Through his 25 books, his countless lectures and interviews, he gave flesh and blood to the ghosts of Auschwitz, Dacchau, Treblinka, and Buchenwald.

Not as a morbid shrine. But to assure that these victims would not have died in vain. As he wrote:

We cannot deny the victims the fulfillment of their last wish: their idee fixe to bear witness. What the merchant from Saloniki, the child from Lodz, the rabbi from Radzimin, the carpenter from Warsaw and the scribe from Vilna had in common was the passion, the compulsion to tell the tale—or to enable someone else to do so. Every ghetto had its historians, every deathcamp its chroniclers. Young and old, learned and unlearned, everybody kept diaries, wrote journals, composed poems and prayers. They wanted to remember and be remembered. They wanted to defeat the enemy's conspiracy of silence, to communicate a spark of the fire that nearly consumed their generation, and, above all, to serve as a warning to future generations.

And Elie Wiesel's life has been dedicated to fulfillment of their wish—not just for remembrance—but as a word of warning of the unspeakable horror of which man is all too capable.

He provided the quiet moral suasion so essential to our efforts to ratify the Genocide Convention.

As the Chairman of the Holocaust Commission, he will oversee the creation of a national museum just a few blocks from here which will serve as a constant reminder to us and our children of the fragile limits of our humanity.

And by serving as the voice of our conscience on the tragedies of Biafra, Cambodia, the Sahel, he has done much to keep his promise to the merchant, the child, the rabbi, and the scribe.

The awarding of the prestigious Nobel Prize is a belated, but meaningful, recognition of the debt that all of humanity owes to him. And I am delighted to join in honoring Elie for the tremendous gift he has shared with all of us.

TRIBUTE TO MRS. JANE KATZ

Mr. HEFLIN. Mr. President, I was deeply saddend by the death of my close friend, Mrs. Jane Katz of Montgomery, AL. Mrs. Katz was an outstanding servant of the State of Alabama who, throughout her life, labored to benefit every citizen of her community, her State, and her Nation by taking an active role in the workings of democracy. Her strong, respected voice is now hushed. It will, however, never be forgotten, She was a truly remarkable woman whose efforts and presence will be remembered by all in the future.

Jane Katz was, perhaps, best known for her work with the League of Women Voters of Alabama. As legislative chairman she provided legislators and officials at every level of government with helpful insight and crucial knowledge. She continually worked with lawmakers to simply improve and reform. She served for many years as a member of the league board of directors, and was instrumental in establishing a league educational fund. Jane also published a newsletter for the League of Women Voters. Thus, her work educated and informed citizens of issues and concerns by which they were directly affected. This is a most unselfish service which greatly benefits democracy and our American way. An informed public is a stronger, more viable democracy.

I will always be deeply appreciative of the essential participation and help which Jane Katz provided in gaining passage of judicial reform legislation for Alabama. She was as instrumental as anyone in the State in this effort. She helped to inform legislators and citizens regarding the substance and effect of the reform package and then worked to enlist vital support and to dissuade opposition.

Mr. President, Jane Katz was regarded by all who knew her as a devoted friend and an invaluable citizen. She provided Alabama with a tremendous service throughout her life. Those efforts are evident in the many different concerns with which she became involved, and which have improved the life of each Alabamian. I am thankful that her work has not passed unnoticed. I recently saw a letter which described her legacy in an almost poetic manner. I would like to share that with my colleagues at this time. It reads, "(Her) activist devotion to democracy and democratic ideals helped to make Alabama government more

open and, therefore, more responsive. As a result, the fruits of her life's labor will not wither at her death." Jane Katz was a delightful, gracious lady and I will miss her in the years to come.

On September 15, 1986, the Alabama Legislature passed a resolution mourning Jane Katz's death, I ask unanimous consent that it be printed in the RECORD.

MOURNING THE DEATH OF JANE L. KATZ

Whereas, in consensus of deep sorrow and regret, the Legislature of Alabama records the untimely death of Jane L. Katz, on August 18, 1986, at the age of just 55 years; and

Whereas, Jane Katz, a native of Montgomery, Alabama, and a graduate of Syracuse University, was legislative chairman and liaison of the League of Women Voters of Alabama, and brought great knowledge and expertise to her position for over eight years; and

Whereas, Ms. Katz diligently followed the legislative process for over twenty years and was a long time member of the League of Women Voters Board of Directors and was instrumental in establishing a League educational fund; and

Whereas, Jane L. Katz researched and published a biweekly newsletter and sessions' analyses; she had an insightful view of governmental affairs and was an ardent worker for the public interest, better educational opportunities, open government and governmental reform, all of which earned her great distinction and the esteem of her colleagues, friends and this body; and

Whereas, Jane Katz contributed immeasurably to her state and community in her challenging positions for the enrichment of all and in her exemplary dedication for better government; and

Whereas, Jane Katz's leadership, ready smile and quick wit, her culinary skills, and keen intelligence delighted those whose paths she crossed; and

Whereas, Jane Katz served several terms on the Board of Directors of Temple Beth or of which she was an active member; and

Whereas, this legislature valued its association with Jane Katz and will greatly miss her leadership, advice, expertise, vast knowledge and keen wit; Now therefore, be it

Resolved by the Legislature of Alabama, both Houses thereof concurring, That even as we do grievously mourn, we do give thanks for the life, labors and friendship of our friend and distinguished public servant, Jane L. Katz.

Resolved further, That in expression of concern we do send copies of this resolution to Jane L. Katz's devoted husband, Warren, and to her beloved children: Teresa Wright of Birmingham, Alabama, and Laura Katz of Charleston, South Carolina, and Daniel Katz of Annapolis, Maryland, and to her brothers, Arthur Lobman of New York and Walter Lobman of Pensacola, Florida.

THE INTERGRAPH CORP. WINNER OF THE 1986 SENATE PRODUCTIVITY AWARD

Mr. HEFLIN. Mr. President, a few years ago, the U.S. Senate passed a resolution establishing the Senate Productivity Award Program. Through this award, a corporation may be recognized and rewarded both for outstanding productivity, as well as the accompanying benefits to its community, State, and to our Nation. With this productivity award, the U.S. Senate is able to congratulate companies which add significantly to our manufacturing capacity and to our competitiveness in trade at the international level.

This year, I am both proud and delighted to announce that the Intergraph Corp., of Huntsville, AL, has been chosen as the 1986 recipient of the Senate Productivity Award. The Intergraph Corp., a billion dollar, multination engineering company, designs, manufacturers, markets, and supports turnkey interactive computer graphics systems for applications in industry, design, engineering, and mapping. Additionally, it has been instrumental in applying computer graphics technology to the areas of aerospace and defense.

James W. Meadlock, who is now the president and chairman of the board of Intergraph, founded the company 17 years ago. Through his extraordinary technical and market intuition and powerful leadership, he has taken this company from its beginning as an aerospace and defense contractor to its current position as the No. 1 supplier of turnkey interactive computer graphics systems to the world marketplace. Since the company went public 5 years ago, Intergraph has achieved an average annual growth rate of nearly 60 percent. Revenues have increased from $91 million to a projected 1986 level in excess of $650 million. The number of employees has risen from under 900 to 5,300. The great productivity of the Intergraph Corp. is clearly evident. Foreign sales now account for more than 30 percent of the company's annual revenues. With the United States' trade deficit constantly rising, Intergraph's overseas success is truly heartening.

Intergraph's hardware and software products have demonstrably improved the quality of its customers' engineering, and as a result, the quality and usefulness of their products. Bridges, buildings, processing plants, aircraft, and automobiles are all being built more efficiently and with greater structural and mechanical integrity as a result of Intergraph's achievements. Civilian and military maps are more accurate, and telephone and other utility services are better and more reliably engineered because of the advances that the company has made. So, not only has Intergraph demonstrated great productivity in its own right, but its achievements have enabled other manufacturers and industries to improve and increase their productivity as well.

A great deal of Intergraph's success must be attributed to the great technical expertise, market intuition, and powerful leadership of James W. Meadlock. Through his guidance, Intergraph's product line is well balanced, diverse and innovative. It is representative of breakthrough advances in applications and technology. His dedication to imaginative product development, along with an attention to technical details and a commitment to professional management has enabled Intergraph to provide the marketplace with computer graphics tools that solve real world problems, and whose solutions are valued by engineering and mapping organizations around the world. Mr. Meadlock's strongest suit is unquestionably the integrity and honesty with which he conducts his company's business.

Once he makes a commitment, he does not waver from it. His sincerity in providing the best solutions to design engineering problems, along with his absolute insistence on product quality is unmatched in the industry. As a result, there is a tremendous amount of trust and confidence placed in him by Intergraph customers and, perhaps more importantly, by Intergraph employees. His undivided dedication to his company is filtered down through all levels of personnel and is evidenced by the fact that Intergraph's founding technical managment team has stayed together since the company's beginning.

Mr. President, the contributions of James Meadlock and of the Intergraph Corp. have helped to establish the city of Huntsville as a center for computer research and technology. I am proud, and I know that the citizens of Huntsville are proud of the Intergraph Corp. It has made great leaps and bounds in the recent past, and I am sure that its productivity will continue. Such industry will truly advance the interests of our Nation. Again, I congratulate the Intergraph Corp., James Meadlock, and all of the employees for their great achievements. Each individual who is involved in the company shares in this productivity award and should feel proud for his accomplishments, and contributions.

Thank you Mr. President.

THE 75TH ANNIVERSARY OF LINCOLN, AL

Mr. HEFLIN. Mr. President, I am delighted to rise today to congratulate the citizens of Lincoln, AL, on their 75th anniversary. Tomorrow, they will join together to celebrate their common heritage. I am certain that it will be a time that each citizen will remember for years to come.

Although the city was not incorporated until 1911, it has a very long and distinguished history. For hundreds of years, the Creek Indians were the only inhabitants of the area. The first actually documented history of Lincoln

was obtained from the records of Hernando DeSoto, the Spanish explorer, who camped at a site on the outskirts of town while on his expedition in search of gold. A bronze marker now identifies the spot where he and his troops pitched camp.

During the early 1800's, the area of Lincoln was the site of the bitter Creek Indian wars. In 1813, General Andrew Jackson and his troops marched from Fort Strother through what is now Lincoln on his way to fight the Creeks at the Battle of Horseshoe Bend. The route which he took is now called Jackson Trace Road, and it runs on the east side of the city. Even after the State of Alabama was founded in 1819, Lincoln was a part of the land which constituted the Creek Nation until 1832. As evidence of this part of their history, all of the property deeds in Lincoln can be traced back as part of the territory of the Creek Nation.

When the area was first settled, it was named Kingsville. However, many of the settlers came from Lincoln County, GA, and Lincoln, NC. They renamed a post office which existed in 1850 after their former home and ultimately decided to change the name of their community to Lincoln. This name was first chosen in order to honor General Benjamin Lincoln who was a revolutionary war hero. During the Revolutionary War, Benjamin Lincoln had been charged with the defense of Charleston, SC. Although he was captured, he had done such a fine job with what few troops he had that his name became a rallying point among patriots throughout the 13 colonies. When he was released by the British in a prisoner trade, which George Washington had arranged, he was made second in command of the Revolutionary armies. His distinction was so great that he was chosen to accept the surrender of the British swords after the Battle of Yorktown.

Most of the inhabitants of Lincoln were farmers until World War II when the Anniston Arms Depot was founded just 9 miles down the road. Still, the city did not experience much growth until the 1960's when Lake Logan Martin was built. Because of the recreational use of the lake, and because of the city's central location to many other industries, Lincoln began to grow rapidly. The number of citizens of Lincoln nearly doubled between 1960 and 1970 and again between 1970 and 1980. In both decades, it experienced 80% growth. This is, no doubt, due to the strong leadership provided to the city, and the concern of its citizens. Last year, the city conducted a special census in anticipation of the 75th anniversary and it was discovered that it now has a population of 2,601.

The city of Lincoln is, indeed, a great place to live and has much to offer. I have described the near proximity of Lake Logan Martin and the surrounding industry. In addition to this, the Alabama Motor Speedway is located in Lincoln. Education has always been of vital importance to the people, and Lincoln was actually the site of the first county high school. Land for the high school, I understand, was given by a developer.

Mr. President, for 75 years as an incorporated city, and for much longer than that as a small special community, the citizens of Lincoln have been working to make both their city and their state a better place. Their anniversary is not merely a birthday celebration. Rather, it offers the citizens, as a group, an opportunity to look into their past and to realize all that they have accomplished. Those successes and rewards which are reaching fruition today were actually initiated by the many great citizens who labored in the past. I believe that special recognition should be given, as well, to the closeness and harmony of the community. People are able to work together to accomplish goals much as a family does, because they know one another so well.

Now is the time for the citizens of Lincoln to think of the future. Many of those who are celebrating this 75th Anniversary will also be attending the centennial celebration. They will be able to see the changes which will occur in just 25 years from now. If they are to be anything like the last 25, the future will be exciting, indeed, for the citizens of Lincoln. I am certain that Lincoln will make even greater advances—that it will offer even more to its citizens, its State, and its nation. I am delighted to congratulate Lincoln on its anniversary. Indeed, I am very proud to represent the citizens of Lincoln and am pleased to serve them in any way I can.

Thank you Mr. President.

SMALL BUSINESS DESERVES AN ADMINISTRATOR

Mr. BUMPERS. Mr. President, as the 99th Congress grinds toward adjournment, I rise to express my deep disappointment with the White House and the President for having allowed this session of Congress to pass without submitting to the Senate a nominee to be Administrator of the Small Business Administration. In April of this year, Jim Sanders left the Office of Administrator, a position in which he had served capably and with distinction since 1982. Frankly, both Republicans and Democrats could not reasonably ask for a better Administrator than Jim Sanders.

But, both Democrats and Republicans can ask that the constitutional process be followed and that someone be named as Administrator. Since Jim Sanders' departure, the office has been filled on a temporary basis by a Mr. Charles Heatherly. This gentleman has never been considered by the Senate Small Business Committee, although he has appeared before our committee as a witness in an oversight hearing on implementation of the SBA authorization, Public Law 99-272, which President Reagan signed on April 7, 1986. His testimony was to the effect that he was not very interested in the authorization for the agency.

Mr. Heatherly made clear in his public statements and in his testimony not only that he had little respect for Members of Congress, but also that he intended to carry out the plan to dismantle SBA, even though the ink was barely dry on the President's signature on the authorization bill. In fairness to Mr. Heatherly, he has since been quoted as saying that the administration has backed away from its plan to eliminate SBA. I do not know if Mr. Heatherly would be favorably reported by our committee, or if the Senate would confirm him. In fact, I do not know if he is even the person who would be selected by the President as a nominee.

Mr. President, it is not as though there has been no concern expressed about this issue. Senator SASSER was the first to introduce a resolution expressing the sense of the Senate that the President should send us a nominee. Subsequently, the Small Business Committee met and reported a resolution calling on President Reagan to submit a nomination for the Small Business Administration. That measure now appears on the Senate Calendar as Order 702, Senate Resolution 434.

Many of us had high hopes that the White House Conference on Small Business, held here in August, would finally prompt the White House to move. The writing press has been filled with speculation about who might or might not be named. Well, no one has been named, and it is now painfully apparent that no one will be named before Congress adjourns, or at least too late for the Senate to act on the nomination. The delegates to the White House Conference, incidentally, made clear their feelings about SBA. They adopted two resolutions on the subject, the combined total of which received more votes than any other issue, and both of which urged the retention of SBA as an independent agency.

There are 15 million small businesses in America, according to the President's latest report on the state of small business. They have but one independent voice in the executive branch of the Federal Government, and that is the Small Business Administration. We may have legitimate differences of opinion as to how well SBA is doing its job, or even what SBA's job should be. But there seems to be a

broad consensus that the agency for small business, which has been working on behalf of consideration of the concerns of small enterprises in national policy since 1953, should not be thrown overboard. The reauthorization bill for SBA, which Senator WEICKER and I wrote, passed this body by 94 to 3 on July 16, 1985.

The 15 million small businesses and their owners and employees are the leaders in economic growth, producing over 80 percent of all new jobs. They are the leaders in innovation and technology. They are not big businesses that failed, as some in this administration seem to think. They deserve to have a permanent, credible spokesman in the Federal Government, and they will not have one until the President submits a nomination which is confirmed by the Senate. That is not going to happen any time soon.

It now appears that we will have a recess appointment by the President, so that the person named will be in office until the next Congress convenes. Recess appointments were contemplated by the Founding Fathers to allow the President to fill positions in true emergencies, when the shortness of time did now allow the job to go vacant until the Congress returned. That is hardly the situation here, since the job has been vacant since April.

There is nothing I can do at this point except to lament this deplorable situation. But I would be remiss in my duties as ranking member of the Senate Small Business Committee if I allowed this Congress to leave town without calling attention to this very important omission.

Mr. President, I yield the floor.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. BUMPERS. Mr. President, one of the more melancholy aspects of the end of a session of Congress is the retirement of some of the able Senators who have served this institution. This year we are losing a group of Senators—GARY HART, TOM EAGLETON, MAC MATHIAS, BARRY GOLDWATER, RUSSELL LONG—who have had a dramatic impact on both the Senate and the country. PAUL LAXALT certainly has to be counted as one of these outstanding Senators, and I'm truly sorry to see my friend from Nevada depart. We came to the Senate together in 1975 and have been steadfast friends ever since.

PAUL LAXALT has had a remarkable career as a public servant, and served with honor and distinction. Just this past year PAUL showed his strength, resolve, and courage, when he went to the Philippines at the request of President Reagan, and was instrumental in persuading Ferdinand Marcos to relinquish control of the Philippines. This allowed for the peaceful transition of power, thus saving an important ally from the turmoil that could have resulted from a bloody revolution.

He has always conducted himself with perfect aplomb in the Senate, and served his constituency well. The strong traditions of the American West are clearly evident in PAUL LAXALT. He is independent and loyal. He always treats his colleagues with courtesy and respect. He has been a friend to and assisted Republicans and Democrats alike. Walter Lippmann once said, "The final test of a leader is that he leaves behind him in others the conviction and will to carry on." I know PAUL LAXALT has met that test of leadership, and I wish him Godspeed.

TRIBUTE TO SENATOR GARY HART

Mr. BUMPERS. Mr. President, Senator GARY HART has served Colorado, the Senate, and the American people with strength of character, soundness of thought, and eloquence of voice. We will miss him in the Senate.

GARY HART and I were both elected to the Senate in 1974. He has been my seatmate on the Senate floor, and one of my closest friends and companions all of the 12 years of service we have shared. I deeply lament his departure from our ranks, and I will be daily conscious of his absence.

GARY HART can be proud of his record in the Senate. He is a true environmentalist and is a recognized expert on defense issues. His accomplishments are many. He has added a voice firmly grounded in conviction, and has often found himself as a lonely dissenting voice. We were 2 of the 11 Senators that voted in 1981 against the massive tax cuts that have led this Nation into the largest deficit in our history. His foresight and strength of conviction are the mark of a truly great leader.

But it is not only that GARY HART has served as the compassionate conscience of this body, but he has always sought to supplement his dissent with providing constructive, alternative proposals. Every Senator knows that it is easy to oppose, to complain, about legislation that is rarely if ever perfect. It is quite another thing to stand firmly for what one believes is right.

Just 1 year ago, we stood in this Chamber debating what has become one of the celebrated pieces of legislation enacted in the 99th Congress—Gramm-Rudman. GARY HART led the opposition to that measure, but he has consistently offered alternative approaches.

GARY is a man of great vision and creativity. He has one of the best minds in the Senate, and we will miss his intellect.

His accomplishments in the Senate are many, and his mark on the history of this Nation will be well noted by generations to come. But I know that his mark on history will not be limited to his Senate career. He gained the confidence of the American people in almost becoming the Democratic nominee for President in 1984. GARY HART is not through serving his country. I know that he will continue to work to move our Nation forward.

So, Mr. President, I offer a farewell salute to Senator GARY HART. I am saddened by his departure from the Senate. I wish him and his lovely wife, Lee, every possible success and happiness. They will always be my friends.

TRIBUTE TO SENATOR TOM EAGLETON

Mr. BUMPERS. Mr. President, I will miss my dear friend TOM EAGLETON when he retires from the Senate. I will miss his compasssion, his fierce defense of our great Constitution, his mastery of Government programs, and his knowledge of foreign affairs. We are losing a man of great intellect and wit.

TOM has served the State of Missouri with distinction for 18 years. Before that, after graduating from Amherst College and Harvard Law School, he served as prosecuting attorney in St. Louis and attorney general of Missouri. He has been an outstanding public servant in each capacity. His word is his bond, and he always deals with others in a manner that is refreshingly frank and forthright.

Senator EAGLETON'S legislative accomplishments are many and varied, but the one that stands out in my mind is the enactment of the War Powers Resolution. He worked long and hard to make this law a reality. The legislation underscores the constitutional axiom that it is Congress, not the President, that has the power to declare and make war, and it is an important statement of the cooperative relationship the President and Congress must have in conducting a sound foreign policy.

Mr. President, I will miss TOM EAGLETON'S dry wit the most. Each of us has received one of his handwritten notes making some poignant but humorous comment. TOM never lets us off the hook when we put politics or expediency above principle, and he constantly reminds us that we are here not to stroke our own egos but to serve the country and our constituents to the best of our abilities.

TOM EAGLETON will be an exceptional teacher in his next career. Washington University's gain is our loss, and we will sorely miss him.

TRIBUTE TO SENATOR MATHIAS

Mr. BUMPERS. Mr. President, with a sense of reverence and of loss I note that our colleague SENATOR MAC MATHIAS is leaving the Senate at the conclusion of the 99th Congress. Although, as a Member of the loyal opposition, I may benefit from the likely election of a member of my party as his replacement, I deeply regret Senator MATHIAS' leave taking. The Senate will be a much lesser body without the senior Senator from Maryland.

It is often said that none of us is irreplaceable. But MAC MATHIAS reminds us that each of us is also unique and, while a new Senator may bring his or her own new contributions to the Senate and the Nation, no one can fill the space left by MAC MATHIAS.

He is, without a doubt, the best scholar of the Constitution now serving in the Senate. He is one of the best orators to have served in the Senate during the 12 years I have been here. Senator MATHIAS has, time and again, been the voice of conscience and reason on issues of war and peace and justice for all Americans.

Perhaps Senator MATHIAS is best described by his election to Congress in 1958, as a Republican, and his reelection every time he has stood for election since then—including three times elected to the Senate—in a largely Democratic State. The people of Maryland would, no doubt, happily return MAC MATHIAS to the Senate if he chose to run again. Alas, he has not.

I do not believe the last few years have been easy for Senator MATHIAS, as he has often found himself in opposition to a President of his own party. In this opposition, he has shown his true character, and it is this strength of character which makes Marylanders respect and love MAC MATHIAS. They are right to do so, for I have followed him closely and I can assure Marylanders that he has never foresaken his principles, or theirs, for political expediency. Now, Senator MATHIAS says he has had enough of the fun and folly of the Senate, and that is his prerogative.

MAC MATHIAS leaves with many friends, much respect and tremendous gratitude for what he has given our country. I wish him well.

TRIBUTE TO SENATOR BARRY GOLDWATER

Mr. BUMPERS. Mr. President, when the 100th Congress convenes early next year, there will be a gaping hole in the fabric of this august body. Our beloved senior Senator from Arizona, BARRY GOLDWATER, will not be here, giving this body, and the country, the benefit of his wisdom, his intellect, and his spirit. But BARRY will leave behind a legacy that few who have served in this body have ever achieved.

Senator GOLDWATER's was always a clear and consistent voice, speaking out with a clarity and directness on the issues, that is too seldom heard around here. This was especially true in the field of national security. He made no bones about his views on any number of issues in this area, and we are a stronger and better country because of it. He was without peer in his consistent call for a strong defense posture, but this did not mean that he followed a blank check approach to dealing with the Defense Department. Far from it. For example, both yesterday and today he has been here on the floor, making clear his opposition to a new aircraft program, just as strongly as he would defend a weapon that he felt was important for our defense.

This has been one of BARRY GOLDWATER's special gifts that he brought to the Senate's deliberations. He never shrank from speaking what he believed, no matter what political oxen might be gored. I think almost everyone here has been on the receiving end of those comments at one point or another, but it was invigorating for the institution, and we are all better off for it. I well remember last year, when he was upset at the mining of the harbors in Nicaragua, he spoke out, even though he supported aiding the Contras. He spoke out because he has a special reverence for the truth, for "telling it like it is."

Nowhere was his devotion to the truth, and his devotion to building the security of our country more in evidence than in the Department of Defense Reorganization Act of 1986, which we so fittingly named after him. The simple truth is that without Senator GOLDWATER's tireless pursuit of this landmark piece of legislation, it would never have made it. This important legislation certainly had its adversaries in the Pentagon. Despite this will BARRY's dogged devotion to the cause of defense reorganization, the Senate passed his bill by the amazing vote of 95 to 0. This legislation will be a lasting tribute to him for it will enhance our military strength while it streamlines our defense management from top to bottom. BARRY's gift to the country is best described by Armed Forces Journal, which calls it "the greatest contribution to America's security we'll see in our lifetimes." I can tell you, not much legislation passed around here gets an accolade like that.

In a world of mushy language, Senator GOLDWATER went to the heart of issues especially in the area of defense. I remember earlier this year, when I had just finished speaking in support of the reorganization bill, Senator GOLDWATER put his finger right on one of our biggest defense problems when he said to me:

> We are buying a lot of equipment, I hate to tell you, that we do not need. We just need a lot more of fundamental, down-to-earth weapons to go out and fight a war. We do not need all this fancy stuff.

This was typical plain talk from BARRY, the kind of plain talk we all need to hear much more often in this body. Sadly, with his retirement, that kind of plain talk will be a much scarcer commodity around here. But I hope we will continue to hear BARRY's voice from Arizona, or wherever he happens to be, speaking out on the great security and other issues of the day in his own special style. Best wishes to you, Senator GOLDWATER. You leave with the affection, and gratitude, of both the Senate and the country.

SENATOR RUSSELL LONG

Mr. BUMPERS. Mr. President, so many have made statements here about Senator LONG's retirement from the Congress that I find it hard to say anything original on the subject. But, I want to join those who are emphasizing that Senator LONG's retirement represents the passage of an era in the Senate and that this body will miss him in many ways.

We've seen many changes in the Senate just in the last 12 years that I have been here. I am sure that Senator LONG has seen even more since he first came here in December of 1948. The longer I am here the more I see the importance of having elder statesmen in the Senate. We need people like Senator LONG who respect the institution, who understand its procedure, and who treat today's adversary as tomorrow's ally. The issues we debate here often are contentious and we need Members with the dignity and stature of Senator LONG to help us conduct the Nation's business.

We need Senator LONG's sense of humor. The issues we debate here are serious issues, but having a sense of humor lets us concentrate on the issues rather than taking them personally. Indeed, Senator LONG seems just as young at heart today as when I first got to know him. He's got such enthusiasm for the legislative process and he enjoys the process of working here almost as much as the substance.

We will miss his intellect, both on matters within the jurisdiction of the Finance Committee and on many other issues. He is truly a master of our tax laws. He has a long-range view of where this institution has been and where it is going on tax and trade matters. He respects the right of free debate as much as any Member of this body and he knows as much about parliamentary strategy and tactics as anyone I have worked with here.

There is no question in my mind that Senator LONG is one of the persons I will remember most from my time in the Senate. He is a man of stature and quality and I know that it

will be less fun and harder to work here without him. I wish him Godspeed.

TRIBUTE TO SENATOR RUSSELL B. LONG

Mr. DODD. Mr. President, at the end of the 99th Congress, the Senate will bid farewell to one of its most esteemed Members, and I will say goodbye to a man who has been not only a teacher, but a close friend of my family. I am speaking of RUSSELL B. LONG, the "chairman." After a "brief" 39 year stint in the U.S. Senate, RUSSELL has decided to return to Louisiana.

RUSSELL LONG will leave the Senate having served longer than all but three past and present Members. That in and of itself is a formidable achievement but more important than its duration is the name of his tenure in this body. His terms here have been marked by faithful service to his State and the Nation; remarkable parliamentary and political maneuvers that have dazed less adept opponents; and a boyish charm and affability that even those same opponents find hard to resist.

As a member of the Finance Committee since 1953 and as its chairman for 15 years, his mastery of the Federal Tax Code is legendary, his influence far-reaching. During his 15 years as chairman, RUSSELL was known for his consensus building and his dedication to his constituents. His personal achievements include the establishment of the voluntary dollar checkoff for financing Presidential campaigns, the earned income tax credit, and the tax credit program for companies that offer employee ownership plans. These initiatives were significant additions to our Nation's tax structure. In the Republican-controlled Senate, RUSSELL LONG has remained a powerful force on the Finance Committee and his expertise and advise on tax matters will be sorely missed.

The departure of Senator RUSSELL LONG from this body will leave a large void that may never be filled. He has, for a very long time, brightened this Chamber with his down-home stories and winning smile. As a senior Member of the Senate, he has served in leadership roles and provided his colleagues with parliamentary and political advice. He has been a force for stability and calm in the increasingly divisive policy battles of the last several years and for that, we are all grateful.

Senator RUSSELL LONG has been a good colleague and a good legislator; he has been a consummate Senator. It has been a great privilege for me to serve in this body with him, as my father did, and I will sorely miss him. I wish him well in his new life outside the Senate. I know his retirement will be more active than most men's careers.

THE END OF AN ERA FOR THE JEWELRY INDUSTRY

Mr. PELL. Mr. President, as the 99th Congress draws to a close, I wish to call attention to the end of an era for the American jewelry industry. On October 31 of this year, the highly respected executive secretary of the Manufacturing Jewelers & Silversmiths of America, George R. "Dick" Frankovich steps down after 40 years of service to the industry.

The record of Dick Frankovich's service over that period is one of remarkable stewardship during a period of growth, change and innovation for this unique industry which is so important to the economy of Rhode Island.

When he came to the association in 1948 as a 28-year-old Army veteran with a degree in industrial engineering, he found an industry that had been largely converted to wartime production of military insignia, buttons, and buckles as well as bombsights and shell casings. His first task was to help the industry revert to peacetime production.

The industry trade association was still regional in scope—in fact it was called the New England Manufacturing Jewelers & Silversmiths Association—and it was small. It had about 250 members and a budget of $33,000. Under Dick's tenure the association has become truly national in scope, although still based in Providence, and its membership has increased tenfold to some 2,500 members.

The association's growth has undoubtedly been stimulated by the adversity its members have faced during the past 40 years. Dick Frankovich has witnessed the rise of foreign competition which now accounts for one out of every three pieces of jewelry sold in the United States. And he has seen his industry reel under the impact of gold prices that rocketed from $35 to $850 in the 1970's.

In coping with these and other problems, the industry relied on its association for help for the simple reason that it is an industry of small businesses whose individual members are not equipped to deal with problems of national scope.

Dick Frankovich understood this need and planned his programs accordingly. He placed special importance on the association's presence in Washington, and many of us know him as an able and effective spokesman for his industry.

His tenure will be especially remembered for vigorous marketing efforts, notably the establishment of the Providence Trade Show, now known as Expo/Providence, which has become the world's largest jewelery and supply show. Other trade shows have been organized in New York and California, and the association has also become a vigorous presence in European trade shows as well.

Other Frankovich innovations include the establishment of group pension and insurance programs for small companies and establishment of the Jewelers Shipping Association to fill the void created by the fact that common carriers want to transport jewlery products. Most recently it has included the beginnings of a project to use the facilities of the industry to meet the subcontracting requirements of high technology industries.

Looking back, Dick Frankovich in a recent interview summed up his feelings about the frequently tumultuous times he served as "an exciting, busy, frustrating, exhilarating, infuriating, productive and fascinating 40 years."

I can only add that his tenure at the helm of the Manufacturing Jewelers & Silversmiths has been one of enormous benefit to the State of Rhode Island. I know that I speak for many others in public life when I say that Dick has our respect and admiration for his accomplishments. I wish him well.

AGRICULTURAL POLICY

Mr. BRADLEY. Mr. President, it is well known that many of our farmers are facing extreme and trying circumstances. Farmers—especially family farmers—have a special and honored role in American society. They are up before dawn, they work long hours for an uncertain return. Too frequently the farmer's tale is one of adversity, and the seering drought in the Southeast was a recent example of this.

Mr. President, the Members of the Senate have always been quick to repond to the real and perceived needs of the family farmers. Last fall, Congress enacted the most costly farm bill in our history. It is estimated that the Federal Government will spend over $25 billion on farm programs this fiscal year. And still the farm problems persist. A solid case can be made that it is not the neediest farmers who benefit from these programs.

In addition to the direct cost to the Federal Government, there is an even larger cost to consumers, who are saddled with commodity prices far in excess of world market prices. Sugar and dairy products, for example, are priced in U.S. domestic markets at levels which are more than double world prices.

Mr. President, as with many attempts to fool consumers and thwart market economics, these policies have backfired. One industry's boom is another industry's bust. The agricultural State Senators are quick to hail the virtues of the family farm, as rightly

they should. But I feel compelled to tell any colleagues of another institution which deserves recognition and honor: The family run business. Let my colleagues take notice, as the following example makes clear, that farmers aren't the only families with a stake in U.S. agricultural policy.

Van Leer Chocolate is a family owned and operated firm which produces bulk, high-quality chocolate for the confectionary, dairy, and baking industry of northern New Jersey. This business has been nurtured by three generations of Van Leers and now employs 75 people. The Van Leer's have continually reinvested money back in their company and today have a very efficient and modern plant. But this family firm and the jobs it creates are now endangered and U.S. agricultural policy is to blame.

What are the components of bulk chocolate? They're not many: cocoa butter, chocolate liquor, sugar and dairy products. Unfortunately, for Van Leer, sugar and milk products make up two-thirds of the ingredients by weight. This is unfortunate, because Van Leer must purchase these components in the United States at artificially high prices, while their principal competitors—which are foreign based—buy at world market prices. This U.S.-world price differential costs Van Leer almost 20 cents per pound or 14 to 18 percent of the total price per pound of their product.

I note that the administration recently approved subsidized sugar sales to China. This new action, which dropped the world price an additional 10 percent, is quite in line with our other misguided agricultural policies. It distorts market signals to farmers, and undermines the competitive position of our own indigenous industry.

The pressure on Van Leer either to relocate outside the United States or to close up shop is increasing. Fortunately, the Van Leers are committed to a U.S. operation and to New Jersey. I have no misgivings, however. The Van Leers must attend to the bottom line just like any viable entrepreneur must do. If we continue to undermine their competitive position, the outcome is as sad as it is inexorable.

Mr. President, I ask my colleagues what can be done to support the Van Leers and allow their talent and industry to be justly rewarded? Unforunately, the obvious option is a tariff on foreign chocolate producers who have the unfair advantage of access to world sugar and dairy markets. This option is unacceptable: It's a Band-Aid approach to a major economic problem. A tariff would only isolate the U.S. producers and further undermine their competitiveness on world markets.

Mr. President, the only options that promise real improvement are ones that increase the competitive strength of all U.S. industry and agriculture. Our agricultural policies neither help the most hard-hit farmer nor foster competitive industry. We must move our perspective from short-term expediency to a longer term view. Earlier this year, I suggested that we explore a policy whereby struggling farmers could receive special debt relief in return for agreement to forego future subsidies. This type of policy—which focuses on the transition from protected to competitive markets—is the only effective medicine for our national economic problems. Let's not sacrifice our Nation's family firms in a misguided effort to save our family farms.

DESIGNATING MAURICE, MANANTICO, AND MANUMUSKIN RIVERS AS WILD AND SCENIC RIVERS

Mr. BRADLEY. Mr. President, I would like to engage in a colloquy with the Senator of Wyoming, Mr. MALCOLM WALLOP, who chairs the Energy Committee's Subcommittee on Public Lands, Reserved Water and Resource Conservation. On September 24, my colleague from New Jersey, Senator LAUTENBERG, and I introduced S. 2871 to begin the process of designating the Maurice, Manantico, and Manumuskin Rivers in southern New Jersey as wild and scenic rivers. These are beautiful rivers. They are pristine and deserve the wild and scenic river status. Unfortunately, with the busy calendar of the Senate and the Energy Committee, we were not able to schedule hearings in the Senate on this important bill. However, a companion bill, H.R. 5343, has passed the House. The bill is being held at the desk, and I would ask my colleague if he would object to the bill's immediate consideration?

Mr. WALLOP. Mr. President, I must acknowledge that I would be forced to object to the bill's consideration. I am very aware of the Senator from New Jersey's great interest and enthusiasm for this bill. I know he is working hard to have the bill adopted and is considering a number of alternative legislative vehicles. However, no hearings on the Senate measure have been held and, without these hearings, I am now and will remain unable to consent to Senate consideration.

Mr. BRADLEY. Mr. President, I point out for the chairman of this important subcommittee that hearings have been held in the House. This bill enjoys the unanimous support of the New Jersey congressional delegation, local officials, and the local communities. It is unlikely that a Senate hearing will produce additional perspectives or opinions.

Mr. WALLOP. Senator BRADLEY is correct that a Senate hearing would likely have many of the same witnesses as appeared before the House committee. Nevertheless, I note that there is some controversy here, that while communities are in favor, the National Park Service has officially opposed the bill. As chairman of the subcommittee with jurisdiction over public lands and park issues, I am responsible for balanced and appropriate legislation. Without hearings, I am simply unable to assure myself and my colleagues that this legislation is in the national interest.

Mr. BRADLEY. Since the Senator from Wyoming will not consent to this bill's consideration, as is his right, I would like to pose some questions. Will he assist me in scheduling hearings at the earliest possible time in the next legislative session? Will he permit this bill to come before the committee at the first opportunity? And, if approved by the committee, will he help me to bring the measure before the full Senate as soon as is possible?

Mr. WALLOP. I will give my friend, Mr. BRADLEY, my promise of such assistance, should he reintroduce this bill next session.

Mr. BRADLEY. Mr. President, I thank the distinguished Senator from Wyoming for his answer and his commitment. Let me reassure him that I will introduce this bill as soon as possible next session and that I intend to see it through to its final passage by the Senate.

SENATE REFORM: ARE WE CONDEMNED TO IMPOTENCE

Mr. QUAYLE. Mr. President, we have again reached the time of year when we all complain about our broken-down legislative processes; I will go no further in documenting that proposition than to refer to Wednesday's debate on the DOD authorization bill. The Senators from Arizona and Georgia, the chairman and ranking minority members of the Armed Services Committee, made eloquent, cogent and valid statements on the need to reform the way we do business. It is no derogation of the merits of those arguments to say that they are not new—the same arguments were made to the Temporary Select Committee to study the Senate committee system, which I chaired 2 years ago, and have been made many times before and since.

It would be easy to document statements from an overwhelming majority of Senators on the need for reform—unfortunately, it is just as easy to document the fact that what we do is talk and refuse to act. The Temporary Select Committee made some very modest proposals for reform and it made them unanimously but not a single provision of the resolution we reported passed the Senate. The only caveat is that the Senate did make a modest reduction in the number of committee assignments.

As further documentation of our inability to act, I would note that one provision—to establish a Select Committee to study a 2-year budget—did pass the Senate by unanimous consent. However, that consent was vitiated. I later offered the same provision as an amendment to the fiscal year 1986 legislative branch Appropriation Act, but agreed to withdrew it on the assurance of the chairmen of the Budget and Governmental Affairs Committees that they would hold joint hearings on the issue during 1985. No such hearings have been held—and we still bemoan the process without doing anything to change it.

The philosophy of the temporary select committee was to recommend incremental reforms—reforms that would make a meaningful contribution to improving the Senate process but were limited enough to have a chance of adoption. That philosophy has shattered on the rock of experience. If we cannot adopt minor reforms—perhaps we should at least start a process whereby we can consider major ones.

Reflecting on the experience of the defense authorization bill, it seems to me that we have two major problems that require attention: first, is the proliferation of special interest conferees appointed by the House of Representatives and, second, is the duplication and intertwining of the budget, appropriations, and authorization processes.

SPECIAL INTEREST CONFEREES

A brief look at the calendar will show that the practice of appointing special interest conferees has got out of hand. The conference on the defense authorization bill is merely an extreme example of a trend that has spread to bills of every kind and description. On the defense bill, we had six sets of exclusive conferees as well as six sets of additional conferees adding an unconscionable degree of complexity and inflexibility to a conference that had sufficient substantive policy issues to resolve. I strongly believe that the Senate cannot just accept this unilateral change in the conference process on the part of the other body—we must equip ourselves so that conferences can work as they are supposed to work. The essence of that process is that there be managers on the part of the House and Senate who can resolve differences between the bodies. The practice of exclusive and additional conferees is destructive of that process and inconsistent with tradition. Let me just quote from Cleaves' Manual of the Law and Practice in Regard to Conferences and Conference Reports—prepared in 1900—"A conference committee is practically two distinct committees, each of which acts by a majority." For those who might cavil that Cleaves is only a Senate source, let me add that Hinds Precedents—the authoritative source for traditional House procedure—is to the identical effect.

The appointment of exclusive and additional conferees violates this fundamental principle of majority rule, because, in effect, it requires supermajorities of House conferees while the Senate remains committed to a straight majority vote. The playing field is not level.

I intend to explore, during the adjournment, possible courses of action to remedy this situation. It seems to me to be worth examining whether we should revert to the earlier practice of number amendments rather than the current practice of striking all after the enactment clause. In that way, at least, an entire conference will not be hung up on failure to resolve a particular issue—especially if it is not relevant to the central topic of the bill. It also seems to me that it is again time to examine the merits of splitting the defense authorization bill into separate parts, again to avoid blocking an entire conference because of the insistence of exclusive conferees on a particular provision unacceptable to the committee conferees. I hope to explore these and other thoughts with my colleagues on the Armed Services Committee because I firmly believe that we cannot just acquiesce in a development that undermines a fair conference process.

DUPLICATION OF FISCAL PROCESSES

Experience has shown that the three-layer cake is undigestible. The Congress cannot deal every year with budget, authorization, and appropriations processes before providing funding for the Government. We must look at solutions to this problem—rather than bewailing its inevitable result, the omnibus continuing resolution passed during the adjournments frenzy.

I have long been an advocate of the 2-year budget and I am pleased that we have taken a significant stride in that direction in the defense authorization bill. The provision for milestone authorization is also a major step in the right direction. However, the problem is not limited to defense and I urge the chairmen of the Budget and Governmental Affairs Committees to carry out the promises that they have made regarding hearings on the issue.

A 2-year budget will be helpful—but we must go even further. In the fiscal process, we must make two basic decisions; the macro and the micro. What is the total budget going to be, both Government-wide and for the major functions, and how does that translate into funding for individual programs. These two functions are now carried out by three institutions—the Budget Committee for the macro and the Authorization and Appropriations Committees for the micro.

Historically, we moved all appropriations functions into the Appropriations Committee in the post-World War I era so that that committee could perform the macro function. The unification of the appropriations process was a logical congressional counterpart to the unification of the executive budget function mandated by the Budget and Accounting Act of 1921. However, that function has slipped from the committee in two ways—first, through the growth of entitlement and other "back-door" funding mechanisms which eroded that committee's jurisdiction over spending and then through the creation of the Budget Committee in the 1974 act. As a result we now have two committees whose original function was to divide up the pie; but now the Budget Committee divides up the entire pie and the Appropriations Committee only about half of it.

Historically, the functions of the authorizing and Appropriations Committee were distinct but they have become ever more redundant through the growth of 1-year authorizations and the proliferation of detail in those authorizations. From a superficial reading, it is sometimes difficult to distinguish which is the defense authorization and which is the defense appropriations bill as both of them contain both detailed funding provisions and changes in substantive law.

There are many theoretical solutions to this blurring and duplication of the macro and micro fiscal functions. But theoretical solutions will not solve our problems, which are all too practical. We need a practical solution—one that recognizes that any change in the functions of these committees will alter the basic power relationships in the Senate. We, therefor, need a process for dealing with this issue that both involves those that will be most directly affected but which also guarantees that the result of the process will not be total inaction, In other words, it seems to me, that we must express the will of the Senate that the fiscal process must be streamlined and then we must establish a mechanism to ensure that this will of the Senate is carried out. I propose to work on such a measure during the adjournment and invite the cooperation of any of my colleagues who feel that we have talked too long and acted too little.

SENATOR GARY HART

Mr. RIEGLE. Mr. President, GARY HART has been a forceful and thought-provoking Member of this body for the last 12 years. He has also been a national leader with vision and courage. I greaty value his friendship and example. I join my colleagues in wishing him well and every success in the future.

In his years here in the Senate, he has shown leadership in many areas. Following are just a few:

Served on the Senate Select Committee To Investigate the Intelligence Community (1975). Formed under the chairmanship of the late Senator Frank Church to investigate abuses by the intelligence community, report and recommend reforms and played a key role in the investigation and drafting of the committee findings.

Elected chairman, National Commission on Air Quality (1978). The panel was created by Congress with the passage of the 1977 Clean Air Act amendments to study the implementation of the new statute and to recommend ways to improve environmental regulation.

The Commission had 13 representatives of the environmental, scientific, and business communities, Republican and Democratic Members of Congress, State government and Indian tribes.

After 2½ years of study, the Commission published a comprehensive report, "To Breathe Clean Air," that contained 433 findings and 109 specific recommendations.

Appointed advisor to SALT II arms control talks in Geneva. Urged approval of the Treaty during Senate reelection campaign in spite of intense, conservative opposition to the Treaty.

Chairman, Senate Investigation of the Three Mile Island nuclear reactor accident (1979). As chairman of the Senate Environment and Public Works Subcommittee on Nuclear Regulation, Senator HART led an extensive and difficult inquiry into the accident at Three Mile Island. At the conclusion of study, HART convinced the Senate to approve a series of significant reform measures to:

First. Require each State with a nuclear powerplant to have an evacuation plan approved by the Nuclear Regulatory Commission;

Second. Accelerate the assignment of NRC inspectors at each nuclear powerplant and increasing the number of such inspectors being trained;

Third. Improve the training, retraining and licensing of nuclear plant operators;

Fourth. Require the NRC to propose a plan to respond to emergencies; and

Fifth. Require the President to develop a national contingency plan to ensure a coordinated Federal response to future emergencies.

Coauthor, with Senator BARRY GOLDWATER, of 1980 Senate Armed Services Committee report on Command, Control, and Communications strategic warning system. In addition to recommending ways to modernize the NORAD facility, the inquiry revealed that during an 18-month period, the warning system had registered 151 false alarms—one of which lasted a full 6 minutes, half the time it would take a Soviet, submarine launched ballistic missile to reach its target in the United States.

HART authors comprehensive proposal—[Strategic Talks on Prevention]—to prevent the triggering of a nuclear conflict by miscalculation:

Creation of jointly staffed United States-Soviet crisis prevention centers;

Steps to prevent nuclear proliferation;

Reductions of nuclear war-heads and missiles, particularly MIRV's.

Chairman, appointed by then-Senator Edmund Muskie, of Senate Budget Committee Task Force on Synthetic Fuels (1980):

Played the decisive role in scaling back the Carter-proposed $88 billion synthetic fuels program to a more reasonable, two-phased $20 billion effort;

Fought suspension of enviromental standards and won adoption of amendment requiring congressional approval if there were attempts to spend more than $20 billion on the program.

Proposed alternative tax credit for production approach to massive price support subsidy;

Founder, Congressional Military Reform Caucus (1981):

With Republican Congressman WILLIAM WHITEHURST of Virginia, founded caucus dedicated to promotion of military reform;

Caucus now boasts membership of 130 Members of Congress from both sides of the aisle. Caucus has led the fight to:

Terminate the DIVAD air defense weapon;

Win congressional approval of an independent testing office for weapons under development in the Pentagon.

Authored, with William S. Lind, "America Can Win," a book to educate the American public on the principles of military reform.

Cochairman, with Senator LAWTON CHILES, Democratic Task Force on Alternative Budget (1985–1986, appointed by Minority Leader ROBERT BYRD):

Led floor fight against enactment of Gramm-Rudman-Hollings "I";

Coauthored, with Senator CHILES, "budget principles," adopted unanimously by Democratic Conference in January 1986;

Coauthored, with Senator CHILES, alternative budget to fiscal year 1987 budget resolution (final Conference Ageement on budget resolution included $400 million from Hart-Chiles amendment to improve math and science education).

Led successful effort to prevent enactment of Gramm-Rudman-Hollings "II" in the wake of Supreme Court decision striking down automatic budget cutting procedure in Gramm-Rudman-Hollings I.

These are just a few of the areas in which GARY HART has played a significant and leading role here in the Senate. I will miss his advice and counsel. He has meant much to our work here in the Senate. I fully expect GARY to continue to play an important national leadership role for many years to come.

Lori and I extend to Lee and GARY our best wishes for the future.

SENATOR RUSSELL LONG

Mr. RIEGLE. Mr. President, it is the end of an era in the Senate. For most of this century, we have benefited from the wisdom, dedication, and leadership of the Long family. This year, after 38 years in the Senate, RUSSELL LONG is retiring. It won't be the same without him.

One thing that we all agree upon, and there are so few, is that RUSSELL LONG is one of our most distinguished and charming Members. Since he first came to the Senate in 1948, he has made valuable contributions in a number of areas. He is most highly regarded for his expertise on the subject of taxes, where, as chairman of the Senate Finance Committee for 15 years and its current ranking minority member, he has done more than perhaps any other legislator to shape our Tax Code. During the seemingly endless drafts and debates on this year's tax bill, the last one that will have his positive, indelible imprint, RUSSELL was an invaluable resource to Members on both sides of the aisle and an ally for working, middle class taxpayers. He has fought for provisions that benefit the average American, such as the earned income tax credit and employee stock ownership plans.

I've also had the pleasure of working with RUSSELL on the Commerce Committee, and benefited enormously from his friendship, experience, and wise counsel. We've also cooperated on some of the less widely heralded legislation of his career. I look back fondly on the many hours we spent toiling over the Cajun Music Month Resolutions.

RUSSELL LONG has a rare knowledge of political history and a great sense of humor, both will be sorely missed when he leaves the Senate. His institutional memory is one of the Senates most valuable assets. During his nearly 38 years in this body, he has earned the affection and respect of every colleague. That is a rare achievement. I am sure that I speak for all Senators in wishing RUSSELL and Carolyn LONG much happiness and good health in the years ahead.

POSITION ON VOTES

Mr. PELL. Mr. President, I wish to state for the RECORD my position on several votes held in the Senate during its late night session on October 16, 1986, when I was necessarily absent.

On Senate vote No. 351, on a motion to table the House amendment to the

conference report on the continuing resolution relating to "Buy America" provisions, I would have voted "nay."

On Senate vote No. 352, on a motion to table the amendment by Senator METZENBAUM regarding RICO, I would have voted "nay."

On Senate vote No. 353, on a motion to table the amendment by Senator MELCHER regarding the Temporary Emergency Food Assistance Act, I would have voted "nay."

On Senate vote No. 354, on a motion to table the amendment by Senator ABDNOR, which would also have tabled the amendment by Senator GOLDWATER on acquisition of Air Force trainer aircraft, I would have voted "nay."

TRIBUTE TO SENATOR RUSSELL LONG

Mr. KENNEDY. Mr. President, I am proud to join my colleagues in saluting a good friend, a Senator without parallel, a man whose vision of opportunity for all has guided his entire public life.

As we pay tribute to the powerful senior Senator from Louisiana, another question is on our minds as well—"Will there be any power left in Washington after RUSSELL LONG leaves, or will he take it all with him?"

Senator LONG has many admirers in this town—and one of the first qualities that everyone notices is his impressive intellect and extraordinary ability. In fact, it has been said, only partly in jest, that RUSSELL LONG's IQ may be higher than the rest of the Senate combined.

The second and third things some people notice at once about RUSSELL LONG, esxpecially in this Chamber, is that he is a brilliant debater and a brilliant entertainer.

They ought to sell tickets in the Senate gallery on days that RUSSELL LONG is managing a bill on the Senate floor. At the very least, they should bring in busloads of high school classes on the days of those debates—because the young citizens who represent our future will never see a finer example of our democracy in action.

We are all familiar with RUSSELL LONG's legendary reputation as master of the tax laws. We have had 99 Congresses since the beginning of the Republic, but I doubt that the Senate Finance Committee has ever had a better or more effective chairman than RUSSELL LONG.

Some of the best new ideas of the past two decades in our public life have come from Senator LONG. The dollar check-off and public financing of elections have taken Presidential campaigns off the auction block; the earned income tax credit has eased the tax burden on the working poor; and his pioneering advocacy of ESOP's has helped to breathe fresh air into our concepts of the workplace.

His achievements, particularly in these areas, represent an idea about our country that is rooted in the belief that national greatness can only be achieved when every citizen is a beneficiary of the blessings of America. That idea is premised on the understanding that a strong democracy cannot endure with a permanent division between haves and have nots, and that it is the responsibility of Government to advance real opportunity for all.

RUSSELL LONG has pursued this vision with remarkable success throughout his long and remarkable career—a career which surely will not end next January. There is a part of RUSSELL LONG that will never leave public life of public service. Certainly, he is leaving the Senate at the height of his power and his powers—and in the years to come, I hope that any President of either party who has a tough job that needs doing well will be wise enough to turn to to RUSSELL LONG.

I have been honored to serve with RUSSELL LONG for over two decades. For nearly 40 years, he has graced this Chamber with his vision, his intellect, his wit, and his friendship. I commend him for his outstanding service to the people of Louisiana and to all the people of America. He ranks with the greatest Senators who have ever served in this body, and we shall miss him in the years and the debates to come.

TRIBUTE TO SENATOR BARRY GOLDWATER

Mr. KENNEDY. Mr. President, I am proud to join my colleagues in this tribute to a man who for more than three decades has been one of the great institutions of the Senate and the Nation. I am honored to call BARRY GOLDWATER my friend—and I admire his sense of principle, his character and his courage.

We have had our differences on the issues, but as I have come to know him, I have been reminded again of an enduring truth. Friendship does not demand conformity of ideas—and mutual respect does not depend on an identity of ideology.

All of us, Democrats as well as Republicans, know how BARRY GOLDWATER stood his ground—and how the world finally came round to him. The choice he gave the nation has echoed across the years—and its reverberations can clearly be heard today in Ronald Reagan's speeches.

There is another, vital quality that marks him out. While BARRY GOLDWATER takes issues seriously, he never takes himself too seriously. He is not self-important or self-righteous, and woe betide the partisan—of the right or the left—who runs afoul of Senator GOLDWATER by calling legitimate dissent unpatriotic, irreligious, or un-American.

He understands the essential nature of our national life—that the clock turns from the liberal to the conservative hour and back—again and again—and both traditions have something important to contribute. He fights fiercely for his tradition, but I have never heard him say a mean, personal, vindictive word about any one on the other side of the debate.

On the Armed Services Committee, I have disagreed with him on some defense issues. But I have also learned from him—although I do not have to admit, I probably have not learned as much as he would like.

Most of all BARRY GOLDWATER comprehends that love of country transcends any particular policy or specific weapons system—that the values which always unite us as Americans are stronger than the views which sometimes divide us.

Finally, let me say that I speak not only for myself, but for two others who were honored to have him as a friend—John and Robert Kennedy. They swapped stories, teased each other, and vigorously debated everything from labor law reform to the Nuclear Test Ban Treaty. President Kennedy looked forward to Senator GOLDWATER's visits to the Oval Office. Robert Kennedy shared his affection and concern for native Americans—and prized his photographs of the West. I hope this doesn't get him in trouble with his other friends—but we like to think of BARRY GOLDWATER as a Kennedy family friend.

In his final months in the White House in 1963, in a conversation with Ben Bradlee, President Kennedy said of BARRY GOLDWATER:

> I really like him—and if he's the Republican nominee and we're licked, at least it will be on the issues. At least the people will have a clear choice.

Today, two decades later, I can't help but reflect what a great debate it would have been—and what great friends they would have been afterward.

Senator GOLDWATER has set a high standard. His life and service display the true and enduring meaning of "Duty, Honor, Country," and we shall miss him in this Chamber.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. KENNEDY. Mr. President, we shall miss our colleague from Nevada, Senator LAXALT, when he leaves the Senate this year, but all of us have the feeling that he is saying "au revoir" to public life, not "farewell."

Whatever the future may hold for him, it has been a privilege to know him and to serve with him in this Chamber.

PAUL LAXALT may be Ronald Reagan's best friend in the Senate—but it can also be said of PAUL LAXALT that no Senator has more friends on both sides of the aisle in the Senate than he does. And that friendship is based on our high respect for PAUL LAXALT's ability, integrity, loyalty, and leadership.

Unless PAUL writes his memoirs, few of us will probably ever know the true scope of the effective roles he has played so often in the Senate. He is a classic example of the Washington truth that there is no limit to the success that can be achieved if you are willing to give someone else the credit.

I suspect that each of us, at one time or another, has found PAUL's involvement indispensable in finding common ground on issues where passions were rising out of proportion to the merits of the controversy. He has been an effective spokesman for his side of the issues—and an equally effective ambassador to those on the other side.

As we learned in the divisive Senate struggle over the Panama Canal Treaty in the 1970's, a debate in which PAUL LAXALT is involved is a debate that sheds more light than heat.

Perhaps he will be best remembered in these Senate years for the mission he undertook for President Reagan to the Philippines, at a critical moment in the movement for the restoration of Philippine democracy. As I heard last month at the award dinner in New York City honoring President Aquino by the Lawyers Committee for Human Rights, the two worst things that can happen to a dictator are a visit from Senator PAUL LAXALT and a delegation from the lawyers committee.

Obviouusly, we will miss PAUL LAXALT's special touch and special grace in our debates in the years ahead. But I shall also remember him for the many personal kindnesses that he has shown to me and also to my family. He has been a fine Senator and a fine friend, and I wish him well in whatever line of work he chooses next.

TRIBUTE TO SENATOR TOM EAGLETON

Mr. KENNEDY. Mr. President, I would like to take a few moments to pay tribute to our distinguished colleague of many years, Senator TOM EAGLETON. In the next few days, TOM will close out his brillant 18-year career as U.S. Senator. Throughout that time, he has been a loyal and effective Senator for the people of Missouri and for the American people as a whole. Most of all, his eloquent voice and his passionate commitment to the principles of liberty and justice have made him one of the most respected Senators of his generation, a true conscience of the Senate.

We served together on the Senate Labor Committee for many years. In that time, he worked tirelessly to address the Nation's most pressing social problems. His service to the elderly and his authorship of the "Right To Read" program stand out as prime examples of his dedication to the twin and fundamental principles of economic progress and social justice for every citizen. And his successful efforts to rescue the Chrysler Corp., helped save hundreds of thousands of American jobs and prove to the Nation and the world that the United States is prepared to defend American industry and American jobs and lay the groundwork for future growth.

Many of TOM EAGLETON's greatest achievements have come in the areas of foreign policy and the environment. Time and again, he has fought the good fight—and won. In May 1973, he offered the simple, profound, historic one-sentence amendment—"to Halt the Bombing in Cambodia"—that effectively ended U.S. involvement in the war.

Later that same year, TOM EAGLETON was a principal author of the War Powers Resolution, which reestablished the constitutional role of Congress in the power to make war.

Senator EAGLETON has also worked tirelessly to clean up the environment. In the early 1970's, he played an instrumental role in the passage of the Clean Water Act and the Clean Air Act—among the first great pieces of legislation which demonstrated a commitment by the Federal Government to preserve the environment for future generations.

And as a member of the Committee on Governmental Affairs, Senator EAGLETON has made major contributions to the processes by which Government provides services to the people. His efforts to reduce waste and abuse in military spending and his sponsorship of the bill creating inspectors general in 12 major departments and Federal agencies vividly illustrate this commitment.

No Senator in this Chamber has a more intense commitment to the fundamental principles of America; no Senator works harder to advance those principles; no Senator is more indignant when those principles are violated by actions that serve special interests or injure those in need; and no Senator is more eloquent in debate in the passionate defense of America at its best. Time and again, on the Senate floor and in our offices, we have witnessed the phenomenon that when TOM EAGLETON rises for a speech, the Senate Chamber quiets and lesser business stops as we listen to his words.

Now Senator TOM EAGLETON is becoming Prof. TOM EAGLETON. He is taking his enormous energy and talent back to Missouri, where he will share his wisdom and experience with young Americans as professor of political science at Washington University. We shall miss the dedication, insight, integrity, and humor that have graced the Senate for the past 18 years. But most of all we shall miss the friendship of one of the finest Senators who has ever served the Nation.

TRIBUTE TO SENATOR GARY HART

Mr. KENNEDY. Mr. President, it is an honor to pay tribute to our outstanding friend and colleague from Colorado, Senator GARY HART, who is retiring from the Senate to concentrate on other things.

Throughout his 12 years in the Senate, GARY HART has been a strong voice and an effective ally on the issues and causes that we share. He has distinguished himself in many different areas of foreign and domestic policy, but to me he leaves his most lasting mark as a Senator for his comprehensive contributions to the debate on national defense and arms control.

It has been a privilege to serve with him and to learn from him on the Senate Armed Services Committee. He immersed himself in the work of the committee and established himself as a respected national expert on our national defense and national security.

As on so many other issues, GARY HART has had the courage to challenge the conventional wisdom and to buck the prevailing tide. His stands may not always have been popular, but they have been principled and persuasive. As a leader in the fight to defeat the costly, vulnerable and dangerous MX missile, he initiated a Senate filibuster against the missile in 1983 that won the attention of the Nation and focused new attention on the flagrant defects of the missile. Tens of thousands of Americans have demonstrated across the country to stop the MX, and GARY HART's achievement is that he stopped it in the Senate.

In other critical areas of defense as well, he has consistently presented strong and persuasive arguments against the most costly and questionable nuclear and other weapons programs, from star wars, to chemical weapons, to cruise missiles.

In the ongoing debate over the SALT II accords since the 1970's he has played a leading role in analyzing the complex issues and educating the Senate. In all his work on arms control, GARY has continually sought to demonstrate that genuine arms control and a strong national defense are not incompatible. He has stated, consistently and correctly, that while nuclear reductions are important, we must never lose sight of our primary objective, to ensure that nuclear weapons are never used again in anger.

In 1980, he coauthored a report with BARRY GOLDWATER on nuclear false

alerts that provided valuable insights into major flaws in our early warning system, which is designed to provide adequate advance warning of nuclear attack while preventing accidental launch. The Hart-Goldwater study led to a reevaluation of the problems in our command, control and communications network and resulted in new initiatives in that area.

In 1982, he helped initiate the Military Reform Caucus, composed of 54 Members of Congress, military officers and civilian defense experts. The goal of the caucus is to bring our military priorities into line with the goals and objectives of our national defense. The approach, largely conceived by Senator HART, has been to reform the military by first examining its basic building blocks of personnel, tactics and strategy, and hardware.

Earlier this year, GARY authored an impressive new book, "America Can Win," which develops his ideas on personnel, tactics and strategy, weapons procurement, defense reorganization, and arms control. It is a brillant treatise on the problems of America's current military structure and a road map to reform, and its deserves to be read carefully by all of us who deal with these complex and immensely important issues.

In his farewell address to the Senate on October 9, GARY spoke of his "sense of obligation and responsibility to contribute to the public life of his Nation." Anyone who knows GARY HART knows that he takes his obligations and responsibilities to the Nation seriously, as he has throughout his Senate career.

We shall miss him in the Senate. We shall miss his thoughtfulness, his steadiness, his integrity, his grace, and his dedication. And his departure from the Armed Services Committee will be a special loss to all of us on that committee.

Whatever the future holds for GARY HART, he as been a brilliant and effective Senator, and I wish him well in the new and even more important enterprise that he is undertaking.

TRIBUTE TO SENATOR CHARLES McC. MATHIAS, JR.

Mr. KENNEDY. Mr. President, it is an honor to join my colleagues from both sides of the aisle in paying tribute to our friend from Maryland, Senator CHARLES MCC. MATHIAS. For more than a quarter century, MAC MATHIAS has been the foremost champion of civil rights in the U.S. Senate. Throughout his brilliant career in the Senate and in the House of Representatives before that, he has been a tireless and eloquent advocate of the rights of minorities, women, the elderly, and the disabled, and we shall miss his leadership in the years to come.

I have been proud to stand shoulder to shoulder with MAC MATHIAS in the critical civil rights struggles of the past two decades. His leadership on fair housing legislation dates to his freshman year in the Senate and has continued to the present time. He has also been in the forefront on the continuing battle for equal voting rights for all our citizens. In 1982, he was a principal sponsor of the Voting Rights Act extension, which has done so much to advance the peaceful revolution of civil rights in America and to transform our society into one that more nearly meets the ideal of equal justice under law.

In addition, MAC worked tirelessly to assure that Martin Luther King, Jr. received the recognition he so richly deserved. As a leader of the long and successful effort to place a statue of the great civil rights leader in the Capitol, and to designate a national holiday in his honor, MAC, like Martin Luther King, Jr., taught us that with preserverance, we truly can overcome.

MAC's retirement will be felt especially deeply by all of us on both sides of the aisle who worked with him on the Senate Judiciary Committee. For years on that committee, we have looked to MAC for the decisive vote on so many critical issues, not only in the area of civil rights, but on other issues as well. As chairman of the Subcommittee of Patents, Copyrights and Trademarks, he has championed the rights of creative artists, and has initiated innovative and important reforms to bring copyright and patent protections into the 20th century. His efforts to bring the United States into the Berne Convention have highlighted the need for international recognition of creative rights. Throughout his career, in all aspects of our work on the committee, he has been devoted to fairness and justice. All of us who have been privileged to serve with him on that committee have learned from him and admired him, and we shall miss his leadership, his counsel, and his friendship.

In addition, MAC leaves a mark of high distinction in many different areas of foreign policy, especially on nuclear arms control. His skill as a legislator, his thorough understanding of complex issues, and his commitment to arms control have brought us closer to that great and overriding goal of our time. In particular, he has been a tireless advocate for a comprehensive nuclear test ban treaty, and we are closer to that historic goal today because of his thoughtful Senate work.

He has also made a lasting contribution on numerous other critical issues in foreign policy. He was one of the first to warn about the accumulating danger of the Third World debt. He played an indispensable role in developing and strengthening the antiapartheid legislation that has finally put America on the side of justice and a free South Africa.

In these and so many other ways, MAC MATHIAS has graced this Chamber with his presence. I wish him well in the years to come. His retirement is a loss to the Senate, to Maryland, and the country. He will rank as one of the finest Senators that Maryland has ever had, and I hope that Presidents in future years will find ways to use the enormous talent, integrity, and statesmanship that he brings to everything he touches.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. MOYNIHAN. Mr. President, to this Senator, my colleague, PAUL LAXALT, the strong silent Gary Cooper of the U.S. Senate is, to a degree, enigmatic. This trace of mystery is perhaps in keeping with his Basque heritage, a people whose origins are unknown. The Senator from Nevada keeps his distance, maintains perspective, remains objective.

Thucydides, in the "History of the Peloponnesian War" writes:

> the bravest are surely those who have the clearest vision of what is before them, glory and danger alike, and yet notwithstanding go on to meet it.

PAUL has been the President's closest friend and advisor, and has lead the Presidential campaign of his party in the last three elections because his vision is clear, steady, and reliable. Last year, PAUL returned from a private retreat in the hill country of his native Nevada with a decision. He has seen what lies ahead for him and now chooses to go on to meet it.

As he does so, I join my colleagues in congratulating him and wishing him well.

TRIBUTE TO SENATOR CHARLES McC. MATHIAS

Mr. MOYNIHAN. Mr. President, MAC MATHIAS is a friend of mine: A friend who has served in the Congress with unequalled distinction for more than a quarter century.

Much has already been said here on the floor and in the press about his upcoming retirement. The accomplishments of his long career are, of course, familiar to all of us. Yet a listing of those things, I do not believe, cannot begin to convey what MAC means to me and to the rest of his friends and colleagues here.

We respect the senior Senator from Maryland, yes, for the power of his well-known intellect. We respect him for his skill as a legislator. And we admire him for his prudence, wisdom, rock-steady temperament, and ever-present good humor. But even more, MAC MATHIAS has made his mark as a man of conscience. He acts always

from belief and from conviction. The U.S. Senate knows this about their colleague from Maryland. And the people of his great State know it. His constituents have respected him—and re-elected him for it.

But Senator MATHIAS moves on. He will practice law, and some fortunate students at Johns Hopkins University will have the benefit of his teaching. This is his right, or more precisely his due. This Senator would presume only to offer CHARLES MCCURDY MATHIAS every possible good wish, and to thank him for a generation of incomparable service to this State and Nation.

TRIBUTE TO SENATOR THOMAS F. EAGLETON

Mr. MOYNIHAN. Mr. President, it should not surprise us that the State that gave this Nation President Harry S. Truman also produced THOMAS FRANCIS EAGLETON. And now, after three distinguished terms TOM EAGLETON leaves these battles, true to the Spartan mother's admonition, with his shield, not on it.

Mr. President, I will miss our distinguished colleague from Missouri. Without presuming, I would say that he and I have had much in common in this body: our special obligations and burdens as legislators of Irish heritage, our service on the Select Committee on Intelligence, and a bond that perhaps binds us closer than any other; our struggle, while Members of the U.S. Senate, to put thoughts on paper.

As my colleagues are well aware, TOM is a true man of letters. His book, "War and Presidential Power: A Chronicle of Congressional Surrender," 1974, is an insightful legislative history of the War Powers Resolution authored by the Senator from Missouri along with two other giants in the history of this Chamber, the distinguished Senator from Mississippi, JOHN STENNIS, and our former revered colleague from New York, the late Jacob K. Javits.

TOM and I have commiserated on the trials of writing on more than one occasion, marveling at the huge time and effort required to compose even a single coherent page. Well, TOM, those of us you leave behind envy you. We envy the time you will have to devote to your writing and to pursue your teaching and law practice.

Mr. President, before the people of Missouri reclaim their senior Senator, the Senator from New York would like to thank him for his immense contribution here and to offer him fondest farewell.

THE RETIREMENT OF SENATOR RUSSELL B. LONG

Mr. MOYNIHAN. Mr. President, last month, just before the Senate accepted the conference report on the Tax Reform Act of 1986, I noted that it as not only a historic moment but also a poignant one, for we had just heard RUSSELL LONG's last speech on a tax measure on the floor of the U.S. Senate.

He is second in seniority here, and has 38 years of extraordinary service to this body and to the Nation to his credit. This is, to be sure, a record that will not soon be equaled.

Of all his achievements, of which so much has been heard in these last days of the 99th Congress, his long tenure with the Senate Committee on Finance—including 14 years as its chairman—seem to this Senator the most exceptional. I have been privileged to serve on that panel with him for a decade, and can attest that he is more skilled and knowledgeable with respect to the Internal Revenue Code than any member of the committee or indeed any Member of the U.S. Senate.

Senator LONG's imprint on the code ranges from creating employee stock ownership plan [ESOP] to being responsible for the $1 checkoff plan to help finance Presidential elections. But to fully appreciate RUSSELL LONG's contribution, one must know of how he exercised his special talents behind the scenes. It was RUSSELL LONG who, in the critical moments of the tax conference, made the suggestion that the two chairmen negotiate one on one on behalf of their committees. This suggestion, of course, was a masterstroke. It brought, at the very last moment, a breakthrough that led to the landmark tax bill the Congress recently approved.

Mr. President, this body has been fortunate and privileged these 38 years to have RUSSELL B. LONG among its Members. I will miss him, as will every Senator. It will take more than a little getting used to do without him.

RETIREMENT OF SENATOR GARY HART

Mr. MOYNIHAN. Mr. President, the senior Senator from Colorado will be with us in this Chamber only a short while longer. As he does move on, I would like to say a very few words, he is a good friend and valued colleague, and I am sorry to see him go.

Last summer, I was privileged to introduce Senator HART to an audience at Georgetown University, where he gave a series of lectures on the subject of "Enlightened Engagement." These were not the kind of speeches perhaps that students are accustomed to hearing from the usual hired orators on the college lecture circuit. These were the kind of reasoned, scholarly statements the Senate has heard so often from the Senator from Colorado. Senator HART had given his audience a set of major foreign policy addresses; addresses, I might add, that every Member of this body could profit from reading.

Mr. President, of the 24 Senators who voted against the Gramm-Rudman-Hollings legistlation last year, Senator HART was one of the most effective spokesman. In his remarks on the floor and in colloquies with the Senator from New York, Senator HART was consistently one of the strongest and most articulate voices heard in opposition to that legislation, which many of us believe flawed and misguided.

Senator HART has made his mark in this Chamber, Mr. President, as a man of vision, a man of compassion, and a man of intellect. He is a demonstrated leader whose departure leaves a gaping hole here, and though I am sad to see him go, I would wish him every possible success in the coming years.

TRIBUTE OF SENATOR RUSSELL LONG

Mr. DURENBURGER. Mr. President, in 8 years in the U.S. Senate, I have had the privilege to work with some of the most distinguished men and women in the United States. During that time I have had the opportunity to work with a man of deep compassion, broad vision, and true wisdom—Senator RUSSELL LONG.

Senator LONG has served in Congress for 38 years. His imprint lies on every major tax bill that we have adopted in the past 30 years. And his knowledge of the Internal Revenue Code is unparalleled.

As chairman and ranking minority member of the Senate Finance Committee, Senator LONG will be long remembered for having shaped many aspects of the tax policy of the United States. However, I believe that if there is one aspect of tax policy that truly represents the legacy of RUSSELL LONG, it is the provisions of the code that have encouraged the development and growth of Employee Stock Ownership Plans [ESOP's].

I can say without hesitation that had RUSSELL LONG not been in the Congress, there would not be a single ESOP in the United States. He has nurtured this concept for many years and the more than 6,000 ESOP's now in existence owe a supreme debt of gratitude to the senior Senator from Louisiana.

It is not surprising that Senator LONG has fought so long to encourage the development of ESOP's. For the ESOP concept fits in with his vision that every working man and woman should have a voice in how the company he or she works for operates; and that employees should share in the profits of those companies.

As we consider how the American corporation can evolve into a more productive and competitive entity, I believe we will see more and more companies turning to the ESOP format. This evolution will occur because RUSSELL LONG had a vision.

Mr. President, we will all miss Senator LONG'S intellect, humor, and wisdom. The Senate will never be the same without RUSSELL LONG. All Americans owe a debt of gratitude to this true gentleman.

TRIBUTE TO GARY HART

Mr. DURENBERGER. Mr. President, the end of the 99th Congress marks the end of several distinguished Senate careers. The average length of service of a sitting Senator has been falling of late, and will accelerate. While the infusion of new blood has a renewing effect on the Senate, we pay a price for the loss of institutional memory and continuity.

Mr. President, the announcement of GARY HART'S retirement from the body to pursue other opportunities for public service took very few by surprise. He has demonstrated among us and across the country that he has a sense of where this country should go and the ability to communicate it to others. His ability to motivate volunteers to become involved in politics is a great contributon to our political vitality.

I will miss GARY'S contribution to the work of environmental and resource protection in which we cooperated on many occasions in the Senate Environment and Public Works Committee. I also welcome his efforts to stimulate a broader national debate on the long-term consequences of pollution and failure to address resource protection. It is only through a deeper and broader appreciation of the risks and benefits involved that the American people fulfill our obligation to pass on a better America to those who follow us.

I thank him for the seriousness of his commitment to the business of government and wish him well.

TRIBUTE TO PAUL LAXALT

Mr. DURENBERGER. Mr. President, in April 1978, I came to this city to try to make up my mind whether to seek the nomination of my party for Governor or U.S. Senator. PAUL LAXALT took an hour out of his duties as manager of the opposition to the Panama Canal Treaties to talk with me. In that meeting he convinced me that in order to change policy, you had to be involved in the financing of policy. PAUL LAXALT may not have defeated the treaties, but he won me over that day and I have been grateful to him ever since.

I had first met PAUL 12 years earlier, at a conference of Republican Governors at the Broadmore. I can say without hesitation that the qualities for which he is respected and sought after now, were fully evident then. One cannot spend any time with him without being struck with his personal graciousness and confidence. That personal strength has made him an effective Senator and player on the larger political stage.

PAUL LAXALT'S friendship with Ronald Reagan is often cited as great boost to PAUL'S influence and effectiveness. What I believe is shortchanged in the degree to which he has boosted Ronald Reagan through their friendship and made him the leader he is today. In a recent magazing article, Ronald Reagan stated that one of the hallmarks of his success has been that, "I surround myself with the best people I can find." PAUL LAXALT has been one of those people, and he shares the credit for what has been accomplished during the Reagan years.

Grace under pressure and over the long haul is a rare virtue. I have personally seen that quality in PAUL LAXALT and I will miss its quiet and stabilizing influence on this body. I wish him well as he departs this place for the next challenge of his public life.

TRIBUTE TO SENATOR TOM EAGLETON

Mr. DURENBERGER. Mr. President, I rise to say a few words of appreciation and respect for my colleague TOM EAGLETON, as he retires from this body after 18 years of distinguished service.

TOM brought two gifts to this Capitol which have sustained him throughout his service. The first was a keen lawyer's attention to both detail and principle. I had the pleasure, and at times the predicament, of serving with him on the Governmental Affairs Committee, depending whether we were allies or opponents. I must say I preferred him as an ally. His powerful advocacy for the sanctity of human life was a highlight of his career. His second talent was an incredible sense of humor and the ability to use it to frame an issue and win an audience. He was serious when it was appropriate and entertaining when it was necessary.

My experience with TOM on the Intelligence Committee over the last 2 years was particularly rewarding. During a difficult period in the continuing evolution of the intelligence oversight process, Senator EAGLETON helped the committee strike the necessary balance between the need for a strict constitutional separation of powers and for a high level of professionalism within the intelligence community. The American people will never know fully the contribution he made in this important area, but as his chairman, I thank him from my heart.

Mr. President, TOM EAGLETON has relished political life and it has been obvious in everything he has done. Perhaps only the game of baseball held a higher place in his life. Like a wise manager, TOM EAGLETON knew how the game was played. He know all the angles and kept track of all the percentages. And consequently, he won more than his share. And by the way, Mr. President, he was always a great guy to have in the dug-out. That may be what I will miss most.

TRIBUTE TO BARRY GOLDWATER

Mr. DURENBERGER. "What is conservatism?" Abraham Lincoln asked, "Is it not preferring the old and tried against the new and untried?" BARRY GOLDWATER is a true conservative, whose consistency and strength of conviction have made him an important figure in an era, unfortunately, which is not distinguished by either. Just as BARRY GOLDWATER can live up to a century-old definition of conservatism, so generations from now he will be known as the man who made a straight pathway in the American political wilderness for Ronald Reagan and brought conservative thought into the mainstream of our political debate.

One of the things that has distinguished BARRY GOLDWATER'S career was that he always called his own shots. His penetrating insight and frankness has pierced many a colleague and reporter to the quick. Unencumbered by the need to justify his own existence or to impress anyone, BARRY shared his heart and mind liberally, if I can use that word.

I recall one late session when BARRY was the Presiding Officer and a particular Senator was presenting a relatively minor unanimous consent request with a great excess of flourish and formality. To take him down a notch, Senator GOLDWATER put aside the conventional "Without objection, so ordered." and ruled: "It's OK by me."

Mr. President, I was privileged to succeed BARRY GOLDWATER as chairman of the Senate Selection Committee on Intelligence. Because of his leadership and insight, he brought the intelligence oversight process to maturity. He was the critical counterweight to those who wanted to turn oversight into a political process, while maintaining and strengthening the accountability of the intelligence community to the American people. That may be one of his lesser known and understood accomplishments, but something for which he can take great pride in serving his country.

BARRY GOLDWATER further distinguished himself by having the integrity to part company with the direction of his party when he felt it had badly strayed from conservative principle. I remember the devastating impact of his opposition to court-stripping legislation of the early eighties, even though the object of those efforts was a conservative's paradise: elimination of busing, abortion and legal impediments to school prayer. GOLDWATER courageously said that going around the Constitution to achieve those ends was the opposite of conservatism.

Mr. President, the American people are grateful that BARRY GOLDWATER brought something very special to halls of leadership of this nation, at that he didn't hold any of it back. In a city that thinks in herds and seems to live by the xerox machine, BARRY GOLDWATER is an original.

TRIBUTE TO SENATOR CHARLES MATHIAS

Mr. DURENBERGER. Mr. President, I rise today at the conclusion of the 99th Congress to express my deep respect for the Senator from Maryland, Mr. MATHIAS. I will miss his presence and influence in this place, and want to take a moment here to express my gratitude for his service.

Maryland proudly calls itself the Free State. In keeping with that theme, MAC MATHIAS could well be characterized as the Free Senator. He has personified independence and nonpartisanship throughout his service in this body. While that road may have denied him the instant gratification which this job can give, in the long haul it has brought him respect and a solid reputation for integrity and judgment.

MAC MATHIAS is one of the first politicians I heard who had a serious "take-home" message for me. I heard him speak in Minneapolis at an Anti-Defamation League dinner in 1977. I had no idea at the time I'd ever want to be a U.S. Senator. But I said to myself when he finished, "If ever I were, that's the Senator I would be."

I will always hold a personal fondness for MAC because of the unique kind of person he is. MAC has inspired me with his reverence for this institution. They don't hand you a piece of paper after they swear you in that tells you how to be a Senator. You learn that by observing. MAC imparted to me a sense of history and reverence which makes me a better Senator, and this a better institution. And yet for all his pride for the Senate, he maintained a personal humility and simplicity. It is a rare man who can be very serious about his work, but not too serious about himself. To paraphrase Rudyard Kipling, MAC MATHIAS was able to keep his head while all about him were losing theirs.

My thanks go to the people of the State of Maryland and to the Mathias family for sharing his talents with us. And to MAC, wherever the new year finds him, on some distant shore or busy at the honorable profession of gentleman farmer, good fortune and gratitude for who you are and all you've done.

THE DEPARTMENT OF AGRICULTURE ANALYSIS OF MANDATORY PRODUCTION CONTROLS AND ACREAGE REDUCTION PROGRAMS

Mr. WILSON. Mr. President, every Member of the Senate is fully aware of the problems confronting rural America. Indeed, this body spends a great deal of its time discussing measures intended to assist our Nation's farmers.

In just the past few weeks, we have considered disaster relief for farmers who have suffered crop losses due to the drought in Georgia and the floods in Michigan. We have discussed providing economic restitution to cattle ranchers who lost money due to the Federal Dairy Program. We have voted on special tax treatment for farmers to allow them to continue income averaging. We have deliberated about allowing the Rural Electrification Administration to save billions of dollars by prepaying without penalties its loans to the Government. We have debated increasing Federal grain inspection standards, imposing farm program payment caps, lowering interest rates from the Farm Credit System, expanding farm exports and food giveaways to reduce commodity surpluses.

Without commenting upon the merits—or demerits—regarding any of these proposals, they do collectively represent a variety of partial answers to the larger problems plaguing our farmers and rural America. In my view, part of these problems is directly attributable to a component of our current farm policies; specifically, the acreage reduction programs. Similarly, I am convinced that our farm economy will be irreversibly harmed should we move toward mandatory production controls, which some farmers and Senators are advocating. Both of these matters were the focus of recent studies conducted by the Department of Agriculture, the details of which confirm my misgivings about acreage set-asides and production controls.

The acreage reduction programs require that any farmer who wishes to receive commodity loans and deficiency payments must agree to set-aside a fixed percentage of his farmable land. This percentage ranges from a low of 20 percent for wheat farms to a high of 35 percent for rice growers. By way of example, a rice producer who owns 200 acres and wishes to sign-up for the rice program can only plant rice on 130 of his acres and must idle the remaining 70 acres to comply with the 35 percent ARP.

Historically, the justification for taking perfectly good and fertile land out of production is to reduce the overall costs of the Federal support programs. Because the amount of subsidy which a farmer receives is based upon the volume of his production, these acreage reduction programs are intended to limit Government outlays by reducing the number of acres on which Federal payments can be made. In reality, these large ARPS are utilized to off-set the unreasonably high target price levels which Congress has insisted on preserving.

In a congressionally mandated study on the economic effect of acreage reduction programs, the Department of Agriculture documents the costs associated with our reliance upon acreage set-asides. While intended to save taxpayer's money, the imposition of ARPS, according to the USDA study, clearly takes a toll on our country's overall economy. Specifically, the report shows that the 30 million acres removed from production this year resulted in a loss of 260,000 American jobs and $580 million in tax revenues. Moreover, the idling of these 30 million acres cost our Nation's agricultural input industries $3 billion in lost sales.

In my opinion, our continuing reliance on ARPS—which is dictated by the maintenance of high target prices—has reduced our farmers' ability to compete in the world market. By eliminating as much as one-third of a farmer's producing capacity, our Federal policies are reducing his economies of scale, thereby increasing his cost per bushel or pound or hundredweight, as well as encouraging foreign plantings.

According to employment figures provided by the Departments of Labor and Agriculture, nearly a million jobs on farms and other rural businesses have been lost since 1979—a 17-percent drop. During the past 7 years, nearly 250,000 farmers have gone bankrupt, accounting for a loss of 600,000 on-farm jobs. In addition, a number of related industries have been hard hit, including farm machinery makers, fertilizer manufacturers, food processing companies, and shippers.

In an attempt to boost farm income and reverse this downward economic trend, a small number of farmers and certain Members of Congress are beginning to advocate as a solution an expanded use of acreage reduction programs in the form of Government-imposed mandatory production controls. Last year, this concept was considered and rejected by the Senate Agriculture Committee, as well as by the full Congress. And for good reason: I

believe that such an approach would only accelerate the decline, not revitalize the prospects of our Nation's rural economy.

Last month, a Department of Agriculture study documented the adverse effect that mandatory production controls would have upon the American economy, in general, and on our Nation's farmers, in particular. According to the Department's Economic Research Service, a set-aside of 55 percent of our Nation's commodity acreage would:

Eliminate 553,000 jobs in the farm production sector alone—nearly 21 percent of total on-farm employment;

Reduce the farm sector's contribution to the gross national product by $16.2 billion—a 23-percent drop;

Remove 1.2 million jobs in the domestic food processing, marketing, and purchasing system;

Slash $43 billion from the amount which food processors, marketers, and consumers add each year to the GNP;

Reduce agricultural input industry employment by 18 percent or approximately 370,000 jobs; and

Eliminate nearly $12 billion from the input industry's share of GNP.

In summary, the adoption of a production control scheme would dramatically lower the Nation's GNP by $71 billion and eliminate 2.2 million American jobs.

As this study clearly indicates, the practice of idling productive land carriers with its severe consequences—not only for the Nation's 2.7 million farmers and farmworkers, but for the nearly 19 million other Americans whose jobs depend upon agriculture. In my view, under the repeated government practice of setting aside farmland, rural America is systematically shutting down—a casualty of the congressionally imposed acreage reduction programs.

And next year when the Congress revisits the farm bill, these recent USDA studies will present a thorough analysis of any proposal which attempts to increase farm income by expanding acreage set-asides through mandatory production controls. And it is for reasons clearly set forth in these documents that Congress should overwhelmingly reject them as unsound and counterproductive.

Instead, Mr. President, I am convinced that the answer to our Nation's farm problems lie in a movement away from Federal policies which disrupt and distort the agricultural marketplace and toward a national emphasis on regaining and expanding our farmers' export markets.

FURTHER CLARIFICATION OF SUPERFUND PROVISIONS

Mr. STAFFORD. Mr. President, it has been said that the Superfund Amendments and Reauthorization Act of 1986, which has already acquired the affectionate nickname of "SARA" among some Washington lobbyists, is "fuzzy" and not a clear congressional directive.

While this Senator would agree that the bill approved by the Superfund conference, which the Senate passed by a vote of 88 to 8, is not a perfect example of lucidity and precision, he would not go so far as to call it "fuzzy." Admittedly, however, neither the bill nor the statement of managers necessarily provides all of the guidance which might be desired. It is for this reason that Members on both sides, as a matter of routine, explain and elaborate on particular provisions contained in conference reports.

These explanations are offered by Members for the purpose of clarifying ambiguities or filling blank spots. In some cases, attempts are made by special interests groups to create the basis for later legal challenges as part of the administrative or judicial processes, but such attempts at revisionism are the exception.

But in every case, the language of the conferees, as set forth in the statement of managers, is the best and surest expression of the intent of the House and Senate. Whenever the statement or the Member conflicts with either the legislative language or the narrative explanation of the conference report, the statement of the Member must yield.

Having said that, there nonetheless remain ambiguities in virtually any legislation of more than a few pages in length. The original Superfund law of 1980 was no exception, and neither is SARA. Where such ambiguities exist, individual Members can and legitimately do offer guidance. It is to be expected that in some cases where such guidance is offered, there may be differences of opinion between Members.

This Senator is in a somewhat unusual, but by no means unique, position. When the legislation which lead to the enactment of Superfund was introduced in the 95th Congress as S. 2900, he was an original cosponsor, together with its primary author, Senator Muskie of Maine. Together, we helped see that proposal through Senate approval under the number S. 2083, but it died when the other body failed to act.

When the successor to S. 2900 was introduced in the following Congress, it bore the number S. 1480. Again, this Senator was privileged to be a primary cosponsor and to play a large part in the bill's development due to his position as the ranking minority member of both the full committee and the subcommittee.

Late in the 96th Congress when Superfund appeared dead, it was my privilege to collaborate with my good friend, Senator RANDOLPH of West Virginia, in several successive compromise bills. Essentially, these compromises were pared down versions of S. 1480 as reported from the Committee on Environment and Public Works. The changes were worked out in private, closed door meetings with a wide variety of Senators with various concerns. In a sense, these meetings were not unlike the "small group" meetings that characterized the conference of SARA.

Due in large measure to the efforts of Representative FLORIO, the House passed S. 1480 exactly as it had been approved by the Senate. And within days of the time Superfund was signed into law, the Committee on Environment and Public Works began overseeing the law's implementation. Eventually, this lead to the resignation of senior Agency officials and their replacement by new appointees, one of whom was Mr. Lee Thomas.

In April 1984, the Committee on Environment and Public Works began the process of reauthorizing Superfund. It has now stretched over 31 months, consuming tens of thousands of hours.

Mr. President, I belabor this point for a purpose:

First to make it clear that even if this Senator had closed his eyes and ears at every possible opportunity, he still would have acquired a great familiarity with the Superfund law.

Second, to make it clear that this Senator's eyes and ears were not shut. Even had he cared to avoid the Superfund program, it would ahve been impossible to do so and still serve adequately as the ranking minority member and then the chairman of the Committee on Environment and Public Works. But mere duty could never have compelled the attendance at uncounted hours of hearings, markups, closed door negotiations, conference committee meetings, and subgroup meetings. Attendance was because of interest, not obligation.

I sincerely believe, Mr. President, that this Senator's understanding of the Superfund law, the programs it established and the latest set of amendments is as good as any, and better than most. Therefore, if there are errors in what I say, they are honest mistakes. I do not believe there are any such mistakes in this statement or that which I made on October 3, 1986, although I will freely admit that some did not necessarily agree with or like what was said.

Mr. President, for the record, I would like to review some of the areas of the conference report and share my views on them.

The question of timing—usually referred to as "pre-enforcement review"—was one of the central issues throughout the Superfund debate, and apparently the cause of some continu-

ing confusion. The question is when and under what circumstances a Superfund cleanup may be reviewed in court.

The statement of mangers, at page 40, explains that two of the House provisions adopted by the conferees "explicitly provide for circumstances in which judicial review can be obtained prior to implementation of the response action." On page 41, the statement directly explains the conference substitute as follows:

In new section 113 (h)(4) of the substitute, the phrase "removal or remedial action taken" is not intended to preclude judicial review until the total response action is finished if the response action proceeds in distinct and separate stages. Rather an action under section 310 would lie following completion of each distinct and separable phase of the cleanup. For example, a surface cleanup could be challenged as violating the standards or requirements of the Act once all the activities set forth in the Record of Decision for the surface cleanup phase have been completed. This is contemplated even though other separate and distinct phases of the cleanup, such as subsurface cleanup, remain to be undertaken as part of the total response action. Similarly, if a response action is being conducted at a complex site with many areas of contamination, a challenge could lie to a completed excavation or incineration response in one area, as defined in a Record of Decision, while a pumping and treating response activity was being implemented at another area of the facility. It should be the practice of the President to set forth each separate and distinct phase of a response action in a separate Record of Decision document. Any challenge under this provision to a completed stage of response action shall not interfere with those stages of the response action which have not been completed.

New section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants, or contaminants.

Although known as a "pre-enforcement review" issue, this shorthand is a misnomer. The issue highlighted is more accurately referred to as "pre-implementation review." It is clear that while the Conference Committee sought to extinguish "pre-enforcement review", the opportunities for citizens and responsible parties to seek "pre-implementation review" were not extinguished. This is true under both Superfund and under State nuisance law.

Courts, where it is consistent with the law and the circumstances at a given site, should allow citizen challenges early in the process.

This statement is not inconsistent with either the conference bill or the statement of managers, nor with any agreement that Members would withhold floor statements explaining these provisions.

It has been said that 113(h) covers all lawsuits, under any authority, concerning the response actions that are performed by EPA and other Federal agencies, by State pursuant to a cooperative agreement, and by private parties pursuant to an agreement with the Federal Government. Such a construction would be inconsistent with the evolution of the "preenforcement review" provisions, as well as the explicit language of the bill and report.

As passed by both the House and Senate, section 113(h) began as follows:

"No court shall have jurisdiction to review any challenges * * *"

But as approved by the conferees, the bill now begins as follows:

"No *Federal* court shall have jurisdiction *under Federal law other than under section 1332 of Title 28 of the United States Code (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 121 (relating to cleanup standards)* to review any challenges . . . .".

As originally drafted, each bill purported to extinguish the jurisdiction of any court to review any challenge. Clearly, the conference bill no longer does this. Rather, it purports to extinguish the juridiction of specified courts to review challenges arising out specified laws. What was a sweeping prohibition in the House and Senate versions has become much more narrow and targeted. An illustration of this change is the differing impacts which the bills would have on challenges based on State laws, such as nuisance (which was discussed at length in my October 3 statement).

Clearly, under either the House or Senate version of H.R. 2005 a complaint based on State nuisance law would fall within the phrase "no court shall have jurisdiction to review any challenge". But equally clearly, such a claim would not be barred by the conference language, which would permit a suit to lie in either Federal court (where jurisdiction could be based on diversity of citizenship) or in State court. This construction is confirmed by the statement of managers explanation that—

New section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants or contaminants.

Whether or not a challenge to a cleanup will lie under nuisance law is determined by that body of law, not section 113, because section 113 of CERCLA governs only claims arising under the act.

Section 113 (a) and (b) are drawn directly from S. 1480 of the 96th Congress, which I mentioned earlier in this statement. They are identical to sections 9 (a) and (b) of S. 1480, both as it was introduced and as it was reported. The committee report accompanying S. 1480 stated that the subsections "provide for jurisdiction and venue of actions brought under this act." The report noted that the Federal district courts would have "exclusive original jurisdiction over all other causes of action *arising under this act*" (emphasis added). Thus, it is clear that reach of 113 is restricted to suits "brought under" CERCLA or "arising under" it. Similarly, new subsection (h) governs only the suits filed under the circumstances enumerated in paragraphs (1) through (5) for the review of "challenges to removal or remedial action selected under section 104, or to review any order issued under 106(a)." Nowhere in the original law, in the version or H.R. 2005 approved by the conferees or in the statement of managers is there support for the proposition that "any controversy over a response action selected by the President, whether it arises under Federal law or State law, may be heard only in Federal court and only under circumstances provided" in section 113. Such a statement in contrary to the express legislative language and the statement of managers.

Such a construction would also be inconsistent with the provisions of CERCLA and SARA relating to preemption of State laws and displacement of Federal laws.

CERCLA, as enacted in 1980, contained only one arguably preemptive provision, which was section 114(c). SARA has repealed even that provision due to its misconstruction by the U.S. Supreme Court. Thus, the law as amended by SARA will leave unalloyed the statement contained in 114(a) that—

Nothing in this act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.

This policy of leaving State laws undisturbed is also reflected in 302(d) of the original law.

Nothing in this act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this act shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

The bill approved by the committee of conference continues and confirms this policy of nonpreemption. It does attempt to establish a process of integrating the requirements of State laws into the decisionmaking process of Superfund. The statement of managers explains that while the cleanup standards contained in section 121 "create circumstances in which State requirements can be avoided, it does not establish a system of preemption."

To state, as some have done, that the cleanup standards provisions of SARA preempt Federal and State

cleanup standards and Federal and State permitting requirements is to suggest that the requirements of section 121 are a nullity. Both in substance and procedure, they were painstakingly developed for the purpose establishing a cleanup system which is required, by law, to accommodate itself to the requirements of Federal and State laws, but allow some of the financial or other burdens to be shifted to States. It is, in effect, a system that allows for the uniform application of stringent standards, but imposes some of the incremental costs on either the responsible parties or the State government, rather than the Superfund. While the system established by section 121 will bring pressure to bear on States to yield when there is conflict between their standards and the cleanup intentions of the Superfund, it does not provide a mechanism that allows them to be unilaterally overridden. Nowhere in section 121 is there authority for the Federal Government to preempt, for good reasons or bad, applicable and appropriate State laws.

Section 121(d)(2)(C)(i) allows the application of clause (ii). Since clause (ii) provides for the nonapplicability of a "State standard * * * which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants or contaminants * * *," it appears to provide for preemption of such State laws. It does not. Instead it establishes an admittedly complex, and very probably confusing, mechanism which allows for the preservation of these laws and prevents unilateral action to override them.

Clause (i) never becomes available until the requirements of 121(b)(1) have been satisfied with respect to the site or release in question. Section 121(b)(1) requires, in turn, that the President determine that a remedial action which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants or contaminants cannot be undertaken at the site or release in question. Such determinations are to be made on a case-by-case, site specific basis, and are described in more detail in the paragraph's third, fourth, fifth, sixth and seventh sentences.

Specifically, the President must conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies. The technologies must include any which would, in whole or part, result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. And, in making the assessment, the President must at a minimum take into account certain factors, listed as (A) through (G). Finally, the President must select a remedial action which protects human health and the environment. In no circumstance, whether with respect to cleanups to which clause (ii) might apply or to any other, may the President select a remedial action which fails to protect human health and the environment. Of those solutions which are protective of human health and the environment, the President must select one which is cost effective and utilizes permanent solutions and alternative treatment technologies to the maximum degree possible.

It will be burdensome for the President to comply with these requirements on a case-by-case basis. Nevertheless, the burden imposed on the President is justified because of the serious consequences of proposing land disposal as the remedial action, when such action would be in violation of State law.

When the President has exhausted all alternatives and the only remaining option is land disposal within a State where that would, in fact, be contrary to State law, then and only then does clause (ii) becomes applicable. Although clause (ii) appears to state unequivocally that such a State requirement would be inapplicable, it is followed immediately by clause (iii) which provides for the continued application of such requirements.

If such a State standard, requirement, criteria, or limitation meets the conditions contained in (I), (II), and (III), it remains applicable and must be complied with by the President. Conditions (I) and (II) are attempts to describe, for lack of a better term, State statutes which are "Not In My Back Yard" laws and which have no legitimate reason for their enactment. In some areas of all States, and in all areas of some States, prohibitions on the land disposal of hazardous wastes are not only defensible, but the soundest possible public policy. Indeed, the Congress itself adopted in the Hazardous and Solid Waste Amendments of 1984 a band on the land disposal of liquid hazardous wastes to apply throughout the United States.

State laws which satisfy condition (II) would include those establishing comprehensive land use programs, even when in the opinion of some they merely protect "esthetics." Such laws, many of them statutes, exist in many States for the purpose of protecting natural resources ranging from fragile ecosystems to unblemished views and vistas. Indeed, the Clean Air Act protects such values. The judgment of whether a law was adopted by the legislature or courts of a State for reasons unrelated to protection of human health or the environment is to be made from the perspective of the State and its interests, for it is its citizens and officials who are best situated to define what is appropriate environmental protection within such State's borders.

Finally, a State must arrange for the disposition of the materials, both financially and otherwise, elsewhere. But while the State is left to its own resources in making nonfinancial arrangements, it may recover the incremental costs through use of CERCLA, State laws, or other Federal laws—for example, the Clean Water Act, the Safe Drinking Water Act and the Resource Conservation and Recovery Act. Section 107 expressly authorizes the recovery of such response costs by State and local governments, unless they are inconsistent with the national contingency plan [NCP]. Costs incurred in compliance with State laws described in condition (II) are consistent with SARA and are, therefore, consistent with the NCP, absent some independent and unrelated reason for disqualifying them.

Mr. President, such a system—designed to encourage an accommodation between two systems, not the capitulation of one of them—can scarcely be described as preemption. Ultimately, State laws and standards remain in full force and effect. If such laws yield when they could be applied, it is because State officials made that choice.

Mr. President, there are several other areas regarding the Superfund reauthorization which require a very brief further explanation. They are as follows:

THE SUPERFUND LIABILITY STANDARD

While CERCLA does not explicitly state that the liability is strict, joint, and several, it does incorporate in the definition of "liable," the standard of liability under section 311 of the Clean Water Act. Both section 311 and CERCLA have been held to impose strict, joint and several liability, which was the outcome that was expected by myself and others in 1980.

LIABILITY FOR UNDERGROUND TANKS

SARA establishes a new program for response to releases from underground tanks. To the extent that response costs exceed the mandated financial responsibility requirements, the Administrator may take that into account in deciding whether the equities demand the recovery of costs exceeding the insurance or other financial responsibility instrument. But compliance with the financial responsibility requirement is not determinative of the equities.

HEALTH ASSESSMENTS

While the language in SARA does not contain the phrase "medical testing," health assessments are to include morbidity and mortality data. To accumulate such data may require some medical testing, if the Administrator of the Agency for Toxic Substances and Disease Registry considers it necessary.

Neither the health assessment nor the health study provisions were included for the purpose of providing litigants with information to be used in law suits. However, the information collected would be admissible, or not, into evidence or otherwise used in a court as it would without respect to the provisions of SARA or CERCLA. Neither of the laws affects whether or not the information may be used.

USE OF MCLG'S

Section 121 provides a mechanism for compliance with State and Federal laws and standards. This mechanism applies to sources of water, surface as well as subsurface, whether or not the water is now, is projected to be, or is capable of consumption by human beings. Potability is only one of several considerations to be taken into account and the fact that water either is not presently used, or is not projected to be used, as a drinking water supply does not automatically determine whether MCLG's are to be considered. If it is appropriate, MCLG's should be taken into account; if it is not, they should not be.

SELECTION OF PERMANENT REMEDIES

SARA establishes, among those remedies which are protective of human health and the environment, a preference for those which permanently and significantly reduce the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants. In some cases, this requirement may very well constrain the President's flexibility in the selection of remedies, but as to choosing one of several which satisfy the preference, the President's flexibility is retained.

RESPONSE ACTION CONTRACTORS

The statement of managers accompanying SARA states that "the conferees urge States to take note of the Federal standards and review their own standards of liability." According to the "Random House College Dictionary," a review is "a second or repeated view of something." According to "Webster's Third New International Dictionary," to review is to "to examine again: make a second or additional inspection of: study anew." Also according to Webster's a review—the noun—is "a looking over or examination with a view to amendment or improvement."

Mr. President, if the word "review" suggest a change, it does not suggest one in any particular direction or the other, nor in favor of one particular interest group or the other. The sentences immediately preceding that which I quoted refer not just to the liability standard for contractors, but to the "existing standard of liability for responsible parties under CERCLA" as well.

Without belaboring this point, Mr. President, it is the view of this Senator that the statement of managers does not urge States to necessarily change their own standards of liability, with respect to responsible parties or any other group, or to change them in any particular direction. Of course, these are the views of just this Senator—as I made clear at the outset of these remarks—but I made them known at the time of the conference to the other body. If there is some disagreement, this Senator regrets it. But the language of the conferees, as set forth in the statement of managers, is the best and surest expression of the intent of the House and the Senate on this and all other matters.

THE NATIONAL NUTRITION MONITORING AND RELATED RESEARCH ACT OF 1986

Mr. BINGAMAN. Mr. President, I believe the majority leader is well aware of my interest in legislation I have pushed in the 99th Congress which would establish a national nutrition monitoring system. Last year I introduced S. 1569, which was cosponsored by my colleagues Senators MATSUNAGA, CHILES, HOLLINGS, GORE, MITCHELL, BOSCHWITZ, SIMON, LEVIN, STENNIS, RIEGLE, GLENN, DURENBERGER, and DIXON. I introduced similar legislation late in the last Congress.

I deeply regret that this legislation was not considered this Congress since it has wide support from over 70 organizations representing food producers, consumers, members of religious organizations, senior citizens, health and nutrition professionals, scientists, education officials, advocates for children and low-income people, public officials, and minorities. I will ask unanimous consent that a list of these organizations be included at the conclusion of my remarks.

This August, the Governmental Affairs Committee reported out the House companion, H.R. 2436 without amendments. I supported this for two reasons: first, because of the attention given in the House and revisions made to garner the support of over 70 organizations; and, second, because of expediency. Both my bill and the House version reach the same objectives and I strongly believe that some action is necessary before we adjourn.

The House overwhelmingly passed this legislation by a vote of 305 to 85 on June 26 of this year. The vote culminates nearly a decade of exhaustive oversight by both the House Science and Technology Committee and the House Agriculture Committee.

H.R. 2436 and S. 1569 merely provides a structural framework to improve our Federal nutrition surveillance program and to account for Federal dollars in this area. The information gathered from ongoing surveys and research are an invaluable tool that provides needed data to health professionals and scientists as well as public policymakers. The major criticism of our current efforts point to a lack of a comprehensive program. The embarrassing result is we simply do not know the current nutritional status of our citizens. Coordination among agencies and timeliness are two major deficiencies.

Over nine agencies of the Federal Government engage in nutrition research and training at a cost of well over $200 million. The Department of Agriculture, the Department of Health and Human Services, and the Department of Commerce each collect data and conduct research through 19 different surveys. Given the disparate data collection, analysis, and reporting it's no wonder that we need an integrated approach. This conclusion was reached in 1985 in a report to the President and Congress by the National Agricultural Research and Extension Users Advisory Board wherein it stated that as a result of poor coordination among the appropriate Federal agencies, each agency ignored opportunities to coordinate with other agencies "to economize and perhaps make the results more conclusive." Even the Hunger task force, appointed by President Reagan recommended that the USDA and the HHS coordinate their two surveys on a continuous and prompt basis.

A second deficiency of our nutrition monitoring is the lack of timely data. This issue becomes more critical as we continue to vote for or against health care, food assistance, food and environmental safety, agriculture production, and biomedical research. How can we make informed decisions when there is not current baseline data on the nutritional status of the U.S. population? We do not even know whether our current policies are having the intended effect or whether with better information we could make changes. The decisions we make today are based on data collected in the 1970's. Yet, a more complete understanding between diet, nutrition, and health would pay off in terms of our knowledge and fiscal expenditures.

Briefly, nutrition monitoring legislation streamlines the administrative functions of nutrition monitoring and consolidates the authority within an Interagency Board to assist the Secretaries of Health and Human Services and the Department of Agriculture in the development, management, and implementation of a coordinated program and a comprehensive 10-year plan. An Advisory Council would be appointed by the President and Congress to give scientific and technical advice on the development and implementation of the national nutrition monitoring program.

This program ensures the effective use of Federal and State dollars by promoting the following: State and

local monitoring initiatives development of improved monitoring methods and standards; stimulate academic, industry, governmental partnerships, and improve methods to foster recovery and cost-sharing techniques.

It is my hope that next Congress the chairman of the Committee on Agriculture and the Committee on Labor and Human Resources will join me in pushing for this much needed legislation. In conclusion Mr. President, I express my commitment to further educate the Senate and ask unanimous consent that a letter I sent to the majority and minority leader be printed in the RECORD, along with a list of organizations to which I referred earlier.

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

U.S. SENATE,
Washington DC, October 3, 1986.

Hon. ROBERT DOLE,
Senate Majority Leader,
U.S. Senate, Washington, DC.
Hon. ROBERT C. BYRD,
Senate Minority Leader
U.S. Senate, Washington, DC.

DEAR SENATORS DOLE AND BYRD: We are writing to urge you to bring before the Senate H.R. 2436, the National Nutrition Monitoring and Related Research Act of 1986. The Senate Governmental Affairs Committee favorably reported out this bill without amendments. A report has been filed. The House of Representatives overwhelmingly voted for its passage June 26, 1986 by a vote of 305 to 85. Given the serious need and the bipartisan support for this measure, we ask that you schedule time for consideration and final passage of this legislation before we adjourn.

We believe it is essental to bring accountability to our current efforts in national nutrition monitoring. This issue has been the subject of over a half-dozen Congressional hearings and two General Accounting Office reports over the past several years. The Senate companion bill was introduced by Senator Bingaman and is cosponsored by Senators Matsunaga, Chiles, Hollings, Gore, Mitchell, Boschwitz, Simon, Levin, Stennis, Riegle and Glenn.

The federal government currently conducts the National Health and Nutrition Examination survey and the Nationwide Food Consumption Survey. Both are intended to provide an accurate and timely assessment of what Americans are eating. With this data, the nutritional, dietary, and health status of the population can be established; the quality and safety of the food supply can be inspected; nutrition research priorities can be pinpointed; the relationship between diet and disease can be explored; American food consumption patterns can be analyzed; and public and private health care costs could be reduced if Americans had proper nutritional information.

Despite the value of this information, deficiencies plague our program: stale data; lack of accurate statistics for high risk groups and geographic regions; and lack of federal agency coordination on the issue. Consequently, we know little about the nutrition and dietary needs of our country.

H.R. 2436 would streamline the administrative functions of nutrition monitoring and consolidate the authority within an Interagency Board to assist the Secretaries of Health and Human Services and the Department of Agriculture in the development, management, and implementation of a coordinated program and a comprehensive ten-year plan. An Advisory Council would be appointed by the President and Congress to give scientific and technical advise on the development and implementation of the national nutrition monitoring program.

This program would ensure effective use of federal and state expenditures by promoting state and local monitoring initiatives; development of improved monitoring methods and standards; stimulate academic/industry/governmental partnerships, and improve methods to foster recovery and cost-sharing techniques.

We request your favorable consideration to schedule H.R. 2436. It enjoyed bipartisan support in the House and over seventy organizations have gone on record in support. It presents the Senate with an opportunity to make much needed improvements to a valuable federal resource—nutrition research data.

Sincerely,

JEFF BINGAMAN.
JOHN GLENN.
RUDY BOSCHWITZ.
SAM NUNN.
DAVE DURENBERGER.
ALBERT GORE, Jr.
BILL COHEN.
TOM EAGLETON.
LAWTON CHILES.
CARL LEVIN.

ORGANIZATIONAL ENDORSERS OF H.R. 2436

American Academy of Pediatrics, Committee on Nutrition, American Association of Retired Persons, American Association of University Women, American Baptist Churches, American College of Preventive Medicine, American Dietetic Association, American Federation of State, County, and Municipal Employees, American Heart Association, American Home Economics Association, and American Meat Institute.

American Nurses Association, American Public Health Association, American Public Welfare Association, American School Food Service Association, Association of Faculties of Graduate Programs in Public Health Nutrition, Association of Maternal and Child Health and Crippled Childrens Directors, Association of Schools of Public Health, Association of State and Territorial Health Officials, Association of State and Territorial Public Health Nutrition Directors, and Bread of the World.

California Conference of Local Health Department Nutritionists, Center for Science in the Public Interest, Center on Budget and Policy Priorities, Child Welfare League of America, Children's Defense Fund, Clergy and Laity Concerned, Coalition for Public Health Nutrition, Coalition on Block Grants and Human Needs, Community Nutrition Institute, and Consumer Federation of America.

Federation of Jewish Philanthropies (New York), Rood Research and Action Center, Friends Committee on National Legislation, Health Officers Association of California, Institute of Food Technologists, Interfaith Action for Economic Justice, Joint Public Affairs Committee of the American Institute of Nutrition and the American Society for Clinical Nutrition, League of United Latin American Citizens, Lutheran Council, USA, and Mennonite Central Committee.

National Association of Counties,, National Association of County Health Officials, National Association of WIC Directors, National Black Child Development Institute, National Cattlemen's Association, National Consumers League, National Council of La Raza, National Council of Senior Citizens, National Farmers Union, National Grange.

National League for Nursing, National Milk Producers Federation, National Perinatal Association, National Rural Nursing Coalition, National School Boards Association, New York State Department of Education, Older Women's League, Public Voice for Food and Health Policy, Rural Coalition, Service Employees Interantional Union, Society for Nutrition Education, and Southern Health Association.

Subcommittee on Human Nutrition of the Experiment Station Committee on Policy of the Land Grant Colleges, Teachers of Preventive Medicine, The Children's Foundation, The National PTA, U.S. Conference of Local Health Officers, U.S. Conference of Mayors, United Church of Christ, United Egg Producers, University of North Carolina/Child Health Outcomes Project, World Hunger Education Service, and World Hunger Year.

RONNI KARPEN MOFFITT—SUPERGIRL

Mr. HARKIN. Mr. President, 10 years ago, on September 21, 1976, Orlando Letelier and Ronni Karpen Moffitt were murdered at Sheridan Circle, here in the Nation's Capital. The Letelier car was exploded by assassins sent to this country to murder him, Ms. Moffitt was riding with him, and was also killed. The circumstances of that tragedy are well known and I do not wish to dwell on the details at this time. Rather, I prefer to sound a happier note, one emphasizing life over death, if you will. I want to insert into the RECORD the words spoken in tribute to his sister by Michael Karpen, at the annual commemoration of the murder at Sheridan Circle, this last September 21. I believe my colleagues will be as moved as I have been by the eloquent statement by Michael Karpen, in memory of the sister who died 10 years ago, at age 25.

I ask unanimous consent that the words of Micheal Karpen be entered into the RECORD.

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

REMARKS OF MICHAEL KARPEN

On behalf of my family, I would like to thank you for coming here today to take a few minutes out of your schedule to remember the events that took place here 10 years ago, and to reflect upon the lives of two people whose loss leaves a void that time seems unable to fill.

I have been asked to say a few words about my sister, Ronni, whom my memory of and love for, can not be diminished by the years. If you don't mind, I would like to take the opportunity to share a few personal memories and thoughts with you.

I know that many of you knew and respected Ronni and some loved her. Some of you knew her as a friend, some as a coworker and others as a political compatriot. But I knew, respected and loved her, as no one else could. I knew her and loved her as my big sister.

It has been 10 years since I touched my sister's hand, kissed her cheek, laughed at her dumb jokes. And I miss these and I am angered and saddened that they were taken away from me, but I am also angered and saddened that they were taken away from you, also, and that those of you who never knew Ronni will never have the opportunity to do so. But, although I can never physically touch Ronni again, not one day passes that I don't think about her, and speak with her; that I don't ask for, and receive, her guidance. She is, as she always has been my moral, ethical and political mentor, as well as my personal guidance counselor on life. You see, she is my big sister.

Ronni was 6 years older than I, and as a result was often given the job of taking care of me.

When we were growing up, she was my "protector". I remember when I was 5 or 6, my brother, who is a few years older than I, would pick a fight with me, and invariably end up on top of me. All I had to do was shout Ronni's name. No matter what she was doing, she would drop it, and in a matter of seconds, there she would be, coming to my rescue, yelling "Supergirl" and throw my brother off of me. He never had a chance.

She was my Saturday morning partner. I remember waking her up early on Saturday mornings to watch cartoons in our pajamas, eating marshmallow cookies together.

She was my friend. When I was 12 years old and didn't make the little league, she was there to soothe my bruised ego, and more importantly, to take me out to eat.

She was my confidante. When I was a teenager and gave a party, Ronni was given the chore of acting as my chaperone. She never complained and never, never squealed.

She was my chauffeur on my first date, having to wait outside in the car, as I and my date ate ice cream inside the local ice cream store.

Because both my parents worked, she at times was my cook, making lunch for me after school.

When my parents went on vacations, she was a surrogate parent. I remember one time when my parents were away, I decided to sleep at a friend's house without calling to tell her. The next day when I came home, I received a scolding from her that was so loud, and so extensive that to this day, I never even walk around the block without telling someone where I am going.

In school, she helped me with my homework and prepared posters when I ran for school office. She helped teach me what clothes to wear, and how to wear my hair. She taught me about girls, about music, about drugs.

Ronni was more than a child of the 60's for whom political activity was merely something to do between classes. She began college at the University of Maryland, being the subject of panty raids. She ended it participating in political protests, some of which were the subject of police raids. As her mind expanded and she was made aware of certain inequalities and injustices that existed in our society, she was moved to try to change society. She was moved not out of a sort of intellectual curiosity that change could come about by merely reading political theory or by shouting slogans, or even through violent means. She was not a violent person. It was said of my sister that when the revolution came, she would most certainly be a part of it; maybe not on the front lines, but she would be there giving support and guidance to those who needed it, and probably serving chicken soup to the injured and the ill. Ronni was moved by the simple fact that she was a good and kind human being.

Ronnie knew that the only way inequality could become equality, the only way injustice could become justice was by reaching out to those who needed help or assistance, and together determining what their needs were, and working together to fill those needs. Although she was a brilliant student, my sister was not a theorist, she was a doer, someone willing to wear overalls and build solid change, brick by brick.

As I matured, I began to appreciate what a truly exquisite and talented human being Ronni was. She was an accomplished musician and artist. My and my parents' homes are adorned with her work. In Passaic, our home town, she had been a counselor for underprivileged children. She loved children, and believing that any lasting change must begin with education, she became a teacher in a public school in Maryland. In Washington she helped create the "Music Carry-Out", teaching music to those who could not afford it and providing a place where musicians of all types of music, from classical, to jazz, to rock, to Latin, to African could go and practice and share their joy of music, and through that sharing begin to understand that all people, like all music, share certain undeniable bonds and qualities. And I am, as she was, most proud of her work at I.P.S. of which I know many of you are familiar.

There are many more things that I would love to say about my sister. But time will not allow it. She was a wife, daughter, friend, co-worker, musician, artist, political activist, protector, cartoon watcher, confidante, chaperone, chauffeur, cook, teacher and big sister. If that seems like a lot to do in 25 years of life, it is because every moment of my sister's life was filled with the joy of living.

I hope that I have given you a bit of a look at the human being Ronni was and what she has done. And I guess that is time for me to take a look at myself and look at the type of human being I am and ask what have I done and what else can I do?

It has now been 10 years since Ronni's death, and I hope I have become the type of person of whom she would be proud. I miss her now as much as I ever have. But I know, that when I need her, when those around me who are bigger and stronger decide to pick a fight with me and end up on top, all I have to do is yell for Ronni and she will drop whatever it is she is doing and in a matter of seconds, in the background will be heard her voice yelling, "Supergirl" and I know there will be no need to worry.

KATHLEEN LAWRENCE NOMINATION

Mr. HARKIN. Mr. President, during these closing hours of the 99th Congress, I wish to state for the RECORD my opposition to the nomination of Kathleen Lawrence to be Under Secretary of Agriculture for Small Community and Rural Development. I do so because I fear that the President may make a recess appointment for Mrs. Lawrence because it would now appear that the Senate will not confirm her nomination prior to adjournment. Because of the importance of this position to rural America, and for reasons which I will outline below, I would encourage the President to look elsewhere in filling this post.

My opposition to this appointment does not stem from any personal animosity that I have for Mrs. Lawrence. It is, however, the result of the strong feelings I have about the qualifications of any person who would hold this post, and the clear absence of those qualifications in the case of Mrs. Lawrence.

The Under Secretary of Agriculture for Small Community and Rural Development has responsibility for several major farm and rural development programs, including the Farmers Home Administration, the Rural Electrification Administration, and the Federal Crop Insurance Corporation. The position must be held by a person who has a deep understanding of rural America, has experienced rural life either through living or working in a small town or on a farm, or has through previous work experience or academic training demonstrated a sincere interest in advancing the needs and concerns of rural Americans. Furthermore, the incumbent must have the skills and desire to be an advocate for rural America within the administration.

When judged by this modest standard, how does Mrs. Lawrence rate? Not very well I regret to say.

First, has she ever worked or lived in rural America? Answer: No. The only places she has lived in her lifetime are suburban New York City and Alexandria, VA.

Second, what work experience has she had in any way related to agriculture or rural development prior to joining the U.S. Department of Agriculture? Answer: None.

Third, what academic training has she had relating to agriculture or rural development? Answer: None.

Parenthetically, I would add that I believe she somewhat misled the committee in the representation of her educational credentials. In a background paper provided to the committee prior to her confirmation hearing she listed the following four institutions under the heading "Education:"

Harvard University, John F. Kennedy School of Government, University of Virginia, Northern Virginia Community College, Queens College.

After her confirmation hearing, I requested additional information regarding dates of attendance, hours earned, and degrees received. She responded to this request with the following information.

Queens College, 1960; 3 credits in history, University of Virginia, 1978; 3 credits in business law; Northern Virginia Community College, 1977 and 1980; 18 credits: 6 in economics, 6 in management and 6 in marketing.

John F. Kennedy School of Government, 1985; non-credit certificate course for Senior

Managers in Government consisting of 120 hours of case studies and lectures in management, personal management and the budget process.

Upon receiving this information, I requested of Mrs. Lawrence that she provide copies of transcripts for the institutions involved which she agreed to do. However, to date I have not received her transcript from Queens College. The transcript from the Northern Virginia Community College revealed the course work taken was designed to assist real estate sales agents.

During her confirmation hearing, I asked Mrs. Lawrence what academic training she had that would be related to agriculture. She responded, "My academic training is in economics and management." In view of her sparse academic record, I found this response to be quite misleading.

Finally, Mr. President, during the course of her confirmation hearing, I found absolutely no evidence that she intended in any way to be an advocate for rural America. When questioned about her views on the President's budget request zeroing out virtually every important rural development program which would be under her jurisdiction if confirmed, she expressed nothing but unqualified support for the President's position. While this may be understandable for a Presidential appointee, I also detected virtually no interest on her part in fighting for these programs within the administration in the future.

In conclusion, I believe that Mrs. Lawrence is totally unqualified for this post. Rural America deserves a better qualified individual.

DEMOCRACY IN CHILE

Mr. HARKIN. Mr. President, as one who has long followed the struggle for democracy in Chile with sympathy and admiration, I invite the attention of my colleagues to a very significant letter sent to the U.S. Embassy in Santiago on October 7 by Ricardo Nunez, the General Secretary of the Chilean Socialist Party.

Mr. Nunez is the leader of those democratic socialists who have decided to cooperate with the other democratic parties in Chile in seeking a prompt and peaceful return to democracy in that country. As members of the Democratic Alliance and the National Accord for a Transition on a Democracy, the Chilean Socialist Party rejects the violence of both the extreme left and the extreme right. The Socialists of Nunez have chosen instead the path of a peaceful transition to democracy.

It is in this context that the Nunez letter to our Embassy in Santiago is particularly significant. In the letter of October 7, Nunez thanks our Embassy for its efforts on behalf of Ricardo Lagos, a Socialist leader recently jailed by the Pinochet regime and since released. Nunez also takes the occasion to stress once again his party's support for a political solution in Chile that reflects the best interests of the country and the wishes of the immense majority of Chileans. Furthermore, according to Lagos, "those who support a logic of confrontation and war are extreme sectors, on opposite sides, and are an obvious minority."

I urge all friends of Chilean democracy to applaud this clear stand by the Nunez Socialists, and I congratulate Ambassador Barnes for his efforts in support of a transition to democracy in Chile. In the current circumstances prevailing in Chile, more than ever it becomes necessary to support full compliance with human rights and a rapid democratic transition. Otherwise, the Chilean crisis will end in tragedy.

Mr. President, I ask that the entire text of the Nunez letter be printed in the RECORD.

The letter follows:

MR. CHARGE D'AFFAIRES: In the name of the Socialist Party of Chile and in that of those who sign below, we dutifully express our greatest thanks for your active concern and solidarity over the unjust incarceration of one of the leaders of our organization, Ricardo Lagos. The measures taken by the Government of the United States and your embassy were of great importance in obtaining his freedom.

The ample and diverse support we received, as much here as internationally, are the best testament to the understanding that exists for our efforts to find a political solution to the grave national crisis, as this represents the only option that reflects the best interests of the country and the wishes of the immense majority of Chileans. Those who support a logic of confrontation and war are extreme sectors, on opposite sides, and are an obvious minority. Their attitude can only compromise the future of the Chilean Nation.

Allow us, Mr. Charge, to ask that you pass on to your government and to the different American personalities and organizations the highest regards and thanks of all the Socialist leaders and militants for the solidarity they expressed to us during the recent occurrances. This commits us to intensify our efforts to obtain democracy and liberty in this country.

We take advantage of this opportunity to express to you our highest esteem.

Sincerely,

RICARDO NUNEZ,
General Secretary.
ARMANDO ARANCIBA,
Chief of International Relations.

BLANCA ROSAL: A MATTER OF LIFE AND DEATH

Mr. HARKIN. Mr. President, Blanca Rosal, a Guatemalan refugee seeking political asylum in this country, recently heard the State Department's recommendation on her case. The answer was no. The advice, if adopted by the Immigration and Naturalization Service, could kill her.

Blanca Rosal is the mother of two small children. She is the only parent they know; their father, Jorge, disappeared after his abduction by paramilitary squads on August 4, 1983. Though Blanca herself was repeatedly threatened and kept under close surveillance by Army intelligence agents following her husband's kidnapping, she had the courage to meet and comfort other bereaved relatives of the disappeared in Guatemala.

Together they formed the Grupo de Apoyo Mutuo [GAM], a mutual support group which is determined to learn the fate of the missing family members in a country where more than 38,000 Guatemalans have disappeared in the past 30 years.

Since 1985 more than 700 wives, brothers, sisters, and parents of the disappeared have joined GAM. Despite the fact that the families have scrupulously avoided all political groups and movements, on March 14, then President Oscar Mejia Victores publicly denounced the GAM as subversive and warned them against "overextending the authorities' patience."

A week later, Hector Gomez, a leading member of GAM, was abducted, mutilated and killed. Within another week, a second GAM leader, Rosario Godoy, along with her 2-year-old baby, were assassinated. To this date, not a single member of the Guatemalan Armed Forces or police have been investigated, prosecuted, or punished for these or any—I repeat, any—of the tens of thousands of killings and disappearances they have committed in the past three decades.

Following the murder of her colleagues and explicit threats against her own life, Blanca fled to the United States with her children. From her home in Arlington, VA, she has resumed her campaign to find her husband.

Blanca should be an ideal candidate for political asylum. According to the 1980 Refugee Act, political asylum is available to any who have a "well-founded fear of persecution" because of their race, religion, nationality, membership in a particular social group, or political opinion.

The State Department, in an opinion released this July, advised that the Immigration Service reject her asylum request. The Department even accused her husband of having belonged to an armed guerrilla group. In Guatemala, where families of those accused of leftist ties have been targeted by security forces, the State's charge almost insures Blanca's death if she were returned home.

Blanca is not the first Guatemalan to be refused asylum. In 1985, when Guatemala was ruled by the last of its military strongmen, only 1 percent of

Guatemalan applicants were granted asylum. The coming to power of a civilian President in January of this year has reduced their chances even further.

To this administration the mere election of Vinicio Cerezo solves Guatemala's 30-year nightmare of disappearances, killings, and torture. No matter how well intentioned President Cerezo may be—and I consider him a sincere, well meaning and courageous democrat—he has not displaced from power the same military establishment responsible for the disappearance of Blanca's husband and thousands like him.

Furthermore, the Guatemalan military has thwarted the new President's human rights efforts at every turn. Despite Cerezo's earlier pledge to appoint a commission to investigate the fate of the disappeared, army pressure forced him to shelve the commission. Judicial prosecution of military personnel for abuses is out of the question, because the military has granted themselves an amnesty which protects them from prosecution for past crimes.

Not surprisingly, human rights violations continue and Guatemalan newspapers report dozens of disappearances and killings every week.

Sending Blanca Rosal and her children back to Guatemala is equivalent to signing their death warrants. If they are returned and harmed, the blood of Blanca and her two children will be on the hands of our State Department and their deaths will haunt us for years to come. The family must be permitted to stay.

THE HASENFUS FLIGHT RECORDS

Mr. HARKIN. Mr. President, yesterday I introduced a proposal to require a full and complete accounting by the President of U.S. Government involvement in the Hasenfus flight and other Contra military support operations conducted by private American citizens.

By a narrow margin, this body rejected that resolution. Fifty Senators decided in essence, to close their eyes to possible involvement by this administration in military operations of the Contras. I am saddened by that. However, the fact that 47 Senators, some of whom have consistently supported the President's Nicaragua policy, voted for my resolution demonstrates the depth of concern in this body that the Congress and the American public are not being fully informed by the White House about this incident.

I can assure my colleague that I will not allow this issue to die; and I am confident that, as more and more reports of government association with Hasenfus and other Contra support operations come out, the American people will demand that the covers be removed, that the administration's stonewall be broken, and that the truth be told.

Toward that end, today, in the sixth of a series of speeches on the Hasenfus mission, I intend to focus on the questions raised by the flight records found in the C-123 cargo plane downed over Nicaragua.

The documents, including flight logs, personal notes, and business cards carried by the three Americans on board, reveal the nuts and bolts of a contract air resupply operation.

Its operations, run out of Illopango Air Base in San Salvador, are led by two Cuban-Americans. One of them, Max Gomez, an ex-CIA agent, was introduced to the Salvadoran Air Force by Vice President Bush's National Security Advisers. By the Vice President's own admission, Gomez met Mr. Bush on several occasions to discuss his activities in El Salvador.

Its an operation manned by individuals who worked in the past on and off, on contract or directly for the U.S. Government. Most of those people had close ties with the CIA, dating back to the 1961 Bay of Pigs invasion and the war in Southeast Asia.

Furthermore, the C-123 logs now document a series of missions flown from military bases in the United States and run out of air strips in Honduras built and repaired with U.S. funds.

A log entry for February 6, according to today's New York Times, lists airport codes that appear to show that a rebel plane flew from Richmond, VA, to Mercury, NV, and then to Las Vegas. According to the log, the plane went from Las Vegas to McClellan Air Base in Sacramento, CA.

Use of a U.S. air base by a rebel plane would indicate a greater level of Government involvement in Contra supply flights than the administration has so far conceded.

Other documents show that a rebel supply plane had been stored in a U.S. air base in 1983 before being approved for cargo flight operations.

The copilot for the Hasenfus mission, Wallace B. Sawyer, apparently flew at least 15 flights between March and August to make drops over Nicaragua. Many originated at the Honduran military's Aguacate Air Base in Central America.

Some stopped off at a dirt strip in Mocoron in the eastern part of Honduras.

Both strips have benefited from U.S. military construction funds spent during U.S. military exercises conducted in 1984 and this year. In 1984, nearly $200,000 was spent by U.S. Army engineer units to harden and smooth the Aquacate air field. In 1986, the U.S. Government admits to spending $255,000 to upgrade the Mocoron airfield. That same airstrip in eastern Honduras, according to Sawyer's flight records, was used by planes flying weapons to the Contras.

Yet, according to a spokesman for the U.S. Embassy in Honduras, "The only purpose of building those strips was as part of the [military] exercise."

The use of air bases built with U.S. funds to support Contra military operations would be illegal. Current law prohibits any support, both direct and indirect, by the U.S. Defense Department and CIA for Contra operations.

Mr. President, this secret war in Nicaragua smacks of mischief and intrigue. This private war, which some claim is run out of the inner recesses of the White House, appears to be waged without regard for the law and in violation of the intent of Congress which wrote those laws.

Unfortunately, despite the assurances of my colleagues, Congress and all its investigatory committees have helped very little in disclosing this murky tale of spies, secret flights, and Contra support operations. Sadly, the White House has devoted itself to hiding, not revealing the truth.

The American people deserve more. They deserve to know all the facts, they deserve to know if the laws of this land have been broken, and they deserve to know if the credibility of our Nation has been tarnished.

Let us not allow it be said that Congress slept while its laws were broken and its will flaunted by this mischievous operation.

RETIREMENT OF SENATOR RUSSELL LONG

Mr. BRADLEY. Mr. President, this week brings to a close the Senate career of a legend in this body and someone I consider a friend and mentor—the senior Senator from Louisiana, RUSSELL LONG.

When I was first elected to the Senate, I sought to become a member of the Senate Finance Committee. In addition to my interest in the committee's large area of jurisdiction, I wanted to observe and learn from its distinguished chairman, Senator LONG. His reputation as a master of Senate procedure and the legislative process was legendary. He has forgotten more about the Senate than most Senators will learn in a career. I was fortunate to become a member of the Finance Committee and, as its least senior member, I found that RUSSELL LONG was a very kind and helpful chairman and teacher. He always added insight to the moment of the Senate and he did so with good spirit and generosity.

Senator LONG has left his mark on the Senate and on some of the most important laws that govern this country, including Medicare, Medicaid, Social Security, the Childrens' Health Assurance Program, the Womens, In-

fants, and Children's Feeding Program, Employee Stock Option Plans. It can truly be said of the senior Senator from Louisiana that this one man has certainly made a difference—in this body and in the country.

We will all miss Senator LONG and his lovely wife, Carolyn. However, I hope that Senator LONG's departure from the Senate will not end his distinguished career in public service. He has been an outstanding spokesman for the people of Louisiana here in Washington and I hope that we can look forward to his continued service to his State when he retires from the Senate.

RETIREMENT OF SENATOR THOMAS EAGLETON

Mr. BRADLEY. Mr. President, I do not know of a single Member of the Senate who is accorded greater personal respect and admiration by his colleagues than the senior Senator from Missouri, THOMAS EAGLETON.

Senator EAGLETON's judicious demeanor and thoughtful approach to all legislative issues has made him an important influence in the Senate. As someone who has known TOM EAGLETON for many years, I will personally miss his counsel and his reasoned approach to the tough legislative problems which continue to confront Congress.

For 30 years Senator EAGLETON has served the people of Missouri with distinction—first, as circuit attorney in St. Louis, then as Lieutenant Governor, and for the last 18 years as U.S. Senator.

Among some of the legislative accomplishments in which Senator EAGLETON can take justifiable pride are the adoption of an amendment in May 1973 to halt the bombing of Cambodia, adoption of the War Powers Resolution in July 1973, creation of independent offices of Inspector General in 12 major Federal departments and agencies, enactment of loan guarantees to save the Chrysler Corp. from bankruptcy, and passage of the Clean Air and the Clean Water Acts. An additional matter on which I have worked particularly closely with Senator EAGLETON is opposition to subsidies for tobacco.

Senator EAGLETON has not only been deeply involved in some of the most important legislative issues the country has faced, he has shown a passionate concern for the institution of the Senate itself. He has focused our attention on the rules of the body and the high ethical standards which should guide us. His voice, his conscience, and his sense of purpose will all be missed.

RETIREMENT OF SENATOR GARY HART

Mr. BRADLEY. Mr. President, 12 years ago, the people of Colorado elected GARY HART to the U.S. Senate. During that period of time, Senator HART has provided leadership to Colorado and to the country. He has been candid, principled, and dedicated to the long term public interest.

Senator HART has spearheaded the effort to reform the military, he led the Senate's inquiry into the Three Mile Island accident, he chaired the National Commission on Air Quality.

I am pleased to have had Senator HART's early and consistant support for my efforts to reform our Tax Code. He was an original cosponsor of the Bradley-Gephardt fair tax bill. And he was a consistent supporter of the Senate's tax reform efforts when this legislation faced many amendments which would have doomed the tax reform effort.

Senator HART's contributions will be missed in the Senate but I am sure that he will continue to shape public policy for many years to come.

SENATOR TOM EAGLETON

Mr. RIEGLE. Mr. President, I rise to say a very fond farewell to my dear friend and colleague from Missouri, TOM EAGLETON.

I shall miss him very much as will my colleagues.

TOM EAGLETON is extraordinary in many ways. To my mind he is the best lawyer in the Senate.

His knowledge and sense of history, and political history in particular, is truly exceptional.

Of all his talents, his sense of humor may be the best of all. The loss of his laughter and wit is painful to contemplate.

I had the rare good fortune to have an office adjoining TOM's in the Dirksen Building, and so have had the luxury of frequent contact where we could kibitz about the baseball scores, the windbags in the caucus, and the ups and downs of life in general.

America has been fortunate to have TOM EAGLETON's service at the highest level of our Government. His integrity, courage, independence, convictions, and powerful intellect have been part of the real strength of the U.S. Senate during his service here.

Knowing him now as I do, I feel the country was the loser when he left the Democratic national ticket in 1972. He and his wife Barbara would have brought wonderful qualities to the office of Vice President.

When special individuals leave the House or Senate, the institutions endure, but they are never the same again. TOM EAGLETON made the U.S. Senate stronger and better during his service here—and we will feel his absence—I will especially so.

Yet it is exciting to think of TOM in a classroom at Washington University in St. Louis, where he will be teaching next year. I envy his students. He has a true gift for teaching as I have witnessed, and I know he and his students will greatly enjoy their time together.

So as we finish this final day of the 99th Congress, my wife, Lori, and I want to wish TOM and Barbara the very best in the days and years ahead. TOM and Barbara, you will be in our thoughts and our prayers for the future. Thank you again for your friendship and your magnificent service to our country and its people.

GLOUCESTER COUNTY, NJ TERCENTENARY 1686–1986

Mr. BRADLEY. Mr. President, the recent summit in Reykjavik is a fitting backdrop to celebrate the 300th anniversary of a county in New Jersey that hosted another summit nearly 20 years ago. I would like to ask my colleagues to join Senator LAUTENBERG and me in commemorating the 300th anniversary of the founding of Gloucester County, NJ.

My colleagues will recall the 1967 summit between President Johnson and Premier Kosygin which was held at Glassboro State College which is located in Gloucester County. Gloucester County's place in modern world history always will be appropriately marked by that important 3 day meeting. During the 300th anniversary of its founding, Gloucester County's role in the annals of the birth of our emerging Nation should be remembered as well. The history of this area of New Jersey serves as a reminder of the democratic ideals that this Nation rests upon.

Despite its English name, Gloucester was originally settled by the Swedes and the Dutch who had crossed over the Delaware from Fort Christina, now Wilmington, DE, during the middle 1600's. These groups were responsible for tranforming the southwestern section of New Jersey into small farms. Gloucester County's farming tradition continues to this very day. The South Jersey Chamber of Commerce reports that more than 700 fruit and vegetable farms in the county produce nearly $40 million worth of apples, peaches, tomatoes, asparagus, melons, and hogs annually. Once referred to as the "garden patch of Philadelphia," Gloucester County's agricultural prominence is widely recognized today.

In the 1660's, the first English colonists began to arrive in the area. At that time, the focal point of west New Jersey was in Burlington, a location quite far from the farmers living in southwestern New Jersey. In May of 1686, the Swedes and the Quakers met at Arwames, now Gloucester City, to

organize their own government. It is this historic meeting that Gloucester celebrates this year.

Gloucester's proximity to Philadelphia and the Delaware River also placed it in the center of our fight for independence from the British. Forts were built at Billingsport and high on the bluff overlooking the Delaware at Red Bank. In October 1777, fiercely fought battles at Billingsport and then at Fort Mercer helped earn New Jersey its title of "Pathway of the Revolution." Four hundred American soldiers were outmanned by 2,200 Hessian troops. A monument now marks the site of the historic battle at Fort Mercer.

From its melting pot beginnings and historic steps toward self-government, to the nurturing of progressive education provided by the Quakers during the late 1700's and its participation in the industrial revolution, Gloucester County's history has exemplified the ideals that we, as Americans, cherish. Gloucester County, its people, and its history are truly symbols of American progress. I am pleased to recognize its proud history of accomplishment and I look forward to its bright future.

REYKJAVIK AND THE FUTURE OF ARMS CONTROL

Mr. ROCKEFELLER. Mr. President, given the horrendous destructive potential of the United States and Soviet nuclear arsenals, it is not surprising that the drama of the Iceland summit has captured the world's attention—and imagination.

President Reagan went to Reykjavik last weekend apparently hoping to achieve agreement on the framework for a Euromissile accord and a date certain for a summit meeting in the United States. But Mr. Gorbachev had his own agenda—sweeping nuclear disarmament proposals tied to strict limitations on strategic defense research. Superpower agreement evidently foundered in the end over star wars, but not until President Reagan had agreed to eliminate nuclear missiles from Europe and phase out all strategic ballistic missiles—or maybe all nuclear weapons—within a decade.

Much attention has been given in the media to whether Mr. Gorbachev trapped President Reagan by upping the ante for agreement at the 11th hour. There is uncertainty over what in fact was put on the table at Hofdi House. The administration has been engaged all week in putting the best possible face on the outcome. Pollsters are avidly engaged in asking the American people who won. But as the flurry of activity surrounding the Reykjavik meeting subsides, the meaning of the extraordinary events in Iceland last weekend merits—and will receive—serious reflection.

In my view, the Reyhjavik meeting suggests cause of concern about the future of nuclear arms control on two counts. First, the dubious promise of theoretical missile defense plan was considered more important than concrete nuclear arms control agreements. Second, the President was apparently prepared to embrace certain dramatic—yet potentially dangerous—disarmament proposals. The irony of Reykjavik is that the President's commitment to star wars—troubling in itself—may have been all that stood in the way of some very unsound potential arms control agreements.

In order to appreciate fully the meaning of Reykjavik, it is necessary first to revisit the first 3 years of the Reagan administration's nuclear policy.

The Reagan administration came to office as avowed opponents of arms control and committed critics of the SALT process conducted under the previous four administrations. Arms control was downplayed by the new Reagan team as a dangerous soporific which threatened to dull public support for the Reagan military build-up. But the bellicose rhetoric of the early Reagan White House soon generated a wave of nuclear anxiety among Americans and West Europeans. The "nuclear freeze" movement swept America, and the "peace movement" took to the streets in every West European capital. By late 1981, the administration felt the need for a public relations effort to appease an increasingly concerned public. Accordingly, negotiating efforts were begun on two fronts: strategic arms and intermediate-range nuclear forces [INF].

The administration embraced initial proposals in both strategic and INF negotiations which envisioned very deep cuts, including the so-called "zero option" calling for complete elimination of all Euromissiles. Having opposed SALT II because it did not go far enough in reducing nuclear arsenals—and being pressed into the public diplomacy of arms control—administration officials inevitably maintained that they would only be satisfied with deep cuts. But such proposals, while dramatic, had the virtue to an administration skeptical of arms control of being virtually nonnegotiable. Whatever their short-term value in convincing the public that efforts to curb the arms race were underway, the administration's proposals were neither serious arms control nor good security policy.

The President's March 1983 speech outlining his vision of strategic defenses compounded the confusion of an already muddled strategic policy. The strategic defense inititative was motivated in large measure by a Presidential desire to take the "high ground" in the nuclear debate by providing a vision of a nuclear-free world. Having exacerbated nuclear fears through hard-line rhetoric, the administration sought to quiet those fears through rhetorical claims that nuclear weapons could and should be "rendered impotent and obsolete."

Under the President's concept of missile defenses, the mutual threat of nuclear retaliation would no longer serve as the basis for Western security. The deterrent policy which had served to guide American strategic planning for 3½ decades—and which has prevented major conflict—was suddenly rejected in favor of a Presidential vision that technology could render the threat of nuclear weapons meaningless.

Unfortunately, reality must intrude. Referring to President Reagan's strategic defense initiative, former Secretary of Defense James Schlesinger stated in 1984 that:

> It would be irresponsible for us to base our defense posture on rhetoric that may sell well on the political scene, but (which has) little relationship to the underlying technological, budgetary and strategic realities.

And the underlying technological reality is that star wars is not going to put the nuclear genie back in the bottle. The underlying strategic reality is that to do so—without concommitant reductions in conventional forces—would undermine our security and that of our allies.

It is profoundly regrettable to all of us, but nuclear weapons are a fact of the post-war world. They have also become a key component of Western security. They serve to offset the huge Warsaw Pact conventional superiority in Europe; and they compensate for a geopolitical fact: the Soviet Union is a Eurasian power, while our efforts to defend allies must rely on "extended deterrence."

The real challenge before us is to fashion a framework for the control of these awesome weapons so that nuclear forces guarantee—rather than threaten—our security.

My concern about star wars is this: it represents both an obstacle to arms control and an impediment to strategic stability. The ability of one side to render itself invulnerable to nuclear attack—while at the same time retaining the capacity to destroy one's adversary—would be vastly destabilizing, a virtual invitation to engage in nuclear brinkmanship. And common sense and logic dictate that an attempt on our part to build such defenses would likely lead to an offsetting increase in Soviet offensive missiles in order to overcome that defense.

Experience suggests that offensive arms limits are possible only with limitations on defensive systems. We should recognize the fact of this linkage and avoid another qualitative spiral in arms competition with the

Soviet Union. When the Soviets first began work on defensive systems, the United States contemplated adding multiple warheads to our strategic missiles in order to overcome those defenses. Critics warned that MIRV'ing would be a grievous mistake, pointing out that it would likely result in a new and destabilizing cycle of the arms race. The critics were ignored, we MIRV'd, and now our fixed-silo ICBM's are threatened by Soviet MIRV'd SS-18's. We should not repeat that mistake.

The proper role of arms control should be to stabilize the "nuclear stand-off" and provide an element of predictability in the superpower nuclear balance. The actual number of weapons deployed by both sides is not in itself the most threatening aspect of the nuclear equation. The real threat is the likelihood that those weapons may be used. Our goal should be to structure secure retaliatory forces on both sides at the lowest possible level of weapons. Arms reductions are desirable, but they must contribute to stable deterrence.

That is why the survivability of U.S. land-based missiles should be addressed in the arms talks and in our own strategic planning. MIRV'd ICBM's in fixed silos—the administration's plan for the MX—exacerbate rather than help the problem of ICBM survivability. Mobile systems, such as the single-warhead Midgetman, contribute to an assured retaliatory force and thereby enhance strategic stability. We should not propound arms proposals which do not address this critical requirement of sound strategic policy. Deep cuts are not an end in themselves.

Nor should we seek to eliminate a whole category of weapons simply for the sake of arms control. As Senator NUNN pointed out on the Senate floor earlier today, the President's suggestion in Reykjavik that we abolish all strategic ballistic missiles within a decade may have very negative consequences for the United States. Soviet superiority in air defense would yield a very unfavorable strategic balance in a world dominated by bombers and cruise missiles.

When NATO decided in 1979 to deploy Pershing II and ground-launched cruise missiles in European countries, it did so in order to bolster America's "nuclear umbrella" over Western Europe. The "zero option" proposal to wipe out all nuclear missiles in Europe may be superficially appealing, but would effectively decouple the United States from Western European defense, a long-time objective of the Kremlin. Arms control at the expense of the strategic coherence of the Atlantic Alliance is bad arms control.

The troubling message of Reykjavik is that dramatic antinuclear posturing—deep cuts, missile defense—has taken the place of serious, security-enhancing arms control. Arms control as public relations has taken over at center stage, while star wars works to preclude progress on real limitations. Mr. Gorbachev—no novice at the game of nuclear public relations—took advantage of this in Iceland by drawing President Reagan into supporting zero missiles in Europe and the elimination of all ballistic missiles, only to hold the agreement hostage to strict limits on SDI. The message to the world: all is possible if only Reagan gives up his dream of star wars.

To test the possibilities, the United States should be prepared to make concessions on star wars, especially in light of its dubious continued usefulness as a bargaining chip. As former Defense Secretary Harold Brown has noted, the President's vision of a ballistic missile astrodome is "surely infeasible in my lifetime, our children's and probably our grandchildren's." At the same time, we should avoid showy proposals for dramatic arms cuts which have immediate popular appeal, but which are antithetical to Western security interests.

The hard truth is this: the future of arms control lies in admitting that we will continue to live with the threat of nuclear war. We should get on with the task of managing stable nuclear deterrence at the lowest possible level of weapons. Our security, and that of our children and grandchildren, will continue to rest on it.

RETIREMENT OF SENATOR RUSSELL LONG

Mr. ROCKEFELLER. Mr. President, I have only been in the Senate a short time. But I feel particularly privileged that my introduction to this Chamber occurred in the 99th Congress, so that I had the opportunity to serve 2 years with RUSSELL LONG.

My colleagues have spoken with great admiration and eloquence about the extraordinary career of RUSSELL LONG. His accomplishments, over a period of 38 years, are legendary. Winning a special election before he turned 30 was just the first of many successes that distinguished his Senate service. His skill as a strategist, his depth of knowledge of the Tax Code and so many areas of public policy, his sense of humor, and tireless efforts on behalf of his constituents will be deeply missed by the people of Louisiana—and by all of us.

Over the course of six Senate terms, including 15 years as chairman of the Finance Committee, RUSSELL LONG has had many important legislative initiatives. But the one that stands out to me as his single greatest contribution has been his effort to encourage employment ownership of American industry. His advocacy of employee stock ownership plans [ESOP's] has enormously heightened public awareness of their value to workers and companies alike. His benefits in employee ownership are guided by a vision that more cooperative labor-management relations can substantially improve our economic performance. It is a vision that I share—and one that I hope both labor and management will find increasingly attractive in years to come.

RUSSELL LONG was among the first to recognize the motivational value of ESOP's. He observed how financially troubled companies became profitable again under employee ownership, in part because the workers had a strong stake in the success of the enterprise. And he saw how ESOP's could foster a participatory style of management, involving workers in decisionmaking from the shop floor to the boardroom.

Employee-owned firms have had some stunning successes. Weirton Steel in my State of West Virginia, which was on the verge of closing down when workers and community residents bought the plant 4 years ago, is now one of the only profitable steel companies in the country. An ESOP was the key to saving this mill, and averting a catastrophic loss of jobs. It was also the cornerstone of a far-reaching cooperative effort by labor and management at Weirton, that stressed innovation and commitment to quality. In an industry reeling from cutbacks in production and employment, Weirton's profitability is truly remarkable.

Currently, close to 7,000 companies in this country have ESOP's, covering more than 10 million workers. Some, like Weirton, were saved from shutting down; many more were healthy companies transferred to the employees when the original owners retired. Perhaps the single greatest tribute to RUSSELL LONG's leadership is the growing interest in employee ownership that this experience displays. All of us who share his vision will miss his counsel, as we work to encourage cooperative industrial relations in the years ahead.

REAGAN'S REMARKS IN NORTH DAKOTA

Mr. BYRD. Mr. President, this morning I spoke in this Chamber that it was my wish that President Reagan would tone down his partisan remarks about SDI and keep the discussion of arms control reductions on a high plane of seriousness where it belongs. It was my hope that the President would come back to Earth, and stop all this "beam me up, Scotty" talk as if SDI will solve all of America's strategic problems. I am a supporter of SDI as I said this morning. A very strong supporter. I want, as every American

wants, the President of the United States to protect America's vital national security interests when he negotiates with his Soviet counterparts. But as my distinguished colleague from Georgia, Senator NUNN, pointed out this morning we need to sift the wheat from the chaff of just what was proposed and discussed in Iceland. America's vital nuclear strategic interests, interests that we here in the Senate have deliberated on for decades, can not be resolved in a rushed weekend of negotiations.

So I say to the President that I am his supporter when it comes to going forward with SDI as an insurance policy for our Nation's security. It is an insurance policy to be sure. But we do not know its terms, we do not know what the premium will be, and we do not know whether the insurance company, to use the President's metaphor, will pay the American people when they file a claim. We are a long way off from even signing the policy.

So I urge the President to slow down, make a midcourse direction, reenter the atmosphere, and come back down to Earth. In the long term, and we need to think of SDI as long term, all this rushed "beam me up, Scotty" talk about space beams and lasers has little to do with the immediate reality of how we protect America's current strategic interests.

Just as importantly, it seems important to again remind the President that most of our Nation's problems are back here on Earth. Back here on Earth the problems of North Dakota's farmers will not be solved by laser beams from space. Back here on Earth the farmers of North Dakota are losing their farms because of the President's misguided farm policies. Back here on Earth, the trade deficit is making American workers unemployed. Back here on Earth, the national deficit is the Nation's No. 1 problem.

So, I urge the President to come back down to Earth, restrain his political advisers, and reenter the dialog about arms control and SDI in a responsible, nonpartisan manner. It is in America's interests.

ENDING UNITED STATES UNILATERAL SALT II COMPLIANCE BOLSTERS NUCLEAR DETERRENCE, ARMS NEGOTIATIONS, AND WORLD PEACE

Mr. McCLURE. Mr. President, ever since 1976, when Governor Reagan first became a candidate for President of the United States, and ever since January 1981, when Ronald Reagan became President, he has repeatedly warned the Soviets to stop their ever expanding pattern of violations of strategic arms limitation talks [SALT] treaties.

The Soviets, however, have totally ignored Ronald Reagan's warnings. President Reagan's repeated warnings, juxtaposed against the ever expanding pattern of Soviet SALT violations, show that the credibility of American diplomacy must be restored.

Proportionate responses to the 22 Soviet violations of SALT II alone, which President Reagan has confirmed to Congress, have long been overwhelmingly approved by the Congress. And according to a reliable poll conducted in July, 70 percent of the American people support President Reagan's May 27, 1986, decision to abandon U.S. unilateral compliance with the SALT II Treaty. The most important proportionate response to the 22 confirmed Soviet SALT II violations is to abandon U.S. unilateral SALT II Compliance on November 11, 1986, when President Reagan plans to complete the conversion of the 131st B-52 bomber to carry air launched cruise missiles.

President Reagan stated in June 1986, in regard to his strategic modernization programs and the importance of his May 27 decision to end U.S. unilateral compliance with SALT II by mid-November, that:

> We come to one of those unique crossroads of history when nations decide their fate . . . our choices are clear.

American diplomatic credibility must be restored in order to regain the integrity of the arms control negotiating process, and in order to bolster deterrence of nuclear war. This is true, Mr. President, because it is a fact of life in the nuclear age that deterrence of nuclear war rests upon our demonstrated political will. Soviet leaders continuously test and gauge American political will, and they respect American actions, not rhetoric, as expressions of our political will.

I believe that the political will to respond proportionately to the Soviet SALT II violations would be clearly demonstrated to the Soviets by abandoning United States unilateral compliance with SALT II on November 11, 1986. Indeed, Mr. President, this action is crucial to preserving nuclear deterrence. Therefore, abandoning U.S. unilateral SALT II compliance serves to strengthen world peace and international security.

Moreover, if arms control is ever to provide America with security, the Soviets must be taught by our actions that they must strictly comply with each of their obligations under every provision of each arms treaty. Otherwise, United States unilateral compliance with arms control treaties that the Soviets are allowed to violate with impunity becomes American unilateral disarmament.

The Western democracies tried unilateral compliance with arms control treaties repeatedly violated by Hitler in the 1930's. Increasingly, as the armed strength of the Nazis grew out of these arms control treaty violations, the Western policy of unilateral compliance became unilateral disarmament and appeasement. Appeasement did not stop World War II; it caused it. As the moral hero of the interwar period, Winston Churchill, tried to do, we must seek to restore the political will he sought to call forth when he tried to explain to the British Parliament the tragedy that was overtaking the free world in 1938:

> The whole equilibrium has been deranged, and the terrible words have . . . been pronounced against the Western democracies—"Thou art weighed in the balance and found wanting." And do not suppose that this is the end. This is only the beginning of the reckoning. This is only the first sip, the first foretaste of a bitter cup which will be proffered to us year by year unless by a supreme recovery of moral health and martial vigor, we arise again and take our stand for freedom as in the olden time . . . Owing to the neglect of our defenses . . . we seem to be very near the bleak choice between War and Shame. My feeling is that we shall choose Shame, and then have War thrown in a little later, on even more adverse terms than the present.

Neville Chamberlain learned and the Western democracies learned the hard way in August 1939. As Chamberlain belatedly confessed:

> Our past experience has shown us only too clearly that weakness in armed strength means weakness in diplomacy.

The political will expressed by the careful, deliberate acts of a democracy is what must inform our opponents of our intention and capabilities to keep the peace. Only by showing our will to respond proportionately to Soviet breaches of arms control treaties can we try to restore the integrity of the arms control process, preserve the credibility of American diplomacy, and bolster nuclear deterrence.

Moreover, if the United States does not demonstrate firmness by responding to repeated Soviet violations of existing arms control treaties, then the United States negotiating posture in Geneva will have no credibility—the Soviets can agree to any terms, if they think they can violate any new treaty with impunity. The integrity of the entire arms control process must be restored, and United States proportionate responses to the Soviet violations are required to try to enforce Soviet compliance with existing treaties.

Mr. President, our distinguished colleague the late Senator Henry Jackson accused former President Carter of "appeasement" of the Soviet Union for even signing the SALT II Treaty of June 18, 1979, believing it to be unequal.

I strongly agree with Governor Reagan's statement of January 1980, that:

> The Soviets only see weakness in a President who clings to unilateral observance of the fatally flawed SALT II Treaty.

As recently as December 1985, President Reagan said in regard to SALT II that:

> There's no way that we could be so one-sided as to be destroying missiles and things of that kind to stay within a limit that they are violating.

Mr. President, there are 22 Soviet violations of SALT II alone that have been confirmed to the Congress by President Reagan. The most strategically important of these Soviet SALT II violations are:

The Soviet deployment of many more intercontinental missile launchers and bombers than they had when the SALT II Treaty was signed in June 1979, in violation of the three central numerical limits of SALT II;

The Soviet deployment of over 70 SS-25 mobile ICBM's, a second new type ICBM banned by SALT II, in violation of the most important qualitative limit of SALT II;

The Soviet deployment of more warheads than SALT II allows on the SS-18 super heavy MIRV'd ICBM, in violation of another central sublimit on missile fractionation.

I agree with President Reagan's statement on June 10, 1985, that:

> We can not impose upon ourselves a double standard that amounts to unilateral Treaty compliance, and, in effect, unilateral disarmament.

As Governor Reagan correctly stated in May, 1980:

> I believe the SALT II Treaty should be withdrawn, and I especially believe the US should not abide by its terms prior to ratification. To abide by the terms of the proposed agreement would violate Article 33 of the Arms Control and Disarmament Act of 1961.

And candidate Reagan added correctly just before the 1980 election that:

> SALT II is illegal, because the law of the land, passed by Congress, says we can not accept a treaty in which we are not equal, and we're not equal in this treaty.

During the 1980 Presidential campaign, candidate Reagan repeatedly described the SALT II Treaty correctly as "fatally flawed, unequal, and illegal." Candidate Reagan declared that he would withdraw the SALT II Treaty from the Senate. Former President Carter stated that the 1980 election was a national referendum on his proposed SALT II Treaty. But SALT II lost when Ronald Reagan won in 1980.

There are good reasons why a "blocking one-third" of the Senate has always been against prolonged U.S. unilateral compliance with the SALT II Treaty.

First, it was unequal because the Soviets were allowed a monopoly of 820 heavy, counterforce, MIRV'd ICBM's—the most dangerous weapons in the world. The United States was allowed zero heavy ICBM's.

Second, the Soviets did not have to count in the SALT II limits their 270 intercontinental Backfire bombers, possessing greater range than both Soviet and United States intercontinental bombers which did count—even though equality is mandated by United States law.

Third, SALT II allowed the Soviets to add well over 4,000 mostly counterforce, hard target capable, nuclear warheads.

Fourth, SALT II failed to limit thousands of Soviet stockpiled missiles capable of rapid reload, refire, and covert soft launch.

Largely for these and many other reasons, the Senate Committee on Armed Services voted without dissent in December 1979, that the proposed SALT II Treaty was unequal, unbalanced, destabilizing, and "not in the national security interest of the United States."

This judgment has been proven to be correct. Since 1979, the Soviet strategic nuclear arsenal has increased to an even higher level than the Joint Chiefs of Staff estimated in 1979 that the Soviets would deploy by 1985, even if no SALT II had ever been signed. Thus SALT II failed to constrain the Soviet threat, and failed thereby to serve American national security interests.

As we recall, former President Carter deferred the Senate's debate on the proposed SALT II Treaty in January 1980, because of the Soviet aggression against Afghanistan, the first use of Soviet armed forces outside the Soviet Bloc since World War II. At that time, our distinguished colleague, Senator MOYNIHAN, conceded that the two-thirds majority needed for Senate advice and consent for the President to ratify SALT II, was never there. Even before the shock of the Soviet aggression against Afghanistan, the United States had detected the Soviet combat brigade in Cuba.

But now in late 1986, the Soviets are ahead of the worst case strategic threat estimate made by our Joint Chiefs of Staff in 1979; the Soviets have engaged in the genocidal use of chemical and bacteriological weapons in their still ongoing wars of aggression against innocent and defenseless civilians in Southeast and Southwest Asia, which is banned by international law; and the potential Soviet nuclear delivery threat from Cuba is twice what it was in 1962 at the time of the Cuban missile crisis.

Former President Carter's stated purpose for deferring the SALT II debate in the Senate was to reassess Soviet intentions in the wake of Afghanistan. Perhaps the reported Soviet flight tests since April 1986, of new super heavy, sixth generation ICBM's in further multiple violation of SALT II best summarizes Soviet global intentions.

In a vote in November 1983, 37 percent of the Senators present voted against the SALT II Treaty. In June 1983 and again in March and April 1986, 34 Senators wrote to President Reagan affirming that the expanding pattern of Soviet SALT violations made the United States disavowal of SALT II necessary. In September 1983, the Senate voted 93 to 0 to require President Reagan to make the first of four required reports to Congress and to the American people on Soviet SALT violations. The first Presidential report of January 1984, charged seven Soviet SALT violations. The most recent Presidential report contains well over 22, so there is indeed an expanding pattern of Soviet SALT violations. In June 1984, the Senate voted 99 to 0 that the United States should not comply with an arms control treaty, such as SALT II, which the Soviets have been detected, verified, and confirmed to be violating. Finally, by a vote of 90 to 5 in June 1985, the Senate even forbade United States unilateral compliance with SALT II, and authorized President Reagan to take proportionate responses to Soviet SALT II violations.

In sum, Mr. President, President Reagan already has the overwhelming support of the Senate and the American people to end U.S. unilateral compliance with the SALT II Treaty. As Defense Secretary Weinberger stated in December 1984:

> We now confront precisely the situation that the SALT process was intended to prevent.

Both the fiscal year 1987 defense authorization bill and the fiscal year 1987 continuing resolution now contain "sense of the Congress" language which fortunately is not binding on President Reagan and would not commit the United States to continued unilateral compliance with the SALT II Treaty. This is fortunate for our constitutional principles, because the House of Representatives has no role in treaty ratification, and can not constitutionally legislate compliance with an unratified treaty. And as I have pointed out, United States unilateral disarmament is a dangerous policy which the history of the 1930's clearly demonstrates destabilizes world peace. This language reads as follows:

> It is the sense of the Congress that it is in the national security interests of the United States to continue voluntary compliance with the central numerical sublimits of the SALT II Treaty as long as the Soviet Union complies with such sublimits . . . [New Section] In accordance with international law, the United States shall have no obligation to comply with any bilateral arms control agreement with the Soviet Union that the Soviet Union is violating.

Mr. President, let me comment on this bill language, before I disclose some newly declassified verification

judgments which bear upon this language.

The initial section seeming to support SALT II is not binding in law, and therefore President Reagan can ignore it in exercising his constitutional duties as Commander in Chief.

The focus of the initial section is upon the sublimits of SALT II, not upon the overall ceilings or limits. This is because SALT II proponents realize that the Soviets are clearly violating the three overall limits. But indeed, it is clear that the Soviets have already violated a "central numerical sublimit" of SALT II by exceeding the 10 warhead limit on the SS-18 ICBM. The SS-25 is a second new type ICBM which is a violation of the main qualitative limit of SALT II.

The operative impact of the language in both sections is clearly triggered by Soviet SALT II violations. President Reagan is thus provided with two options—either to declare that the Soviet violations of the limits allow the United States to stop its unilateral SALT II compliance; or, to declare that the 22 Soviet SALT II violations themselves, irrespective of the clear Soviet violations of the three overall limits, the main qualitative limit, and the SS-18 warhead sublimit and probably the MIRV ICBM launcher sublimit, allow the United States to cease its SALT II compliance. And in either case, the President can also argue that U.S. SALT II compliance is not in the U.S. national security interest.

Let me detail the proof that the Soviets are violating all three of the overall limits to SALT II, and are probably also now violating the most important sublimit of SALT II.

The Soviets have long been confirmed by President Reagan to be above the overall number of strategic nuclear delivery vehicles they had in June 1979, when the SALT II Treaty was signed—2,504. The Soviets are also well above the interim SALT II overall limit on strategic nuclear delivery vehicles—2,400—and the overall SALT II ceiling on stategic nuclear delivery vehicles—2,250.

But now it is confirmed that the Soviets are increasing their margin of violation of all three limits.

I would now like to reveal a new verification judgment just declassified and released by the Arms Control and Disarmament Agency and the CIA on October 10, 1986:

Prior to the sinking of the Soviet Yankee Class SSBN on October 6, 1986, the number of Soviet Strategic Nuclear Delivery Vehicles that are SALT II-accountable was larger than it was when the President, in 1984 and 1985, found the Soviets to be in violation of their obligation to abide by the numerical limits of SALT II. It was also larger than it was on May 27, 1986, when the President announced his new policy abandoning US unilateral compliance with SALT II, and larger than it was on August 5, 1986, when Senator McClure argued on the Senate floor against US unilateral SALT II compliance. Even when the 16 SLBMs carried on the Yankee Class submarine that recently sank are removed from the number of SALT II-accountable Soviet Strategic Nuclear Delivery Vehicles, the number remains greater than the 2,504 SNDVs recognized as permitted by SALT II.

Mr. President, what is the number of Soviet SALT II-accountable SNDV's? The precise answer is classified, and surrounded by some uncertainty, as I shall point out. But much can be said to answer this question at the unclassified level in open session on the Senate floor, using only unclassified, official, authoritative sources, together with some reasonable unclassified analysis, and my own unclassified estimates.

Mr. President, here is the unclassified total of Soviet strategic nuclear delivery vehicles, as of April 1986 and October 5, 1986, according to the Defense Department's unclassified report entitled "Soviet Military Power" dated April 1986: 2,520.

From this total, we should subtract the 16 SLBM's on the *Yankee* class SSBN which sank on October 6, 1986. The new total would then seem to be 2,504 Soviet SNDV's, the same number the Soviets had when SALT II was signed.

But ACDA and the CIA have just revealed that even after the *Yankee* class sank, the current Soviet SNDV number is greater than 2,504. What are the additional Soviet SNDV's, which ACDA and CIA say are deployed and SALT II accountable?

Mr. President, there are in fact many more Soviet strategic nuclear delivery vehicles that are SALT II accountable. In a Senate floor speech on March 18, 1986, my distinguished colleague, Senator JESSE HELMS, the ranking Republican member of the Senate Foreign Relations Committee, stated that:

A new different ICBM is now being deployed at Plesetsk in place of the mobile SS-16—reportedly the mobile SS-25 ICBM, which is covertly MIRV-capable.

This statement was based upon President Reagan's unclassified "Fourth Report to Congress on Soviet SALT Violations," dated December 1985. And according further to an unclassified attachment to an unclassified letter to President Reagan on May 6, 1986, sent by my distinguished colleagues Senators HATCH, HOLLINGS, QUAYLE, HELMS, and the late, distinguished Senator East, there was—

Confirmed deployment of 50 to 200 SS-16 mobile ICBM launchers at the Plesetsk test range, now being replaced by also banned SS-25 mobile launchers.

Based upon these two unclassified sources, I have in turn estimated that there are now at least 20 mobile SS-25 ICBM launchers deployed at the Plesetsk test range, and these are therefore also SALT II accountable. I would emphasize that this estimate is unclassified, and I believe it to be a midrange estimate. There may be many more.

Moreover, the 50 to 200 SS-16 mobile ICBM launchers which are reportedly being replaced by a similar number of SS-25's at Plesetsk, have, according to the President's unclassified report, apparently simply disappeared. They are simply unlocated.

But just as we must still count "36" SS-20 mobile IRBM launchers which the Joint Chiefs of Staff have publicly declared are similarly, "unlocated," we must also count the disappeared 50 to 200 SS-16's in the Soviet total of strategic nuclear delivery vehicles accountable under SALT II. These mobile SS-16's are probably covertly deployed, just like the 36 unlocated SS-20's.

Thus, Mr. President, according entirely to unclassified sources and to reasonable. unclassified, midrange estimates, we must add to the 2,504 SNDV's that the Soviets had when SALT II was signed in June 1979, the following additional intercontinental missiles and bombers: 20 SS-25 mobile ICBM's estimated now to be deployed at Plesetsk; 5 Blackjack bombers which are SALT II accountable, according to Soviet Military Power; 50 to 200 S-16 mobile ICBM launchers "unlocated" and estimated to be covertly deployed.

So now the total of Soviet SALT II accountable strategic nuclear delivery vehicles is in the range of 2,579 to 2,729. This estimate explains why ACDA and the CIA have just revealed that the number of Soviet SNDV's "remains greater than the 2,504 SNDV's recognized as permitted by SALT II." The precise number is difficult to determine, due to several Soviet actions, which deliberately impede United States SALT verification by national technical means, also in violation of SALT II.

Thus the Soviets are at least 75 to 225 Strategic intercontinental missiles and bombers over the number they had when SALT II was signed 8 years ago. And there are probably more than three S-24 rail-mobile MIRV'd ICBM launchers already deployed and SALT II accountable, as I will point out later.

And further, this estimated Soviet SNDV level does not even take account of what appears to have been the Soviet cessation of the dismantling of SS-11 ICBM silos and Bison tankers in only partial compensation for ongoing deployments. This reported cessation appears to have occurred since the July 1986 special United States-Soviet SALT Standing Consultative Commission session in Geneva. This reported cessation could add in the near term 20 to 30 or more SALT II accountable Soviet SNDV's, because the relentlessly ongoing Soviet SS-25,

SS-24, Delta IV, Typhoon, Bear H, Backfire, and Blackjack deployments are now probably occurring without any Soviet attempt at compensation at all.

In sum, the Soviets keep creeping upward and creeping further upward in intercontinental missiles and bombers and warheads.

No wonder that the Reagan administration, ACDA, and the CIA state that the Soviets are over the SALT II "limits," in the plural.

The Soviets are indeed clearly over the three SALT II overall limits or ceilings on intercontinental missile launchers and bombers of: 2,250; 2,400; as well as over the de facto SALT II ceiling of 2,504, the number of SNDV's they had when SALT II was signed in June 1979. Moreover, the change of one or two United States intelligence judgments to reflect the actual evidence of Soviet activity would even put the Soviets immediately over all the SALT II sublimits.

As I shall point out in detail in a moment, the Soviets are probably already over the most important SALT II sublimit, and they will surely be over the second sublimit by early next year, and they could already be over the third SALT II sublimit. A slight change of one or two unclassified CIA intelligence assessments of the range of a Soviet air-launched cruise missile, and the definition of what constitutes a heavy bomber, would immediately force this conclusion!

According to one of these unclassified CIA assessments, 100 TU-95 A, B, and C attack bombers carrying the AS-3 Kangaroo air-launched cruise missile do not count against the Soviet SALT II sublimit of 1,320 MIRV'd missiles and ALCM-equipped bombers, because the SALT II definition of a long-range ALCM is one with a range less than 600 kilometers. CIA believes that the AS-3 Kangaroo's range is less than 600 kilometers. Yet in the first edition of "Soviet Military Power," the Defense Department and the Defense Intelligence Agency stated that the range of the AS-3 Kangaroo was "650" kilometers. Strong evidence supports the DIA range estimate.

Thus if the DIA AS-3 range estimate was accepted, the Soviets would be over the 1,320 sublimit even sooner than early next year.

More significantly, the AS-3 Kangaroo ALCM, with at least 650 kilometers range, and the AS-15 ALCM, with 3,000 kilometers range, are both compatible with the intercontinental Backfire bomber. The Arms Control and Disarmament Agency and the CIA believe that without any flight-test or modifications, both long range ALCM's could probably be covertly fitted onto the Backfire. Using the supersonic-capable Backfire to carry these subsonic long-range ALCM's ought to, however, somewhat degrade the flight characteristics and flight profile of the Backfire. But ACDA and CIA believe that such deployment of long-range ALCM's on the Backfire could be attractive to the Soviets in a SALT II break out scenario. Soviet adoption of this option could be difficult to detect. Therefore, if the Soviets have decided to break out of SALT II, they could have the capability of using Backfire bombers covertly as long-range ALCM carriers. The key question is whether or not the Soviets have broken out of SALT II. I believe that the 22 confirmed Soviet violations of SALT II are evidence that Soviet SALT II break out may have occurred. United States Intelligence cannot rule out the possibility of Backfires carrying long-range ALCMs, and therefore I believe that the United States should consider that the Soviets have adopted this option. I believe that the United States should realistically count 270 Backfires as long-range ALCM carriers. I believe further that the Soviets may already be over the 1,320 SALT II sublimit.

Thus, Mr. President, the Soviets have far exceeded the SALT II overall ceilings of 2,250 and 2,400 stategic nuclear delivery vehicles. But, more importantly, the Soviets are increasingly over the number of strategic nuclear delivery vehicles that they had when SALT II was signed in June 1979—2,504. This is a clearcut, conclusive verification judgment supported by strong intelligence evidence whose interpretation is not disputed.

The Soviet violation of the overall SALT II ceiling is increasing as the Soviets continue to deploy TU-95 Bear H heavy bombers equipped with long-range, cruise missiles, new Blackjack heavy bombers equipped with ALCM's, Delta IV and Typhoon SLBM submarines, and SS-25 road mobile ICBM's, and without any compensation in dismantling.

The fact that the Soviets are increasing their violation of the overall ceilings of SALT II is agreed to by almost everyone involved in the SALT issue. The facts in this case are clear. The facts of this Soviet SALT II violation are probably the reason that the proponents of SALT II have deliberately ignored the overall ceilings of SALT II in their bill language, and have instead focused only upon the SALT II sublimits. But by ignoring the Soviet violations of the three overall limits, the proponents of United States unilateral SALT II compliance are allowing the Soviets to choose to selectively violate the provisions of SALT II.

Mr. President, let's turn now in more detail to the SALT II sublimits. These are: 820 MIRV'd ICBM's for each side; 1,200 MIRV'd ICBM's and MIRV'd SLBM's for each side; 1,320 MIRV'd ICBM's, MIRV'd SLBM's, and heavy bombers equipped with long-range air-launched cruise missiles on each side.

The most important of these SALT II sublimits is the 820 sublimit on MIRV'd ICBM's. This is because it attempts to constrain the most letal weapons in the world—MIRV'd ICBM's—which are capable of first strike, counterforce attacks upon U.S. ICBM silos and other hardened targets. According to official, authoritative, unclassified information, the Soviets now have 818 MIRV'd ICBM's.

Thus only three more Soviet MIRV'd ICBM launchers deployed will put the Soviets over this sublimit.

It is important to consider the following new verification judgment made by ACDA on August 4, 1986, and cleared then for declassification:

> We can not exclude the possibility, in the context of the SALT II Treaty, that *several launchers* for the SS-X-24, a rail mobile *MIRV'd ICBM*, have left their place of final assembly and may therefore be accountable under SALT II.

These two new ACDA verification judgments mean that in addition to being increasingly above the three overall SALT II ceilings, the Soviets may now also be over the most important sublimit of SALT II, the sublimit of 820 MIRV'd ICBM's.

"Several launchers" for the MIRV'd SS-X-24 railmobile ICBM is, according to Webster's Dictionary, "more than two." More than two is three. If three or more SS-24's are SALT II accountable, then the Soviets are over the sublimit of 820, because they already have 818.

The burden of proof that the Soviets are not already violating the most important sublimit is on the proponents of United States SALT II compliance.

Given the long track record of United States intelligence continuously underestimating Soviet strategic forces, I believe that three or more SS-24 railmobile MIRV'd ICBM launchers already exist. I believe further that three or more SS-24's are in fact already SALT II accountable. Perhaps this is why the Soviets are trying to continuously camouflage and conceal their SS-24 railmobile launchers.

In sum, the Soviets are probably already over the main sublimit of SALT II, as well as the three overall ceilings. Indeed, further supporting this conclusion is the following statement from the Defense Department's authoritative unclassified book "Soviet Military Power" published in April 1986:

> The SS-X-24 deployment in a railmobile mode could begin as early as late 1986 . . . Early preparations for the deployment of the SS-X-24 are already underway.

This same document also stated that railmobile SS-24 deployment was expected "soon." These Defense Department statements are consistent with the recent ACDA and CIA verification

judgment that the SS-24 may already be deployed.

Mr. President, it is already late 1986 as the fiscal year 1987 defense authorization bill and fiscal year 1987 continuing resolution are going to be signed by the President into law, and SS-24 deployment is probably already underway. Also by late 1986, an additional Soviet Typhoon SLBM submarine and an additional Delta IV class SLBM submarine will probably begin sea trials, thus becoming SALT II accountable. When this happens, the Soviets will be above the SALT II sublimit of 1,200 MIRV'd ICBM's and SLBM's. These submarines are about to be launched, so it is clear that the Soviets already intend to exceed two of the three SALT II sublimits. And as I have pointed out, realistically counting 100 TU-95 Bear A, B, C's and 270 Backfire bombers as long-range ALCM carriers would put the Soviets over the 1,320 sublimit.

I hope that the proponents of continued United States unilateral compliance with the SALT II Treaty will realize the danger and futility of continued United States compliance in light of these new ACDA and CIA verification judgments on Soviet violations of the three overall ceilings and the most important sublimits of SALT II.

Defense Secretary Weinberger made an important and correct statement in his article in the spring 1986 edition of "Foreign Affairs":

> Even with the SALT II restraints, the Soviet Union has built more warheads capable of destroying our missile silos than we had initially predicted they would build without any SALT agreement.

I strongly agree with the tragic accuracy of this conclusion, as well as with Secretary Weinberger's famous statement that we are facing precisely the situation that the SALT process was supposed to prevent.

We must not continue with this folly of continued U.S. unilateral SALT compliance. This is simply unilateral disarmament and appeasement. It did not work to preserve peace against Hitler's arms control treaty violations of the 1930's, and it will not work against Gorbachev's arms control treaty violations of the 1980's.

As Winston Churchill stated early in World War II, in words that all American political leaders should consider carefully as we confront the inevitable comparisons of the 1930's to the 1970's and 1980's:

> We must regard as deeply blameworthy before history the conduct . . . of all democratic leaders, both in and out of office, during this fatal period. Delight in smooth-sounding platitudes, refusal to face unpleasant facts, desire for popularity and electoral success irrespective of the vital interests of the State, genuine love of peace and pathetic belief that love alone can be its sole foundation, obvious lack of intellectual vigour . . . all of these constituted a picture of British fatuity and fecklessness which, though devoid of guile, was not devoid of guilt, and, though free from wickedness or evil design, played a definite part in the unleashing upon the world the horrors and miseries, which, even so far as they have unfolded, are beyond comparison in human experience.

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 a nomination, which was referred to the appropriate committees.

(The nomination received today is printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 1:05 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 197. An act for the relief of Elga Bouilliant-Linet;

S. 475. An act to amend section 408 of the Motor Vehicle Information and Cost Savings Act to strengthen, for the protection of consumers, the provisions respecting disclosure of motor vehicle mileage when motor vehicles are transferred;

S. 1082. An act granting the consent of Congress to the Arkansas-Mississippi Great River Bridge Construction Compact;

S. 1352. An act to enhance the carrying out of fish and wildlife conservation and natural resource management programs on military reservations, and for other purposes;

S. 1562. An act to amend title 31, United States Code, with respect to the fraudulent use of public property or money;

S. 2129. An act to amend the Product Liability Risk Retention Act of 1981 to include coverage of other lines of liability insurance, and for other purposes;

S. 2320. An act to amend an act to add certain lands on the Island of Hawaii to Hawaii Volcanoes National Park, and for other purposes;

S. 2370. An act to authorize the Francis Scott Key Park Foundation, Inc., to erect a memorial in the District of Columbia;

S. 2914. An act to extend through fiscal year 1988 SBA Pilot Programs under section 8 of the Small Business Act;

H.R. 1390. An act to authorize additional long-term leases in the El Portal administrative site adjacent to Yosemite National Park, California, and for other purposes;

H.R. 2826. An act to amend the Wild and Scenic Rivers Act by designating a segment of the Horsepasture River in the State of North Carolina as a component of the National Wild and Scenic Rivers System;

H.R. 3614. An act to restrict the use of government vehicles for transportation of officers and employees of the Federal Government between their residences and places of employment, and for other purposes;

H.R. 5056. An act to permit registered public utility holding companies to own certain interests in qualifying cogeneration facilities;

H.R. 5496. An act to designate certain National Forest Systems lands in the State of Georgia to the National Wilderness Preservation System, and for other purposes;

S.J. Res. 339. Joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week";

S.J. Res. 352. Joint resolution to designate the week beginning October 19, 1986, as "Gaucher's Disease Awareness Week";

S.J. Res. 407. Joint resolution designating November 12, 1986, as "Salute to School Volunteers Day"; and

S.J. Res. 422. Joint resolution commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion.

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. THURMOND].

At 2:25 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its clerks, announced that the House agrees to the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes, with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendment of the Senate to the following bills:

H.R. 2574. An act for the relief of the survivors of Christopher Eney;

H.R. 4037. An act relating to the Indiana Dunes National Lakeshore, and for other purposes; and

H.R. 4154. An act to amend the Age Discrimination on Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes.

The message further announced that the House agrees to the amendments of the Senate to the following bill and joint resolution:

H.R. 1010. An act for the relief of Audrey O. Lewis and Emerson B. Vereen; and

H.J. Res. 36. Joint resolution authorizing establishment of a memorial to honor

women who have served in or with the Armed Forces of the United States.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 415. Concurrent resolution to make corrections in the enrollment of the bill H.R. 5484.

At 5:29 p.m., a message from the House of Representatives, delivered by Mr. Guthrie, one of its clerks, announced that the House has passed the following bills, without amendment:

S. 1230. An act to amend the patent laws implementing the Patent Cooperation Treaty; and

S. 2852. An act to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987.

The message further announced that the House agrees to the amendments of the Senate to the joint resolution authorizing establishment of a memorial to honor the estimated five thousand courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom.

The message also announced that the House has passed the bill (S. 1236) to amend title 18 of the United States Code and other laws to make minor or technical amendments to provisions enacted by the Comprehensive Crime Control Act of 1984, and for other purposes; with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 5363) to amend the interest provisions of the Declaration of Taking Act; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5682. An act to authorize the Secretary of the Navy to make a certain conveyance of real property.

ENROLLED BILLS SIGNED

At 7:38 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 4873. An act to authorize certain transfers affecting the Pueblo of Santa Ana in New Mexico, and for other purposes; and

H.R. 5598. An act to provide for the transfer of the Coast Guard cutter "*Taney*" to the city of Baltimore, Maryland, for use as a maritime museum and display.

The enrolled bills were subsequently signed by the President pro tempore [Mr. THURMOND].

At 9:09 p.m., a message from the House of Representatives delivered by Ms. Goetz, one of its reading clerks, announced that the House recedes from its amendments to the amendments of the Senate numbered 19 and 117 to joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes, and agrees thereto; and that the House agrees to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 59 to the joint resolution.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6) to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure.

The message further announced that the House has passed the bill (S. 2091) to amend the provisions of the Federal Land Policy and Management Act of 1976 relating to the acquisition of public lands; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendments of the Senate to the concurrent resolution (H. Con. Res. 395) to correct technical errors in the enrollment of the bill H.R. 3838; with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 645. Joint resolution to designate 1988 as the "National Year of Friendship with Finland";

H.J. Res. 754. Joint resolution providing for furloughed employees compensation; and

H.J. Res. 755. Joint resolution providing for the convening of the first session of the One hundredth Congress.

The message also announced that the House has passed the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 417. A concurrent resolution.

ENROLLED BILL SIGNED

The message further announced that the Speaker has signed the following enrolled bill:

H.R. 3578. An act to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia on Judicial Disabilities and Tenure, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore [Mr. THURMOND].

ENROLLED JOINT RESOLUTION SIGNED

At 9:46 p.m., a message from the House of Representatives delivered by Mr. Romanello, one of its clerks, announced that the Speaker has signed the following enrolled joint resolution.

H.J. Res. 738. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

The enrolled joint resolution was subsequently signed by the President pro tempore [Mr. THURMOND].

At 10:35 p.m., a message from the House of Representatives, delivered by Mr. Allen, one of its clerks, announced that the House has passed the following bills and joint resolutions, each with an amendment, in which it requests the concurrence of the Senate:

S. 1744. An act to require States to develop, establish, and implement State comprehensive mental health plans;

S. 2921. An act to amend the Public Law 99-396 exception to the Balanced Budget and Emergency Deficit Control Act of 1985, and for other purposes; and

S.J. 336. Joint resolution to express the sense of Congress on recognitions of the contributions of the seven Challenger astronauts by supporting establishment of a Children's Challenge Center for Space Science.

The message also announced that the House has passed the bill (S. 2890) to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the "Albert V. Bryan United States Courthouse"; with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 1790. An act to withdraw certain public lands for military purposes, and for other purposes;

H.R. 5730. An act to provide for a land exchange in the State of Alaska; and

H.J. Res. 756. Joint resolution to make corrections in the Comprehensive Anti-Apartheid Act of 1986.

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 416. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 5300; and

H. Con. Res. 418. Concurrent resolution to direct the Secretary of the Senate to make technical corrections in the enrollment of the bill S. 2638.

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, October 17, 1986, she had presented to the President of the United States the following enrolled bills and joint resolutions:

S. 197. An act for the relief of Elga Bouilliant-Linet;

S. 475. An act to amend section 408 of the Motor Vehicle Information and Cost Savings Act to strengthen, for the protection of consumers, the provisions respecting disclosure of motor vehicle mileage when motor vehicles are transferred:

S. 1082. An act granting the consent of Congress to the Arkansas-Mississippi Great River Bridge Construction Compact;

S. 1352. An act to enhance the carrying out of fish and wildlife conservation and natural resource management programs on military reservations, and for other purposes;

S. 1562. An act to amend title 31, United States Code, with respect to the fraudulent use of public property or money;

S. 2129. An act to amend the Product Liability Risk Retention Act of 1981 to include coverage of other lines of liability insurance, and for other purposes;

S. 2320. An act to amend an act to add certain lands on the Island of Hawaii to Hawaii Volcanoes National Park, and for other purposes;

S. 2370. An act to authorize the Francis Scott Key Park Foundation, Inc. to erect a memorial in the District of Columbia;

S. 2914. An act to extend through fiscal year 1988 SBA Pilot Programs under section 8 of the Small Business Act;

S.J. Res. 339. Joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week";

S.J. Res. 352. Joint resolution to designate the week beginning October 19, 1986, as "Gaucher's Disease Awareness Week";

S.J. Res. 407. Joint resolution designating November 12, 1986, as "Salute to School Volunteers Day"; and

S.J. Res. 422. Joint resolution commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3858. A communication from the Deputy Assistant Secretary of the Air Force (Logistics and Communication), transmitting, pursuant to law, a report on the conversion of various functions at certain installations to performance by contract; to the Committee on Armed Services.

EC-3859. A communication from the Assistant Secretary of the Army (Installations and Logistics), transmitting, pursuant to law, notice of the recent discovery and emergency disposal of suspected chemical munitions at Dugway Proving Ground, Utah; to the Committee on Armed Services.

EC-3860. A communication from the General Counsel of the Department of Energy, transmitting, pursuant to law, notice of a meeting related to the International Energy Program; to the Committee on Energy and Natural Resources.

EC-3861. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, a report on abnormal occurrences at licensed nuclear facilities for the first calendar quarter of 1986; to the Committee on Environment and Public Works.

EC-3862. A communication from the Deputy Secretary of Transportation, transmitting a draft of proposed legislation to authorize the use of currently apportioned Highway Trust Funds for various highway projects; to the Committee on Environment and Public Works.

EC-3863. A communication from the Assistant Secretary of State (Legislative and Intergovernmental Affairs), transmitting, pursuant to law, a report on the emigration and human rights policies of the Government of Haiti and its cooperation with United States development assistance programs in Haiti; to the Committee on Foreign Relations.

EC-3864. A communication from the Director of the National Science Foundation, transmitting, pursuant to law, the first report on the research facilities needs of U.S. universities; to the Committee on Labor and Human Resources.

EC-3865. A communication from the Chairman of the Federal Home Loan Bank Board, transmitting, pursuant to law, the annual report of the Board for calendar year 1985; to the Committee on Banking, Housing, and Urban Affairs.

EC-3866. A communication from the Secretary of State, transmitting, pursuant to law, the semi-annual reports for the period October 1985-March 1986 listing Voluntary Contributions made by the U.S. Government to International Organizations; to the Committee on Foreign Relations.

EC-3867. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a copy of the response to a request by the Chairman of the House District of Columbia Committee regarding District law relating to demonstrations near diplomatic facilities; to the Committee on Governmental Affairs.

EC-3868. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-208, adopted by the Council on September 23, 1986; to the Committee on Governmental Affairs.

EC-3869. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-212, adopted by the Council on September 23, 1986; to the Committee on Governmental Affairs.

EC-3870. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-210, adopted by the Council on September 23, 1986; to the Committee on Governmental Affairs.

EC-3871. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-209, adopted by the Council on September 23, 1986; to the Committee on Governmental Affairs.

EC-3872. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-216, adopted by the Council on October 7, 1986; to the Committee on Governmental Affairs.

EC-3873. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-211, adopted by the Council on September 23, 1986; to the Committee on Governmental Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-894. A resolution adopted by the City Council of Berea, Ohio favoring amendments to the Bankruptcy Law to protect retirees benefits; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary:

Report to accompany the bill (S. 2575) to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes (Rept. No. 99-541).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. GORE:

S. 2940. A bill to provide for partial public financing of general elections for candidates in campaigns for the U.S. Senate, and other purposes; to the Committee on Rules and Administration.

By Mr. DURENBERGER:

S. 2941. A bill to require the Director of the Office of Personnel Management to conduct demonstration projects under the Federal employees' health benefits program for the purpose of determining the feasibility and effectiveness of providing voluntry contractual alternatives to the prevailing tort basis for compensating persons for injuries or illness incurred or aggravated as a result of the health care receive as patients under employees' health benefits plans; to the Committee opn Governmental Affairs.

By Mr. BRADLEY (for himself, Mr. LAUTENBERG, Mr. MOYNIHAN, and Mr. D'AMATO):

S. 2942. A bill to authorize and direct the Secretary of Interior to retain the American Museum of Immigration at the base of the Statute of Liberty National Monument; to the Committee on Energy and Natural Resources.

By Mr. HEINZ:

S. 2943. A bill to restrict certain U.S. contributions to international organizations until certain actions to investigate abuses of the United Nations system are undertaken by the United Nations Secretary General; to the Committee on Foreign Relations.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 2944. A bill to modify the application of the antitrust laws to encourage the licensing and other use of certain intellectual property; to the Committee on the Judiciary.

By Mr. LAUTENBERG (for himself, Mr. SIMON, Mr. CRANSTON, Mr. MOY-

NIHAN, Mr. DODD, Mr. BRADLEY, Mr. METZENBAUM, and Mr. KERRY):

S. 2945. A bill to provide for rehiring certain former air traffic controllers; to the Committee on Commerce, Science, and Transportation.

By Mr. GLENN:

S. 2946. A bill to permit national banks to buy and sell platinum; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MURKOWSKI:

S. 2947. A bill to provide domestic observers on U.S. fishing vessels; to the Committee on Commerce, Science, and Transportation.

By Mr. MATSUNAGA (for himself and Mr. INOUYE):

S. 2948. A bill to authorize the President to promote posthumously the late Lieutenant Colonel Ellison S. Onizuka to the grade of Colonel; considered and passed.

By Mr. GLENN:

S. 2949. A bill to authorize the Secretary of Health and Human Services to make grants to States to support family caregivers information and education demonstration programs; to the Committee on Labor and Human Resources.

By Mr. HATCH (for himself, Mr. WEICKER, Mr. DOLE, Mr. STAFFORD, Mr. KERRY, Mrs. HAWKINS, Mr. NICKLES, Mr. MATSUNAGA, Mr. QUAYLE, Mr. HOLLINGS, Mr. ABDNOR, Mr. ANDREWS, Mr. ROCKEFELLER, and Mr. GARN):

S.J. Res. 431. Joint resolution to designate the period January 1, 1988, through December 31, 1988, as the "Year of Workers With Disabilities"; to the Committee on the Judiciary.

By Mr. WILSON:

S.J. Res. 432. Joint resolution to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MURKOWSKI:

S. Res. 513. Resolution to encourage the development of domestic sources of strategic and critical materials in order to protect our national security; to the Committee on Armed Services.

By Mr. ARMSTRONG (for himself, Mr. MOYNIHAN, Mr. HATCH, Mr. HECHT, Mr. DECONCINI, Mr. JOHNSTON, and Mr. DANFORTH):

S. Res. 514. Resolution calling for hearings in the Committee on the Judiciary on procedures for protecting citizens against improper investigative and prosecutorial practices; considered and passed.

STATMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH (for himself, Mr. WEICKER, Mr. DOLE, Mr. STAFFORD, Mr. KERRY, Mrs. HAWKINS, Mr. NICKLES, Mr. MATSUNAGA, Mr. QUAYLE, Mr. HOLLINGS, Mr. ABDNOR, Mr. ANDREWS, Mr. ROCKEFELLER, and Mr. GARN):

S.J. Res. 431. Joint resolution to designate the period January 1, 1988, through December 31, 1988, as the "Year of Workers With Disabilities"; to the Committee on the Judiciary.

YEAR OF WORKERS WITH DISABILITIES

Mr. HATCH. Mr. President, today, we are introducing a joint resolution to designate 1988 as the "Year of Workers with Disabilities." Our purpose is to highlight the employment accomplishments in businesses and Government of 36 million Americans with disabilities.

During 1987, we intend to heighten public awareness of the capabilities, aspirations, and availability for employment of Americans with disabilities as well as their needs, problems, and existing disincentives. We also want to promote the career advancement of Americans with disabilities and encourage the retention of working Americans who become disabled.

Commemoration of the "Year of Workers with Disabilities" will allow us the opportunity to showcase the valuable service that individuals, groups and associations, volunteer organizations, business and industry, organized labor and Government agencies provide in the education, training, placement, and employment of Americans with disabilities.

Several years ago, Congress passed a joint resolution declaring 1983-92 as the "Decade of Disabled Persons." The United Nations drafted a 10-point agenda to commemorate the achievements of persons with disabilities with the "expansion of education, training, and job opportunities for persons with disabilities" being a major objective. Now that we are at the midpoint of the decade, it is very timely that we highlight the employment accomplishments of persons with disabilities and outline ways to improve their job opportunities.

I am already joined by 13 other Senators in introducing this joint resolution. I urge my other colleagues to support this joint resolution in order to make the commemoration of 1988 as the "Year of Workers with Disabilities" a reality.

By Mr. WILSON:

S.J. Res. 432. Joint resolution to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week"; to the Committee on the Judiciary.

NATIONAL BURN AWARENESS WEEK

Mr. WILSON. Mr. President, I rise this morning to speak of a problem little noticed in America—except by those who are its victims. For them, it is literally life-shattering in its implications. I rise to introduce a Senate joint resolution designating the week of February 9, 1987 as "National Burn Awareness Week." And in so doing, I would suggest that this is but the first small step on a journey of many miles, a journey which must be taken by all of us who live in a country with the worst burn problem of any industrialized nation in the world.

Burns exact a tremendous toll of human life, suffering, disability and financial loss. Burn injuries continue to be one of the leading causes of death in the United States. Of the 2 million people who are victims of burn injury each year, 70,000 are hospitalized and another 12,000 suffer death as a result of their burns. An even more tragic statistic of this problem is the fact that children, elderly, and the disabled represent a majority of burn victims, with a death rate of five times that of any other group. Finally, the severe psychological impact of burn rehabilitation for the victim cannot be measured in simple economic terms.

Each year millions of dollars are spent trying to remedy the effects of burns and burn-related incidents. Recent studies conclude, however, that approximately 75 percent of all burns could be prevented by proper education of children and adults. For this reason, the resolution provides for a public awareness program designed to familiarize the public with methods of burn prevention.

I ask my colleagues support in this resolution by cosponsoring the establishment of "National Burn Awareness Week."

Mr. President, I ask unanimous consent that the text of the resolution be printed at this point in the RECORD.

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

S.J. RES. 432

Whereas the burn problem in the United States is the worst of any industrialized nation in the world;

Whereas burn injuries are one of the leading causes of accidental death in the United States;

Whereas every year approximately two million people are victims of burn injury in the United States;

Whereas of these injuries, seventy thousand are hospitalized and account for nine million disability days annually;

Whereas approximately twelve thousand people die from burn injuries;

Whereas deaths resulting from burn injuries increased in 1985;

Whereas the rehabilitative and psychological impact of burns are devastating;

Whereas children, the elderly, and the disabled are most likely to suffer serious burns;

Whereas it is estimated that approximately 75 percent of all burns could be prevented by proper education of children and adults; and

Whereas there is a need for an effective national program that deals with all aspects of burn prevention: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the period commencing February 9, 1987, and ending February 15, 1987, is designated as "National Burn Awareness Week" and the President is authorized and requested to issue a proclamation calling upon the people of the United States and all Federal, State, and local government officials to observe such

week with appropriate programs and activities.

By Mr. GORE:

S. 2940. A bill to provide for partial public financing of general elections for candidates in campaigns for the U.S. Senate, and for other purposes; to the Committee on Rules and Administration.

CAMPAIGN LIMITATION AND PUBLIC FINANCING ACT

● Mr. GORE. Mr. President, today I am introducing a modest proposal to limit spending in senatorial elections. I hope that this can stir discussion of comprehensive campaign financing reform measures in the 100th Congress.

I am a cosponsor and supporter of the Mathias-Simon public financing bill—S. 1787, but some of my colleagues believe that that proposal moves too quickly. I am offering a compromise that is simple, certain, and cheap.

My chief concern in this debate is the exorbitant costs of campaigns. If we are to reform the present system, such proposals must address the question of cost before moving on to the underlying issues of how campaigns are financed. The Mathias-Simon bill is a realistic effort to minimize costs and the influence of "special interests." But the current political climate seems ill-inclined to support a comprehensive bill.

My bill establishes voluntary expenditure limits based on the average costs of Senate elections in the last three cycles. These limits should serve as an incentive to curb campaign expenditures, putting public pressure on candidates to agree to realistic expenditure limits.

This proposal is very simple. At the time an additional files as a candidate under State law, all candidates would be required to file with the FEC a statement of their intention to abide by these limitations.

If two candidates agree to abide by the expenditure limitations, then each would be required to do so. The FEC would be required to inform the Senate Ethics Committee at any time that a candidate has exceeded such limitations.

If those two candidates do not agree to abide by the limitations, neither is required to do so and no new regulatory scheme is set up.

However, if the first candidate agrees and the second candidate does not agree to abide by the expenditures limits, then on the day after the primary, the first candidate is awarded a grant equal to the expenditure limit. At this point the second candidate would not be subject to any expenditure limitations. The candidate receiving the grant would be required to limit his or her spending to an amount equal to 150 percent of the grant.

Independent candidates and other minor party candidates may also qualify under this bill if they meet certain criteria.

At the end of my statement, I will include a listing of States and the applicable expenditure limitations. These were determined by reviewing historic spending patterns and are based on a multiplier of the voting age population of each State.

The expenditure limitations contained in this bill are realistic and provide more than enough money to run robust campaign. I would expect that most candidates would agree to abide by these limitations. However, if candidates do not feel they can live within these limits, they are free to exceed them. But in refusing to abide by reasonable expenditure limitations, they could confer a substantial grant to their opponent. I would expect that only such candidates who have access to unlimited sources of funds would be confident enough to refuse to abide by these limitations. Thus, the overall cost to the Treasury should be minimal. It is impossible to predict at this point how much this measure would cost, but it is clear that public pressure would keep costs to a minimum.

Even in these times of budgetary constraints, this would seem a small price to pay for the broader goal of limiting overall campaign expenditures. No candidate is required to abide by any limitation, nor does this bill present the vexing questions associated with other bills. It does not set up any new regulatory mechanism, but rather relies on current FEC responsibilities. In fact, violations of the act would be reviewed by the Senate Ethics Committee and not the FEC. It would be my hope that the committee would act forcefully and decisively against violators using the range of sanctions available to them.

The bill is easy to administer, simple in execution, and inexpensive to the Treasury. It addresses a political problem through political means—by appealing to public pressure and basic competitive instincts.

As I said at the outset, this is only a first step toward limiting the overall cost of campaigns. If enacted I would hope that experience would bring new initiatives and new methods to "rachet" down the costs of campaigns.

Mr. President, I ask unanimous consent that the bill and applicable expenditure limits be printed in the RECORD.

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

S. 2940

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 "Campaign Limitation and Public Financing Act".

SEC. 2. The Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following new title:

"TITLE V—PUBLIC FINANCING OF SENATE GENERAL ELECTION CAMPAINGS

"DEFINITIONS

"SEC. 501. For purposes of this title—

"(1) the definitions set forth in section 301 of this Act apply to this title;

"(2) 'general election' means any regularly scheduled or special election held for the purpose of electing a candidate to the United States Senate;

"(3) 'eligible candidate' means a candidate who is eligible, under section 502, to receive payments under this title; and

"(4) 'authorized committee' means, with respect to any candidate for election to the United States Senate, any political committee which is authorized in writing by such candidate to accept contributions or to make expenditures on behalf of such candidate to further the election of such candidate.

"ELIGIBILITY FOR PAYMENTS

"SEC. 502. (a) To be eligible to receive payments under this title, with respect to an election—

"(1) a candidate in an election shall certify to the Commission that—

"(A) such candidate is the nominee, of one of the major political parties, for election to the United States Senate;

"(B) such candidate or the party of such candidate received, in either of the two most recent general elections for the United States Senate in the same State in which he is a candidate, at least 25 percent of the total vote cast in the election for such office; or

"(C) such candidate and the authorized committees of such candidate have received contributions from individuals in a total amount of not less than 20 percent of the overall limitation on expenditures, as determined under section 315(j), by the date of the primary election, with respect to that campaign.

"(2) a candidate shall certify that such candidate is seeking election to the United States Senate;

"(3) a candidate shall certify to the Commission his intention to comply with applicable provisions of law with respect to any payment received;

"(4) a candidate shall certify, in the declaration filed pursuant to section 504, that he will abide by the limitations on expenditures provided in section 315(j) unless such limitation is increased for such candidate pursuant to section 506.

"(5) a candidate who has qualified for a payment under this title shall, within 20 days after qualifying, agree that such candidate and the authorized committees of such candidate—

"(A) will obtain and furnish to the Commission any evidence such Commission may request about the campaign expenditures and contributions of such candidate; and

"(B) will keep and furnish to the Commission any records, books, and other information it may request;

"(6) a candidate shall apply to the Commission for the payment referred to in section 503; and

"(7) the Commission shall determine that—

"(A) an opposing candidate in such election has not agreed that he will not exceed the limitation on expenditures set forth in

section 315(j) or has filed a certification pursuant to section 505, stating that such candidate does not intend to comply with the limitations on expenditures; and

"(B) at least two candidates have qualified for the election ballot for election to the same seat under the law of the State involved.

"(b) Agreements, certifications, and declarations under this section shall be filed with the Commission at the time and in such manner as the Commission requires.

"ENTITLEMENT TO PAYMENTS

"SEC. 503. (a)(1) A candidate who meets the eligibility requirements in section 502(a) is entitled to a payment for use in such candidate's general election campaign in an amount that is equal to the expenditure limit provided for such State pursuant to section 315(j)(1).

"(2) Pursuant to the provisions of section 506, a candidate receiving a payment pursuant to paragraph (1) shall be subject to the limitation on expenditures provided in section 315(j)(2).

"(b) All payments received by a candidate or the authorized committees of such candidate under this title shall be deposited at a national or State bank in a separate checking account which shall contain only funds so received. No expenditures of funds received under this section shall be made except by checks drawn on such account.

"DECLARATION BY CANDIDATES

"SEC. 504. (a)(1) Not later than the date on which a candidate qualifies for election under the law of the appropriate State, or ninety days before the date of any general election, whichever is earlier, each candidate for election shall file with the Commission a declaration of whether or not such candidate intends to make expenditures in excess of the limitations on expenditures provided under section 315(j).

"(2) Any declaration of election filed pursuant to paragraph (1) may be amended or changed at any time within ten days after the filing of such declaration. Such amended declaration may not be amended or changed further.

"(b) Each candidate for election shall notify the Commission and each other candidate for the same election within forty-eight hours after such candidate, or any of the authorized committees of such candidate makes any expenditure, or incurs any obligation to make an expenditure, in excess of the limitation on expenditures contained in section 315(j).

"CERTIFICATIONS BY COMMISSION

"SEC. 505. (a) No later than forty-eight hours after a candidate files a request with the Commission to receive a payment under section 507, the Commission shall certify the eligibility of such candidate to the Secretary of the Treasury for payment in full of the amount to which such candidate is entitled. Such request shall contain such information and shall be made in accordance with such procedures as the Commission may provide by regulation.

"(b) Initial certifications by the Commission under subsection (a), and all determinations made by such Commission under this title, shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission and judicial review under the provisions of this Act.

"INCREASED EXPENDITURE LIMITS

"SEC. 506. A candidate who is eligible to receive a payment pursuant to the provisions of this title, and receives such payment based, in part, on the fact that an opposing candidate in such election did not agree to abide by the limitations on expenditures, shall have such limitation increased pursuant to this Act. Such limitation shall include expenditures made from the payment received pursuant to section 503, and from contributions received by such candidate and shall be increased to equal an amount not in excess of the limitation provided in section 315(j)(3).

"PAYMENTS TO ELIGIBLE CANDIDATES

"SEC. 507. (a) The Secretary of the Treasury shall maintain in the Presidential Election Campaign Fund established by section 9006(a) of the Internal Revenue Code of 1954, in addition to any other accounts he maintains under such section, a separate account to be known as the 'Senate General Election Campaign Account' (hereafter in this title referred to as the 'Account'). The Secretary shall deposit into the Account, for use by candidates eligible for payments under this title, the amount available after the Secretary determines that amounts in the fund necessary for payments under subtitle H of the Internal Revenue Code of 1954 are adequate. The moneys in the Account shall remain available without fiscal year limitation.

"(b) Upon receipt of a certification from the Commission under section 505, the Secretary shall pay the amount certified by such Commission to the candidate to whom the certification relates.

"(c) Payments received under this section shall be used only to defray election campaign expenses incurred with respect to the period beginning on the day after the date on which the candidate qualifies for the election ballot under the law of the State involved, and ending on the date ninety days after the date of the election, or the date ninety days after the date on which the candidate withdraws from the campaign or otherwise ceases actively to seek election, whichever occurs first. Such payments shall not be used (1) to repay any loan to any individual, or (2) to make any payments, directly or indirectly, to such candidate individually or to any member of the immediate family of such candidate.

"EXAMINATION AND AUDITS: REPAYMENTS

"SEC. 508. (a) After each general or special election, the Commission may conduct an examination and audit of the campaign accounts of the eligibile candidates, as designated by the Commission, in order to determine whether the expenditures complied with the provisions of this title.

"(b) If the Commission determines that any payment or any portion of any payment made to an eligible candidate under section 507 was in excess of the aggregate amount of the payments to which such candidate was entitled, the Commission shall notify such candidate, and such candidate shall pay to the Secretary of the Treasury an amount equal to the excess amount.

"(c) Any amount received by an eligible candidate may be retained for a period not exceeding ninety days after the date of the election for the liquidation of all obligations to pay election campaign expenses incurred during the period specified in section 507(c). At the end of such ninety-day period 50 percent of that portion of any unexpended balance remaining in the accounts of the candidate's authorized committees shall be promptly repaid to the Secretary. In making such determination, all amounts received as contributions shall be considered as having been expended before any amounts received under this title are expended.

"(d) No notification shall be made by the Commission under subsection (b) with respect to a campaign more than twenty-four months after the day of the election to which the campaign related.

"(e) All payments received by the Secretary under subsection (b) shall be deposited by him in the appropriate account.

"REPORTS TO CONGRESS

"SEC. 509. (a) The Commission shall, as soon as practicable after the close of each calendar year, submit a full report to the Committee on Ethics of the United States Senate setting forth—

"(1) the expenditures incurred by each qualified candidate, and the authorized committees of such candidates, specifying which candidates have exceeded the expenditure limits;

"(2) the amounts certified under section 505 for payment to each such candidate; and

"(3) the expenditures made by candidates who did not agree to, or did not comply with the limitations on expenditures set forth in section 315(j).

"(b) In addition to the reports filed pursuant to subsection (a), the Commission shall, at any time a candidate in a campaign exceeds the expenditure limits for such campaign, submit a report to such Committee on Ethics setting forth—

"(1) the expenditures incurred by such candidate and the authorized committees of such candidate; and

"(2) the amounts certified under section 505 for payment to each such candidate.

"(c) Each report submitted pursuant to this section shall be printed as a Senate document.".

LIMITATIONS ON EXPENDITURES IN GENERAL ELECTION CAMPAIGNS

SEC. 3. (a) Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end thereof the following:

"(i) For purposes of this section, expenditures made on behalf of any candidate (as determined under section 315(b)(2)(B)) for the office of Senator of the United States shall be considered to be expenditures made by such candidate.

"(j)(1) Except as otherwise provided in this Act, a candidate who receives payments for use in his general election campaign for the office of Senator of the United States, pursuant to section 507 of this Act may not make expenditures in such campaign in excess of—

"(A) $.50 multiplied by the voting age population plus $1,500,000 in States with a voting age population of 5 million or less;

"(B) $.50 multiplied by the voting age population plus $1,000,000 in States with a voting age population of more than 5 million but less than 10 million; or

"(C) $.50 multiplied by the voting age population plus $500,000 in States with a voting age population of 10 million or more.

"(2) For purposes of this subsection, the voting age population of a State shall be the population certified under subsection (e) for such State.".

"(3) A candidate, pursuant to the provisions of section 506, may make expenditures limit which otherwise applies to such candidate pursuant to paragraph (1).".

(b) Section 315(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)) is amended by adding at the end thereof the following:

"(3)(A) The limitation established in subsection (j) shall be increased by the percent

difference certified in paragraph (1) minus 2 percent if such difference is 2 percent or more. If such difference is less than 2 percent, such limitation shall be increased by an amount equal to the amount of such differences.

"(b) For purposes of this paragraph, the base period is the calendar year of 1986.".

STUDY AND REPORT BY COMMISSION

SEC. 4. The Federal Election Commission shall, for one year, study and monitor the efficacy of the programs resulting from amendments made by this Act. The Commission shall begin such study one year after the date of the first election in which the amendments made by this Act apply and shall report to Congress no later than April 1 of the year following the completion of such period of studying and monitoring.

EFFECTIVE DATE

SEC. 5. The amendments made by this Act apply to any campaign for election to the United States Senate for which the election is held more than one year after the date of enactment of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated, in addition to the amounts available pursuant to section 507 of the Federal Election Campaign Act of 1971, as added by this Act, such additional sums as may be necessary to carry out the provisions of this Act.

State	Voting age population	Expenditure limitation
Alabama	2,893,000	$2,946,500
Alaska	348,000	1,674,000
Arizona	2,257,000	2,628,500
Arkansas	1,705,000	2,352,500
California	19,094,000	10,047,000
Colorado	2,347,000	2,673,500
Connecticut	2,408,000	2,704,000
Delaware	458,000	1,729,000
Florida	8,631,000	5,315,500
Georgia	4,228,000	3,614,000
Hawaii	758,000	1,879,000
Idaho	689,000	1,844,500
Illinois	8,436,000	5,218,000
Indiana	3,998,000	3,499,000
Iowa	2,121,000	2,560,500
Kansas	1,791,000	2,395,500
Kentucky	2,696,000	2,848,000
Louisiana	3,124,000	3,062,000
Maine	856,000	1,928,000
Maryland	3,259,000	3,129,500
Massachusetts	4,459,000	3,729,500
Michigan	6,591,000	4,295,500
Minnesota	3,048,000	3,024,000
Mississippi	1,804,000	2,402,000
Missouri	3,697,000	3,348,500
Montana	588,000	1,794,000
Nebraska	1,169,000	2,084,500
Nevada	686,000	1,843,000
New Hampshire	734,000	1,867,000
New Jersey	5,709,000	3,854,500
New Mexico	995,000	1,997,500
New York	13,362,000	7,181,000
North Carolina	4,600,000	3,800,000
North Dakota	491,000	1,745,500
Ohio	7,857,000	4,928,500
Oklahoma	2,401,000	2,700,500
Oregon	1,990,000	2,495,000
Pennsylvania	8,996,000	5,498,000
Rhode Island	738,000	1,869,000
South Carolina	2,389,000	2,694,500
South Dakota	504,000	1,752,000
Tennessee	3,490,000	3,245,000
Texas	11,410,000	6,205,000
Utah	1,204,000	2,012,000
Vermont	392,000	1,696,000
Virginia	4,241,000	3,620,500
Washington	3,228,000	3,114,000
West Virginia	1,432,000	2,216,000
Wisconsin	3,479,000	3,239,500
Wyoming	354,000	1,677,000

By Mr. DURENBERGER:

S. 2941. A bill to require the Director of the Office of Personnel Management to conduct demonstration projects under the Federal employees' health benefits program for the purpose of determining the feasibility and effectiveness of providing voluntary contractual alternatives to the prevailing tort basis for compensating persons for injuries or illness incurred or aggravated as a result of the health care received as patients under employees' health benefits plans; to the Committee on Governmental Affairs.

MALPRACTICE DISPUTE RESOLUTION ACT

● Mr. DURENBERGER. Mr. President, I rise today to introduce the Malpractice Dispute Resolution Act. This legislation would authorize demonstrations within the Federal Employees Health Benefits Program [FEHBP] to test out the feasibility and desirability of voluntary alternative mechanisms for compensation for injuries incurred by patients in the course of medical treatment.

Mr. President, national concern about medical malpractice litigation has again reached a fevered pitch and its effects on access to medical care may soon reach crisis proportions. Legislative measures being offered by State legislatures and Congress do not reflect a consensus on who is at fault or what the ultimate solutions may be.

Many believe that the tort system, as a mechanism for dealing with medical malpractice injuries, may be an important part of the problem. They argue:

First, it is expensive to administer. Less than 40 percent of provider-paid insurance premiums paid for liability coverage of doctors and hospitals go to compensate injured patients. The remainder is consumed by the malpractice resolution system itself, that is by attorneys and insurance companies.

Second, it fails to fairly compensate injured persons. While a few plaintiffs win large awards, they commonly experience a long, drawn out litigation process. And most patients with injuries never even pursue their claims because of the prospects of a protracted legal fight with no assurance of a positive outcome.

Third. It is unreliable as a quality assurance mechanism. It fails to police or penalize poor medical practice. At the same time, the threat of malpractice fosters the practice of wasteful, even potentially dangerous, defensive medicine.

In response to the crises, virtually every State has considered and many have enacted legislation to reform their tort law.

As you recall, Mr. President, when this country experienced an earlier malpractice crisis in the mid 1970's broad tort reforms were instituted. Yet here we are again with skyrocketing insurance premiums, a backlog of cases pending in State courts, and a frightening number of physicians, particularly those in the highest-risk specialties such as obstetrics, who are "going bare" and practicing without malpractice insurance coverage. And some family physicians with obstetric practices have even decided to quit delivering babies altogether. This may severely limit access to necessary health care, especially in rural America.

State tort reform has alleviated some of the immediate problems in the malpractice resolution system. However, it has not given us long term solutions. Alternative approaches to resolving questions of medical liability should be considered as a means to developing longer term answers to our problems. It is important that we begin to examine these approaches now.

In the mid-1970's, fee-for-service health care dominated, and this "cottage industry" type of care, centered on the sole practitioner, allowed for a more generic method of resolving questions of medical liability—the tort system.

But today, new relationships are forming between patients, hospitals, doctors, and health coverage plans. Health Maintenance Organizations and other alternative delivery and financing health care systems are particularly well-suited to testing alternative resolution systems for medical liability because subscribers of health plans arrange with a defined group of doctors and hospitals, in advance of the actual need for care.

The terms and conditions of the provider-patient relationship are thus specified in advance as are the financial requirements of the members. This gives health plans and subscribers an opportunity to make an informed judgment about more than premium costs. It offers a chance to experiment with new arrangements for resolving questions of medical liability. And that is why I have developed S. 2941.

S. 2941 would authorize up to three demonstrations of alternative mechanisms for resolving disputes over medical liability in the Federal Employees Health Benefits Program [FEHBP]. This legislation contemplates two approaches:

First. Voluntary contractual modifications of patients' rights under the existing tort law system.

Second. Compensation systems that replace the tort system entirely (at least for specified injuries) and condition payment to the injured parties on criteria other than provider fault or negligence.

In the summary of S. 2941 which accompanies my statement, examples are given of potential contractual modifications of tort rights as well as an explanation of "no-fault" concepts that the Office of Personnel Management could approve as part of the FEHBP demonstrations authorized by this bill.

Mr. President, the FEHBP is the ideal laboratory for testing the feasibility and desirability of alternative malpractice resolution systems. The Federal Government, as employer, can provide the States with alternative models of malpractice resolutions systems. The bill I am introducing today would do just that. It is an approach that is respectful of States' prerogatives but is also potentially valuable in promoting fundamental change in the approach taken by society to the resolution of medical liability questions.

The FEHBP represents the best of the past and the potential of the future. Since 1960, the FEHBP has been the model for the consumer's role in the financing and delivery of quality medical services. It gave the country the model as well as the experience it needed to move all health plans to consumer choice.

In the future, an alternative method of dealing with occurrences of malpractice could become an integral and important part of a health plan marketed to employees. It is an appropriated step for the Federal Government as an employer to take on the medical liability issue for its workers, those people with whom it shares the cost of health coverage. And it also can allow the Federal Government to demonstrate to the Nation the possibilities for alternative systems to resolve the medical malpractice crisis.

Mr. President, the potential offered by this legislation is great, and I am committed to its debate and passage in the 100th Congress. As is my practice, I introduce it today to allow time for a general discussion of its utility and to seek futher guidance in its development.

I want to acknowledge the assistance I have received on developing this legislative proposal from my staff, especially my former legislative assistant, Chip Kahn, and from Clark Havighurst, of the Duke University Law School, and Arnold Rosoff, associate professor in the Wharton School of the University of Pennsylvania. Their contributions have been invaluable and I look forward to continuing to work with them as this legislation is perfected in the months to come.

I also look forward to hearing from others who are interested in this problem and receiving their comments and suggestions.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD, followed by the bill summary I referred to earlier.

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

S. 2941

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

SECTION 1. This Act may be cited as the "Malpractice Dispute Resolution Act of 1986".

SEC. 2. The purposes of this Act are—

(1) to provide a basis for determining the feasibility and effectiveness of providing, under voluntary contractual arrangements, alternatives to the tort liability system of compensating persons for injuries or illness incurred or aggravated as a result of the health care received as patients under employee health benefits plans;

(2) to provide a basis for determining the practicability of voluntarily implementing alternative substantive rules or procedures for providing compensation for such injuries or illness under health benefits plans offered by carriers participating in the Federal employees' health benefits program;

(3) to provide a basis for comparing the costs and benefits of the tort liability system of providing compensation for such injuries or illness with the costs and benefits of providing compensation for such injuries or illness on a no-fault basis, including a comparison of—

(A) the economic and other costs to society, insurers, health care providers, premium payers, and injured patients;

(B) the effects on the quality of health care; and

(C) the speed and fairness in compensating claimants for such injuries or illness; and

(4) to develop experience and information that are useful to the Federal Government, State governments, private health insurers, malpractice insurers, alternative health care delivery systems, purchasers of employee health benefits, and health care providers in developing and implementing alternative substantive rules or procedures for providing compensation for such injuries or illness.

SEC. 3. (a) In order to accomplish the purposes of this Act, the Director shall, during the 4-year period beginning on January 1, 1988, conduct not less than 1 and not more than 3 demonstration projects under the Federal employees' health benefits program.

(b) Each demonstration project under subsection (a) shall be conducted by a single carrier or a group of carriers, shall be designed to test the feasibility and benefits of one or more innovative systems for providing compensation for injuries or illness described in section 2(1), and shall be subject to the approval of the Director.

SEC. 4. (a) Each person enrolled in a health benefits plan that is contracted for or approved under chapter 89 of title 5, United States Code, and is involved in a demonstration project approved by the Director pursuant to this Act may voluntarily agree, for himself and each other beneficiary covered by his enrollment, that entitlement to receive compensation for injuries or illness incurred or aggravated as a result of health care furnished under the plan shall be determined exclusively under the alternative substantive rules or procedures provided under the demonstration project.

(b) The legal rights of a person subject to an agreement under subsection (a) may not be modified by a health benefits plan involved in a demonstration project under this Act unless the person making such agreement has first been informed of the nature of the alternative substantive rules or procedures to be provided under the project and the rights to be modified. Information on such rules, procedures, and rights shall be given in the manner prescribed by the Director in connection with the approval of the demonstration project.

(c) The rights and obligations under agreements made under subsection (a) are enforceable in any State court that has jurisdiction of the parties and jurisdiction to adjudicate tort or contract claims.

SEC. 5. (a) The Director shall solicit from each carrier offering a health benefits plan contracted for or approved under chapter 89 of title 5, United States Code, proposals for demonstration projects to carry out the purposes of this Act.

(b) Demonstration projects proposed and approved under this Act may include—

(1) binding arbitration or other alternative dispute resolution procedures;

(2) contractual modifications of existing substantive rules governing tort claims, including (A) limitations on recoverable damages, (B) compensation offsets for any accounts received from collateral sources, (C) periodic payment of awards, (D) alterations of the legal standards for determining liability, and (E) specifications of the types of proof or expert testimony admissible to establish negligence; or

(3) compensation for specified injuries or illness on a no-fault basis.

(c) Before approving a demonstration project for providing compensation for injuries or illness on a no-fault basis, the Director shall consider whether the project—

(1) provides compensation for designated events on such basis;

(2) preserves the right of participants in such project to commence civil tort actions for injuries or illness caused by an event other than a designated compensable event;

(3) preserves reasonable direct or indirect incentives for maintaining the quality of care and preventing the occurrence of designated compensable events; and

(4) generally provides financial protection for consumers of health care that is at least comparable, on an actuarial basis, to the protection otherwise provided by the right to pursue civil tort actions for injuries or illness incurred or aggravated as a result of the negligence of a health care provider.

(d) The Director shall require—

(1) that demonstration projects include such provisions as the Director considers necessary to carry out the purposes of this Act and to protect the persons covered by the demonstration projects and the interests of the Federal Government; and

(2) that participating carriers and health care providers furnish the Comptroller General of the United States such information as the Comptroller General considers necessary to evaluate the demonstration projects under section 6 of this Act.

SEC. 6. (a) Not later than December 31, 1991, the Comptroller General of the United States shall submit to Congress, in writing, a report containing the Comptroller General's analysis of the experience under the demonstration projects conducted under this Act.

(b)(1) Except as provided in paragraph (2), the report under subsection (a) shall include any recommendations the Comptroller General considers appropriate, including recommendations on whether—

(A) health benefits plan carriers should be required or permitted under the Federal employees' health benefits program (or any other Federal government health care program) to adopt any of the alternative substantive rules or procedures tested in the demonstration projects;

(B) other public or private health benefits plans should consider incorporating any

such alternative substantive rules or procedures;

(C) any of the alternative substantive rules or procedures should be modified before being made a part of any health benefits plan; and

(D) there should be any additional testing or study of alternative substantive rules or procedures before they are made a part of any health benefits plan.

(2) If the Comptroller General finds that the experience under any demonstration project is inconclusive with respect to any matter described in clauses (A) through (D) of paragraph (1) or is generally inconclusive, the Comptroller General shall state in the report such finding and the reasons for such finding. The Comptroller General is not required to include in the report a recommendation on any matter to which such a finding relates.

(c) The Director shall furnish the Comptroller General any information the Comptroller General considers necessary to carry out this section.

(d) The Comptroller General may not disclose, in the report or otherwise, any information which identifies a claimant under a demonstration project conducted pursuant to this Act.

SEC. 7. (a) There are authorized to be appropriated to the Office of Personnel Management for each of fiscal years 1988, 1989, 1990, 1991, and 1992, such sums as may be necessary to carry out sections 2 through 5 of this Act.

(b) Funds appropriated under the authorization in subsection (a) may be used to meet the expenses of designing, implementing, marketing, and evaluating the alternative rules and procedures demonstrated in a demonstration project under this Act and, in the case of a demonstration of a program providing compensation for injuries or illness on a no-fault basis, may be used to pay any additional insurance premiums necessitated by the demostration project.

SEC. 8. As used in this Act:

(1) The term "Director" means the Director of the Office of Personnel Management.

(2) The term "no-fault" means without regard to negligence.

THE MALPRACTICE DISPUTE RESOLUTION ACT OF 1986

(A Bill to Support Demonstrations of Innovative Medical Injury Compensation and Quality-Assurance Systems)

BACKGROUND

The negligence-oriented tort system has severe shortcomings as a mechanism for dealing with medical injuries:

It is expensive to administer. (Less than 40% of provider-paid insurance premiums ends up in victims' hands, the rest going to insurers and lawyers.)

It fails as a system for fairly compensating injured persons. (Most patients suffering treatment-related injuries receiving nothing, while a few receive much more than their economic loss.)

It is unreliable as a quality-assurance mechanism. (It fails to police much poor medical practice and may foster wasteful defensive medicine rather than reasonable care.)

State tort reforms may help to alleviate these problems, but different, more fundamental approaches may be desirable and should be examined.

Although many in the federal government have felt a need to address the malpractice problem, there has been an understandable reluctance to take action at the federal level. This bill represents an approach that is respectful of the states' prerogatives but potentially valuable in promoting responsible change. It is also in keeping with a federal policy of facilitating and encouraging private initiatives to lower cost and improve quality.

THE CONCEPT

This bill's purpose is to encourage demonstrations of voluntary alternative mechanisms for compensating injuries incurred by patients in the course of medical treatment. Two approaches are contemplated:

Voluntary contractual modifications of patients' rights under the existing tort system;

Compensation systems that displace the tort system entirely (at least for specified injuries) and condition payment on criteria other than provider negligence or fault.

The policy objectives of this federal initiative are to establish the feasibility and desirability of voluntary reforms of tort rights in competing private health plans and to determine the efficacy of no-fault approaches. The initiative should yield experience and data helpful to both the states and the private sector in seeking long-term alternatives to the costly tort system.

The vehicle chosen for the proposed demonstrations is the Federal Employees Health Benefits Program (FEP). The FEP was selected because it gives the federal government two things:

A legitimate purchaser's interest in the malpractice problem;

An ideal laboratory in which to explore possible alternatives.

The FEP is preferable to the Medicare program as a place in which to experiment with tort reforms because, unlike Medicare, it covers a population similar to that affected by the alleged malpractice "crisis." Moreover, Medicare is likely to move further in the direction of offering beneficiaries a menu of competing plans along the lines of the FEP consumer-choice model. Thus, work on improving this model has potential long-term benefits for Medicare and other federal health programs.

SPECIFICS

The bill instructs the Office of Personnel Management (OPM) to conduct up to three demonstrations by FEP-participating plans of innovative approaches to compensation for medical injuries. Because these demonstrations entail modifications of patients' malpractice rights, the bill provides that federal employees will be bound only if they elect the alternative arrangement and if basic standards of disclosure and fairness are met.

Possible contractual modifications of tort rights that might be proposed as demonstrations by FEP plans and approved by OPM under this bill include—

Provision for binding arbitration or some other alternative method of dispute resolution;

Limitation of the amount of tort damages recoverable (e.g., a cap on compensation for noneconomic losses, such as pain and suffering)

Provision for offsetting against awards any amounts received from collateral sources, such as health or disability insurance;

Provision for periodic payment of awards;

A change in the legal standards for determining liability (e.g., a change in the rule requiring adherence to possibly inefficient local custom);

A specification of the types of proof or expert testimony admissible to establish negligence.

That such modifications of consumers' existing tort rights are not necessarily unconscionable is revealed in State legislation imposing one or more such modifications on all consumers as a matter of law. Under the bill, any surrender of tort rights would be voluntary, not compulsory. Moreover, it would almost certainly be accompanied by compensating benefits or price concessions to plan subscribers accepting modifications of their legal rights. The bill declares that contractual waivers of existing rights in any demonstration approved by OPM should be enforceable in state courts.

The bill also authorizes demonstration of no-fault concepts. These demonstrations would also be implemented by private contracts approved by OPM. The bill anticipates that no-fault schemes will take the following form:

The plan agrees (or individual providers agree) to compensate patients fairly (through casualty insurance) for "designated compensable events" without regard to provider negligence or fault.

The consumer waives all other legal rights with respect to such injuries.

The plan remains (or individual providers remain) at risk for poor claims experience so that financial incentives for avoiding compensable outcomes are strengthened, making it reasonable to expect that the quality of outcomes will be improved.

The bill contemplates that a no-fault alternative compensation system, as compared to the tort system, would not be actuarially unfair to the consumer of health services. Thus, the class of injuries to be compensated should be significantly larger than the class of negligently caused injuries currently compensable under the tort system.

EVALUATION

In order to receive a demonstration grant, a private FEP plan would have to undertake to share its experience with the General Accounting Office in order to permit an evaluation of the demonstration. At the end of a demonstration, the GAO will publish, without revealing actual injury and compensation experience, the details of the program and its conclusions concerning whether the program should be—

Considered for mandatory adoption by the states or in any federal program;

Considered for voluntary adoption by private health plans;

Modified in certain ways before adoption;

Studied further;

Classified a failure.

FUNDS

The bill authorizes such appropriations as necessary for four years, to be used for designing, implementing, marketing, and evaluating alternative compensation systems and for supplemental insurance premiums necessitated by a no-fault compensation system.●

By Mr. BRADLEY (for himself, Mr. LAUTENBERG, Mr. MOYNIHAN, and Mr. D'AMATO):

S. 2942. A bill to authorize and direct the Secretary of the Interior to retain the American Museum of Immigration at the base of the Statue of Liberty National Monument; to the Committee on Energy and Natural Resources.

AMERICAN MUSEUM OF IMMIGRATION

Mr. BRADLEY. Mr. President, on October 28, the United States will celebrate the centennial anniversary of the dedication of the Statue of Liberty. It was 100 years ago that the statue was unveiled before President Grover Cleveland at the original dedication ceremony. A gift from our French neighbors, the statue has come to represent the worldwide recognition of our quest for freedom and the hopes of immigrants, past and future.

At the base of the statue stands a small museum, the American Museum of Immigration. The museum documents and celebrates the immigrant's experience in America. This museum has been supported by thousands of private donors, who understand the value and need to commemorate our immigrant heritage. Our Government, by situating the museum at the base of the statue, has also signaled its convictions and implicit understanding of the special status of immigrants in the American social fabric.

The museum has been located at the base of the Statue of Liberty since its inception in 1956. At one time, the National Park Service considered relocating the museum, but concluded that the current site is an appropriate one for the museum. In an agreement signed with museum representatives on September 5, 1985, the Park Service pledged to maintain the museum at the current site and to improve its facilities.

This bill has a simple purpose: To ratify that signed agreement and to ensure the continued maintenance of the American Museum of Immigration at the base of the Statue of Liberty. I am pleased to be joined by Senators LAUTENBERG, MOYNIHAN, and D'AMATO in introducing this legislation. I ask for unanimous consent that a copy of the agreement between the Park Service and the museum representative be printed in the RECORD. I also ask for unanimous consent that the bill be printed in the RECORD.

There is only a little time left in this Congress. As a result, it is unlikely that any action will be taken this year on this bill. However, my colleagues and I are committed to reintroduce this legislation next session and to see it through to its final passage.

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

S. 2942

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

(1) in 1986 the United States celebrates the centennial anniversary of the Statue of Liberty National Monument;

(2) the Joint Resolution of August 3, 1956, (70 Stat. 956; Public Law 936) declares that the presence of the American Museum of Immigration at the base of the Statue of Liberty National Monument enhances the significance of such monument;

(3) a substantial amount of the funding used for the American Museum of Immigration was contributed by private donors, many of whom object to proposals to move the museum to another site;

(4) from both an historic and symbolic standpoint, the Statue of Liberty National Monument remains the most appropriate location for the American Museum of Immigration;

(5) an agreement, signed on September 5, 1985, by official representatives from the Department of the Interior and the American Museum of Immigration, affirms a commitment to maintain the American Museum of Immigration at the base of the Statue of Liberty;

(6) additional space for the American Museum of Immigration, should it be needed, should be located on Ellis Island which is under renovation; and

(7) the American Museum of Immigration at the Statue of Liberty should be rehabilitated and should be maintained.

SEC. 2. The Secretary of the Interior is authorized and directed to retain the American Museum of Immigration at the base of the Statue of Liberty National Monument.

U.S. DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Boston, MA, September 5, 1985.

The AMERICAN MUSEUM OF IMMIGRATION,
New York, NY.

The following terms for a new American Museum of Immigration exhibit in the Statue of Liberty are agreed upon:

that an agreement on a new exhibit shall be in keeping with the existing charter of the American Museum of Immigration (AMI) and the existing agreement between AMI, Inc. and the United States Department of the Interior;

that consistent with the charter and agreement, the predominant theme of the new exhibit on level 2P will be the history of the immigrant experience and how that experience and the immigrants themselves contributed to and became part of the fabric of America, and, the new exhibit will also deal, within the context of that immigrant experience, with the symbolism of the Statue of Liberty;

that the existing AMI exhibit will be replaced with a new AMI exhibit on the 2P level of the Statue of Liberty's base at a cost not to exceed $3.5 million including interpretive and architectural design and modifications;

that the new Statue museum on level 1P will be part of the AMI and that the structural flow and the basic concept for the American Museum of Immigration on both levels 1P and 2P will be complementary;

that the exhibits on 1P and 2P will be known as the American Museum of Immigration;

that the Liberty/Ellis Island Collaborative (LEIC), the National Park Service's consultants, and AMI Inc. will discuss concepts, exchange ideas, and give consideration to each other's views regarding the new exhibit on level 2P during the initial phase of basic concept development.

that LEIC's design and plans for the fabrication and the installation will be reviewed with AMI Inc. through participation in the review process required by the NPS work orders for each subsequent stage of the project;

that the final responsibility for the planning, design, fabrication and installation of the new exhibit will be delegated to LEIC under the direction of the parties to this agreement;

that the aforementioned efforts will be funded by The Statue of Liberty/Ellis Island Foundation, Inc. (SOLEIF, Inc.), which has allocated $3.5 million for this purpose, and that the Foundation will fund each work directive as requested by the NPS;

that the schedule for constructing the new American Museum of Immigration will begin on August 1, 1986 and will be completed on or before the following schedule:

August 1, 1986—LEIC begins preparation of basic concept.

May 1, 1987 (or before)—Basic concept completed. Architectural work on level 2P begins.

November 1, 1987 (or before)—Installation of new exhibit begins.

March 1, 1988 (or before)—Opening of AMI on level 2P. Construction on the new AMI will begin May 1, 1987 or when Kodak is moved to Ellis Island, whichever is sooner.

Review session based upon the above schedule will be agreed to by the NPS, SOLEIF, Inc. and AMI, Inc. within 30 days after LEIC submits designs and plans.

that a special three-member review panel will be established to consider and resolve differences of opinion in the event of disagreement at the review sessions and that the panel will meet within three days of each of the review sessions;

that resolution will be by unanimous consent at the time of the panel meetings, and each party agrees that it will not unreasonably withhold its consent;

that the members of this panel will be Herbert S. Cables, Jr., Regional Director, North Atlantic Region, National Park Service or its designee; Robert F. Cahill, Executive Vice President, The Statue of Liberty/Ellis Island Foundation, Inc. or its designee; and an AMI, Inc. representative, and that members of the panel will be empowered by their respective organizations to finally resolve any differences at these meetings;

that the present AMI on level 2P will remain open from July 1986 until physical work on 2P begins and that it will be repainted and recarpeted in time for the July 1986 celebration. The cost of refurbishing will be paid by SOLEIF, Inc.

Agreed to:

For The National Park Service
HERBERT S. CABLES, JR.,
Director, North Atlantic Region.

For The Statue of Liberty/Ellis Island Foundation
ROBERT F. CAHILL,
Executive Vice President.

For the American Museum of Immigration, Inc.
ALFRED H. HOROWITZ,
Chairman, Executive Committee.

● Mr. LAUTENBERG. Mr. President, I am pleased to join my colleague from New Jersey, Senator BRADLEY, and Senators MOYNIHAN and D'AMATO from New York in introducing this bill.

This legislation addresses the renovation of the American Museum of Immigration and the continued location of the museum at its present site. The American Museum of Immigration commemorates the thousands of new immigrants who passed through Ellis Island on their way to begin new

lives in a new land. Since its incorporation in 1972, over 800,000 people have visited the museum each year.

It is fitting that the museum is located in the base of the Statue of Liberty, our greatest symbol of the freedom and opportunity of America. Significant restoration of the museum's exhibit area has enhanced its display capabilities. Among the exhibits is a continuing display on the symbolism of the Statue of Liberty throughout the world. This is but one example of how the museum serves to preserve the rich heritage of the immigrants who arrived on Ellis Island. There has been some discussion of moving the museum to another site. I do not support this position. From an historic and symbolic viewpoint, it is appropriate that the museum remain in the base of the statue. This bill upholds this position.

Both of my parents came to this country through Ellis Island. Serving as a trustee of the American Museum of Immigration has deep personal meaning to me. I am pleased to join my colleagues in sponsoring legislation that will maintain and enhance the museum at its current location.●

● Mr. MOYNIHAN. Mr. President, I rise to join my distinguished colleague from New Jersey in urging the Senate to express its desire that the American Museum of Immigration be kept in its current location at the base of the Statue of Liberty.

This year marks the centennial anniversary of the Statue of Liberty National Monument. On July 4 we celebrated this happy event with great fanfare. An important part of the statue's significance, indeed a place for the keeping of tangible records of the history that the statue itself is a symbol of, is the American Museum of Immigration.

In the past several years the future of the museum has been in some doubt. The National Park Service has on several occasions expressed a desire to move the museum to Ellis Island, away from its symbolic proximity to Lady Liberty.

To remove any doubts as to the proper location of the museum, this piece of legislation expresses the sense of the Senate that the Department of the Interior should maintain the museum in its current site at the base of the statue, and should rehabilitate the museum as necessary to keep it as an important and vital part of the national monument's surroundings.

On August 3, 1956 the Congress acted to declare that the museum, in its site at the base of the Statue of Liberty, enhance the significance of the statue. Much of the funding for the museum is privately contributed, and many of the museum's financial supporters object to any plans to move it to any other site. The Senate can act today to reaffirm a longstanding congressional position and to recognize the concerns of the museum's supporters, by stating clearly that it wants the museum to be kept in its present location.

I urge my colleagues to join my friend from New Jersey and me in support of this measure and to express with us the desire of the Senate that the symbolic and historic legacies of the immigrations story be kept together now and in the future.●

By Mr. HATCH (for himself and Mr. LEAHY):

S. 2944. A bill to modify the application of the antitrust laws to encourage the licensing and other use of certain intellectual property; to the Committee on the Judiciary.

INTELLECTUAL PROPERTY ANTITRUST PROTECTION ACT

● Mr. HATCH. Mr. President, I am pleased today to join with Senator LEAHY in introducing legislation which will improve U.S. competitiveness and benefit U.S. consumers by promoting technological innovation. This legislation is a necessary element of our efforts to provide U.S. companies the environment they need to stay competitive in world markets and is a key part of the administration's intellectual property initiatives. Companion legislation has already been introduced in the House of Representatives by Representative FISH, ranking member of the House Judiciary Committee.

The proposed legislation would extend the positive step taken 2 years ago in the National Cooperative Research Act by applying the licensing provisions contained in that act to all agreements to convey intellectual property rights, whether or not the property is created in a joint research effort. The legislation would require that such agreements be evaluated for antitrust purposes upon consideration of all relevant economic factors, including their procompetitive benefits. Treble damage recoveries would also be eliminated. The legislation would allow all intellectual property, not just jointly created property, to be developed and marketed in an efficient and procompetitive manner.

The requirement that agreements to convey intellectual property rights be evaluated on the basis of their reasonableness is a key part of the administration's intellectual property initiatives, proposed earlier this year. We have already considered as part of the trade package the portion of these proposals protecting intellectual property, including process patents, from unfair import competition. These trade-related intellectual property proposals enjoyed bipartisan support, and will likely be included in the trade package when final action on it takes place in the next Congress. The legislation I am introducing today would move forward with the key remaining element of the administration's package.

It is important that we move forward quickly to remove unnecessary impediments to the development and marketing of new technologies. Some recent judicial decisions have created uncertainty in the high-technology community by invalidating licensing practices which do not have anticompetitive consequences. By not considering all competitive effects of agreements involving intellectual property rights, such decisions subject U.S. companies to possible treble damage liability for normal competitive practices which do not harm competition. Such decisions have the effect of discouraging technological innovation at the very time it is of great importance to U.S. competitiveness that it be promoted. The proposed legislation would send a reliable signal to the courts and the business community that would encourage, rather than discourage, technological innovation.

Mr. President, we need to continue the task of insuring that the antitrust laws and intellectual property laws do not work at cross-purposes, harming U.S. competitiveness. The legislation we are introducing today would lessen this tension by continuing to ban practices shown to be anticompetitive under an analysis of all competitive conditions. But importantly, this legislation would prevent courts from invalidating practices which do not have anticompetitive consequences, and which in fact are procompetitive and encourage the development of intellectual property. This clarification of our antitrust laws will help American high-technology companies to compete effectively in the highly competitive international marketplace. I am therefore pleased to be offering this important legislation with Senator LEAHY today and hope that its introduction will lead to its early consideration in the 100th Congress.●

● Mr. LEAHY. Mr. President, American brainpower has always been one of our most important resources. In the world of ideas, it is our most important resource.

Today I am joining Senator HATCH to introduce the Intellectual Property Antitrust Protection Act of 1986. The purpose of this legislation is to promote competition in the international market of ideas. The purpose of introducing it today is to encourage our best legal minds and experts in the fields of antitrust and intellectual property to think about this legislation and ways in which it can be improved. That way, we can open the 100th Congress with this legislation at the top of our legislative agenda.

Under this proposal, a rule of reason standard would be applied to agreements to convey rights to use, practice or sublicense patented inventions,

rights to use or sublicense trade secrets, or rights in a copyrighted work or mask work. Such agreements to convey intellectual property rights would not be deemed illegal per se under the antitrust laws. Instead, under this rule of reason standard, courts would be required to analyze such agreements on the basis of their actual effects on competition, considering all competitive factors relevant to the licensing, including its procompetitive benefits. This proposal also eliminates treble damage recoveries in actions involving such licensing agreements.

It is designated to strengthen the ability of U.S. companies to compete in international trade, to boost manufacturing capabilities, and to allow our American companies to develop efficient marketing strategies while assuring the quality and reliability of their products for the American consumer. At the same time, it preserves antitrust remedies for those agreements which actually harm competition.

Mr. President, I believe in strong antitrust enforcement. A key part of maintaining strong antitrust enforcement in this country is recognizing that when our antitrust laws begin to operate against competition we need to modify them to produce good economic and social results and ultimately to promote U.S. competition in world markets.

This proposal represents one more step in our effort to establish and implement policies which help American companies in international competition. In order to improve the economic competitiveness of American companies in world markets, we must ensure that any of our laws which unnecessarily discourage research and development and innovation in high technology are modified. As we move into the 21st century, we in Congress have a duty to enhance incentives for the creation of new technologies and new innovations.

This proposal does that by applying provisions similar to those contained in the National Cooperative Research Act to the licensing of all intellectual property. Providing more freedom to license will be particularly helpful to small companies, individual inventors and small, specialized research operations. Those small operation are at the heart of our future development in the high-technology field, but they do not always have the resources to develop and market inventions on their own. This legislation will enhance the ability of those companies to enter into arrangements which preserve their right to a full return on their investment in developing their ideas. It will also promote efficient distribution of those products.

Mr. President, Congress must meet the challenge to respond to the growing need to support American technology in international markets. We need to do so without abrogating the fundamental principles of our antitrust laws.

I believe this proposal does that, and I want to get it on the table now so that all interested parties can study it. We can then open the 100th Congress with this effort to improve competition well underway.

One specific question on which I welcome comments is: Should this legislation set out qualifications or limitations before its detrebling provisions apply, I hope we can begin to develop answers to this and other questions before hearings are held early in the 100th Congress. I intend to continue to work toward that end with Senator HATCH and Congressman FISH who has introduced similar legislation in the House.●

By Mr. HEINZ:

S. 2943. A bill to restrict certain U.S. contributions to international organizations until certain actions to investigate abuses of the United Nations system are undertaken by the United Nations Secretary General; to the Committee on Foreign Relations.

UNITED NATIONS LEGISLATION

Mr. HEINZ. Mr. President, the United Nations, to the dismay of U.N. supporters like myself, has lost credibility in the United States for several reasons. First, the United States and the West are almost always outvoted by a Third World majority that lines up with the Soviet bloc on many issues. That may be improving, but in any case there is little we can do to change it.

There is another, crucial reason for the erosion of American support for the United Nations. That is the neglect and abuse of the organization itself. Waste, fiscal irresponsibility, and worst of all espionage. The perversion of the U.N. organization by the Soviet bloc, which uses it for espionage against the United States and the West, is intolerable. And we can do something about that.

Congress has already proven that we can get the United Nations to reform itself. Senator KASSEBAUM'S amendment of last year which reduced U.S. contributions to the United Nations until budgetary reform was underway, is in effect this year. And already there is a package of proposals, drawn up by the so-called Group of 18, before the General Assembly for approval.

The aim of my bill is simple—to restore the credibility of the United Nations. To start the cleanup to remove the abuses that have destroyed American support for the organization we helped create. The legislation would withhold 50 percent of our assessed contribution to the U.N. budget until the U.N. Secretary General investigates the abuses of the U.N. Charter that have made a mockery of the Secretariat's independence.

My bill also gives the President something we all know he needs in dealing with the Soviets—a big stick. The Soviets are the worst offenders of the abuses I cite in my amendment, abuses that underlie their use of the United Nations Secretariat for espionage against the United States. The Soviets also have the political clout to block a cleanup at the United Nations. Giving the United States Government something to wield in our talks with the Soviets, in the form of real pressure to cleanup the United Nations, is the best kind of support the Congress can provide.

During debate on the continuing resolution, I offered an amendment similiar to this legislation. That amendment would have restricted our U.N. contribution until the Secretary General undertook his investigation of abuses in the Secretariat. The substance of my earlier amendment never was voted because of procedural considerations. But I think this crucial issue must be addressed.

Some may question the legal basis for withholding our U.N. contributions. But there is no question about our right to withhold, including our right to condition our assessed contributions on specific U.N. actions.

The United States has regularly bailed out the United Nations when it was in financial trouble. We have no binding obligation to bail them out when others withhold without penalty, and when they use some of our contribution to spy against us.

Others may say we have no jurisdiction over the employees of the United Nations—Soviet or otherwise. That is irrelevant to my bill. We do have jurisdiction over U.S. Government expenditures, and we do have the power to tell the U.N. Secretary General that he has to enforce his own rules if he wants the United States to continue supporting the United Nations.

The question before the Senate is not a legal one. It is whether to send the Soviets the strongest possible signal that the American taxpayer will no longer help pay for Soviet espionage, that we will no longer tolerate the wholesale Soviet bloc assault on the integrity of the United Nations. The question is whether to send the Secretary General a clear signal of American seriousness about cleaning up the United Nations, whether to continue financing the relentless Soviet war of espionage against the United States. That's a clear choice for me. I urge my colleagues to make the clear choice and support my bill.

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

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

S. 2943

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That fifty percent of the funds made available for the Fiscal Year 1987 by any provision of law to meet the obligations of the United States for assessed contributions to the United Nations and its specialized agencies may not be obligated until the President certifies to the Congress that the Secretary General of the United Nations has undertaken an investigation examining—

(1) the use of salary remission arrangements whereunder the nationals of member states serving as employees of the United Nations Secretariat or any of its specialized agencies are required to turn over their salaries to their national governments and retain only a portion of the salary paid to them by the United Nations;

(2) the excessive use of secondment by member states whereunder nationals of the member states serving as employees of the United Nations Secretariat or the specialized agencies are seconded to such employment on fixed-term contracts and not allowed to become regular career employees of the United Nations, with a view to implementing the recommendations of the Group of 18 with respect to limits on the use of secondment; and

(3) the blatant control of nationals of member states serving as employees of the United Nations Secretariat or the specialized agencies through regular supervision, consultation, and evaluation of such nationals of member states by their permanent missions to the United Nations or to the specialized agencies of the United Nations.

By Mr. LAUTENBERG (for himself, Mr. SIMON) Mr. CRANSTON, Mr. MOYNIHAN, Mr. DODD, Mr. BRADLEY, Mr. METZENBAUM, and Mr. KERRY):

S. 2945. A bill to provide for rehiring certain former air traffic controllers; to the Committee on Commerce, Science, and Transportation.

REHIRING OF CERTAIN AIR TRAFFIC CONTROLLERS

● Mr. LAUTENBERG. Mr. President, today I am introducing legislation which would allow for the rehiring of air traffic controllers fired in 1981. I have long supported the selective rehiring of some of those released in 1981 in the interest of enhancing aviation safety and reducing flight delays which are plaguing the major airports of our country. Newark International Airport in New Jersey, unfortunately, holds the national record for flight delays.

The House and Senate conferees from the respective Subcommittee on Transportation Appropriations, meeting on the continuing resolution, agreed to include in the conference report a provision allowing for selective rehiring. Earlier this year, the House narrowly defeated an amendment to the transportation appropriations bill to require rehiring. Clearly, the notion that experienced air traffic controllers be brought back into the air traffic control system as rapidly as possible has gained considerable support over the last year.

Mr. President, the controller rehiring provision was not included in the final conference report on the continuing resolution. The full conference defeated the provision after the White House indicated that, should the provision be included, the President would veto the continuing resolution. I would note that the White House made that indication even though the provision was permissive and not mandatory.

Mr. President, the time for controller rehiring will come. I see no other way for the FAA to meet its own goals to increase experience levels in the controller work force. The President and the Secretary of Transportation might not want this authority to rehire former controllers this year. They might well conclude that they need it next year.

In the continuing resolution, the conferees have included a provision setting minimum progress levels for full performance level controllers at towers and centers around the country. The FAA has been put on notice. Either it meets these targets or it will face the rehiring issue again.

Mr. President, I am dismayed at the position on controller rehiring taken by the administration. It is time for all of us in the Congress, at DOT and the FAA, and at the White House, to face facts. We do not have sufficient experienced air traffic controllers. We are not making sufficient progress toward getting more experienced controllers. Changes in Federal tax and retirement policy will make that task harder. The status quo is not working and it is time for a change.

I want to be sure that controller rehiring is on the congressional agenda when the 100th Congress convenes in January. Therefore, I am today introducing legislation, which I will reintroduce in January, to allow for the selective rehiring of former controllers on a case-by-case basis. The legislation simply removes the bar against rehiring former controllers and specifies that the Office of Personnel Management will rule on the suitability of former controllers for Federal employment.

This bill will make clear to the administration that it must relinquish its adamant, short-sighted opposition to one option that can ensure that our skies are kept safe and our airlines are allowed to fly without excessive delays and inconvenience to the traveling public.

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. 2945

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That air traffic controllers whose appointments were terminated on account of the strike of air traffic controllers which began on or about August 3, 1981, shall not, as a class, be considered unsuitable for appointment or reinstatement in the Federal Aviation Administration. Determinations of suitability for appointment or reinstatement to any such position shall be made on a case-by-case basis by the Office of Personnel Management in acordance with part 731 of title 5 of the Code of Federal Regulations (as in effect on June 1, 1986).●

By Mr. GLENN:

S. 2946. A bill to permit national banks to buy and sell platinum; to the Committee on Banking, Housing, and Urban Affairs.

PLATINUM TRADING LEGISLATION

● Mr. GLENN. Mr. President, my bill would insert the word "platinum" in the section in the National Bank Act that allows banks to trade in bullion. Quite simply, this would allow American banks to trade in platinum as well as gold and silver.

Under current law, American banks are locked out of the platinum market because the National Bank Act of 1863 allows banks to trade in bullion—which refers only to gold and silver. When the language was written over 100 hundred years ago, the word "bullion" in the act fairly represented the extent of trade in precious metals. Then, the platinum group metals had few of their modern uses and were rarely traded. Today, however, the term "bullion" is needlessly restrictive.

I believe in the value of free competition, and that alone is reason enough to adopt this amendment. No reason exists to deny banks this opportunity. The bank industry today is far more sophisticated than it was in 1863 when the current law was written, and banks are now capable of developing top-flight trading departments, if they have not done so already. If banks have the expertise and the interest and a market exists, then our laws should reflect the realities to today's banking industry and trading market.

The market for platinum certainly exists and could well afford more competition among brokers. Trading in platinum has increased dramatically. Industrial users here in the United States consume about 1 million ounces a year. And recently, the New York Times reported that investment demand has doubled, if not tripled, as individual investors have discovered platinum as an alternative investment to gold and silver. Today's financial market is rapidly changing with banks and other institutions finding themselves competing for the same customers over the same services. The Congress should recognize this reality and change its laws accordingly.

One significant benefit then of allowing American banks to trade in the platinum group is improved market efficiency. The increased competition among traders would result in better services, lower commissions and more innovative ways to provide financing for platinum customers.

In addition, the entry of American banks will help to make the metals considerably more accessible to all American customers. For example, domestic demand for platinum far exceeds domestic production. Yet, the prospects for increased domestic production are good: while the only known source of platinum in the Western Hemisphere is in Montana, the geological formation that produces Russia's output of platinum runs across the Bering Sea, raising the possibility that platinum may be discovered in Alaska. There might also be deposits in the waters off Hawaii and Florida. Banks may help develop the domestic market by offering production-cycle financing, purchase and resale of production as well as forward hedging and platinum-based loans. Moreover, banks will also be able to engage in platinum recycling and become major distributors of its products.

I am aware that some concerns exist over the risks involved in permitting banks to trade in precious metals, but I believe that those risks have been exaggerated. First, I think it deserves repeating that banks today are sophisticated institutions. Yet, we must also not forget that banks have been trading in gold and silver in this country for over 100 years. This activity has always carried with it its own inherent risks, and if history is any measure, the banks have successfully met the challenge and prudently engaged in bullion trading. I should also point out that platinum is not completely new to banks. Some banks already offer platinum leases to certain customers and lend against platinum collateral. Also, some banks are approved platinum depositories for various future exchanges trading in platinum. And overseas, banks such as Credit Suisse, Swiss Bank, and Deutsche Bank have long been active traders in the platinum market. American banks should be treated no differently.

Mr. President, it is time to put a stop to this historical and legal bias against banks and rid this anachronism from our laws.●

By Mr. MURKOWSKI:

S. 2947. A bill to provide domestic observers on U.S. fishing vessels; to the Committee on Commerce, Science, and Transportation.

DOMESTIC OBSERVERS ON U.S. FISHING VESSELS

● Mr. MURKOWSKI. Mr. President, I rise today to introduce a bill which will facilitate the placing of observers on domestic fishing vessels for the collection of information necessary for the conservation and management of our Nation's fishery resources. Since passage of the Magnuson Fishery Conservation and Management Act [MFCMA] in 1976, observers have been placed on foreign fishing operations within our country's 200-mile exclusive economic zone [EEZ]. Statistics gathered from the monitoring of foreign fleets have been critical to fishery managers as they set appropriate harvest levels. However, as directed foreign fishing decreases, information on the condition of some fish stocks has become more difficult to come by.

I have long supported the development of our domestic fishing industry and the full Americanization of the fishery resources within our EEZ. Representatives of the fishing industry in Alaska have expressed to me the need for observer coverage of a portion of our domestic fleet to assure the availability of data of U.S. fishery resources. The MFCMA currently provides authority for scientific observers to be placed on domestic vessels. In fact, the Gulf of Alaska fishery management plan adopted pursuant to the MFCMA provides authority for observers on domestic vessels. However, there is some questions as to how an observer program can be funded because the MFCMA prohibits the imposition of fees for fishing permits above the administrative cost incurred in issuing the permits.

Before a successful observer program can be implemented, the issue of funding must be resolved. The legislation I am offering today would amend the MFCMA to clarify that fees may be charged to fund an observer program. The fees could be collected and used only for the observer program.

The continued availability of accurate data on our fishery resources is vital for sound conservation and management. I offer this legislation today in an effort to help clarify the observer issue and assure that fishery managers have the information necessary to make wise resource decisions.

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

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

S. 2947

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, Amend § 303(b), 16 U.S.C. § 1853(b), by renumbering paragraphs (7) and (8) as paragraphs (8) and (9), and by adding a new paragraph (7), to read as follows:

"(7) establish programs for the collection of information necessary for the conservation and management of any fishery, including requirements that observers be placed on fishing vessels that are engaged in a fishery, with the costs of such programs to be borne equitably by participants in the fishery;"●

By Mr. GLENN:

S. 2949. A bill to authorize the Secretary of Health and Human Services to make grants to States to support family caregivers information and education demonstration programs; to the Committee on Labor and Human Resources.

FAMILY CAREGIVERS ADVOCACY RESOURCE AND EDUCATION DEMONSTRATION PROGRAM ACT OF 1986

● Mr. GLENN. Mr. President, this legislation, the State Family Caregivers Advocacy, Resource, and Education [Family CARE] Demonstration Act of 1986, would establish a 3-year national demonstration program, with five to eight Statewide sites, to provide a central source of information regarding services and programs available to assist those providing care to their frail elderly and disabled family members. While the services and information provided by Family CARE would be aimed primarily at those caring for the elderly, efforts to benefit those caring for younger, chronically disabled family members would be encouraged.

BACKGROUND

It is estimated that some 80 percent of all personal care for the frail elderly is provided by family members, not by the Government or other programs. The person providing this care is usually a woman—a wife, daughter, or daughter-in-law—and is frequently older herself. She is the "woman in the middle," caring for the frail family member as well as her own household, often while holding a full-time job. These multiple responsibilities—usually without respite or other outside support—create an extremely stressful situation that leaves the caregiver emotionally and physically exhausted.

There are a variety of services available that support and assist family caregivers. However, many family caregivers do not utilize them, either because they lack information as to what services are available, or they are reluctant to ask for assistance. This may lead to the premature use of nursing homes, and in turn, unnecessary Medicaid expenditures. Often a caregiver places a loved one in a nursing home because the caregiver is too exhausted to continue, not because of a decline in the patient's condition.

There is a documented need for support for caregivers. At an Aging Committee hearing last November in Cincinnati, Mrs. Bernadette Tatman testified that as the person solely responsible for caring for her frail 88-year-old mother and retarded brother, there was a 6- to 8-month period of time when she was not able to leave her house.

PROVISIONS

Establishes Family CARE, a central source—clearinghouse—of information

and referral for family caregivers, which would:

Emphasize coordination of services, community education, and outreach and support for caregivers; have a toll-free telephone number and a written resource directory available at a nominal fee to provide information on respite care, adult day care, home medical services, family support and advocacy groups, education and training, elder abuse hotlines, and so forth; build public awareness of the efforts of family caregivers through community education efforts, such as public service announcements and workshops.

Requires careful evaluation of the various demonstrations to provide a new source of information and to help focus future efforts to assist family caregivers. The evaluation would address such issues as:

The success of Family CARE in linking caregivers with key services and the impact on relieving caregivers' stress; the prevention of premature or unnecessary institutionalization; the impact on development or expansion of key services, including in private sector services.

COST

The total cost of this project would be approximately $5 million over a 3-year period, and it would be administered by the Department of Health and Human Services. The funds would be awarded competitively, with special priority given to those States with varying population characteristics—for example, one State with a predominately rural population, one with predominately urban population, another with a large ethnic population, et cetera.

OVERVIEW

This bill is consistent with previous efforts to recognize and support the efforts of family caregivers. It is also consistent with the administration's emphasis on highlighting and strengthening the family, and encouraging private sector initiatives to combat social problems. I anticipate broad-based support from senior citizen and family support groups. I invite my colleagues to join me in supporting this bill.●

ADDITIONAL SPONSORS

S. 2101

At the request of Mr. HEINZ, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 2101, a bill to recognize the organization known as "Veterans of the Vietnam War, Inc."

S. 2115

At the request of Mr. THURMOND, the name of the Senator from Louisiana [Mr. LONG] was added as a cosponsor of S. 2115, a bill to recognize the organization known as the 82d Airborne Division Association, Inc.

S. 2588

At the request of Mr. DOMENICI, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of S. 2588, a bill to provide permanent authorization for White House Conferences on Small Business.

S. 2651

At the request of Mr. DECONCINI, the names of the Senator from Louisiana [Mr. LONG], the Senator from Iowa [Mr. HARKIN], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 2651, a bill to reduce Federal libility for the relocation of certain Navajo Indians through the exchange of certain lands between the Hope and Navajo Indian Tribes, and for other purposes.

S. 2734

At the request of Mr. MATHIAS, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 2734, a bill to amend chapter 83 of title 5, United States Code, to provide civil service retirement credit for service performed under the Railroad Retirement Act, and for other purposes.

S. 2808

At the request of Mr. GORE, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 2808, a bill to amend title XI of the Social Security Act to require hospitals participating in the medicare and medicaid programs to establish protocols for organ procurement, to establish standards for organ procurement agencies, and for other purposes.

S. 2861

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 2861, a bill to provide for research, education, and information dissemination concerning Alzheimer's disease and related dementias.

S. 2902

At the request of Mr. WALLOP, the name of the Senator from Colorado [Mr. ARMSTRONG] was added as a cosponsor of S. 2902, a bill entitled the "Federal Land Exchange Facilitation Act of 1986."

S. 2912

At the request of Mr. GLENN, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 2912, a bill to amend the Older Americans Act of 1965 to strengthen and improve the provisions relating to State long-term care ombudsman programs, and for other purposes.

S. 2916

At the request of Mr. BOSCHWITZ, the name of the Senator from Nevada [Mr. HECHT] was added as a cosponsor of S. 2916, a bill to amend the Internal Revenue Code of 1986 to retain a capital gains tax differential, and for other purposes.

SENATE JOINT RESOLUTION 112

At the request of Mr. PELL, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of Senate Joint Resolution 112, a joint resolution to authorize and request the President to call a White House Conference on Library and Information Services to be held not later than 1989, and for other purposes.

SENATE JOINT RESOLUTION 403

At the request of Mr. ROTH, the names of the Senator from Rhode Island [Mr. CHAFEE] the Senator from Virginia [Mr. WARNER], the Senator from New Jersey [Mr. BRADLEY], the Senator from Virginia [Mr. TRIBLE], and the Senator from Florida [Mr. CHILES] were added as cosponsors of Senate Joint Resolution 403, a joint resolution to designate 1988 as the "National Year of Friendship With Finland."

SENATE JOINT RESOLUTION 423

At the request of Mr. KERRY, the names of the Senator from Idaho [Mr. MCCLURE], the Senator from Utah [Mr. HATCH], the Senator from Maine [Mr. MITCHELL], the Senator from Missouri [Mr. EAGLETON], the Senator from Idaho [Mr. SYMMS], the Senator from Florida [Mrs. HAWKINS], and the Senator from Georgia [Mr. MATTINGLY] were added as cosponsors of Senate Joint Resolution 423, a joint resolution to designate the week beginning January 19, 1987 as "Shays' Rebellion Week" and Sunday, January 25, 1987, as "Shays Rebellion Day."

SENATE CONCURRENT RESOLUTION 147

At the request of Mr. CRANSTON, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of Senate Concurrent Resolution 147, a concurrent resolution to express the sense of the Congress that the monkeys known as the Silver Spring Monkeys should be transferred from the National Institutes of Health to the custody of Primarily Primates, Inc., animal sanctuary in San Antonio, TX.

SENATE CONCURRENT RESOLUTION 167

At the request of Mr. KERRY, the names of the Senator from Michigan [Mr. RIEGLE], and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of Senate Concurrent Resolution 167, a concurrent resolution to express the sense of Congress regarding efficient and compassionate management of the Social Security Disability Insurance [SSDI] Program.

SENATE RESOLUTION 513—ENCOURAGING THE DEVELOPMENT OF DOMESTIC SOURCES OF STRATEGIC AND CRITICAL MATERIALS

Mr. MURKOWSKI submitted the following resolution; which was re-

ferred to the Committee on Armed Services:

S. RES. 513

Whereas the Comprehensive Anti-Apartheid Act of 1986 sent a clear signal that the Congress is ready to prohibit the importation of strategic minerals from South Africa should the apartheid situation not improve in the next year;

Whereas the United States imports from South Africa a significant percentage of at least six minerals critical to U.S. security;

Whereas the United States continues to increase its dependence upon foreign sources of strategic minerals;

Whereas the United States imports over fifty percent of its commerical supplies for over two dozen highly important strategic minerals;

Whereas an increasing amount of strategic minerals is imported in its processed form, thus driving the U.S. commerical processing industry toward technological obsolescence;

Whereas the National Critical Materials Act of 1984 sets up the National Critical Materials Council to establish a national Federal program for advanced materials research and technology;

Whereas the Strategic and Critical Materials Stock Piling Revision Act of 1979 directs that the purposes of the National Defense Stockpile is to serve the interest of national defense only and the National Defense Stockpile is not to be used for economic or budgegtary purposes;

Whereas the Strategic and Critical Materials Stock Piling Revision Act further directs that the quantities of materials stockpiled should be sufficient to sustain the United States for a period of not less than three years in the event of a national emergency;

Whereas prior to the passage of the Anti-Apartheid Act of 1986 the National Security Council proposed to substantially reduce stockpile goals and to sell quantities of stockpiled materials; and

Whereas the Strategic and Critical Materials Stock Piling Revision Act directs the President to encourage the development of sources of strategic and critical materials within the United States to decrease our dependence upon foreign sources of such materials in times of national emergency:

Now, therefore, be it

Resolved, That the policies enunciated by the Senate in the Strategic and Critical Materials Stock Piling Act again are hereby strongly endorsed by the Senate to encourage our independence of foreign sources of strategic minerals and to protect our national interest in the development of domestic sources of strategic minerals. The Senate urges the President to make our domestic strategic minerals policy a high priority and to report to the Congress by June 1, 1987, a plan to stimulate innovation and technology utilization in materials industries. The purpose of this plan is to ensure that the United States is not put in a position where it can be held hostage to any foreign country for our strategic and critical materials needs.

SENATE RESOLUTION 514—RESOLUTION RELATING TO PROCEDURES FOR PROTECTING CITIZENS AGAINST IMPROPER INVESTIGATIVE AND PROSECUTORIAL PRACTICES

Mr. ARMSTRONG (for himself, Mr. MOYNIHAN, Mr. HATCH, Mr. HECHT, Mr. DECONCINI, Mr. LAXALT, Mr. BINGAMAN, Mr. PRYOR, Mr. GORE, Mr. HUMPHREY, Mr. JOHNSTON, and Mr. DANFORTH) submitted the following resolution; which was considered and agreed to:

S. RES. 514

Whereas our system of justice requires both firm defense of individual liberties and vigorous enforcement of the law, and

Whereas it is the responsibility of Congress to assure that the zeal of the Executive Branch in enforcing the law is always balanced against the rights of citizens under the Constitution, and

Whereas it is in the interest of justice for procedures to exist within the government to assure that the rights of citizens are protected against improper investigative and prosecutorial practices, now therefore be it

Resolved, That the Committee on the Judiciary, appropriately finds, shall hold hearings, exercising full Committee powers as necessary, on procedures for protecting citizens against improper investigative and prosecutorial practices and report its findings and recommendations to the Senate on or before September 1, 1987.

AMENDMENTS SUBMITTED

CUYAHOGA VALLEY NATIONAL RECREATION AREA

McCLURE AMENDMENT NO. 3489

Mr. McCLURE proposed an amendment to the bill (H.R. 4645) to modify the boundaries of the Cuyahoga Valley National Recreation Area, as follows:

TITLE I—CUYAHOGA VALLEY NATIONAL RECREATION AREA

SECTION 101. BOUNDARY ADJUSTMENT.

Section 2 of the Act entitled "An Act to provide for the establishment of the Cuyahoga Valley National Recreation Area", approved December 27, 1974 (16 U.S.C. 460ff et seq.), is amended as follows:

(1) In subsection (a), strike "numbered 655-90,001-A and dated May 1978" and insert "numbered 644-80,054 and dated July 1986".

(2) At the end of subsection (a), insert the following:

"The recreation area shall also comprise any lands designated as 'City of Akron Lands' on the map referred to in the first sentence which are offered as donations to the Department of the Interior or which become privately owned. The Secretary shall revise such map to depict such lands as part of the recreation area.".

(3) In subsection (b), after the first sentence, insert the following:

"The Secretary may not acquire fee title to any lands included within the recreation area in 1986 which are designated on the map referred to in subsection (a) as 'Scenic Easement Acquisition Areas'. The Secretary may acquire only scenic easements in such designated lands. Unless consented to by the owner from which the easement is acquired, any such scenic easement may not prohibit any activity, the subdivision of any land, or the construction of any building or other facility if such activity, subdivision, or construction would have been permitted under laws and ordinances of the unit of local government in which such land was located on April 1, 1986, as such laws and ordinances were in effect on such date.".

TITLE II—NATIONAL PARK SYSTEM FEES

SEC. 201. Subsection 12(b) of the Act of August 18, 1970, as amended (16 U.S.C. 1a-7(b)), relating to the preparation of general management plans for units of the National Park System, is amended by striking out "(b)" and inserting in lieu thereof "(b)(1)" and inserting the following new paragraphs at the end thereof:

"(2) As a component of each general management plan, a resources management plan shall be prepared by the Director of the National Park Service. The resources management plan shall identify the natural and cultural resources of the unit and set forth methods and actions by which such resources shall be preserved, protected, and managed in accordance with the laws applicable to such unit. Resources management plans and actions in support thereof shall be developed and conducted in accordance with appropriate scientific information applicable to the resources of the unit and their use by visitors. The Director shall assure that unit managers are appropriately trained and have access to needed information and research in developing and implementing resources management plans.

"(3) From funds available for operation of the National Park System, the sum of $2,000,000 annually shall be available to the Director of the National Park Service for matching grants to educational institutions, public or private agencies or organizations, or persons for the conduct of research, monitoring, and study of natural and cultural resources within the National Park System and for the development of appropriate methods of management and interpretation of such resources. Such grants shall be matched by an equal amount of funds from the grantee or by services equal in value, in the judgment of the Director, to the funds granted.".

SEC. 202. (a) Section 4(a) of the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601-6a(a)), if further amended as follows:

(1) Paragraph (1) is amended by striking out "$10" and inserting in lieu thereof "$25" in the first sentence.

(2) Paragraph (1) is further amended by striking out "(1)" and inserting in lieu thereof "(1)(A)" and adding the following new subparagraph:

"(B) For admission into a specific designated unit of the National Park System, or into several specific units located in a particular geographic area, the Director of the National Park Service is authorized to make available an annual admission permit for a reasonable fee but not to exceed $15 for any such permit regardless as to whether it is for admission to one or more units. The permit shall convey the privileges of, and shall be subject to the same terms and conditions as, the Golden Eagle Passport, except that it shall be valid only for admission into the specific unit or units of the Na-

tional Park System indicated at the time of purchase.".

(3) Paragraph (2) is amended by adding the following sentences at the end thereof: "No fee for a single visit may exceed $3 for a single visit permit as defined in section 71.7(b)(2) of title 36 of the Code of Federal Regulations or $7.50 for a single visit permit as defined in section 71.7(b)(1) of title 36 of the Code of Federal Regulations. For the purpose of this paragraph any reference to section 71.7(b)(1) or 71.7(b)(2) of title 36 of the Code of Federal Regulations shall be deemed to be a reference to those regulations which were in effect on September 1, 1986.".

(4) Paragraph (4) is amended by striking out "without charge" and inserting in lieu thereof "for a fee $10" in the second sentence, and by striking out "other" in the third sentence.

(5) Paragraph (3) is amended by adding the following new sentence at the end thereof:

"Notwithstanding any other provision of this Act, no admission fee may be charged at any unit of the National Park System which provides significant outdoor recreation opportunities in an urban environment and to which access is publicly available at multiple locations.".

(6) By adding the following new paragraph (6):

"(6)(A) No later than 60 days after the date of enactment of this paragraph, the Secretary of the Interior shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, a list of units of the National Park System and the entrance fee proposed to be charged at each unit (hereinafter in this paragraph referred to as 'the list').

"(B) Following submittal of the list to the respective Committees, any proposed changes to the list, including the addition or deletion of park units or the increase or decrease of fee levels at park units shall not take effect until 60 days after the proposed change has been submitted to the Committees.".

(b) Section 4 of the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601-6a), is further amended as follows:

(1) Subsection (e) is amended by adding the following after the final period: "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.".

(2) Subsection (f) is amended by striking out "(f) Except" and inserting in lieu thereof "(f)(1) Except as provided in paragraph (2) and except"; and by adding the following new paragraph:

"(2) Notwithstanding any other provision of law, for the period beginning on the date of enactment of this paragraph until September 30, 1981, all receipts collected from fees or permits for admission or entrance to the National Park System, all fees collected under subsections (a), (b) and (c) of this section with respect to the National Park System, shall be available until expended, without further appropriation, for expenditure as determined by the Director of the National Park Service, first, to defray the cost of collection, second for resource protection, research, interpretation, and maintenance activities related thereto at the collecting unit; and third, for resource protection, research, interpretation, and maintenance activities related to all units of the National Park System: *Provided*, That the Director shall insure that non-collecting units receive for fair and reasonable portion of the revenue made available pursuant to this paragraph. Except for receipts necessary to defray the cost of collection, receipts available for expenditure in accordance with this paragraph may be used to make grants for the purposes authorized in section 12(b)(3) of the Act of August 18, 1940, as amended, and without regard to where the receipts were collected. Beginning October 1, 1991, and for each fiscal year thereafter, all fees collected under subsections (a), (b) and (c) of this section with respect to the National Park System shall be credited to the Land and Water Conservation Fund.".

(c) Section 402 of the Act of October 12, 1979 (93 Stat. 664), is hereby repealed.

(d) The Secretary of the Interior shall not charge any entrance or admission fee at the U.S.S. Arizona Memorial in the State of Hawaii.

TITLE III—FEDERAL ONSHORE COMPETITIVE OIL AND GAS LEASING ACT OF 1986

SECTION 301.—This title may be cited as the "Federal Onshore Competitive Oil and Gas Leasing Act of 1986".

SEC. 302.—(a) Section 17(b)(1) of the Act of February 25, 1920 (30 U.S.C. 226(b)(1)), is amended to read as follows:

"(b)(1) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than two thousand five hundred and sixty acres, except in Alaska, where units shall be not more than five thousand one hundred and twenty acres, which shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State where eligible lands are available at least every two months, and more frequently if the Secretary determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty of 12.5 per centum in amount or value of the production removed or sold from the lease. The Secretary shall establish by regulation a minimum acceptable price which shall be the same for all leases and which is at least $20 per acre. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the minimum acceptable price, without evaluation of the value of the lands proposed for lease. Leases shall be issued within sixty days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year. All bids for less than the minimum acceptable price shall be rejected. Lands for which no bids are received or for which the highest bid is less than the minimum acceptable price shall promptly be offered for leasing under subsection (c) of this section and shall remain available for leasing for a period set by the Secretary not to exceed three years after the competitive lease sale.".

(b) The first sentence of section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended to read as follows: "(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding. Lands be be leased under this subsection shall be made available at least every two months. Leases shall be issued within sixty days of the date on which the Secretary identifies the first qualified applicant."

(c) Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended by adding the following at the end thereof:

"(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the minimum acceptable price established by the Secretary and (ii) for which, at the end of the period prescribed by the Secretary under subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section.

"(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is canceled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.".

(d) The third sentence of section 17(d) of the Act of February 25, 1920 (30 U.S.C. 226(d)), is amended to read as follows: "A minimum royalty of not less than $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased, except that no minimum royalty shall exceed the rental rate that would have applied before discovery.".

(e) Section 17(e) of the Act of February 25, 1920 (30 U.S.C. 226(e)), amended by designating the existing provision as subparagraph (1) and by adding the following at the end thereof:

"(2) In addition to the authority granted to the Secretary under Section 39 of this Act (30 U.S.C. 209), where a lessee is denied access for operations involving exploration, drilling or production on a valid lease due to prolonged environmental or other analyses, unresolved litigation, or other delays which are beyond the control of the lessee and which continue beyond 90 days after receipt by the Secretary of a written request by the lessee for access to the leasehold for such purposes, the Secretary is authorized to suspend the lease, and the term of such lease shall be extended by adding any such suspension period thereto.".

SEC. 303. The third sentence of section 30a of the Act of February 25, 1920 (30 U.S.C. 187a) is amended to read as follows: "The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment—(1) of a separate zone or deposit under any lease, (2) of a part of a legal subdivision, or (3) of less than six hundred and forty acres outside Alaska or of less than two thousand five hundred and sixty acres within Alaska, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas. Requests for approval of assignment of sublease shall be processed prompt-

ly by the Secretary. Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within sixty days of the date of receipt by the Secretary of a request for such approval.".

SEC. 304. The first sentence of section 31(b) of the Act of February 25, 1920 (30 U.S.C. 188(b)) is amended to read as follows:

"(b) Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after thirty days notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 17(j) of this Act which contains a well capable of production of unitized substances in paying quantities.".

SEC. 305. The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) is amended by adding at the end thereof the following new section:

"SEC. 43. Actions taken by the Secretary of the Interior to develop regulations and procedures for a competitive oil and gas leasing program or to hold particular lease sales shall not be subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969. Except as otherwise provided in this section, nothing in this Act shall be considered as affecting the application of section 102 of the National Evironmental Policy Act of 1969.".

SEC. 306. Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(1) Subsection (c) and (e) (16 U.S.C. 3148(c) and (e)) are deleted in their entirely.

(2) The second sentence of section 1008(d) (16 U.S.C. 3148(d)) is deleted.

(3) Subsection (d) and (f) through (i) (16 U.S.C. 3148 (d) and (f) through (i)) are renumbered subsections (c) through (g) respectively.

SEC. 307 (a) (1) Lands to be leased which were available for noncompetitive oil and gas leasing pursuant to section 17(c) of the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) on the day prior to the enactment of this title but which were not covered by an oil and gas lease on January 1, 1986, and for which no lease application or offer was pending on the date of enactment of this title, shall be leased to the person first making application for the lease who is otherwise qualified to hold a lease under the Act of February 25, 1920 without competitive bidding. The authority to issue leases as provided in this paragraph shall expire fifty months from the date of enactment to this Title: *Provided;* that applications for leases filed pursuant to this paragraph which are pending on such expiration date shall be processed and leases issued under the authority of this paragraph except where the issuance of any such leases would not be lawful under Sec. 17(c) of the Act of February 25, 1920 as in effect on the day prior to enactment of this title or under other applicable law.

(a)(2). No land may be leased under paragraph (a)(1) of this section if it is within the State of Arkansas or if, on the date of enactment of this title, it: (i) is under study for inclusion in a known geological structure of a producing oil or gas field or in a favorable petroleum geological province; (ii) was referred to a surface managing agency (other than the Bureau of Land Management) for a recommendation or consent regarding leasing and no lease application, offer or bid is pending; or (iii) is within the Overthrust Belt area of Wyoming as defined by the Director, Bureau of Land Management, by memorandum dated February 24, 1986. Lands to be leased which are covered by this paragraph shall be leased in accordance with subsection 302(a) of this title. The Secretary of the Interior shall publish in the *Federal Register* within 90 days from the date of enactment of this title a list of lands covered by this paragraph.

(b) Notwithstanding any other provision of this title and except as provided in paragraph (e) of this section, all noncompetitive oil and gas lease applications filed pursuant to regulations governing the simultaneous oil and gas leasing system (43 CFR subpart 3112) and pending on the date of enactment of this title shall be processed, and leases shall be issued within sixty days following the date of enactment of this title under the provisions of the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this title, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If the date of enactment of this title occurs during a simultaneous filing period prescribed by the regulations of the Department of the Interior, all applications filed during that period shall be considered filed prior to the date of enactment.

(c) Notwithstanding any other provision of this title and except as provided in paragraph (e) of this section, all noncompetitive oil and gas lease offers filed pursuant to regulations governing the over-the-counter leasing system (43 CFR subpart 3111) prior to October 1, 1986, shall be processed, and leases shall be issued within sixty days following the date of enactment of this title under the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this title, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If the Secretary posts tracts for competitive sale containing lands in an over-the-counter noncompetitive lease offer filed between October 1, 1986, and the date of enactment of this title, and if any such tracts do not receive bids greater than or equal to the minimum acceptable price established by the Secretary at the sale, the Secretary shall reinstate the noncompetitive lease offers for these tracts and shall issue leases in accordance with section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)).

(d) Notwithstanding any other provision of this title, all competitive oil and gas lease bids filed pursuant to applicable regulations (43 CFR subpart 3120) pending on the date of enactment of this title shall be processed, the high bid for each tract shall be accepted without further evaluation of the value of the tract, and leases shall be issued within sixty days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year, under the Act of February 20, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this title, except where the issuance of any such lease would not be lawful under such provisions or other applicable law.

(e) No noncompetitive lease applications or offers pending on the date of enactment of this title for lands within the Shawnee National Forest, Illinois, the Ouachita National Forest, Arkansas, Fort Chaffee, Arkansas, or Eglin Air Force Base, Florida, shall be processed until these lands are posted for competitive bidding in accordance with section 302 of this title. If any such tract receives no bid greater than or equal to the minimum acceptable price established by the Secretary then the noncompetitive applications or offers pending for such a tract shall be reinstated and noncompetivie leases issued, under the Act of February 20, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If competitive leases are issued for any such tract, then the pending noncompetitive application or offer shall be rejected.

SEC. 308. (a) Except as provided in section 307 of this title, all oil and gas leasing pursuant to the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), after the date of enactment of this title shall be conducted in accordance with the provisions of this title.

(b) The Secretary shall issue final regulations within one hundred and eighty days after the date of enactment of this title. The regulations shall be effective when published in the Federal Register. The environmental and economic impacts of this title having been fully considered by the Congress, the Secretary shall not prepare any environmental, economic, or small business impact analyses, which may otherwise be required by law of Executive Order, when he prepares proposed regulations or adopts final regulations implementing this title.

(c)(1) Prior to issuing regulations implementing this title, the Secretary shall hold at least one competitive lease sale pursuant to Section 302 of this title. Sale procedures shall be established in the notice of sale. This sale shall include tracts which, but for the enactment of this title, would have been posted for the filing of simultaneous oil and gas lease applications pursuant to applicable regulations (43 CFR Subpart 3112). The Secretary may also include in the sale tracts which would otherwise have been posted for competitive sale pursuant to applicable regulations (43 CFR subpart 3120) and tracts which received over-the-counter noncompetitive oil and gas lease offers pursuant to applicable regulations (43 CFR subpart 3111) between October 1, 1986, and the date of enactment of this title. The Secretary may hold additional sales if he considers it necessary prior to the issuance of final regulations pursuant to subsection (b) of this section.

(2) If tracts which would, but for the enactment of this title have been posted for the filing of simultaneous applications do not receive bids of greater than or equal to the minimum acceptable price established by the Secretary at a competitive sale held under this section, they shall subsequently be posted for the filing of simultaneous applications provided the Secretary has not yet issued regulations under subsection (b) of this section.

(3) If no competitive or noncompetitive leases are issued for lands posted for sale as provided in paragraph (c) of this section, the Secretary shall lease such tracts in accordance with the regulations issued pursuant to paragraph (b) of this section.

SEC. 309. The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) is amended by inserting after section 40 the following new section:

"SEC. 41. (a) Any person shall be liable under the standards set forth in subsection (c) and (d) of this section if that person misrepresents to the public, by any means of communication, the following:

"(1) the value or potential value of any lease or portion thereof issued under this Act;

"(2) the value or potential value of any lease or portion thereof to be issued under this Act;

"(3) the value or potential value of any land available for leasing under this Act;

"(4) the availability of any land for leasing under this Act;

"(5) the ability of the person to obtain leases under this Act on his or her own behalf or on behalf of any other person; and

"(6) the provisions of this Act and its implementing regulations.

"(b) Any person who organizes, or participates in, any scheme, arrangement, plan, or agreement to circumvent the provisions of this Act or its implementing regulations shall be liable under the provisions of this section.

"(c) The Attorney General shall institute against any person who, given the nature of the intended recipient of the communication, knew or should have known he or she was violating subsection (a) or (b) of this section, a civil action, in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any federal mineral, or both.

"(d) Any person who knowingly and willfully violates the provisions of this section shall, upon conviction, be punished by a fine of not more than $500,000 for each violation or by imprisonment for not more than five years, or both.

"(e)(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

"(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action, unless it is shown that the officer, employee, or agent was acting without the knowledge or consent of the corporation or other entity.

"(f) The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines and imprisonment afforded by any other law or regulation.

"(g)(1) A state may commence a civil action under subsection (c) of this section against any person conducting activity within the state in violation of this section. Civil actions brought by a state shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) or this section.

"(2) The state shall notify the Attorney General of the United States of any civil action filed by the state under this subsection within thirty days of filing of the action.

"(3) Any civil penalties recovered by a state under this subsection shall be retained by the state and may be expended in such manner and for such purposes as the state deems appropriate. If a civil action is jointly brought by the Attorney General and a state, by more than one state or by the Attorney General and more than one state, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action.

"(4) Nothing in this section shall deprive a state of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.".

SEC. 310. Section 35 of the Act of February 25, 1920 (30 U.S.C. 191) is amended by adding the following at the end of the section:

"In determining the amount of payments to states under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.".

SEC. 311. The Secretary shall submit annually to the Congress a report containing appropriate information to facilitate Congressional monitoring of this title. Such report shall include, but not be limited to:

(a) the number of acres leased, and the number of leases issued, competitively and noncompetitively;

(b) the amount of revenue received from bonus bids, filing fees, rentals and royalties;

(c) the amount of production from competitive and noncompetitive leases; and

(d) such other data and information as will facilitate—(i) an assessment of the onshore oil and gas leasing system, and (ii) a comparison of the system as revised by this title with the system in operation prior to the enactment of this title.

TITLE V—AMERICAN CONSERVATION CORPS ACT OF 1986

SECTION 101. SHORT TITLE.

This title may be cited as the "American Conservation Corps Act of 1986".

SEC. 102. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) conserving or developing natural and cultural resources and enhancing and maintaining environmentally important lands and water through the use of the Nation's young men and women is beneficial not only to the youth of the Nation by providing them with education and work opportunities but also for the Nation's economy and its environment; and

(2) through this work experience opportunity, the Nation's youth will further their understanding and appreciation of the natural and cultural resources in addition to learning basic and fundamental work ethics including discipline, cooperation, understanding to live and work with others, and learning the value of day's work for day's wages.

(b) PURPOSE.—It is the purpose of this title to—

(1)(A) enhance and maintain conservation, rehabilitation, and improvement work on public lands and Indian lands,

(B) improve and restore public lands and Indian lands, resources, and facilities,

(C) conserve energy, and

(D) restore and maintain community lands, resources, and facilities;

(2) establish an American Conservation Corps to carry out a program to improve, restore, maintain, and conserve these lands and resources in the most cost-effective manner;

(3) assist State and local governments and Indian tribes in carrying out needed public land and resource conservation, rehabilitation, and improvement projects;

(4) provide for implementation of the program in such manner as will foster conservation and the wise use of natural and cultural resources through the establishment of working relationships among the Federal, State, and local governments, Indian tribes, and other public and private organizations; and

(5) increase (by training and other means) employment opportunities for young men and women including, but not limited to, those who are economically, socially, physically, or educationally disadvantaged and who may not otherwise be productively employed.

SEC. 103. DEFINITIONS.

For purposes of this title:

(1) The term "public lands" means any lands or waters (or interest therein) owned or administered by the United States or by any agency or instrumentality of a State or local government.

(2) The term "program" means all activities carried out under the American Conservation Corps established by this Act.

(3) The term "program agency" means any agency designated by the Governor to manage the program in that State, and the governing body of any Indian tribe.

(4) The term "Indian tribe" means any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior. Such term also includes any Native village corporation, regional corporation, and Native group established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1701 et seq.).

(5) The term "Indian" means a person who is a member of an Indian tribe.

(6) The term "Indian lands" means any real property owned by an Indian tribe, any real property held in trust by the United States for Indian tribes, and any real property held by Indian tribes which is subject to restrictions on alienation imposed by the United States.

(7) The term "employment security service" means the agency in each of the several States with responsibility for the administration of unemployment and employment programs, and the oversight of local labor conditions.

(8) The term "chief administrator" means the head of any program agency as that term is defined in paragraph (3).

(9) The term "enrollee" means any individual enrolled in the American Conservation Corps in accordance with section 5.

(10) The term "crew leader" means an enrollee appointed under authority of this title for the purpose of supervising other enrollees engaged in work projects pursuant to this title.

(11) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(12) The term "economically disadvantaged" with respect to youths has the same

meaning given such term in section 4(8) of the Job Training Partnership Act.

SEC. 404. AMERICAN CONSERVATION CORPS PROGRAM.

(a) ESTABLISHMENT OF AMERICAN CONSERVATION CORPS.—There is hereby established an American Conservation Corps.

(b) REGULATIONS AND ASSISTANCE.—Not later than 120 days after the date of enactment of this title, the Secretary of the Interior and the Secretary of Agriculture, after consultation with the Secretary of Labor, shall jointly promulgate the regulations necessary to implement the American Conservation Corps established by this title. Within 30 days after the enactment of this title, the Secretary of the Interior and the Secretary of Agriculture shall establish procedures to give program agencies and other interested parties, including the public, adequate notice and opportunity to comment upon and participate in the formulation of such regulations. The regulations shall include provisions to assure uniform reporting on the activities and accomplishments of American Conservation Corps programs, demographic characteristics of enrollees in the American Conservation Corps, and such other information as may be necessary to prepare the annual report under section 410.

(c) PROJECTS INCLUDED.—The American Conservation Corps established under this section may carry out such projects as—

(1) conservation, rehabilitation, and improvement of wildlife habitat, rangelands, parks, and recreational areas;

(2) urban revitalization and historical and cultural site preservation;

(3) fish culture and habitat maintenance and improvement and other fishery assistance;

(4) road and trail maintenance and improvement;

(5)(A) erosion, flood, drought, and storm damage assistance and controls,

(B) stream, lake, and waterfront harbor and port improvement, and

(C) wetlands protection and pollution control;

(6) insect, disease, rodent, and fire prevention and control;

(7) improvement of abandoned railroad bed and right-of-way;

(8) energy conservation projects; renewable resource enhancement, and recovery of biomass;

(9) reclamation and improvement of strip-mined land; and

(10) forestry, nursery, and silvicultural operations.

(d) PREFERENCE FOR CERTAIN PROJECTS.—The program shall provide a preference for those projects which—

(1) will provide long-term benefits to the public;

(2) will instill in the enrollee involved a work ethnic and a sense of public service;

(3) will be labor intensive; and

(4) can be planned and initiated promptly.

(e) LIMITATION TO PUBLIC LANDS.—Projects to be carried out by the American Conservation Corps shall be limited to projects on public lands or Indian lands except where a project involving other lands will provide a documented public benefit as determined by the Secretary of the Interior or the Secretary of Agriculture. The regulations promulgated under subsection (b) shall establish the criteria necessary to make such determinations.

(f) CONSISTENCY.—All projects carried out under this Act for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with the provisions of law and policies relating to the management and administration of such lands, with all other applicable provisions of law, and with all management, operational, and other plans and documents which govern the administration of the area.

(g) APPLICATION PROCEDURES.—(1) Each program agency may apply for approval to participate in the American Conservation Corps under this title.

(2) Applications for participation in the American Conservation Corps on Federal public lands shall be submitted to the Secretary of the Interior or the Secretary of Agriculture in such manner as is provided for by the regulations promulgated under subsection (b). Applications for participation in the American Conservation Corps on non-Federal public lands or Indian lands shall be submitted to the Secretary of the Interior. Applications for participation in the American Conservation Corps on projects on lands described in subsection (e) shall be submitted to the Secretary of Agriculture or the Secretary of the Interior as the case may be. No application may be submitted to the Secretary of the Interior or the Secretary of Agriculture before the 30-day period for review and comment by the appropriate State Job Training Coordinating Council (established under the Job Training Partnership Act), if any, which shall consult with the appropriate Private Industry Council, or Councils, in the area in which a project is carried out. Comments of the State Job Training Coordinating Council and Private Industry Council shall be forwarded to the Secretary at the time the grant application is submitted.

(3) Each application under this section must be approved by the Secretary of the Interior or the Secretary of Agriculture, as the case may be, and shall contain—

(A) a comprehensive description of the objectives and performance goals for the program, a plan for managing and funding the program, and a description of the types of projects to be carried out, including a description of the types and duration of training and work experience to be provided;

(B) a plan to make arrangements for certification of the training skills acquired by enrollees and award of academic credit to enrollees for competencies developed from training programs or work experience obtained under this title;

(C) an estimate of the number of enrollees and crew leaders necessary for the proposed projects, the length of time for which the services of such personnel will be required, and the services which will be required for their support;

(D) a description of the location and types of facilities and equipment to be used in carrying out the programs; and

(E) such other information as the Secretary of the Interior and the Secretary of Agriculture shall prescribe.

(4) In approving the location and type of any facility to be used in carrying out the program, the Secretary of the Interior and the Secretary of Agriculture shall give due consideration to—

(A) the proximity of any such facility to the work to be done;

(B) the cost and means of transportation available between any such facility and the homes of the enrollees who may be assigned to that facility;

(C) the participation of economically, socially, physically, or educationally disadvantaged youths; and

(D) the cost of establishing, maintaining, and staffing the facility.

Every effort shall be made to assign youths to facilities as near to their homes as practicable.

(5)(A) Every program shall have sufficient supervisory staff appointed by the chief administrator which may include enrollees who have displayed exceptional leadership qualities.

(B) No project shall be undertaken without the on-site presence of knowledgeable and competent supervision, and all projects undertaken shall be documented in advance in an approved written project plan.

(h) LOCAL PARTICIPATION.—Any State carrying out a program under this title shall provide a mechanism under which local governments and nonprofit organizations within the State may be approved by the State to participate in the American Conservation Corps.

(i) AGREEMENTS.—Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(j) JOINT PROJECTS.—

(1) DEPARTMENT OF LABOR.—The Secretary of the Interior and the Secretary of Agriculture are authorized to develop jointly with the Secretary of Labor regulations designed to allow, where appropriate, joint projects in which activities supported by funds authorized under this title are coordinated with activities supported by funds authorized under employment and training statutes administered by the Department of Labor (including the Job Training Partnership Act). Such regulations shall provide standards for approval of joint projects which meet both the purposes of this title and the purposes of such employment and training statutes under which funds are available to support the activities proposed for approval. Such regulations shall also establish a single mechanism for approval of joint projects developed at the State or local level.

(2) DEPARTMENT OF DEFENSE.—The Secretary of the Interior, the Secretary of Agriculture, and program agencies may enter into agreements, jointly or separately, with the Secretary of Defense to assist the military by carrying out projects under this title. Such projects may be carried out on a reimbursable basis or otherwise.

SEC. 405. ENROLLMENT, FUNDING, AND MANAGEMENT.

(a) ENROLLMENT IN PROGRAM.—(1)(A) Enrollment in the American Conservation Corps shall be limited to individuals who, at the time of enrollment, are—

(i) unemployed;

(ii) not less than 16 years of age or more than 25 years of age (except that programs limited to the months of June, July, and August may include individuals not less than 15 years and not more than 21 years of age at the time of their enrollment); and

(iii) citizens or nationals of the United States (including those citizens of the Northern Mariana Islands as defined in Public Law 98-213 (97 Stat. 1459)) or lawful permanent residents of the United States.

(B) Special efforts shall be made to recruit and enroll individuals who, at the time of enrollment, are economically disadvantaged.

(C) In addition to recruitment enrollment efforts required in subparagraph (B), the Secretary of the Interior and the Secretary of Agriculture shall make special efforts to

recruit enrollees who are socially, physically, and educationally disadvantaged youths.

(D) Notwithstanding subparagraph (A), a limited number of special corps members may be enrolled without regard to their age so that the corps may draw upon their special skills which may contribute to the attainment of the purposes of the title.

(2) Except in the case of a program limited to the months of June, July, and August, individuals who at the time of applying for enrollment have attained 16 years of age but not attained 19 years of age, and who are no longer enrolled in any secondary school shall not be enrolled unless they give adequate written assurances, under criteria to be established by the Secretary of the Interior and the Secretary of Agriculture, that they did not leave school for the express purpose of enrolling. The regulations promulgated under section 404(b) shall provide such criteria.

(3) The selection of enrollees to serve in the American Conservation Corps shall be the responsibility of the chief administrator of the program agency. Enrollees shall be selected from those qualified persons who have applied to, or been recruited by, the program agency, a State employment security service, a local school district with an employment referral service, an administrative entity under the Job Training Partnership Act, a community or community-based nonprofit organization, the sponsor of an Indian program, or the sponsor of a migrant or seasonal farmworker program.

(4)(A) Except for a program limited to the months of June, July, and August, any qualified individual selected for enrollment may be enrolled for a period not to exceed 24 months. When the term of enrollment does not consist of one continuous 24-month term, the total of shorter terms may not exceed 24 months.

(B) No individual may remain enrolled in the American Conservation Corps after that individual has attained the age of 26 years, except as provided in subsection (a)(1)(D) of this section.

(5) Within the American Conservation Corps the directors of programs shall establish and stringently enforce standards of conduct to promote proper moral and disciplinary conditions. Enrollees who violate these standards shall be transferred to other locations, or dismissed, if it is determined that their retention in that particular program, or in the Corps, will jeopardize the enforcement of such standards or diminish the opportunities of other enrollees. Such disciplinary measures will be subject to expeditious appeal to the appropriate Secretary.

(b) SERVICES, FACILITIES, SUPPLIES.—The program agency shall provide facilities, quarters, and board (in the case of residential facilities), limited and emergency medical care, transportation from administrative facilities to work sites, and other appropriate services, supplies, and equipment. The Secretary of the Interior and the Secretary of Agriculture may provide services, facilities, supplies, and equipment to any program agency carrying out projects under this title. Whenever possible, the Secretary of the Interior and the Secretary of Agriculture shall make arrangements with the Secretary of Defense to have logistical support provided by a military installation near the work site, including the provision of temporary tent centers where needed, and other supplies and equipment. Basic standards of work requirements, health, nutrition, sanitation, and safety for all projects shall be established and enforced.

(c) REQUIREMENT OF PAYMENT FOR CERTAIN SERVICES.—Enrollees shall be required to pay a reasonable portion of the cost of room and board provided at residential facilities into rollover funds administered by the appropriate program agency. Such payments and rates are to be established after evaluation of costs of providing the services. The rollover funds established pursuant to this section shall be used solely to defray the costs of room and board for enrollees. The Secretary of the Interior and the Secretary of Agriculture and the Secretary of Defense are authorized to make available to program agencies surplus food and equipment as may be available from Federal programs.

SEC. 406. FEDERAL AND STATE EMPLOYEE STATUS.

Enrollees, crew leaders, and volunteers are deemed as being responsible to, or the responsibility of, the program agency administering the project on which they work. Except as otherwise specifically provided in the following paragraphs, enrollees and crew leaders in projects for which funds have been authorized pursuant to section 413 shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment:

(1) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to the compensation of Federal employees for work injuries, enrollees and crew leaders serving American Conservation Corps program agencies shall be deemed employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provision of that subchapter shall apply, except—

(A) the term "performance of duty" shall not include any act of an enrollee or crew leader while absent from his or her assigned post of duty, except while participating in an activity authorized by or under the direction and supervision of a program agency (including an activity while on pass or during travel to or from such post of duty); and

(B) compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee's or crew leader's employment is terminated.

(2) For purposes of chapter 171 of title 28, United States Code, relating to tort claims procedure, enrollees and crew leaders on American Conservation Corps projects shall be deemed employees of the United States within the meaning of the term "employee of the Government" as defined in section 2671 of title 28, United States Code.

(3) For purposes of section 5911 of title 5, United States Code, relating to allowances for quarters, enrollees and crew leaders shall be deemed employees of the United States within the meaning of the term "employee" as defined in that section.

SEC. 407. USE OF VOLUNTEERS.

Where any program agency has authority to use volunteer services in carrying out functions of the agency, such agency may use volunteer services for purposes of assisting projects carried out under this title and may expend funds made available for those purposes to the agency, including funds made available under this title to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, subsistence, recruiting, training, and supervision. The use of volunteer services permitted by this section shall be subject to the condition that such use does not result in the displacement of any enrollee.

SEC. 408. TENNESSEE VALLEY AUTHORITY.

The Board of Directors of the Tennessee Valley Authority may accept the services of volunteers and provide for their incidental expenses to carry out any activity of the Tennessee Valley Authority except policymaking or law or regulatory enforcement. Such volunteers shall not be deemed employees of the United States Government except for the purposes of chapter 81 of title 5 of the United States Code, relating to compensation for work injuries, and shall not be deemed employees of the Tennessee Valley Authority except for the purposes of tort claims to the same extent as a regular employee of the Tennessee Valley Authority would be under identical circumstances.

SEC. 409. SPECIAL RESPONSIBILITIES.

(a) PAY.—(1) The rate of pay for enrollees shall be the equivalent of 95 percent of the pay rate for members of the Armed Forces in the enlisted grade E-1 who have served for four months or more on active duty, from which a reasonable charge for enrollee room and board shall be deducted by the program agency.

(2) Enrollees shall receive $50 cash incentive stipends for every three months of enrollment in the program.

(3) The rate of pay for crew leaders shall be at a wage comparable to the compensation in effect for grades GS-3 to GS-7.

(b) COORDINATION.—The Secretary of the Interior and the Secretary of Agriculture and the chief administrators of program agencies carrying out programs under this title shall coordinate the programs with related Federal, State, local, and private activities.

(c) CERTIFICATION AND ACADEMIC CREDIT.—Pursuant to the provisions of paragraphs (B) and (C) of section 404(g)(3), the Secretary of the Interior and the Secretary of Agriculture shall provide guidance and assistance to program agencies in securing certification of training skills or academic credit for competencies developed under this title.

(d) RESEARCH AND EVALUATION.—The Secretary of the Interior shall provide for research and evaluation to—

(1) determine costs and benefits, tangible and otherwise, or work performed under this title and of training and employable skills and other benefits gained by enrollees, and

(2) identify options for improving program productivity and youth benefits, which may include alternatives for—

(A) organization, subjects, sponsorship, and funding of work projects;

(B) recruitment and personnel policies;

(C) siting and functions of facilities;

(D) work and training regimes for youth of various origins and needs; and

(E) cooperative arrangements with programs, persons, and institutions not covered under the title.

(e) CCC SITES.—The Secretary of the Interior, after consultation with the Secretary of Agriculture, shall study sites at which Civilian Conservation Corps activities were undertaken for purposes of determining a suitable location and means to commemorate the Civilian Conservation Corps. Not later than one year after the date of the enactment of this Act, the Secretary of the Interior shall submit a report to the Congress containing the results of the study carried out under this section. The report shall include cost estimates and recommendations for any legislative action.

(f) STUDY.—(1) Program agencies shall not use more than 10 percent of the funds avail-

able to them to provide training and educational materials and services for enrollees and may enter into arrangements with academic institutions or education providers, including local education agencies, community colleges, four-year colleges, area vocational-technical schools and community based organizations, for academic study by enrollees during nonworking hours to upgrade literacy skills, obtain a high school diploma or its equivalency, or college degrees, or enhance employable skills. Enrollees who have not obtained a high school diploma or its equivalency shall have priority to receive services under this subsection. Whenever possible, an enrollee seeking study or training not provided at his or her assigned facility shall be offered assignment to a facility providing such study or training.

(2) Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in programs conducted under paragraph (1) shall be consistent with the requirement of applicable State and local law and regulations.

(g) GUIDANCE AND PLACEMENT.—Program agencies shall provide such job guidance and placement information and assistance for enrollees as may be necessary. Such assistance shall be provided in coordination with appropriate State, local, and private agencies and organizations.

SEC. 410. ANNUAL REPORT.

The Secretary of the Interior and the Secretary of Agriculture shall prepare and submit to the President and to the Congress at least once each year a report detailing the activities carried out under this title in the preceding fiscal year. Such report shall be submitted not later than December 31 of each year following the date of enactment of this title.

SEC. 411. LABOR MARKET INFORMATION.

The Secretary of Labor shall make available to the Secretary of the Interior and the Secretary of Agriculture and to any program agency under this title such labor market information as is appropriate for use in carrying out the purposes of this title.

SEC. 412. EMPLOYEE APPEAL RIGHTS.

(a) FEDERAL EMPLOYEES.—In the case of—

(1) The displacement of a Federal employee (including any partial displacement through reduction of nonovertime hours, wages, or employment benefits) or the failure to reemploy an employee in a layoff status, contrary to a certification under section 413(c) (1) or (2), or

(2) the displacement of such a Federal employee by reason of the use of one or more volunteers under section 407 of this title,

such employee is entitled to appeal such action to the Merit Systems Protection Board under section 7701 of title 5, United States Code.

(b) OTHER INDIVIDUALS.—In the case of—

(1) the displacement of any other individual employed (either directly or under contract with any private contractor) by a program agency or grantee, or the failure to reemploy an employee in layoff status, contrary to a certification under section 413(c) (1) or (2), or

(2) the displacement of such individual by reason of the use of one or more volunteers under section 407 of this title,

the requirements contained in section 144 of the Job Training Partnership Act (Public Law 97-300) shall apply, and such individual shall be deemed an interested person for purposes of the application of such requirements.

(c) DEFINITION.—For purposess of this section, the term "displacement" includes, but is not limited to, any partial displacement through reduction of nonovertime hours, wages, or employment benefits.

SEC. 413 AUTHORIZATIONS OF APPROPRIATIONS.

(a) DISTRIBUTION OF FUNDS.—Of the sums appropriated pursuant to subsection (g) to carry out this title for any fiscal year—

(1) not less than 50 percent shall be made available to the Secretary of the Interior for expenditure by State program agencies which have been approved by the Secretary of the Interior for participation in the American Conservation Corps;

(2) not less than 15 percent shall be made available to the Secretary of Agriculture for expenditure by agencies within the Department of Agriculture, subject to the provisions of subsection (e);

(3) not less than 5 percent shall be made available to the Secretary of Agriculture, under such terms as are provided for in regulations promulgated under section 4(b), for expenditure by other Federal agencies;

(4) not less than 25 percent shall be made available to the Secretary of the Interior for expenditure by agencies within the Department of the Interior, subject to the provisions of subsection (e), and for demonstration projects or projects of special merit carried out by any program agency or by any nonprofit organization or local government which is undertaking or proposing to undertake projects consistent with the purposes of this title;

(5) not less than 5 percent shall be made available to the Secretary of the Interior for expenditure by the governing bodies of participating Indian tribes.

(b) AWARD OF GRANTS.—Within 60 days after enactment of appropriations legislation pursuant to subsection (g), any program agency may apply to the Secretary of the Interior for funds under this title. In determining the allocation of funds among the program agencies, the Secretary shall consider each of the following factors:

(1) The proportion of the unemployed youth population of the State.

(2) The conservation, rehabilitation, and improvement needs on public lands within the State.

(3) The amount of other support for the program and the extent to which the size and effectiveness of a program will be enhanced by the use of the Federal funds.

Any State receiving funds for the operation of any program under this Act shall be required to provide not less than 50 percent of the cost of such program.

(c) NON-DISPLACEMENT.—The Secretary of the Interior and the Secretary of Agriculture shall not fund any program or enter into any agreement with any program agency for the funding of any program under this title unless the Secretary concerned or such agency certifies that projects carried out by the program will not—

(1) result in the displacement of individuals currently employed (either directly or under contract with any private contractor) by the program agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the program agency concerned;

(3) impair existing contracts for services; or

(4) result in the inability of persons who normally contract with the agency for carrying out projects involving forestry, nursery, or silvicultural operations on commercial forest land to continue to obtain contracts to carry out such projects.

For purposes of paragraph (4), the term "commercial forest land" means land in the National Forest System or land administered by the Secretary of the Interior through the Bureau of Land Management which is producing, or is capable of producing, 50 cubic feet per acre per year of industrial wood and which is not withdrawn from timber utilization by statute or administrative decision.

(d) STATE SHARE TO LOCAL GOVERNMENTS.—If, at the commencement of any fiscal year, any State does not have a program agency designated by the Governor to manage the program in that State, then during such fiscal year any local government within such State may establish a program agency to carry out the program within the political subdivision which is under the jurisdiction of such local government. Such local government program agency shall be in all respects subject to the same requirements as a State program agency. Where more than one local government within a State has established a program agency under this subsection, the Secretary of the Interior shall allocate funds between such agencies in such manner as he deems equitable.

(e) PROGRAMS ON FEDERAL LANDS.—Funds provided under this section to any Federal agency shall be used to carry out projects on Federal lands and to provide for the Federal administrative costs of implementing this title. In utilizing such funds, the Federal agencies may enter into contracts or other agreements with program agencies and with local governments and nonprofit organizations approved under section 404(h).

(f) PAYMENT TERMS.—Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretary of the Interior or the Secretary of Agriculture, as appropriate, finds necessary.

(g) USE OF FUNDS.—Contract authority under this title shall be subject to the availability of appropriations. Funds provided under this title shall only be used for activities which are in addition to those which would otherwise be carried out in the area in the absence of such funds. Not more than 10 percent of the funds made available to any program agency for projects during each fiscal year may be used for the purchase of major capital equipment.

(h) ADMINISTRATIVE EXPENSES.—The regulations under section 4(b) shall establish appropriate limitations on the administrative expenses of Federal agencies and program agencies carrying out programs under this title. Such limitations shall insure that administrative expenses of such programs shall be minimized to the extent practicable taking into consideration the purposes of this title and the nature of the programs carried out under this title.

(i) APPROPRIATION LEVELS.—There is authorized to be appropriated for the purposes of carrying out this title $75,000,000 for each of the fiscal years 1987 through 1989. Funds appropriated under this title shall remain available until exended.

MULTIPLE APPEALS FILED WITH RESPECT TO THE SAME AGENCY ORDER

HATCH AMENDMENT NO. 3490

Mr. DURENBERGER (for Mr. HATCH) proposed an amendment to the bill (H.R. 439) to amend title 28, United States Code, to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order, as follows:

At the appropriate place insert the following:

SEC. . Section 172 of title 28, United States Code, is amended to read as follows:

§ 172. Tenure and salaries of judges.

"(a) Each judge of the United States Claims Court shall be appointed for a term of 15 years. Any such judge so appointed may be reappointed and shall continue in office until his successor takes office.

"(b) Each such judge shall be compensated at the rate equal to the rate received by judges of the United States Tax Court.".

DOLE AMENDMENT NO. 3491

Mr. DURENBERGER (for Mr. DOLE) proposed an amendment to the bill H.R. 439, supra, as follows:

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

Section 140 of Public Law No. 97-92, 95 Stat. 1183, 1200, is hereby repealed.

LEVIN AMENDMENT NOS. 3492 AND 3493

Mr. MATSUNAGA (for Mr. LEVIN) proposed two amendments to the bill H.R. 439, supra, as follows:

AMENDMENT No. 3492

Is amended by adding at the appropriate place the following new section:

"In the administration of the Immigration and Nationality Act, the provisions of section 204(c) of that Act shall be inapplicable in the case of Nabil Yaldo."

AMENDMENT No. 3493

Is amended by adding at the appropriate place the following new section:

"Notwithstanding the provisions of section 212(a)(23) of the Immigration and Nationaliy Act, Hyong Cha Kim Kay may be issued a visa and admitted to the United States for permanent residence if she is found to be otherwise admissible under the provisions of that Act.

"This exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the date of the enactment of this Act."

CORRECTING TECHNICAL ERRORS IN THE ENROLLMENT OF THE BILL H.R. 3838

PACKWOOD AMENDMENT NOS. 3494 THROUGH 3497

Mr. PACKWOOD proposed four amendments to the amendments of the House to the amendments of the Senate to the concurrent resolution (H. Con. Res. 395) to correct technical errors in the enrollment of the bill H.R. 3838, as follows:

AMENDMENT No. 3494

On page 5(D), in lieu of the matter proposed, insert the following:

On page 62, beginning with line 21, strike through page 63, line 6.

AMENDMENT No. 3495

In lieu of the matter proposed, insert the following:

On page 71, strike lines 4 through 7 and insert:

"(243) On page 76, in paragraph 11 (relating to certain aircraft)—

(A) strike "Kansas, Florida, Georgia, or Texas" in subparagraph (A) and insert "the United States";

(B) strike ", the date of conference committee action)" in subparagraph (B); and

(C) strike subparagraph (C) and insert:

(C) The aircraft is—

(i) purchased on or after August 16, 1986, and before January 1, 1987, or

(ii) is subject to a binding contract which was in effect on August 16, 1986, or entered into on or after August 16, 1986, and before January 1, 1987, and

is delivered and placed in service pursuant to such purchase or contract before July 1, 1987.

Any airplane which is one of 7 airplanes with respect to which an airline signed an airplane purchase agreement on January 20, 1986 (with respect to which the financing contingency was removed no later than February 7, 1986), the estimated cost of which is $2,900,000, and which was delivered before May 23, 1986, and placed in service by May 27, 1986, shall be treated as described in this paragraph

AMENDMENT No. 3496

In lieu of the matter proposed, insert the following:

Strike out the proposed paragraphs (297) and (305).

AMENDMENT No. 3497

In lieu of the matter proposed to be inserted by the House amendment (4) the following:

( ) On page 315, in paragraph (3) (relating to transitional rules) add the following new subparagraphs:

(W) South Carolina Family Farm Development Authority with respect to obligations the aggregate amount of which shall not exceed $10,000,000 issued on or before December 31, 1989.

(X) Clemson University Continuing Education and the Component Housing Project.

( ) On page 617, insert between the 5th and 4th lines from the bottom of the page, the following flush language:

"The provisions of this paragraph shall not apply to any bond issued after December 31, 1990.".

( ) On page 73 of the House Concurrent Resolution, strike "a 150,000 square foot office building which is projected to cost" and insert "the Eastman Place project and office building in Rochester, New York, which is projected to cost up to".

MOYNIHAN AMENDMENT NO. 3498

Mr. MOYNIHAN proposed an amendment to amendment No. 3497 proposed by Mr. PACKWOOD to the amendments of the House to the amendments of the Senate to the concurrent resolution (H. Con. Res. 395) to correct technical errors in the enrollment of the bill H.R. 3838; supra, as follows:

At the end of the amendment, insert the following new section:

Sec. . (a) Section 408 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1378) is amended by adding at the end the following new subsection:

"FAIR TREATMENT OF EMPLOYEES

"(g) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to adversely affect the wages and working conditions including the seniority of any air carrier employees, labor protective provisions calculated to mitigate such adverse consequences, including procedures culminating in binding arbitration, if necessary, shall be imposed by the Secretary as a condition of approval, unless, the Secretary finds that the projected costs of protection would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving there will be no adverse employment consequences or that projected costs of protection would be excessive.".

(b) That protion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 408. Consolidation, merger, and acquisition of control."

is amended by adding at the end the following:

"(g) Fair treatment of employees.".

ADDITIONAL STATEMENTS

PRESIDENT'S COUNCIL ON HEALTH PROMOTION AND DISEASE PREVENTION—S. 2057

● Mr. LUGAR. Mr. President, I am pleased, along with my colleagues Senators HATCH and KENNEDY, to be an original cosponsor of this bill to establish the President's Council on Health Promotion and Disease Prevention.

Since I first came to the U.S. Senate, I have been interested in issues surrounding health and fitness. In recent years such topics have come to the forefront of discussion because of the public's growing awareness of the tremendous impact which lifestyle decisions have on disease prevention, health promotion, and fitness. Disease prevention and health promotion, including the importance of physical fitness, have become a national policy issue, and we all have become more conscious than ever before that it is an area with serious economic consequences.

Lifestyles and fitness decisions have consequences in terms of health care expenditures which must be paid not only by the individual but also by society. The Council which this legislation

proposes to establish will contribute a great deal toward elevating public awareness of how important these choices are for a nation that spends some $438 billion each year for health care, much of it for the treatment of preventable diseases.

The fact is, health care costs are escalating at a rate well beyond inflation. In 1960, the Nation spent less than $26 billion on health care. In 1985, Americans spent $438 billion, an increase of nearly 17 times over a period of only 25 years. This increase in health care costs has placed a heavy financial burden not only on individuals but also on business and Government. A major part of the Federal budget is directly linked to these costs. Health care and other social welfare programs now make up almost half of the Nation's budget.

Given the impact of escalating health care costs, it is important to emphasize that changes in nutrition and lifestyle have tremendous influence on an individual's personal health and productivity. For example, it is estimated that an employee who smokes costs employers between $624 and $4,611 more per year in medical costs, lowered productivity, absenteeism, and other expenses than a nonsmoking employee. Alcoholism is thought to account for $19 billion in lost work productivity annually. However, the results of a recent medical study published in the New England Journal of Medicine indicated that the risk of heart attack in male cigarette smokers decreases within a few years of quitting to a level similar to that of men who have never smoked.

Most Fortune 500 companies as well as thousands of smaller firms are taking an active interest in the physical condition of their employees. The establishment of physical fitness and nutrition programs within a company results in lower health and insurance costs, less absenteeism and turnover, and increases productivity within the work force.

In the past several years, there have been major political debates in Congress over the question of food additives that cause cancer in laboratory animals. Yet the study by the National Cancer Institute found that food additives cause less than an estimated 1 percent of the cancer in the Nation. More than a third of all cancers are directly linked to diet. In short, the leading causes of cancer are factors that individuals can control.

Given these facts, the need to elevate public awareness of the issues involved with health promotion and disease prevention is clear. The President's Council on Health Promotion and Disease Prevention would take various steps to educate citizens of the health impact of nutrition, physical exercise, and lifestyle choices. The Council would encourage State and local governments, and private entities to develop research programs and activities related to health promotion and disease prevention. The Council will examine the most effective means of informing all segments of society, particularly the poor and least educated of our citizens. They have suffered the most from preventable diseases but have been traditionally under informed above the health consequences of nutrition and lifestyle choices.

I am particularly pleased to be a part of this legislation as I have had a longstanding personal interest in health promotion and disease prevention. I am a runner and have sponsored a fitness festival in my home State of Indiana for the past 7 years. The greater questions in our national health are critical to our ability to compete in the world. If we are to be competitive as a nation, we must be prepared for the challenges mentally and physically, factors which greatly supplement the foundations of strong character and leadership ability. We must care for our own sakes, but even more importantly we must prepare our children with good lifelong habits of health and fitness. The Council will be a national vanguard of this endeavor.●

REA PRIVATIZATION DEMONSTRATION PROGRAM

● Mr. MURKOWSKI. Mr. President, I join my colleague from Alaska and others in supporting the privatization demonstration program to allow Rural Electrification Act [REA] cooperatives, at their option, to prepay all their REA-related loans and transition from the Federal program to the private sector.

This provision in the Continuing Resolution before us provides a valuable incentive for REA Cooperatives with the federally guaranteed debt to pursue the private capital markets as an alternative to their historic reliance on the REA Program. Consumers of a cooperative choosing to participate in the demonstration program stand to gain through the savings associated with prepayment of their REA loans. Under the program, which initially will be offered in Alaska, prepayment premiums will be waived on guaranteed loans and discounted buy-back rates will be established for direct or insured loans.

I would have preferred that the privatization demonstration program be available to any REA cooperative, as was the case in the continuing resolution language before it was amended last night on the House floor. However, the pilot program's initial operation in Alaska should provide us with very useful information within the next year to see if it should be offered to REA borrowers elsewhere. I am personally aware of at least one Alaska cooperative, Chugach Electric Association of Anchorage, with serious interest in the demonstration effort.

I appreciate the involvement of the administration with the Alaska delegation and other members to develop this important privatization option that I believe will be of increasing significance to consumers and to the Federal Government. Mr. President, I strongly support the REA demonstration program provision, and I particularly thank Senator STEVENS for his fine work on this amendment.●

PREVENTING AND TREATING CHILD SEXUAL ABUSE: NEW PROBLEMS AND POSSIBLE SOLUTIONS

● Mr. DODD. Mr. President, on May 16, 1986, in New Orleans, LA, the Senate Children's Caucus sponsored its second policy forum on the disturbing topic of child sexual abuse. Once again, this forum was held as part of the Biennial Conference on Childhood Sexual Victimization sponsored by Children's Hospital National Medical Center.

Three distinguished panels of witnesses testified before the Senate Children's Caucus on May 16, 1986. The first panel focused on prevention efforts in schools and communities. Our younger witnesses included two students at George Mason Junior-Senior High School in Falls Church, VA. They were Edward Friend, age 16, and Frank Grimberg, age 17. A third student, Dionne Julien, a 21-year-old student at the Southern University of New Orleans, also testified. All three students stressed the importance of instituting sexual abuse prevention and awareness programs in schools for teenagers and younger children.

Father Mark-David Janus, a constituent of mine from the University of Connecticut, spoke most eloquently of the plight of runaway youth, at risk of sexual exploitation on the streets. He emphasized the need to prevent the sexual and physical abuse at home which leads young people to run away in the first place. Helen Swan, a consultant to the Kansas Chapter and the National Committee for the Prevention of Child Abuse, outlined the history and recent activities of the Kansas Children's Trust Fund and its support for community-based prevention programs.

Our second distinguished panel of experts focused on the recent backlash in some communities which has accompanied press reports of child sexual abuse. Lucy Berliner, founder of the Sexual Assault Center at the Harborview Medical Center in Seattle, focused on the issue of false reporting and its relationship. Dr. Roland Summit of the Harbor-UCLA Medical Center in Los Angeles attempted to put recent highly publicized cases of

sexual abuse and their relationship to backlash into perspective. And Dr. Robert Casse of the Louisiana State Office of Human Development described his State's comprehensive report on child abuse as one means of combating backlash.

The third panel of distinguished witnesses focused their remarks on intervention and treatment. Dr. Jon Conte, professor of social service administration at the University of Chicago, outlined the ways in which child abuse victims are further neglected when intervention fails to result in treatment. Sandra Baker of the child sexual abuse trauma treatment program in Sacramento reviewed new methods for treating both victims and offenders. Dr. Carl Rogers, assistant director of the division of child protection at Children's Hospital National Medical Center spoke of gaps in hospital-based crisis intervention and treatment services. Last but not least, Sheryl Brisett-Chapman of the child welfare league recommended changes in Federal policy to improve intervention and treatment services across the country.

In closing, Mr. President, I commend all the distinguished witnesses who spoke in New Orleans for their excellent and compelling testimony. I would also like to express my gratitude to Representative LINDY BOGGS from Louisiana who attended the forum and contributed the expertise she has gained as chair of the Crisis Intervention task force on the House Select Committee on Children, Youth, and Families.

I submit for the RECORD my opening statement. The transcript of the forum and the written testimony of all the witnesses is available in my office. I urge my colleagues and their staffs to contact Marsha Renwanz of my staff if they wish to review this important record.

The statement follows:

OPENING STATEMENT OF SENATOR CHRISTOPHER J. DODD, SENATE CHILDREN'S CAUCUS, POLICY FORUM: "PREVENTING AND TREATING CHILD SEXUAL ABUSE: NEW PROBLEMS AND POSSIBLE SOLUTIONS"

I am pleased to call to order this policy forum, the second sponsored by the Senate Children's Caucus on the disturbing topic of child sexual abuse. We are grateful to Children's Hospital National Medical Center for again inviting us to hold the forum here at their conference.

Two years ago, I opened our forum by observing that indictments in a Los Angeles preschool had brought this issue to the forefront of public attention. Legal pronouncements earlier this year in that same case have again aroused controversy. There are some who now want to shoot the messengers: namely, those dedicated therapists who help young children find the signs and words to disclose their victimization. Others protest against politicians, alleging that we have capitalized on an issue that is more fiction than fact. Still others maintain that there has been a huge surge in false reports, evaluating efforts to protect children as irrelevant or irreparably injurious to families.

Backlash and backward thinking may try to cover up child sexual abuse, but they won't make it disappear. I said it 2 years ago and I'll say it again today: by even the most conservative estimates, a child is sexually abused someplace in this country every 2 minutes. And although some of our distinguished witnesses here this morning may differ with me in estimating incidence, none would disagree with the contention that our systems of intervening, treating, and preventing such abuse have not kept pace with the dramatic increase in reported cases. The Child Welfare League has pointed out that despite a 59 percent increase in sexual abuse reports in some 20 States, budget squeezes and staff cutbacks have left many with the draconian choice of investigating only if the child is "too young to run."

We know that children from all age, class, and ethnic groups can be at risk of sexual victimization. Boys are not exempt from such abuse. Neither are infants, given reported cases involving 2 and 3 month-olds. And close to half of all victims under age 18 will be the targets of repeated sexual abuse.

We also know that child sexual abuse can trigger many other serious problems, some of them long-lasting. As one witness will testify today, in some instances teenage pregnancy is the direct result of such abuse. In others, the connection is indirect: the result of sexual acting out by teens who were victimized as young children. Child sexual abuse has likewise been linked to alcohol and drug abuse, juvenile delinquency, serious depression, and youth suicide attempts.

In the midst of this bleak scenario, it is important to remember that we have made some progress. With the help of colleagues from both sides of the aisle, I was able to restore the Federal funding for sexual abuse prevention and treatment eliminated in 1981. Legislation I introduced to provide Federal challenge grants for States that setup children's trust funds is now public law. And legislation encouraging reforms to reduce the court-room traumatization of child victims has passed the Senate.

As our expert witnesses this morning will remind us, however, much more needs to be done if we are to continue to make any headway. As the recent Louisiana study so aptly demonstrates, failure to insure proper training for staff and strict standards for investigation and treatment seriously impedes efforts to protect sexually abused children. Emphasizing the investigative process at the expense of treatment services may leave child victims in an untenable position, blaming themselves for the disruption that inevitably accompanies the reporting of abuse without any hope of improvement. And, failure to make treatment a priority for both victims and offenders will only perpetuate the cycle of abuse. As a result, I would like to work on legislation using different funding mechanisms to expand or establish treatment programs in a wide range of settings, from schools and community clinics to hospitals and prisons.

In closing, failure to put the media's almost exclusive focus on dramatic cases into perspective may lead to the neglect of less sensational but equally compelling, intrafamilial cases of sexual abuse. And failure to combat backlash and backward thinking may jeopardize decade-long progress in passing and funding a variety of Federal and State prevention and treatment programs. In this respect, I am anxious to hear the reactions of our witnesses to administration proposals to abolish the national center on child abuse and neglect and fold all child abuse and family violence programs into one block grant.

But before I call on our first distinguished panel of witnesses, let me see if my colleagues wish to make any opening remarks.●

SOVIET POLITICAL PRISONERS DAY

● Mr. RIEGLE. Mr. President, from its very inception, the Soviet Union has practiced a policy of political suppression which it has spread to its illegally seized nations, as well as its satellite nations. The people of 36 distinct nationalities are imprisoned in labor camps, prisons, and pychiatric hospitals. To honor the brave people who have fought against this oppression, October 30 has been declared Soviet Political Prisoners Day.

During the early 1930's, the Soviet Union tried to destroy the last vestige of Ukrainian nationalism. Stalin imposed a widespread famine to force the collectivization of Ukrainian farms. Although Stalin's plan failed, his actions led to the deaths of 7 million Ukrainian people. The Soviet Government continues this oppression today on an individual level.

Iosif Begun had just finished a 2-year term of internal exile for parasitism in 1980. In 1982 he was arrested again and charged with "anti-Soviet agitation and propaganda." Begun was sentenced to 7 years in a labor camp and 2 years internal exile.

Leonid Volvovsky was arrested and charged with "defaming the Soviet state." He was sentenced to 3 years in a labor camp.

Zakhar Zunshain was arrested and charged with "circulation of fabrications known to be false which defame the Soviet state and social system." He was sentenced to 3 years in a prison.

Igor Ogurtsov, a Russian activist, was tried and found guilty of treason for his religious and political activities. Now in failing health, Ogurtsov is completing the final months of a 20-year sentence in prison and in exile.

When the Soviet Union signed the Helsinki Final Act of 1975, outrages like the ones committed against Begun, Volvovsky, Zunshain, and Ogurtsov were supposed to end. Over 100 Soviet citizens openly joined watch groups to monitor Soviet compliance. As of August 1985, the Soviet Union had imprisoned 51 members, imprisoned and released 20 others, and forced another 18 members to emigrate. As a result, the Moscow Helsinki Group announced, in September 1982, that it had to discontinue its activity.

One member of the Moscow group is Elena Bonner, wife of Andrei Sakharov. Sakharov was exiled to Gorky without trial or sentence, and on August 17, 1984, Bonner was also

exiled there. She described exile as being unable to talk to anyone except Sakharov, having her apartment searched so often that she left the key in the door when she left, and opening mail to find dozens of cockroaches scurrying out of the envelope. This mental torment is unjustifiable punishment for acts which are protected under the Helsinki accords.

In many cases, sentences to labor camps and psychiatric hospitals are used in conjunction with internal exile. Dr. Anatoly Koryagin, a member of the Commission on Psychiatric Abuse, wrote:

> All the people I examined had joined the ranks of the mentally ill because they did or said things which are considered "anti-Soviet."

Dr. Koryagin was sentenced to 7 years in strict regimen labor camp and 5 years internal exile for making that statement. While at the labor camp, Dr. Koryagin has been brutally beaten, forced to work for 14 hours a day, is malnourished, and must live in unsanitary conditions.

Now the Soviet Union has devised a method to prevent some prisoners from ever being released. Article 188-3 of the Soviet Criminal Code, enacted in October 1983, makes infractions of prison camp rules subject to criminal penalties. Under this law, a prisoner's sentence can be extended indefinitely.

As deplorable as the conditions are in the prisons and in the labor camps, even more disturbing is the ease with which the Soviet Government imprisons its citizens. Public outcry is the only hope for these brave Soviet citizens. Soviet Political Prisoners Day was established for just this reason. We, who are free, must be the voice for those who are not permitted to speak for themselves.●

GERRY WYRSCH

● Mr. HECHT. Mr. President, for Gerry Wyrsch, sine die adjournment of the 99th Congress brings to a close over 9 years of dedicated and skillful service to the United States Senate. As his career on the Hill ends, Gerry departs with a finely developed knowledge of, and respect for, this institution, all of which I am sure makes it difficult indeed for him to say goodbye to Washington.

While he has served other Members of this body, Mr. President, Gerry has been a valued part of my office since I was elected in 1982. In fact, Gerry was the first legislative staff person I hired, and he has served me with dedication and distinction ever since. Most recently, Gerry has been my special assistant on the Subcommittee on Housing and Urban Affairs. And, as always, he has provided me with excellent counsel and advice.

Mr. President, Gerry now heads home to the West with his lovely wife Martha. My staff and I thank Gerry for his excellent work and example and the many fine contributions he made to the great State of Nevada. We all wish Gerry and Martha the very best in their new home and for the future.●

HESTER AND WINNIE FRANKS

● Mr. PRYOR. Mr. President, next month, Hester and Winnie Franks of Dumas, AR, will celebrate their 50th wedding anniversary. This beloved couple and long-time friends of mine are an institution in their community.

Hester Franks, a retired employee of the Crow-Burlingame Co., has been an active participant in the Dumas business community. In fact, he served as president of the Dumas Chamber of Commerce and its Industrial Foundation. Active in the local Lions Club, Hester was also a mover and a shaker in the drive to establish the Southeast Arkansas Medical Center in Dumas.

A strong proponent of providing activities for the area's young people, Hester has been long active in Dumas' athletic programs.

His wife, Winnie, a very talented artist, dedicated for many years her energies to the First United Methodist Church.

They now enjoy a well-deserved retirement in the community they so dearly love and I join their many friends and relatives in paying tribute to their golden anniversary. I wish them continued good health and happiness.●

NANCY STEHLE

● Mr. HECHT. Mr. President, I want to take time today to pay tribute to a recently departed member of my staff, Ms. Nancy Stehle. While her tenure was short, her impact was great and she is sorely missed.

Mr. President, in March of this year, Nancy temporarily joined by staff as a congressional fellow upon taking a leave of absence from her official role as a civilian within the Department of the Navy. Ms. Stehle holds the position of Deputy Director of Environmental Programs, within the Office of the Assistant Secretary of the Navy, Shipbuilding and Logistics. In that capacity, Nancy is responsible for overseeing environmental program development for the Navy.

In her short but fruitful stay, Mr. President, Nancy has had the opportunity to witness, first hand, the inner workings of Congress and how Capitol Hill affects our daily lives, While she has been enlightened, from my perspective, Mr. President, Nancy's technical expertise, enthusiasm and motivation have been invaluable to me and my entire staff. Her loss is felt.

Nancy is unique to us, Mr. President, and she remains our friend. As she departs the Senate, my staff and I thank her for her hard work and inspiration and wish her all the very best for the future.●

NATIONAL DAY FOR WOMEN IN SPORTS

● Mr. DOMENICI. Mr. President, I am proud to be a cosponsor for Senate Joint Resolution 418 which designates February 4, 1987 as a "National Day for Women in Sports". The House has passed a similar measure, House Joint Resolution 740, and the bill is awaiting the President's signature. I think it is very important to recognize the positive effect which participation in sports has on the young people in our country, and the opportunity it provides, particularly for women.

Sports develops skills which serve the athlete not only on the playing fields but in all of life's pursuits. Many of our leaders obtained their first taste of leadership through participation in sports. Leadership requires a fine balance between concern for others and a self-confident drive to win. Nowhere can women obtain these skills better than in sports.

I am very proud of our outstanding program in New Mexico because it provides a well-rounded health and physical education curriculum. As a former professional baseball player, I know the value of this kind of experience.

Both the University of New Mexico in Albuquerque and New Mexico State University in Las Cruces have outstanding women's golf programs. The New Mexico State team won the High Country Athletic Conference championship last year. It is a tribute to the State's fine women's golf programs that both of these New Mexico universities have been chosen for the honor of hosting the National Collegiate Athletic Association Women's Golf Championship, one in 1987 and the other in 1988.

New Mexico schools also have a fine women's basketball program. The girls' team from Kirtland Central High School in Fruitland, NM, has been State champion in basketball six straight times. One more win will set a national record. The Southwest International Sports Federation from Albuquerque is sponsoring a basketball competition between a group of outstanding New Mexico high school girls and teams in Finland and the Soviet Union in April 1987.

In my field of human endeavor, there are at least a few people who serve as examples of excellence. In these individuals, we are able to find a measure of our own possibilities instead of a reminder of our own limitations. The State of New Mexico claims several outstanding women athletes.

Nancy Lopez is one of those examples of excellence. By the time she was seven, she was following her parents around the Roswell, NM, public course. When she was 8, her dad gave her a sawed-off four wood. Within a year she was playing rounds with him, and by age 11 she was beating him. At 12 she won the first of three State women's tournaments. At Godard High School in Roswell, she ranked No. 1 on an otherwise all-boy golf team, and led the team to a State championship. From the beginning of her professional career, she was a record-setter both for the size of her purses and the number of consecutive tournaments she won. She was noted as a tough competitor with a warm personality, gracious under pressure and a favorite with the gallery.

Kathy Whitworth, who grew up in Jal, NM, is another noted woman golfer with an impressive record of wins and earnings. In the early 1970's she was instrumental in getting the number of events and women's purses increased, attracting many firms to sponsor women's tournaments. She said, "This is a game where you learn a lot about yourself. You learn your own capabilities and how you react under pressure."

Other noted women golfers from New Mexico include LPGA members Rosey Jones, Alexandra Reinhardt, and Kris Monaghan.

Claudia Schleyer received All-American honors, both as a basketball player and for academic performance, three times while she was attending Eldorado High School in Albuquerque. She went on to graduate this year from Abilene Christian University with a 3.9 grade average in pre-med. She is the Nation's leading scorer and holds the record in Division II college basketball. She also received the Southland Corp. Award this year, given to the top 10 amateur athletes in the United States.

Cathy Carr was an Olympic champion in 1972 while attending Highland High School in Albuquerque. She set two world records, claiming gold medals for both the 100-meter breast stroke and the 400-meter medley relay.

Darlene Anaya of Albuquerque won a first in Judo in the 1983 Pan Am Games.

Laurel Brassey, a volleyball champion, came in sixth in the 1975 Pan Am Games, fourth in the 1979 Pan Am Games, and was selected as a member of the American Olympic Swim Team in 1980.

These and the many other fine women athletes from New Mexico and every other State deserve to be honored by the country as a whole. I urge the President to sign this measure and provide suitable recognition to our sports heroines on February 4, 1987.●

MANITOWOC'S WCUB WINS PRESTIGIOUS FORUM AWARD

● Mr. KASTEN. Mr. President, a local radio station in Manitowoc recently gained a national award that reflects well, not only on the station itself, but also on the State of Wisconsin.

WCUB, a 5,000-watt AM radio station that serves the 33,000-resident lakeshore community of Manitowoc, as well as 17 counties across east, northeast, and central Wisconsin, has won the prestigious "Forum Award," sponsored by the Atomic Industrial Forum.

What makes this accomplishment particularly noteworthy is that past winners of the Forum Award, which was established in 1969 to recognize both print and electronic media coverage of nuclear energy issues, have included BBC Radio Science Unit, the Associated Press Radio Network, National Geographic, New Yorker, and United Press International, to name a few.

That a local radio station in Wisconsin has been added to this prestigious list is a great honor, indeed.

WCUB news editor Ruth Ann Schmidt and news director Mike Kinzel produced a six-part series on the Point Beach Nuclear Powerplant in Two Rivers, WI. Their series focused safety precautions needed for nuclear energy, the economic benefits of nuclear energy and how local residents react to having a nuclear powerplant in their community.

According to the Atomic Industrial Forum, the WCUB series put a "really good picture across, even though it was a radio report."

I would especially like to recognize Ruth Ann and Mike for their professionalism and the quality of their work. These two individuals constitute the entire news department at WCUB.

Ruth Ann, 25, is a native of Two Rivers, WI, and a graduate of the TransAmerican School of Broadcasters in Wausau, WI. She has been with WCUB for 4 years, and is the daughter of Gerald and Helen Schmidt.

Mike Kinzel, 40, has been with the station for 15 years. He is a native of Manitowoc and a graduate of the University of Wisconsin in Madison with a degree in journalism.

WCUB's "Nuclear Neighborhood," ironically, ran the week of the Chernobyl incident, April 29 through May 3. The industry of these two professional radio news reporters was, thus, timely as well as informational.

Mr. President, Ruth Ann and Mike will be in Washington to receive their award on November 18. I wish both of them the best for continued success in their journalistic careers and, on behalf of the people of Wisconsin, congratulate them on this significant achievement for themselves, for their station, and for the State of Wisconsin.●

REPORT ON TRIP TO PEOPLE'S REPUBLIC OF CHINA

● Mr. HEINZ. Mr. President, on May 23, 1986, I was privileged to lead a delegation of our distinguished colleagues, including Senators from New Jersey [Mr. BRADLEY], Virginia [Mr. TRIBLE], and Maryland [Mr. SARBANES] to the People's Republic of China.

Our goal in visiting the People's Republic of China was to investigate a number of important issues affecting future relations between the United States and the People's Republic of China through discussion and debate with our Chinese hosts. Our first objective was to gauge the convergence of economic and strategic interests between the United States and China as a basis for long-term cooperation. This included discussion of shared strategic objectives with regard to the Soviet Union and expanding bilateral trade and investment.

A second area of inquiry that we had a deep interest in investigating was China's ambitious economic modernization program. Beyond the basic outlines of the program, our discussions focused on the prospects for its realization given the physical and policy limitations facing the country and the uncertainty of a sustained political commitment to open economic policies.

We undertook extensive meetings with managers of production facilities, Chinese officials, and United States businessmen to gain a better understanding of the impact of economic modernization on the Chinese economy and the level of political commitment to reform among Chinese decisionmakers. These discussions also provided us with firsthand accounts of the growth and development constraints resulting from shortages of trained manpower and managers, the weakness of the current technological base, and limited access to foreign exchange.

Beyond what might be termed physical constraints, we delved into the institutional and policy constraints that the Chinese continue to inflict on themselves. We challenged the Chinese to remove the structural limitations imposed by Chinese Government policies. We had extensive discussions of the problems of currency inconvertibility, limited labor mobility, an all-encompassing social welfare system counted as an overhead cost of production for each workplace, and limitations placed on access to essential goods, services, and credit by Government planners and bureaucrats. We also explored flaws in basic macroeconomic policies including monetary policy, capital market development, tax policy, and general market pricing. Chinese policymakers indicated that they understood very well many of the criticisms we presented, but offered

few assurances that meaningful reform was imminent.

The third key area of our investigations was the United States role in supporting Chinese modernization and the climate for United States trade and investment in China. To put the issue in context, we gathered data and sought Chinese insights on the role United States goods and technology have been playing in improving China's civilian and military industrial base and the impact of United States and COCOM export regulations on the flow of technology to China. To assess the future of United States involvement in China, we explored Chinese development priorities and potential for free access by United States firms to the Chinese domestic market, a major sticking point with the Chinese but essential to attainment of their investment goals.

In investigating the United States role in China, we focused considerable attention on the strengths and constraints cited by the Chinese and Americans as facing United States investors in China. The greatest strength that we found was the clear preference, repeatedly cited by the Chinese, for dealing with United States firms, especially compared to the Japanese. The Chinese cited United States firms' willingness to commit investment dollars and technology to China. The Japanese, on the other hand, were criticized for being salesmen, unwilling to undertake direct investment or provide technology.

Unfortunately, we also found almost overwhelming constraints facing United States firms interested in investing in China. The problem most often cited is the requirement that prescribed levels of foreign exchange earnings—or import substitution goals—be attained before profits can be repatriated. A second problem in sealing a deal in China is limited and uncertain legal protections. Third, businessmen cited poor quality and overpriced land, labor, and other inputs to production. We made repeated efforts to explain these problems to the Chinese and to bring the full dimension of the problem home to them in our discussions. Despite some very lively debate on these issues, however, the Chinese remained unwillingfully to accept our assessment of the situation or to commit themselves to effective steps to resolve them.

The final area we discussed with the Chinese was the potential for friction in Sino-American relations arising from problems in the trade area. We had a frank discussion of rapidly increasing levels of Chinese textile exports to the United States. We stated in the clearest possible terms that, while the Chinese may view the United States economy as huge and easily able to absorb their textiles, the loss of jobs in the United States due to surging textile imports is simply unacceptable. We noted that the U.S. economy is the most open in the world and that we are glad to share its growth with others, but we will not see it swamped by imports to the detriment of U.S. industries.

A second, but less immediate, issue raised concerned China's long-term trade strategy. The Chinese stressed their need to expand and upgrade the value of their exports in order to finance essential imports and indicated that they are focusing on consumer products such as computer peripherals for the markets on the Pacific rim. We noted that, over time, this could result in China joining other Asian economies producing such goods, displacing United States goods in Pacific rim markets, and eventually increasing competition in a few product lines in the United States market. We stressed that the Chinese will have to take care to avoid a mercantilist approach that only creates new stresses in the international trading system.

As you can ascertain from my remarks, my colleagues and I had a very lively and exhaustive set of discussions with our Chinese hosts on a broad range of issues. We found many issues in agreement between our own countries but also identified many areas of disagreement that should keep our diplomats busy for years to come. While our trip did not resolve our bilateral problems, it was a tremendous learning experience for me and for the other Senators and, I believe, for our hosts as well.

I would like to offer special thanks to all of our Chinese hosts for their hospitality and for the frankness and openness with which they approached our discussions. I would also like to pay tribute to Senators BRADLEY, TRIBLE, and SARBANES for their hard work, probing questions, and the vigor they sustained throughout a journey of many thousands of miles and many days. We all learned a great deal and, I hope, made a small contribution to putting Sino-American relations on a firmer footing for the future.

I would like to include in the RECORD a report of our trip. It includes an overview of our visit, a discussion of the issues I summarized in my remarks, and our findings and conclusions on issues facing the United States and China in the coming decades. I ask that our report be printed immediately following these remarks.

The report follows:

SENATE BANKING COMMITTEE REPORT

VISIT OF CODEL HEINZ TO CHINA

Overview of Delegation Visit

A Senate delegation led by Senator John Heinz, Chairman of the Banking Committee's Subcommittee on International Finance and Monetary Policy, visited the People's Republic of China from May 23 to June 1, 1986. The delegation included Senators Bill Bradley, Paul Sarbanes, and Paul Trible and sought to investigate the following issues.

The convergence of economic and strategic interests between the United States and China, including shared strategic objectives with regard to the Soviet Union and expanding trade and investment.

China's ambitious economic modernization program, physical and policy constraints facing the country, and the likelihood of a sustained political commitment to open economic policies.

The U.S. role in supporting modernization and the climate for U.S. trade and investment in China.

Potential sources of friction in Sino-American trade and economic relations.

The delegation's visit was hosted by the Chinese People's Institute for Foreign Affairs (CPIFA).

In order to gain exposure to the widest range of opinion on these issues in the time available, the delegation travelled to seven cities in north, central and southern China, and met with Central government policymakers, local officials, and line managers of production facilities.

The delegation arrived in Beijing on May 23 and received a formal welcome to China from His Excellency Han Nianlong, President of CPIFA, and Madame Zhu Man Li, Deputy Secretary General of the Institute. An introductory briefing on the full range of U.S. political, military, and commercial relations with China was provided by U.S. Embassy staff at the home of Charge d'Affaires Peter Tomsen.

On Saturday, May 24, the delegation met with Mr. Bu Ming, Chairman of the Board of the Bank of China, who provided a financial overview of the Chinese economy along with his views on economic modernization and policy reform. In the afternoon, Xu Xin, Deputy Chief of the General Staff of the People's Liberation Army discussed the Soviet threat in Asia, current Chinese military policy, and areas of disagreement in strategic policy between China and the United States.

On Monday, May 26, the delegation met with Mr. Jia Shi, President of the China Council for Promotion of International Trade (CCPIT), for a discussion of Sino-American commercial relations including problems in the investment regime and bilateral trade issues. This was followed by a meeting in the Great Hall of the People with Vice Premier Li Peng, the most senior Chinese official on the itinerary, during which he provided a broad overview of China's foreign policy including points of convergence and divergence between the United States and China. Next the delegation met with Vice Minister of Foreign Affairs Zhu Qizhen, the official responsible for Sino-American relations, and examined prospects for closer bilateral relations. Finally, discussion returned to bilateral trade and investment issues in a dinner meeting with Mr. Lin Hanxiong, Minister of the State Administration of the Building Materials Industry, and Qian Qichen, Vice Minister of Foreign Affairs.

On Tuesday, May 27, the delegation left Beijing and flew to Inner Mongolia. The day was spent touring the tank production facilities at the Inner Mongolia Number One Machinery Plant in Baotou and meeting with municipal officials. At the factory, the Director, Mr. Zhang Jun Ju, explained the plant's operations and conducted a tour of tank and rail car production lines. The delegation then met with Baotou Deputy Mayor

Zhang Zhiyu for a discussion of economic development and the modernization program in Baotou before departing for Xian, the old imperail capital in central China.

On Wednesday, May 28, the delegation visited the Lishan Microelectronics Company, a major high technology research and production facility. Mr. Yang Li Qan, President, and Mr. Huang Chang, Chief Engineer, provided an overview of Lishan's training and research programs; then Mr. Huang, a U.S. trained scientist, led a tour of the semiconductor manufacturing facility and discussed the impact of Western export controls on Chinese technological development.

On Thursday, May 29, the delegation departed Xian and flew to Shanghai. U.S. Consul General Thomas Brooks and his staff provided an overview of the Shanghai economy and U.S. business involvement there and a tour of the commercial district.

On Friday, May 30, the delegation had a full day of meetings beginning with a visit to the Xin Zhonghua Machinery Factory, producer of orbital rocket launchers and of refrigerators for the mass market. A briefing was provided by the Director, Mr. Zhang Wen Zhang, assisted by Madame Huang Zhong Qi of the Shanghai Bureau of Astronautics. In the afternoon, the delegation divided into two groups, with part visiting the Hudong Shipyard for a briefing and tour by the shipyard's Director, Mr. Li Qing Ke, and the others meeting with Mr. Jin Zhuqing, Director of the Shanghai Municipal Science and Technology Commission, who provided insights on development plans and government investment goals in Shanghai. A reception at the U.S. Consulate provided an opportunity to discuss the investment climate with members of the American business community in Shanghai. Finally, the delegation met with Vice Mayor Li Zhaoji of the Shanghai Municipal People's Government and Mr. Sun Gengduo, Vice Chairman of the Finance and Economy Committee of the Shangahi Municipal People's Congress to discuss local development issues.

On Saturday, May 31, the delegation travelled by train to Hangzhou where meetings were held with Mr. Wang Hongyi, Vice Secretary General of the Zhejiang Provincial People's Government, and His Excellency Xin Qichao, Vice Governor of Hangzhou, on investment and economic policy issues in the region and the city. The night was spent in Guangzhou and on Sunday, June 1, the delegation departed by train for the Shen Zhen Special Economic Zone bordering Hong Kong.

Mr. Jin Xipei, Vice Mayor of Shen Zhen, provided a briefing on developments in the Special Economic Zone and a tour of the city, following which the delegation crossed the border into Hong Kong. In Hong Kong, Mr. Burton Levin, U.S. Consul General, hosted a reception at which the delegation was briefed by Consulate staff and the U.S. business community on China trade. The delegation departed Hong Kong late in the evening and arrived back at Andrews Air Force Base on June 2.

The trip was flawlessly managed by the delegation's Chinese hosts, U.S. diplomatic personnel in China, military personnel accompanying the delegation and at refueling stops in Alaska and Japan, administrative staff of the Senate. The journey provided a wealth of insights on Sino-American relations to the participants which are summarized below.

Convergence of U.S. and Chinese Interests

The U.S. Government characterizes Sino-American relations as between friendly, non-allied states, in recognition of China's independent foreign policy that avoids alignment with either super power. The delegation's discussions confirmed that there are many issues on which the two countries share a common viewpoint but also that the Chinese differ with U.S. policy in certain areas. The Chinese tended to emphasize to their American audience the threat of Soviet expansionism and the need for both the United States and China to closely monitor Soviet actions in Asia and stand ready to counter aggression. On international issues concerning Central America, the Middle East, and terrorism, the Chinese championed the interests of developing countries by arguing that the United States, like the Soviet Union, should not interfere in the affairs of sovereign states.

Despite these differences and the previous estrangement between the Beijing government and the United States, current friendly relations are supported by a considerable reservior of good will between the peoples of the two countries. U.S.-educated Chinese and the large overseas Chinese population in the United States provide natural links. In addition, the United States was credited with only a limited role in the unequal economic relationships forced on China by Western colonial powers during the nineteenth and early twentieth centuries.

The PRC officials expressed the strong interest of the Chinese government in maintaining good policital relations and expanding economic ties. The Chinese repeatedly stated that they look to Western technology as an essential ingredient of their ambitious modernization plans. American computer technology was clearly favored by the industrial managers with whom the delegation spoke, and English is the favored foreign language in the Chinese education system by a wide margin.

Particularly noteworthy was the fact that the Taiwan issue was raised only once during the visit. While described as a major stumbling block for future Sino-American relations in the delegation's opening meeting, the failure of senior military or civilian officials to even mention the issue appears to indicate that the Chinese will not let U.S.-Taiwan relations stand in the way of expanded PRC access to U.S. trade and investment.

The delegation echoed the sentiments of the Chinese government on the desirability of closer Sino-American relations, but pressed the Chinese for evidence with which to reassure skeptical Americans on the likelihood of long-term convergence of political and economic interests between the People's Republic of China and the United States. The discussions focused most often on the political posture of China vis a vis the Soviet Union and the United States and the state of economic relations with the U.S.

Soviet Union

Considerable attention was focused on the state of Sino-Soviet relations. The Senators questioned PRC officials on the significance of recent signs of easing of tensions between the Chinese and Soviets including the signing of a new trade agreement and expanded cultural ties. The Chinese were asked how relations could be improved in the face of clear Soviet expansionism threatening to China's interests in Afghanistan, Vietnam, Mongolia, and North Korea.

As a starting point, Chinese officials argued that close ties with the Soviets following the Revolution were driven primarily by Chinese isolation imposed by the West rather than a special affinity for the Soviets. PRC officials pointed to a long history of mistrust between China and Russia dating from the czarist period, and claimed that fundamental interests rather than social systems are the most important underpinnings of relations between states. They reassured the delegation that China knew very well the things of which the Soviets were capable from first hand experience and China was not likely to ally herself with the Soviet Union.

Their argument in support of improved Sino-Soviet relations was simply that world peace was best served by relaxation of tensions among states. While the Chinese continue to distrust the Soviets, the two countries share a 7000 mile border and must work to ease tensions in the interest of peace.

They argued that the principal goal of expanded economic ties with the Soviet Union is modernization of the more than 130 industrial plants built by the Soviets during the 1950s and now in desperate need of technical upgrading. In any case, expanded trade along those lines would only reduce the current PRC trade surplus with the Soviet bloc (with no effect on foreign exchange because of the clearing account system used) and would little alter the heavy concentration of Chinese trade in Western markets (East bloc trade is 10 percent of China's total). In addition, China's greatest need is advanced technology for which it looks almost exclusively to the West; the Soviets clearly had little credibility in this area.

Trade and Investment

The Chinese welcome the expansion of U.S. trade and investment in China and point to it as the clearest sign of expanding ties between our countries. The United States is China's third largest trading partner and second source of direct investment after Hong Kong. Total trade has grown rapidly, rising more than 40 percent over the last four years to $8.1 billion in 1985. Total U.S. investment in China stands at roughly $1 billion.

The Chinese are anxious for closer economic ties but attempt to place the burden for more vigorous efforts on the American government and business community. Their arguments are laced with claims about the disproportionate advantages enjoyed by the United States in bilateral relations, supported by misleading and incomplete bilateral trade statistics that exclude all exports to the U.S. through Hong Kong and thereby turn a slight surplus for China into an annual deficit of roughly $1 billion.

The Chinese take the view that Western businessmen are missing a great opportunity by not investing in China. They constantly downplay the difficulties of operating a business there. In the trade area, supported by their claims about a bilateral deficit for China, the Chinese argue that the only problems are on the side of Chinese exports (principally textiles) which are tightly controlled by the U.S. Only if Chinese exports grow can their imports grow, expanding Western opportunities to export to China. The key to expanded trade, in their analysis, is removal of U.S. trade restrictions.

The particular strength of the U.S. position in China is the willingness of U.S. companies to undertake joint ventures despite considerable difficulties in establishing themselves and high start-up cost. The Chinese attitude toward the United States was in sharp contrast to their view of Japan which was characterized as wanting only to

sell, never to share production capabilities or transfer technology or skills. Over the long run, the willingness of U.S. firms to bear these start-up costs in China and persevere in working with the Chinese offers promise of strong economic ties between the two countries.

The Drive for Economic Modernization

The long-term prospects for Sino-American economic ties depends much more on the Chinese than on the United States. Despite an attitude expressed by many senior Chinese officials that U.S. firms were missing a great opportunity if they did not invest in China, Chinese economic policies, the level of development in the country, and limitations of infrastructure and manpower represent daunting obstacles to an expanded U.S. role in the Chinese economy.

Deng Xiao Ping has set the economic goal of roughly tripling China's real GNP to $1 trillion by the year 2000. China must improve on its average 6-7 percent growth over the last 10 years if it is to reach this goal and the country faces a range of political and economic problems that make that outcome problematic. To address these constraints, the PRC government launched an ambitious economic policy reform program.

The Modernization Program

The Chinese have set out a program of Four Modernizations to guide future economic policy. The order of priority assigned to economic modernization places agriculture first, followed by industry, science and technology, and finally defense. Officials noted a number of indicators of the changes that have occurred.

Central planning has been reduced from specific production targets to only general guidelines. Enterprises are increasingly permitted to go into production of new types of goods to meet market demand at the discretion of enterprise managers, resulting in shifts of production from planned output of military or heavy industrial goods into civilian and consumer products: tanks to railway cars in Baotou, rockets to refrigerators at Xin Zhonghua.

Concepts like self-management and retention of profits are being introduced into enterprise management. Instead of turning over all production and profits to the state, managers are now called upon to meet demand and to turn over part of profits in the form of taxes, using new profits for reinvestment.

The commercial sector is no longer the exclusive province of the state. Private entrepreneurs are permitted to start businesses and a state production plan has been replaced by a system based on supply and demand.

Many new, young managers with at least secondary-level technical training have been put in place, replacing party cadres with little training. Since the reforms began in the heavy industrial city of Baotou, for instance, the average age of managers has dropped from 50 to 45 and the prevalence of managers with secondary level technical training or above has increased from 10 percent to 60 percent.

A system of reward and punishment for workers has been introduced providing monetary incentives for good workers and demotions and "lay offs" for poor performers.

As to the ultimate success of economic reform, the Chinese officials repeatedly pointed with pride to the success of the rural reforms already undertaken. They noted that China feeds 20 percent of the world's population with only 7 percent of total arable land. They pointed to expanded availability of fresh fruits and vegetables, the growth of free markets in rural areas, and the success of incentives in spurring production.

The delegation's visit to the Shen Zhen Economic Zone also provided physical evidence of the steps being taken to promote a more modern economy. An impressive high rise city has sprung up in 6 years under an "open door policy" toward foreign capital and technology. The Chinese measured the Zone's success in the 4,000 contracts signed with enterprises from 15 countries totalling more than $3 billion of investment.

However, Shen Zhen officials admitted that effort has been concentrated in completing basic infrastructure. Now the task is turning to improving the investment climate, dealing with the different management styles of China and the West, limited trade and commerical law in China, and ubiquitous shortages of trained manpower. The problems of reform in the urban setting are only now being put into place throughout the country, and the general tone of comments was that this was likely to be a more protracted and difficult process than the rural reforms.

All officials and managers with whom we spoke stressed their commitment to economic reform, referring to it as absolutely essential to attainment of overall economic goals. No one appeared to believe that consistent high growth was possible under the present system of economic organization or at levels of technology and training available within China. The delegation pressed very hard in the area in an attempt to determine the depth of commitment of senior officials to reform.

The delegation noted past examples of dramatic shifts in policy, from liberal, progrowth policies to ideological purification. There was much discussion of the Cultural Revolution, the massive social unheavel sparked by Chairman Mao to renew the Communist revolution, and its value as a guide to the future. The Chinese tendency toward xenophobia was also discussed, a trait exhibited last year in spontaneous attacks on foreign spectators after a loss by the Chinese national soccer team to Hong Kong.

All Chinese officals we met professed a deep commitment to the new policy reforms and the opening to the outside world, a commitment based at least in part on their revulsion at the excesses of the Cultural Revolution. Two basic arguments were put forward as indications of the commitment of the Chinese people and government to change.

Every conversation on the Cultural Revolution was dotted with personal accounts of the impact of the tremendous social dislocation and economic losses of that period. The delegation's hosts argued that these events so deeply affected the national psyche that the Chinese would not let such a thing happen again; the Cultural Revolution represented a major turning point in the history of post-revolutionary China away from ideology to pragmatism.

The current leadership was taking steps to institutionalize the new order. China is assuming the responsibilities of membership in international organizations such as the IMF, World Bank, and Asian Development Bank, and has applied for membership in the GATT. Bilaterally the Chinese are signing investment treaties and trade agreements binding them to standards of performance in international dealings. Domestically, criminal and civil legal codes are being written to clarify individual rights and ensure due process.

While the evidence does argue for continued reform, it was clear from the delegation's observations and discussions that the Chinese have a very long way to go.

Physical and Institutional Constraints

China is a poor country. The World Bank places its GNP per capita at just over $300, in the same category with countries such as India, Haiti, Somalia, and Sudan. At the same time, China stands in marked contrast to other countries at similar levels of development in terms of personal welfare—higher life expectancy, lower infant mortality, and better nutrition—and economic and financial conditions—consistent higher growth, lower inflation, greater indutrialization, a current account surplus, significant investment inflows, large foreign exchange reserves, and less reliance on concessional foreign aid.

Despite these strengths of the Chinese economy, the country shares many of the problems of low income developing countries: a relatively small base of skilled manpower and managers, weak technological base, limited basic infra-structure, and relatively limited access to foreign exchange. All of these problems are compounded by the sheer size of China, which is the third largest country in the world after the Soviet Union and Canada and with 1 billion people, only 20 percent of which are in urban areas (compared to 75 percent and 66 percent for the Soviet Union and Canada).

Trained manpower: World Bank statistics indicate that only 35 percent of China's secondary school age group is enrolled in school and only 1 percent of the 20-24 age group is enrolled in higher education. The Chinese repeatedly emphasized their shortcomings in this area and the importance of higher education opportunities for Chinese students in the U.S. (the State Department reports about 15,000 students currently in the U.S.). In addition to engineers and scientists, it was clear that trained managers are badly needed as few enterprise managers seemed to have even rudimentary understanding of finance, cost accounting, or productivity analysis.

Technological base: Much Chinese heavy industry dates from the 1950s when the Soviets helped the Chinese build more than 130 factories; the delegation saw a clear illustration in the Baotou tank factory. The Chinese are now looking to the Soviets to update some of these facilities, although they have already undertaken improvements through addition of Western machinery and computer technology in some cases. On the other hand, such outdated Soviet-designed production facilities contrasted sharply with more modern, Western-equipped plants in Xian and Shanghia where production of advanced electronics and rocket boosters demonstrated Chinese capability to carry off modern and relatively sophisticated production, albeit on a small scale.

Infrastructure: The limitations facing China are fairly evident and often cited by the Chinese in discussion. For example, it was noted that China is physically slightly larger than the United States but has a rail network only one-sixth as large. The delegation travelled on the single track connecting the key port city of Guangzhou and the gateway to Hong Kong at the Shen Zhen Special Economic Zone.

Foreign exchange: China's ability to earn foreign exchange is limited by the heavy concentration of exports in textiles, petroleum and petroleum products, and other primary commodities (the top three categories of exports to the U.S.). Expanded export of textiles is limited by quotas under the Multi-Fiber Arrangement (at least until recently a major exception in general being the United States) and prices of petroleum and primary commodities generally are falling. Chinese financial policies would permit more borrowing since debt service is currently 7-8 percent of exports and Chinese policy is to limit the debt service ratio to 15 percent. However, the Chairman of the Bank of China made clear that while China has floated bonds and CDs in Japanese and European markets, the government is wary of taking on substantial foreign exchange risk and is likely to be cautious in increasing its exposure.

Policy Constraints

Despite the strides being made by the Chinese government to reform the economy, government financial and social policies remain at least as great a constaint on development as the physical limitations facing the country. Two key problem areas are foreign exchange management and the labor and social welfare systems.

Limits on convertibility of Chinese currency have been the subject of extensive discussions between U.S. and Chinese officials. Chinese policy on foreign exchange is that foreign currencies are a scarce resource that must be used first to meet the needs of the state. To that end, the Bank of China maintains control over exchange flows, including routine conversion of currencies and repatriation of profits, although the degree of control varies with the policy climate and the prevailing level of foreign exchange reserves in the country. The Bank's Chairman cited the rapid loss of foreign exchange that occurred when central controls were loosened in 1984-85. China ran a record $14.9 billion trade deficit and reserves fell dramatically. The World Bank estimate of external reserves as of 1984 was $22 billion, and Chairman Bu indicated reserves now stood at $12 billion.

The arrangements for repatriation of profits are the subject of an individual deal made with each venture. In terms of general guidance, the Bank of China has recently promulgated rules linking repatriation of a profits to foreign exchange earnings.

Enterprises that earn sufficient foreign exchange from exporting to cover their profits can repatriate those profits—the key is maintaining a positive foreign exchange balance in overall operations. Sale of manufactures abroad and a 1.8 megawatt nuclear plant with planned energy sales to Hong Kong (now under construction) were cited as examples.

Ventures producing for the domestic market but which substitute directly for hard currency imports can also repatriate profits. Armand Hammer's coal mining venture in Shanxi Province was cited as an example by the Chinese.

Producers for the local market that do not earn foreign exchange cannot repatriate earnings directly but can invest their profits in other ventures that do earn foreign exchange and repatriate earnings in that way.

Many U.S. executives indicated that the policy was not all that elaborate really. A venture can only repatriate profits if it earns enough foreign exchange to cover them—period.

Perhaps the most difficult constraints confronting Chinese society are limited labor mobility and the social welfare system. Workers are assigned to work units or enterprises (know as *danwei*) where they have permanent employment assured—the so-called "iron rice bowl." The link to the danwei is not only based on employment, but on housing, education, pensions, health care, and other key services provided only through the work unit. Chinese managers indicated that roughly two-thirds of the workers in their enterprises were involved not directly in production, but in these other ancillary services of the enterprise.

The delegation strongly suggested that breaking the all-encompassing link between worker and danwei would both promote labor mobility to optimize use of available human talent and remove a heavy burden of overhead from enterprises. In our opinion, however, this is likely to require a profound change in the way services are provided in Chinese society. The government will have to develop national systems, or a market for these services will have to develop (with attendant shake-out of enterprises and dislocations while market prices are established). There seems little evidence that progress will soon be made in either area.

Capacity of the Chinese economy for change

Despite all the pledges of commitment by Chinese officials to reform and interest in Western economic models, we generally concluded that the capacity of the system for profound change and the likelihood of change along Western lines remain questionmarks. There was ample evidence of an entrenched "central planning mindset" even among those dedicating themselves to change. Bank of China Chairman Bu argued that when market signals are used, all enterprises produce or import the same goods, so planning is still needed. A number of officials argued that China's development represents a course no one else has tried and that the Chinese must "learn their own way" rather than simply adopt existing models. The Chinese also remain focused of the long-term goal of self-sufficiency in everything.

There was also a sense that others should adapt to China rather than the other way around. Despite all the evidence presented of the efforts still needed to attract foreign investment, the Chinese at times seem mermerized by the great opportunities available in the Chinese market to the point of shortsighted discouraging every western investment they believe they need.

PRC officials remain unreceptive to negotiation of meaningful investor protections in a bilateral investment treaty arguing that U.S. investors already get better treatment than Chinese enterprises (15-30 percent taxation versus 50 percent) and should be satisfied, and that some Europeans have signed BITs on China's terms, so the problem must be the United States.

Even relatively minor requests run into a stone wall at times. Efforts by American businessmen to have the Chamber of Commerce accredited to Beijing and representing their interests have thus far been rebuffed. The Chinese argue that the business community should be satisfied because many have representative offices and the U.S. Council for United States-China Trade is accredited. And? So?

Institutions like the Chinese bureaucracy, with its 5,000 year history, was cited a major hurdle by U.S. officials and businessmen. Fragmented authority spread over a multiplicity of agencies is a major reason things simply do not happen.

The administered Chinese pricing system is another key constraint on the economy. Many if not most prices are set administratively and do not reflect production costs or economic scarcity. This applies to the exchange rate as well as to prices of production inputs like labor, land, utilities, etc. There has been some recent, limited experimentation with prices based on the balance of supply and demand rather than central planning, with resulting inflation of 8.8 percent in 1985. It is most interesting that the Chinese stated that they have set the same rate of inflation as a level they would like to duplicate in 1986.

A particularly damaging element of pricing policy is the practice of grossly overcharging investors for labor, land and other inputs to production. The profitability and therefore the attractiveness of investment in China are reduced by this policy in which labor charges of up to 5 times the local going wage are cited as common, apparently pegged to prevailing average rates elsewhere in Asia (without taking account of differences in infrastructure, education, etc.). Similar overcharging applies to the staging of trade shows and seminars. The government relies on this process to generate foreign exchange since the government lays claim to the foreign exchange and to the difference between prices charged and prevailing local wages and rents. PRC officials noted that all of these prices are subject to adjustment in the negotiated agreements between the investor and the government.

Both to American enterprises investing in China and to the PRC generally the lack of some key institutions is another important constraint. The private sector is very limited in size and restricted to small commercial and service enterprises. There is no private credit system of any kind, and the official credit system is very limited. The legal system is in the early stages of definition and their are few guideposts of legal precedent to go by. These concerns were underlined by "representative" horror stories from U.S. executives.

One businessman seeking a copy of local regulations under which his business was to operate was informed that the regulations were not published but that the local government officials could answer his questions and would inform him of any infractions or problems.

Businessmen also noted a Chinese penchant for unilaterally changing contracts negotiated with foreign investors if they appear more favorable to the investor than originally intended.

In sum, it was clear to all members of the delegation that the Chinese often inflicted needless and counter productive barriers, ranging from miner to major in nature. Until the various—and frequently conflicting—Chinese government bureaucracies realize the extent of this problem, it was our judgment that western businessmen would be greatly discouraged from attempting direct investment.

The U.S. Economic Role in China

The clearest message received by the delegation was that the Chinese welcome the expanding economic ties between the United States and China. They admire American technology and education and want to take advantage of as much of it as they possible can. The Chinese welcome the various sectoral cooperation agreements that have been signed (telecommunications,

science and technology, machine building) and the recently approved tax treaty as indications of a deepening bilateral relationship.

Key Sectors

Chinese officials cited energy, transportation, communications, and electronics as key sectors for cooperation with the United States. These are areas in which the Chinese want to spur development and to which they would like to see U.S. technology applied. Several officials cited major Chinese purchases in these sectors: eight Boeing aircraft and more than 20 planes from McDonnell-Douglas; large General Electric locomotives; a great variety of computers.

There was only passing mention of Chinese use of U.S. military technology, and that reference was to recently approved sale of avionics for China's F-8 fighter. People's Liberation Army (PLA) officials cited the small ($5.2 billion) Chinese military budget as the driving force behind efforts like the F-8 upgrade to work with friendly countries to modernize China's army. In Baotou, the delegation also saw evidence of U.S. computer technology being applied to computer aided design of Chinese tanks. China argued that her army was a defensive force only, that its principle role was to fend off the Soviets and their allies, and that a strong Chinese army was a force for peace and in the U.S. interest.

At the center of Chinese interests in expansion of the Sino-American economic relationship is technology transfer. The Chinese want every U.S. export, every joint venture, to embody a major transfer of advanced technology. Aside from the (false) complaint about running a trade deficit with the United States, the only complaint heard from the Chinese on the economic relationship was that U.S. hi-tech products had been bought (especially computers) but that only limited transfer of technology had accompanied the sales.

Export Controls

Developments in U.S. export control policy with respect to China have mirrored broader developments in Sino-American political relations. In particular over the last several years, controls on technology and equipment, especially for items in widespread commercial use, have been gradually liberalized. In June 1983, President Reagan recognized China's status as a "friendly, non-allied country" in announcing his decision to shift China into export control "Country Group V." China joined most friendly countries of Europe, Africa and Asia in that grouping, although China remained subject to control by the Coordinating Committee (COCOM) in Paris, comprised of Japan and all the NATO countries except Iceland.

Revised U.S. export control regulations were issued in November 1983 establishing detailed technical guidelines ("green lines") for a range of products in seven categories (computers, microcircuits, semiconductor production equipment, computerized and electronic instruments, recording equipment, and oscilloscopes) which would routinely be approved for export to satisfactory end-users in China. Within the U.S. Government, license applications falling within the "green lines" required only Commerce Department (rather than interagency) review. However, these exports continued to be subject to review by COCOM.

In early 1985, the members of COCOM began discussion of steps to streamline approval of China cases that had become routine. A new policy was devised whereby as of December 15, 1986 products falling within guidelines drawn up in 27 product categories (somewhat broader than the seven categories under the 1983 U.S. policy) would no longer require COCOM review. New Commerce Department regulations were issued in late December. Even with this further liberalization, high technology exports to China remain subject to U.S. national security and COCOM controls, reflecting Chinese strategic capabilities unique among friendly countries in Group V.

The progressive relaxation of U.S. and COCOM controls has resulted in an expanding volume and higher level of American technology exported to China. Between 1982 and 1985, license approvals rose from 2,020 to 8,637 while dollar value of approvals increased 1000 percent from $500 million to $5.5 billion. U.S. exports of computers and scientific instruments to China increased by two-thirds from $280 million to $470 million between 1984 and 1985.

The delegation focused considerable attention on the impact of U.S. and COCOM export control regulations on the flow of technology to China. Several Chinese officials brought up the issue of U.S. controls and cited continued controls over technology flows to China, especially continued strict controls on high tech items, as imcompatible with the friendly relations existing between our two countries. At the same time, the Chinese seemed generally aware that export control policies as applied to China had recently been further relaxed and expressed appreciation for this change.

Despite this general awareness of U.S. export control policy by senior officials, Chinese engineers and enterprise managers with whom the delegation met seemed considerably less informed. Even Chinese scientists and engineers in high technology enterprises were short on specifics when asked about their priority requirements for advanced U.S. technologies and were unclear on their availability under current export control regulations.

Discussions with government officials, including the Director of the Shanghai Municipal Science and Technology Commission, produced no evidence that export controls were impeding Sino-American trade and economic relations outside of specialized high tech areas.

At the low technology plants the delegation visited (Baotou tank factory and Hudong shipyard), the only evidence of U.S. technology was several computers for computer aided design and one large automatic boring machine. When asked if any U.S. high technology was needed and unavailable, the response was generally that if they needed American technology, it was accessible (relatively small computers). It seemed clear that these views applied only to nonmilitary hardware and electronics.

Even at the high tech sites visited (Lishan Microelectronics and Xin Zhonghua Machinery Factory) where very advanced computer, semiconductor, and rocket technologies would have been useful, it is not clear that there were U.S. technologies being actively sought by the enterprises that were blocked by controls. It was not clear that the managers fully understood what was and was not available under the new U.S. export rules or were exploring the issue.

At Xin Zhonghau, the Long March 3 rocket, China's orbital launch vehicle, is produced. It is a three-stage rocket capable of placing a satellite in geo-stationary orbit. Given U.S. experience in rocketry, this is clearly an area in which U.S. technology would have been a leader. However, there is *no* cooperation between the United States and China in space technology, and the Chinese engineers reported that no U.S. technology was part of the system. In fact, they had given so little thought to the concept of purchasing U.S. technology that they were hard pressed to name a single item of U.S. rocket technology they would like to buy, although they promised to think about it and send a list.

At Lishan Microelectronics, the chief engineer was American educated and formerly employed in the United States, and had a clear if dated understanding of U.S. export control policy. His factory was capable of producing elements for advanced microchip production (chromium blanks with tolerances below 2 microns) in small quantities and of producing radiation-hardened chips, with a small amount of overall output sold to the military. However, production quality and volume is limited by quality control and non-automated production line.

The main output of the factory is small microchips (8 and 16 bit) and color TV integrated circuits (80,000 pieces annually) and small quantities of computer peripherals, especially floppy disk drives. The factory is principally pursuing expanded production of peripherals and color TV ICs in hopes of capturing the 200 million IC Chinese market from Japan, in addition to exporting to other Asian countries. However, the chief engineer also had interests in further developing the higher end of the technology scale.

He looked to the United States for advanced mask making, sputtering and coating equipment, but did not appear to believe it would really be made available. A review of the new China regulations with Commerce Department staff indicated that while these are clearly areas in which COCOM review is required, it is not necessarily the case that his requests would be denied as he anticipated. The more interesting feature of his comments was the allegations he made about export of COCOM-controlled technologies to China without a license by Japan and several European countries. He pointed out an integrated circuit assembly line purchased in 1980 from Japan which he claimed was sold in contravention of COCOM, and indicated that Japan was willing to sell an advanced electron beam generator this year again against COCOM rules. He also pointed out a sputtering machine bought from the Swiss in 1978 and a microvapor deposition unit bought from the Dutch sister-firm of a U.S. company in Phoenix; again, both COCOM controlled machines.

His argument was that Chinese access to U.S. goods should be relaxed since China already has access to Western advanced technology despite COCOM controls. The limited descriptions of the equipment in question brought back from the China trip and discussed with the Commerce Department indicated at least the possibility that controlled items were sold to the PRC without license.

Opportunities and Problems of U.S. Joint Ventures in China

As mentioned earlier in the report, the Chinese appear to have a strong preference for dealing with Americans over the Japanese. This is because even though Japan puts a lot of time, effort, and manpower into their sales effort over a long period of

time, they do not set up joint ventures and they do not share technology. China is hungry for technology and American firms have been scoring points with the Chinese by putting their money and know-how into the country. It may well be that the willingness of American firms to stay the course of building a joint venture will give the U.S. a firmer footing in China than all of Japan's massive sales effort.

The costs of this strategy for U.S. firms is not inconsequential. As mentioned in the discussion of China's policy and development problems above, joint venture partners face stringent requirements to earn foreign exchange in order to repartiate profits, limited legal protections, overpricing of inputs to production, a limited base of infrastructure, etc. In addition to all these problems, they are faced with little hope of significantly tapping the Chinese market. Many of the businessmen meeting with the delegation reported that their operations were marginal in terms of profitability.

At the same time that China presents some daunting problems, American business appeared to be creating some problems for itself by failing to study and understand the Chinese decisionmaking process. Cases were cited of Americans relying too heavily on their joint venture partners to deal with the system rather than asserting the American leadership necessary to successfully manage and plan their joint venture in China. This practice results in underemployment of American management skills that are an essential ingredient for success and for technology transfer to China.

The sectors and technologies China is trying to develop are those in which there is heavy involvement by small and medium-sized U.S. high technology firms. However, the Chinese are concentrating on attracting larger firms and larger projects and are therefore missing key opportunities for production of software, computer peripherals, etc. that smaller firms produce. China would do well to focus some of its investment promotion efforts on such firms, as would the U.S. Government.

Potential sources of friction

Despite the clear evidence of progress being made in Sino-American relations, there is considerable scope for improvement before the relationship truly represents ties typical between friendly, non-allied countries. The delegation received small reminders of the mistrust that is still to be overcome by the Chinese in their decisions to forbid photos at the Baotou tank factory (with its 1930s production technology) and the Xin Zhonghua factory (where the delegation viewed a disassembled engineering model of two-thirds of a rocket). While these decisions were only minor irritants, they are clearly incompatible with good relations between countries that are now routinely sharing military and advanced civilian technology and exploring areas for further cooperation.

The political relationship has been characterized as solidly based on common interests with regard to the Soviet Union. However, a decision by the Chinese to vigorously oppose U.S. interests in other areas of the world or to emphasize problems over Taiwan could set back the relationship.

In the economic sphere, the trade relationship is the key potential trouble spot in Sino-American relations that will have to be managed carefully in the years ahead. Foremost among the issues in this area is the rising level of Chinese textile exports to the United States. However, over the longer haul the Chinese drive to produce consumer manufactured goods, in many cases through U.S. joint ventures, could begin to affect U.S. overseas markets and the U.S. market as well.

Textiles

There were several discussions of bilateral trade balances that touched upon the delicate issue of rapidly increasing textile exports to the United States. The Chinese argue that the U.S. market should be fully open to them since their exports to the United States are just over one percent of U.S. exports and totally inconsequential. The delegation members rebutted these arguments by pointing out that Chinese experts are very concentrated in textiles and apparel which is both labor intensive and heavily impacted by imports. Chairman HEINZ emphasized that when a U.S. plant fails due to an import surge, people in small towns wind up unemployed with few alternatives available.

The delegation repeatedly pointed out that the U.S. economy is one of the most open in the world, and that the U.S. is happy to share the growth of its market with others. However, China's first quarter 1986 exports of textiles are nearly double the level of first quarter 1985, and China has moved from fourth exporter of textiles to the United States to first. The delegation noted that, as in the area of inter-national relations, this is an issue on which the United States looks to cooperation from the Chinese as a measure of the extent to which they value the bilateral relationship.

Policy Conclusions

The general conclusion of the delegation's trip was that China is pursuing a relatively friendly, non-aligned policy line with regard to the United States, and that there is a convergence of political interests between the two countries with regard to the Soviet Union's actions in Asia.

To support the positive elements in the Sino-American relationship, the United States should maintain a military presence in the Western Pacific to support regional stability, and take steps to support the economic reform and liberalization of Chinese society in order to encourage China to align itself more closely with the West. These steps would include:

Continued official bilateral efforts to negotiate an investment treaty and to fully involve the PRC in international agencies like the GATT.

An increased U.S. business presence to expand the bilateral trade and investment relationship and to promote Chinese acquisition of Western management concepts with a commensurate and necessary deemphasis of control by government bureaucracy.

Ranking U.S. officials and members of Congress should make greater efforts to assist U.S. businessmen in establishing joint ventures in the PRC.

Greater exchanges of mid-level civilian and military personnel as well as educational exchanges of both students and faculty.

The U.S. should support Chinese access to Western technology, but should:

Ensure the COCOM controls are enforced by making special efforts to carefully policy Japanese sales to China to prevent circumvention of controls; and

Make clear to the Chinese that further relaxation of the current limits on technology transfer depends on:

a. Greater Chinese understanding of and support for U.S. efforts to contain Soviet expansionism in the Middle East, Africa and Latin America;

b. Peaceful resolution of differences with Taiwan; and

c. A substantial improvement in the climate for U.S. business investment.

U.S. business interests should be generally more aggressive in pursuit of business opportunities in China. They should not rely on joint venture partners but should learn the Chinese system and take control of their destiny. They should also be more aggressive in seeking help from government officials and members of Congress in opening doors, etc.

The Chinese correctly attach great importance to the role of foreign investment in promoting the more rapid growth to which they aspire. However, they appear intent on pursuing policies designed to thwart a closer relationship to the West and to turn off the flow of Western capital and technology to China. Their growth plans are doomed to failure unless the Chinese government shifts its policies in two key areas.

First, with respect to investment, Chinese leaders must stop deluding themselves that investing in China is too good an opportunity for Western firms to pass up. China is a difficult place to do business at best, and prospects for earning a reasonable rate of return on investment there will remain poor unless the Chinese choose to make potential investments more attractive.

The first step is recognition by the Chinese that U.S. investment is primarily in China's interest and that, under present circumstances, U.S. investors require incentives to attract them to China.

Within the sectors to which the government attaches priority for investment, the Chinese should *recruit* U.S. businesses that have the technology they want, including small business.

Business conditions, market access, pricing of inputs to production, access to the labor market, and policies on repatriation of profits must all be improved. In this regard, more experimentation with special economic zones and other such innovations would be a mechanism for creating a conducive investment climate.

The Chinese must provide reassurance wherever possible that theirs is a long-term commitment to economic reform and foreign investment, acknowledging that this course will inevitably liberalize and profoundly change the political and economic climate in the country.

The second and related area where change is needed is China's present cavalier attitude toward U.S. foreign policy interests. China cannot expect support and cooperation from the United States on matters important to her economic development while the Chinese government polishes its Third World credentials by lambasting the United States on issues important to U.S. foreign policy interests. China appears to view her criticism of U.S. actions to stop Soviet expansionism in Central America or Soviet support for terrorism in the Middle East as China's private business, divorced from the overall Sino-American relationship. This is clearly wrong, and China must realize that an expanding bilateral relationship requires Chinese cooperation with and understanding of U.S. interests on a broad policy front, not just on matters of interest to China.●

THE CRISIS IN HOUSING AND THE NEED FOR A NATIONAL HOUSING POLICY

● Mr. KERRY. Mr. President, over the past 6 years there are few areas of national policy that have suffered more than our national housing policy. After more than four decades of national commitment to a developing decent and affordable housing for all Americans—rich and poor alike—the 1980's have seen a sudden reversal of that goal. Housing has become the forgotten stepchild of both Congress and the administration, and a crisis in housing is already the result.

The housing crisis is, ironically, felt most acutely in those few areas of the country that are currently experiencing healthy economic growth—growth that is directly threatened by the labor shortages that follow from the lack of affordable housing.

This linkage—between the supply of affordable housing and the capacity of continued economic growth—is a linkage that is not well understood by those in Congress and the administration who support the rentrenchment of the Federal role in housing.

Therefore, I would like to call attention to a speech delivered this week by David O. Maxwell, the chairman of the Federal National Mortgage Association, and the national expert on this matter. As noted in today's Washington Post, Mr. Maxwell's speech provides a "vivid account of the Nation's housing dilemma and its implications for local economies."

Mr. President, I ask that the article in today's Washington Post and Mr. Maxwell's speech appear in the RECORD.

The material follows:

HOUSING SHORTAGE CREATING A LABOR ONE

(By Rudolph A. Pyatt Jr.)

Twice during recent conversations, an official from a Washington suburb expressed deep concern about two potentially troublesome elements in her county's economy. A scarcity of housing for low-income families and an apparent labor shortage, the official noted, have been largely ignored as the county's economy continues to expand.

The American Automobile Association's recent disclosure that it is moving its headquarters and 650 jobs from Fairfax County to another part of the country reinforced the official's concerns. One of AAA's reasons for moving, according to AAA officials, is a shortage of workers.

A local television station highlighted another concern of the suburban official when it recently reported the plight of a young couple from West Virginia. Unable to find affordable housing after finding jobs in Northern Virginia, the couple took up residence in a camper.

The concerns of the suburban official are the antitheses, nonetheless, of the public statements of several local officials in the public and private sectors. AAA's decision and the West Virginia couple's plight are mere blips on the big screen of a booming economy in metropolitan Washington.

Unemployment is an incredibly low 3 percent or less in most suburban areas. Housing starts remain strong. Commercial construction continues to soar. Personal income is at record levels. Wealth abounds. All's well in River City, land of prosperity, home of the affluent. To hell with AAA and the homeless, boosterism's leading voices seem to be saying.

In the meantime, the concerned suburban official appears to be part of a minority that worries about growing labor shortages. There is, she says, a direct correlation between a shortage of low- and moderate-income housing near employment centers and the labor shortage in suburban communities. The time has come, she implied, for local officials to consider new housing policies.

The evidence suggests that housing policies deserve added attention in the private sector as well. Indeed, transportation problems, which currently occupy the attention of local business leaders, could be alleviated through more enlightened housing policies.

Why should business leaders care about housing policies? David O. Maxwell, the chairman and chief executive officer of the Federal National Mortgage Association, spelled out several reasons in a strongly persuasive argument this week. In remarks at a Greater Washington Research Center luncheon Wednesday, Maxwell called for a strong national housing policy.

But it was Maxwell's vivid account of the nation's housing dilemma and its implications for local economies that suggested why business should care.

Housing prices are rising again, apartments are in short supply and jobs are moving to places where housing costs even more. Maxwell was describing a national dilemma but executives who heard his remarks must have recognized a very accurate description of housing problems in metropolitan Washington.

Whether they were intended to or not, Maxwell's remarks had the effect of raising the level of sensitivity among local business leaders.

"Our own metropolitan area exemplifies this trend," he declared. "First-time buyers can find little affordable housing near these jobs. They live so far away that transportation becomes an expensive and time-consuming proposition.

"This movement of jobs creates even bigger obstacles for the working poor. New suburban offices need cleaning; parking lots need attendants; junk-food emporiums need servers. How common it is these days, as an article in The Atlantic Monthly recently observed, to see affluent suburban executives motor off to their nearby homes, while their staffs wait for the first of several buses they will have to board on their long journeys home."

Moreover, Maxwell reminded the audience, "The pernicious persistence of racial discrimination continues to reinforce the barriers to accessible housing."

In dozens of U.S. cities, including Washington, Maxwell continued, waiting lists for public housing grow longer and longer. In the Greater Washington area, he said, the number is 34,000 families. "That's more than 100,000 people! At any reasonable rate of construction, it would take 13 years to build housing for those families. And there is no housing being built."

Working families on those waiting lists and others who can't afford housing near their jobs are the ones who clean those shiny new office buildings, park cars, flip hamburgers and, indeed, type letters and stock shelves. But they've having difficulty getting from here—wherever that might be—to there.

Maxwell's remarks were a timely reminder to local business leaders that their support for more enlightened housing policies can enhance employment opportunities and the growth of their businesses.

AMERICAN HOUSING: A VICTORY TO BE CELEBRATED . . . OR STILL TO BE WON?

(Remarks prepared for delivery by David O. Maxwell)

When the Research Center began twenty-five years ago, the American mood was one of exuberant confidence that social problems would yield to the efforts of community-mined organizations like yours. That was a time of high idealism. It's no surprise, then, that the Center was founded during that period.

What is surprising is that you survived through the 70's, when the national mood darkened, and emerged even stronger into the 80's. Yours is no fair-weather idealism.

I'm convinced that the major factor distinguishing you from other public policy organizations that have either succumbed to exhaustion, or trimmed their views to fit current fashions, has been your insistence on research. Research is at the center of your name and your mission.

Your strength has been your recognition that ideals without data are empty, and data without ideals are blind. Your success has come because you have combined both. As a citizen of Washington, I am grateful for your efforts. As a businessman, I depend on them.

I've recently had a first-hand reminder of how rigorous you are in searching out information. I received from Atlee Shidler a list of suggested questions I might answer in my remarks today. The list runs for a couple of pages and covers at least fifteen highly challenging issues. Most of the questions have three parts—some have five or six.

Indeed, if I were to try to deal adequately with Atlee's questions, we'd be here through the Spring semester.

But one of these questions in particular caught my eye. It's a threshold question. If we don't have a good answer for this question, then the other questions become moot. The question is, "Why should the audience care about housing policy?"

Why indeed?

Of course, as individual Americans, we certainly care about our own homes. Poll after poll shows we put home ownership at the top of the list of what constitutes "the good life". This American trait struck a recent distinguished visitor here with special force. After only a few weeks in America, Soviet dissident Yelena Bonner wrote a moving article for *The Washington Post*, with this title: "Americans don't want war. Americans want a house."

But our own personal concerns aside, why should we care about housing policy? After all, American housing has by and large been a notable success:

The proportion of Americans who own their own homes was only about two in five at the time of the Great Depression. Today, two out of three Americans own their own homes.

In 1960, one dwelling in eight lacked plumbing facilities, by 1980, that ratio was down to one in forty.

In 1950, the average dwelling had 1.5 rooms per person; today, the average dwelling has two rooms per person, and the rooms are larger.

There is ample housing for the growing segment of the population who are considered to be affluent—although they, too, have their housing problems. Just the other day, the Post reported the lawsuit in the suburbs by a couple who felt the design for their Hampton Court look-alike had been used by their builder for someone else's house.

Indeed, we Americans believe, perhaps a trifle chauvinistically, that we are the best housed nation in the world.

And so the question: Why should we care about housing policy? Shouldn't we instead simply declare victory and turn our attention to other matters?

Whether stated explicitly or not, that seems a fair description of our present policy. I'm personally struck by the contrast between today's attitude, and the view when I served in the early '70's as General Counsel for HUD. In 1972, there were a record 2.2 million new housing starts in America, many with federal support for low-income families. At that time, housing was one of the top three or four priorities of the Congress.

Today, by contrast, housing seems to have fallen off the national agenda altogether. This year, despite unprecedented declines in mortgage rates, we'll start about 1.8 million new units—a good year but hardly a great one. Since 1981, the HUD budget has been slashed by 65 percent. In short, it is clear that there has been no "safety net" for low-income housing programs. And there's been no national housing bill for six years.

This lack of attention has been spurred by our experience in the 1970's. We all recall those heady days when inflation made a joyride of the housing bandwagon. Low downpayments made it possible for additional millions to climb aboard that bandwagon. Sky-rocketing housing prices bailed everyone out of their mistakes—buyers, lenders, insurers, investors.

For people of low income, the Section 8 program provided incentives for builders to build housing and subsidies for their rents. It was an expensive program, but cost less than the suspended interest-rate subsidy programs of the late '60's and early '70's.

It is not surprising that the early '80's brought a reaction to the housing explosion of the '70's. The new Administration and Congress embraced a new set of priorities: massive defense spending, sharp cut-backs in discretionary domestic spending (but not entitlements such as Social Security), and lower taxes. And, as I have said, housing felt the axe more than any other domestic program.

At the same time, some theoreticians were advancing a new agenda for housing of moderate- and middle-income Americans. They complained that too much credit goes to housing. And they said it was especially unnecessary because the housing job was done. They said it was time to celebrate the victory. They said it was time to dismantle or drastically curb the supports for moderate- and middle-income housing erected over 50 years under presidents and congresses of both parties. They said it was time to let home buyers compete on their own for mortgage money with all other users of capital, large and small.

To test the validity of this line of argument, let's take a brief look at these federally created sources of support for moderate- and middle-income housing; then ask ourselves whether they are needed today.

In the front rank of financial institutions supporting housing were federally chartered savings and loans and savings banks. Through deposit insurance, access to below-market loans from the Federal Home Loan Banks, and tax incentives, savings institutions were encouraged to concentrate their business on housing. Indeed, until 1980, when legislation began the process of removing interest-rate ceilings on deposits, savings institutions had only limited authority to make home loans over $75,000. In effect, savers subsidized home buyers. Today that is no longer the case.

In 1934, the federal government created the FHA to insure long-term, low-downpayment loans for Americans of modest means. After World War II, the VA insurance program teamed with FHA to produce the greatest burst of housing in our history, as GI Joe realized his dream of home ownership in Levittowns across the land.

The Roosevelt Administration realized early that secondary market facilities were needed to replenish the capital of primary lenders by buying the FHA mortgages they made. And so they created Fannie Mae in 1938. Since then, Fannie Mae has evolved into a purely private corporation whose 73 million shares of stock are owned by more than 30,000 shareholders and listed on the New York Stock Exchange. The corporation borrows in the private capital markets. Yet the mission of my company remains basically the same: to buy residential loans from lenders so they have the funds to make more loans. Since 1970, Fannie Mae has been joined in the secondary market by its siblings, Ginnie Mae, a part of HUD which finances FHA and VA loans, and Freddie Mac, which operates much like Fannie Mae.

No one can deny that this network of agencies and companies constitutes a major federal commitment to housing for the middle class in this country. And, of course, I haven't mentioned the most important support of all: the deduction for mortgage interest and property taxes, just now preserved in the new tax bill.

In the current political climate, where "privatization" is in vogue, how important is it for us to fight to preserve this system of supports?

I submit that it is vital. Why?

Not a week passes these days without an article on the decline of the middle class. In all candor, some of the rhetoric on this subject strikes me as contrary to the anecdotal evidence of life around us. So many people, young and old, seem to be able to afford what they really want. Indeed, consumer spending has fueled what little recovery the economy has enjoyed in the last few years. Undoubtedly, a good deal of this consumer spending is made possible by easy credit, which may come back to haunt us. But that's a subject for a different speech.

What we can confirm without contradiction is the decline in housing opportunity, particularly for first-time home buyers. In constant dollars, family incomes remained flat from 1973 to 1984. But during that same period housing prices rose so swiftly that the median-priced house came to absorb more than twice as much proportion of the median family income. You don't have to be Einstein to put those two facts together and come up with an affordability gap.

Why do I single out first-time home buyers? For three reasons. First, because those people who already own their homes have undoubtedly built up equity as housing prices have escalated over the past decade. In fact, that equity build-up may have financed some of the consumer spending spree of recent years. But a big share of it remains, and gives those homeowners the ability to make the downpayments needed to move to another house. Obviously, the first-time buyer does not enjoy this source of funds.

Moreover, downpayments are increasing, a second reason for the affordability gap. In response to massive foreclosures, particularly in the energy and farm belts, lenders have tightened underwriting standards. The 5 percent downpayment loan without FHA and VA insurance has practically disappeared.

Third, jobs are moving to the suburbs where housing is more expensive. We see new urban centers surrounding core cities from coast to coast. Our own metropolitan area exemplifies this trend. First-time home buyers can find a little affordable housing near these jobs; they need to live so far away that transportation becomes an expensive and time-consuming proposition.

This movement of jobs creates even bigger obstacles for the working poor. New suburban offices need cleaning, parking lots need attendants, junk-food emporiums need servers. How common it is these days, as an article in the *Atlantic* recently observed, to see the affluent suburban executives motor off to their nearby homes, while their staffs wait for the first of several buses they will have to board on their long journeys home.

Moreover, the pernicious persistence of racial discrimination continues to reinforce the barriers to accessible housing.

Unfortunately, rental housing currently provides no answer to these problems. Vacancy rates in prospering areas of the nation have settled at new lows. Here in Washington, the vacancy rate is just 1.6 percent. And, of course, that makes rents rise.

Nationwide, median rent-to-income ratios rose from 20 percent in 1974 to 29 percent in 1983, according to the Harvard-MIT Joint Center for Housing. For households in the lowest income quartile, the median rent burden jumped from 35 to 46 percent in the same period. And more than one-fourth of low-income renters paid more than 75 percent of their income in rent. Can you imagine living on 25 percent of your income?

I regret having to say that the shortage of affordable rental property is bound to get worse under the new tax law. The revised code cuts back drastically on several provisions of the Internal Revenue Code that had the effect of spurring the construction of rental housing. At the same time, the favorable treatment afforded home ownership has been fully preserved. This disparity will lead to even more conversions of apartments to condominiums.

So the dilemma of the first-time buyer and the working poor is very real. Housing prices are starting to rise again, fueled by costs of land, infrastructure, and financing. Apartments are in very short supply. Jobs are moving to places where housing costs even more. What is to be done?

The problem does not lend itself to facile answers. We need to put the best brains in the industry to work on it. In this connection, I want to say that developers of housing are among the most creative people I know. They know how to make things work. They need to be challenged by our communities to propose realistic solutions to the affordability gap. Lenders and secondary market companies and agencies need to become involved.

We may need state and local—and, yes, federal—programs to furnish seed money for moderate-income housing. Suburban communities should require construction of

such housing and set-asides for lower-income workers as part of every approved commercial development. Land owned by states and localities can be allocated to private development. The cost of financing can be reduced by taxable and tax-exempt bond issues. The merits of rent control must be re-evaluated. For my part, I think rent control is often self-defeating because it is a disincentive to construction of rental housing.

Above all, we must reject the counsels of those who would destroy the federal system of support for moderate-income housing. On the contrary, we have seldom needed it more. In particular, the FHA should be strengthened and expanded, particularly to insure low-downpayment loans for first-time home buyers and the working poor.

I haven't painted a terribly bright picture of the housing scene here today. And, sadly, before I conclude, I must deal with a much darker side of our condition.

In the midst of plenty, we seem to tolerate the most dismal poverty. Indeed, it pains me to say that many of us simply avert our eyes from what is occurring around us. We seem increasingly prone to the attitude reflected in that old British saying: "Pull up the ladder, Jack, I'm OK."

The most visible manifestation of poverty in the midst of plenty are our homeless fellow citizens. I'm not going to inject myself into the argument about their numbers. We all know there are more homeless than there used to be because we see them. And I, for one, think it's highly appropriate for these reminders of persistent poverty to rest their cold and weary bones where we least like to see them—Lafayette Park or Fifth Avenue, for example. Perhaps this proximity will help us understand their bitter lot, so poignantly expressed by Wordsworth in his lines:

And homeless near a thousand homes I stood
And near a thousand tables pined and wanted food.

From where do all these homeless persons come? Clearly, some come through early release programs from mental institutions, which we also seem to believe we cannot afford to fund adequately. Others have been destituted by drink or drugs. But many, many of them come because there is no housing for them.

In dozens of American cities, including Washington, waiting lists for public housing grow longer and longer. In the Greater Washington Metropolitan Area, the number is 34,000 families—that's more than 100,000 people! At any reasonable rate of construction, it would take 13 years to build housing for those families. And there is no housing being built.

The people on those lists here, and elsewhere across America, are not statistics. They differ one from another. They include poor pregnant women who are participating in your own "Better Babies" project. They include families like Dennis and Suzanne Powell and their five daughters who, as reported by The *New York Times*, lived in their car for seven months because they could not find housing to replace the damaged apartment for which they had been paying $270 a month in rent. They even include, as reported in The *Los Angeles Times*, dozens of working families in that synonym for American enterprise capitalism in the '80's, the Silicon Valley.

No, these people on the housing lists are not all the same. What they share with each other—and with us—is their common humanity, and the fact that they live in the richest nation on earth.

What can be done for the poor who lacks adequate shelter? Certainly, the many private initiatives, abetted by local governments, including the District of Columbia, are important and helpful. One very recent promising example is the concept of linking "incentive zoning" for commercial developers to contributions to low-income housing.

But these efforts alone will not solve the problem.

Housing for the poor cannot be built and maintained without money—lots of it. And the only real source of the kind of money needed is the federal government. We must step up federal support for low-income housing. There is no other answer, and the sooner we recognize that, the sooner we can get to work.

Now, I recognize the federal deficit for the threat its growth poses to our long-term economic health. Any increase in federal appropriations for low-income housing must be "pay-as-we go." Where we get the revenue—whether from fewer or less expensive weapons systems, or higher taxes on the affluent, or perhaps caps on the mortgage interest and property tax deductions—whatever the source of the funds, I am confident we can find them if we become committed to doing so.

And let's not be put off by the failures of the past. Sure, the Pruitt-Igoe public housing project in St. Louis was a famous fiasco that had to be torn down. Sure, some local housing authorities haven't performed as well as we'd like them to. Sure, we don't want to build a new federal housing bureaucracy.

But we can do the job right, using targeted housing block grants to states and localities and, again, by tapping the extraordinary creativity of our housing industry.

In the Housing Act of 1949, our nation dedicated itself to the goal of "a decent home in a suitable living environment" for all Americans. That goal has been repeated in subsequent housing acts. As a statement of policy, we have never retreated from it. In actual fact, we are well on our way to abandoning it.

We must ask ourselves: Are we willing to abandon our housing goals? Do we care whether our children and future generations have the same housing opportunities that we have had? Does it make any difference to us that our poorest fellow citizens find fewer and fewer decent places to live?

If we do care, then housing policy matters to all of us. And you can help to move it back onto our national agenda. You can add your voice to those who reject the conclusion that the housing job is done. You can accept the challenge that our current housing problems pose for us. You can keep alive the American dream of home ownership.

As you join me in this effort, we should all remember that the American home is not only—it is not primarily—just a shelter, a source of capital, or a piece of property. The American home is a locus of values; it represents not just where we live, but who we are.

Let me give Yelena Bonner the last word. In that same article I quoted earlier, she writes: "The American feeling about his house expresses the main traits of Americans—the desire for privacy and independence. . ." She adds that "there is no aggression or parochialism in that attitude. It is open and kind and caring both toward the house and toward everything that it stands for, the soil in the flower boxes and the lovingly-tended lawn, even if it's only three square yards. Americans do not want war. They want a house."●

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 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 Mr. Dennis A. Parobek, a member of the staff of Senator CHIC HECHT, to participate in a program in Chile, sponsored by the Universidad de Chile, Instituto de Ciencia Politica—Institute of Political Science of the University of Chile—from November 9-15, 1986.

The committee has determined that participation by Mr. Parobek in the program in Chile, at the expense of the Universidad de Chile, Instituto de Ciencia Politica, 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 M. Guttman, a member of the staff of Senator DAN QUAYLE, to participate in a program in the Federal Republic of Germany, Sweden, and the United Kingdom, sponsored by the German Marshall Fund, from November 1-13, 1986.

The committee has determined that participation by Mr. Guttman in the program in the Federal Republic of Germany, Sweden, and the United Kingdom, at the expense of the German Marshall Fund, is in the interest of the Senate and the United States.

MOONLIGHTING FOR JAPAN

● Mr. MURKOWSKI. Mr. President, last month, Japan's largest selling newspaper published an amazing article. The article described a $200,000 plan to have Americans in sensitive positions moonlight as information gathers and public relations [PR] agents for Japan.

Briefly, Mr. President, according to the article provided by the U.S. Embassy Tokyo, the Japanese Government has targeted 10 States, including Missouri, Oregon, and Michigan as places with "deep-rooted criticism of Japan." The Japanese plan to use $200,000 worth of Japanese Government cash to hire American "enterprise managers, executive officials of local chambers of commerce and industry, lawyers and newspaper editori-

al staff members in local areas" to do part-time work.

The work expected of the Americans is twofold. First, they are "to collect information for the purpose of helping Japanese enterprises advance into the United States." Second, they are "to conduct PR on Japan's market-opening measures." The idea is that American "faces" would be more likely to deflect suspicions than if the same enterprise was attempted by Japanese.

Mr. President, it is not clear from the article whether this program would be permitted under U.S. law. At the very least, I would think that American participants would have to register with the Department of Justice as foreign agents. They may also have to indicate that their output, if distributed to Americans, is "propaganda" within the meaning of the Foreign Agents Act. If they are to act as lobbyists, then they would also have to register with the Congress, as well.

Quite frankly, I would hope the Japanese Government would reflect on this and reconsider such a program. Foreign influence on the media is a very sensitive subject in the United States. We have very stringent laws on who may and may not own radio stations, TV stations, and newspapers. The Australian-born newspaper publisher Rupert Murdoch became an American citizen at least in part so that he could take control of the New York Post.

Finally, Mr. President, I feel that the program as proposed by the Ministry of International Trade and Industry could be easily misinterpreted by the American people and lead to the very kind of closed markets it is designed to avoid. I feel certain that the Japanese people would not approve of a similar program aimed at their enterprises and opinion makers.

I ask that the article be made a part of the RECORD.

The article follows:

"FRICTION REPORTERS" TO BE ASSIGNED TO US; MITI PLANNING "LOCAL HIRE" IN 10 STATES WITH STRONG CRITICISM AGAINST JAPAN

MITI will consolidate a "grass-roots information network" in the US to cope with the intensifying economic friction. It is a local-reporter system, which MITI will carry out through the Japan External Trade Organization (JETRO) as a new project from the next fiscal year, and MITI will conclude contracts directly with US local economic-world persons and will take up live voices closely connected with local communities. In the initial year, MITI plans to establish it in ten states, including states which have deep-rooted criticism against Japan. In this connection, MITI has submitted a budget estimate of 30 million yen.

MITI and JETRO are both entertaining a sense of crisis, because Japan's trade surplus with the US this year is likely to break the level of 70 billion dollars. Also, there is self-reflection upon the fact that the Japanese side was driven into difficult negotiations, due to its lack of US local information, on such occasions as the inter-governmental semi-conductor consultations since last year, and partly because of this, MITI and JETRO decided to set about hiring foreign reporters for the first time.

As reporters, MITI and JETRO have already prepared a listing of enterprise managers, executive officials of local chambers of commerce and industry, lawyers, and newspaper editorial staff members in local areas. MITI and JETRO are planning to have one reporter in each of ten states, including Missouri, Oregon, and Michigan, in which JETRO has no branch office.

Making a contract with Japan is a side-job for reporters, but the Japanese side is aiming at collecting information about local enterprises while making use of their "faces." MITI and JETRO are attaching expectations on them, while thinking that it will be possible to probe the background of the US Congressional bill for retaliation against Japan and it will also be possible to collect information for the purpose of helping Japanese enterprises advance into the US. Also, MITI and JETRO will try to persuade American citizens who are angry at the expanding of the trade imbalance, by asking these reporters to conduct PR on Japan's market-opening measures.●

MAJ. CHERRY L. GAFFNEY AWARDED FOR OUTSTANDING ACHIEVEMENT

● Mr. HOLLINGS. Mr. President, it is with great pleasure that I rise today to pay tribute to Maj. Cherry L. Gaffney of the U.S. Army, whose outstanding service to the Armed Forces has earned her the prestigious Legion of Merit Award.

Currently a staff pathologist at Walter Reed Army Medical Center, Maj. Cherry L. Gaffney received her award for outstanding meritorious achievement for the critical role she played in the identification of the remains from the tragic mishap in Gander, Newfoundland, which claimed the lives of 248 members of the 101st Airborne Division and 8 crew members who were returning from their role as Middle-East peacekeepers in the Sinai. Major Gaffney's exemplary performance of duty as a member of the joint task force at Dover Air Force Base in Delaware reflects great credit on her and the Department of Defense. The Gander accident was one of the biggest noncombat disasters in military aviation history.

Major Gaffney began active duty in the U.S. Army as a captain in April 1980 and presently holds the rank of major, Medical Corps/Flight Surgeon. She is a graduate of the College of Charleston, with a bachelor of science, and received her medical degree from the Medical University of South Carolina in 1979. One of her ancestors was the founder of the great town of Gaffney, SC. Major Gaffney continues to uphold her family's honorable reputation by receiving such a coveted award.

Mr. President, on behalf of the people of South Carolina I salute Major Gaffney for her accomplishments and wish her the very best in the future.

I request that the text of this award be printed in the RECORD.

The material follows:

THE UNITED STATES OF AMERICA

To all who shall see these presents, greeting: This is to certify that the President of the United States of America authorized by act of Congress 20 July 1942 has awarded

THE LEGION OF MERIT

TO

MAJOR CHERRY L. GAFFNEY, UNITED STATES ARMY

for outstanding meritorious achievement during the period 12 December 1985 to 25 February 1986. Her participation as a member of a Joint Task Force organized at Dover Air Force Base, Delaware was critical in the identification of remains from the aircraft mishap in Gander, Newfoundland which claimed the lives of 248 members of the 101st Airborne Division and 8 crew members. Major Gaffney's exemplary performance of duty reflects great credit on her and the Department of Defense.●

CHILDREN IN COMMUNITIES: OBSTACLES AND OPPORTUNITIES

● Mr. DODD. Mr. President, on May 1, 1986, the Senate Children's Caucus held its second forum honoring "Save the Children Day." Save the Children is a private, nonprofit organization I am proud to say is based in my State of Connecticut. Save the Children has had a most distinguished career assisting children and families both in the United States and abroad.

The Senate caucus heard from two panels of younger witnesses from across the country, representing community projects sponsored by Save the Children. All these young people spoke on the basic theme of building a future for ourselves, our communities, and the children we might have someday. They raised concerns about the issues of alcohol and drug abuse, teenage pregnancy, high school dropouts, unemployment, and poverty.

The younger witnesses were introduced by Marjory C. Benton, distinguished honorary chair of the board of directors of Save the Children. The first panel included Okia Cooper, age 11 of Brooklyn; Lisa Ann Brewer, age 16 of Annville, KY; Robinette Lewis, age 17 of St. Francis County, AR; Susan Toineeta, age 16 of Paint Town, NC; and James Poitra, age 11 of Dunseith, ND. The second panel literally turned the tables on the Senators. We sat in the witness seats and they sat in ours and asked us some very tough questions. These future political leaders included Johanna Martin, age 14 of Bridgeport in my home State of Connecticut; Russel (Beaver) James, age 12 of Woodford, CA; Tiffany Hardrick, age 10 of St. Francis County, AR; Tara Parker, age 11 of St. Helena

Island, SC; and Mark Thompson, age 14 of Sacaton, AZ.

Mr. President, I would like to commend David Guyer, president of Save the Children, for his expert leadership in building an organization that Connecticut and the country can be extremely proud of. I would also like express my appreciation to those Save the Children staffers from the Washington DC, Westport, and regional offices who helped make it possible for the younger witnesses to testify on May 1.

I ask that the witness list and my statement of May 1, 1986, be printed in the RECORD. The complete transcript of the forum and written testimony of the witnesses are available in my office. I urge my colleagues and their staffs to contact Marsha Renwanz of my staff if they wish to review this important forum Record.

The material follows:

SENATE CHILDREN'S CAUCUS

WITNESS LIST—POLICY FORUM ON "CHILDREN IN COMMUNITIES: OBSTACLES AND OPPORTUNITIES"

(Thursday, May 1, 1986; 628 Dirksen Senate Office Building; 9:30 a.m.)

Panel 1

Marjory C. Benton, Honorary Chair, Board of Directors; Save the Children; Westport, Connecticut.

Okia Cooper, age 11; Brooklyn, New York.

Lisa Ann Brewer, age 16; Annville, Kentucky.

Robinette Lewis, age 17; St. Francis County, Arkansas.

Susan Toineeta, age 16; Paint Town, North Carolina.

James Poitra, age 11; Dunseith, North Dakota.

Panel 2

Johanna Martin, age 14; Bridgeport, Connecticut.

Russell (Beaver) James, age 12; Woodford, California.

Tiffany Hardrick, age 10; St. Francis County, Arkansas.

Tara Parker, age 11; St. Helena Island, South Carolina.

Mark Thompson, age 14; Sacaton, Arizona.

OTHER SAVE THE CHILDREN DELEGATES

(Representing Arkansas, Arizona, California, Connecticut, Kentucky, Mississippi, New Mexico, New York, North Carolina, North Dakota, South Carolina)

Gail Benson (age 14), David Byron (age 16), Bernelle Capitan (age 15), Elenore Giron (age 14), Connie Hacker (age 16), Gracelyn Hill (age 12), Ann Jeff (age 16), Harlan Mermejo (age 13), Randy Morales (age 14), Christina Morris (age 15), Matthew Pacheco (age 14), Vaughn Salabye (age 12), Latavish Ulmer (age 11), and Ruby Valdez (age 15).

STATEMENT OF SENATOR CHRISTOPHER J. DODD, SENATE CHILDREN'S CAUSUS—POLICY FORUM: "CHILDREN IN COMMUNITIES: OBSTACLES AND OPPORTUNITIES"

I am delighted to open this Senate Children's Caucus Policy Forum, honoring Save the Children Day. Each year on May 1, it has become a tradition for young people from my State of Connecticut to California to come to Washington, D.C., to tell those of us in the Senate about the issues of greatest concern to them. These younger Americans also represent the concerns of Save the Children, a nonprofit organization based in my State of Connecticut assisting children in families and communities both in this country and abroad.

I would like to tell our younger witnesses here today that five years ago, children very much like them who were testifying on behalf of Save the Children inspired me to work on setting up this caucus. Senator Specter and I established the caucus about three years ago and thirty-two of our colleagues on both sides of the aisle have now joined us in focusing on children's issues. I am pleased to report to our witnesses today that the Senate Children's Caucus has young people testify before us at all of our forums.

Last year, the children who testified on May 1 focused on the plight of their needier peers in Africa, suffering from the ravages of hunger and disease caused by drought. This year, we will focus on problems of critical concern here at home, including unemployment and childhood poverty, alcohol and drug abuse, teenage parenthood, illiteracy and school dropouts. We will hear firsthand from twenty-four Save the Children delegates about such problems in their own communities, from New York to North Dakota.

This morning, however, the Save the Children delegates are going to turn the tables on us. The first panel of witnesses will present their testimony and allow us to question them in the traditional manner. But the second panel will take on the task of serving as Senators by asking us the tough questions about poverty, teen parenthood, and the problems of alcohol and drug abuse. The second panel will quite literally be sitting in our seats and we in theirs. So, the young people will have us in the hot seats and I think the learning experience will be invaluable for all.

I am proud that two of the distinguished delegates who will be testifying and asking us questions this morning come from Bridgeport in my State of Connecticut. The plight of far too many young people in Bridgeport is not an easy one. The biggest risk facing most is poverty. One in every three children under the age of 18 in Bridgeport live in families with incomes below the poverty line and close to fifty percent live in families considered seriously disadvantaged economically.

The picture nationwide is not much better than that found in Bridgeport. One out of every four children under the age of six in this country lives in a family whose income falls below the poverty line. For minority preschoolers, that figure is even higher: Every other black child and close to every other Hispanic child will celebrate their sixth birthdays in poverty. And poverty does not afflict only our very youngest citizens. Children of all ages now constitute the poorest age-group in America.

The risks posed by childhood poverty are numerous and serious. Poverty results in a greater chance of poor health, injury, abuse and neglect. For example, it is not surprising that the infant mortality rate in Bridgeport, closely linked to malnutrition and inadequate health care, is the third highest in my State. One in forty Bridgeport children is reported a victim of neglect or abuse each year.

Children who grow up in poverty face a greater risk of becoming teen parents, dropping out of school and ending up unemployed. One out every of three young people in Bridgeport will leave school before graduating. In cities like New York and Chicago, that figure is close to fifty percent. And, as some of the delegates will testify this morning, in some places in this country, the drop out rate is a staggering 75 percent.

From Bridgeport, Connecticut, to Bishop, California, the primary reason girls give for leaving school is teen parenthood. It should alarm us all that the United States has the highest rate of teenage pregnancy and parenthood in the industrialized world. Likewise, the high unemployment rates linked to teen parenthood give us all cause for concern. Every year, some $16 billion in public assistance payments go to households where the mother was a teenager when her first child was born.

Youth unemployment, alcohol and drug abuse, and involvement in the juvenile justice system can all too often go hand-in-hand. In my State alone, one out of every four drivers responsible for a drunk-driving fatality is a teenager. One out of every three Connecticut students in grades ten to twelve have moderate to heavy drinking problems. And, between 1983-84, the number of children in treatment for cocaine addiction in my State increased 100 percent.

So, I look forward to hearing from our delegates this morning how these difficult problems affect them, their families, their peers, and their communities. And, just as importantly, I look forward to some very tough questions from them. Before I call on our first panel of witnesses, let me see if any of my colleagues would like to make opening remarks.●

INTERNATIONAL COMPETITIVENESS AND THE HOLLOW CORPORATION

● Mr. GLENN. Mr. President, for over 40 years, the American economy was the envy of the world. Out of ravages of the Great Depression and World War II, it produced the greatest and longest period of prosperity in history, creating jobs, wealth, and opportunity for all Americans. Yet, right at this moment, the engine of that strength and prosperity—our manufacturing base—is being dismantled and exported overseas in search of lower costs. This is often called the hollowing of the American corporation.

Recently, Business Week magazine examined this phenomena in an article called "The Hollow Corporation," and in it, the authors painted a grim picture indeed. After reading the piece, I sought the advice of my Advisory Panel on Manufacturing Technology. On it sit some of Ohio's best businessmen, scientists, and professors.

What I heard from them did nothing to lessen my concern. To my dismay, not one of them challenged the findings of the Business Week article. In fact, their letters reflected a grave concern that the United States was losing its competitive edge by moving its production capacity overseas. Listen to what several of them had to say:

I strongly agree with [your] concern about "the hollow corporation." If U.S. industry is to provide jobs for American labor, tax dollars to support government programs and after-tax profits to pay back investors, they must find ways to add substantial value to the products they are selling. (Richard L. Kegg of Cincinnati Milacron)

I found the article * * * to be faithful to my understanding of current trends in U.S. manufacturing. I have always believed that if we lose our industrial base we can't have a prosperous service economy. Nevertheless, since the late 1970s America has had to adjust to an intensifying global interdependence. U.S. manufacturing firms have been extending their value chain to many parts of the world, especially the Far East. In many cases the consequence has been to concede to foreign manufacturers the production of high value-added products upsteam from final assembly, packaging, and distribution. (Arden L. Bement, Jr., Vice President Technical Resources of TRW Inc., Cleveland)

The article expounds in great detail the dangerous state of affairs in manufacturing that the United States is in. The plight of the machine tool industry, which is the backbone of manufacturing, exemplifies more than any other industry this deplorable state. As you know, more than 75 percent of the metal cutting machining centers and turning centers used in U.S. industry are now imported, mostly from Japan. (Dr. Michael Field of Cincinnati)

If their comments fail to register, let me read to you what the founder and chairman of Sony Corp., said:

American companies have either shifted output to low-wage countries or come to buy parts and assembled products from countries like Japan that can make quality products at low prices. The result is a hollowing of American industry. The U.S. is abandoning its status as an industrial power.

To be sure, the hollow corporation is a natural consequence of changing economic conditions worldwide. In the face of stiff foreign competition, American manufacturers are looking for ways to cut their costs, the result being that they have focused their attention on the labor component of their products. So, manufacturers shut down factories and outsource—that is, they buy parts or even whole products from foreign companies which pay their workers pennies a day under substandard working conditions.

We see evidence of the hollow corporation everywhere we look. According to Business Week, virtually all of General Electric's consumer electronics goods are now made overseas. Caterpillar Tractor Co, buys lift trucks from a Korean company, paints them yellow, and sells them. Around 20 percent of the parts in American-made automobiles are imported. Not one video cassette recorder is made in the United States, even though it was invented here. Only very recently, the New York Times reported that the American textile industry cautioned its manufacturers that they "must change its emphasis to rely more on service than manufacturing" and should be prepared to become middlemen between overseas producers and domestic retailers.

Some economists will tell you that this is evidence of a mature industrial economy adapting to international competitiveness. In my opinion, such talk hides the harsh reality—that the continued hollowing of American companies will contribute to a downward trend in our standard of living.

For example, some have suggested that the hollowing process is part of the transition to a service-based economy. I must disagree with those who think the United States can remain prosperous as a service economy. To me, this is a matter of common sense. A service economy has to have something to service. If this argument does not persuade you, consider some others.

Service jobs generally pay lower wages than manufacturing jobs. We have all read about the starting salaries for lawyers and bankers on Wall Street, but for every one of them there are several who are selling hamburgers and sweeping floors. Yesterday's auto workers were able to buy cars, trips, televisions and homes for their families and send their kids to college, getting them out of the factory and into the board rooms. Their spending fueled nearly 30 years of unprecedented economic growth and made our society the most fluid and democratic in the world. This is perhaps the Democratic Party's greatest legacy. But will tomorrow's middle class have the same buying power? Will their children get a taste of the American dream?

Finally, just as our steel, semiconductor and auto firms face foreign competition, so will America's insurance, banking and telecommunications industries. Not only do trade barriers exist, but more and more foreign firms are opening to service their local manufacturing base.

Furthermore, the hollowing process may mean more than the loss of jobs. America's position as the leading innovator in the world may be at stake. For example, in the semiconductor industry, Japan has replaced the United States as the top producer of memory chips—at the cost of 65,000 jobs here in this country. This transfer of production capacity threatens growth in other sectors. As economist Robert B. Reich of Harvard recently wrote:

The design and manufacture of memory chips is so challenging and sophisticated—and intimately linked to so many other electronic advances—that experience in producing chips is essential to continued innovation in a vast array of high-tech products. These include everything from telecommunication devices to strategic defense shields in outer space. Once we get off the track there may be no getting back on. (N.Y. Times, October 12, 1986)

Clearly, Mr. President, this country must strengthen its manufacturing base. I believe that the solution can be found right here in this country. We do not have to look overseas to regain our competitiveness. My Ohio advisers and many experts agree that the key to regaining international competitiveness is a two-pronged strategy: the judicious application of advanced manufacturing technologies, and the organizational and attitudinal changes within business and Government that will make these new technologies work.

PROMOTING A MODERN INDUSTRIAL BASE

It should be a priority of this Congress and the U.S. Government to promote the application of advanced computer technology to the manufacturing process. This is a task that will require concerted efforts on several fronts: research, education, technology transfer, and even the encouragement of the risky but essential steps forward to modern methods of manufacturing. In the race to build and manage the factory of the future, America must finish first.

We have already seen American industry experiment and master islands of automation. This has often been achieved through processes such as computer-aided design and computer-aided manufacturing. However, the factory of the future will combine this and other technologies to achieve the ultimate in manufacturing technology—computer integrated manufacturing or CIM for short.

CIM uses the marvels of computer technology to accomplish the total integration of all parts of the manufacturing process—from marketing and sales, through design, engineering, production, and materials handling. Business Week explained it this way:

[B]y totally automating and linking all of the functions of the factory and the corporate headquarters, a manufacturer would be able to turn out essentially perfect, one-of-a-kind products—at the lowest possible cost and almost overnight. A company could:

Conceive new products on a computer-aided design (CAD) system that would allow designers to optimize their ideas.

Pass the CAD data electronically to a computer-aided engineering (CAE) system to verify that the design will do the job intended and can be made economically.

Extract from the CAE data the information needed to make the product. The information would be sent to a computer-aided manufacturing (CAM) system. The CAM system would send electronic instructions for making the product to computer-controlled machine tools, robotic assembly stations, and other automated equipment on the shop floor.

Mr. President, listen to what my friends in Ohio say about CIM:

Full or partial automation of manufacturing is imperative for the survival of the manufacturing base in the U.S. (Dr. Michael Field)

CIM [is] a solution to halt the growing erosion of manufacturing in the U.S. * * * CIM, in addition to enabling domestic manufacturers to achieve competitive cost parity with foreign production sources

(which are either labor intensive or rigid, dedicated mass productions systems), provides them with the flexibility to manufacture a range of products. (Professor N. Mohan Reddy of Cleveland)

The heart of the solution to this country's problem presented in [The Hollow Corporation] does lie in advanced manufacturing in the form of computer-integrated manufacturing * * * (M. Eugene Merchant, Director Advanced Manufacturing Research, Metcut Research Associates Inc., Cincinnati)

The benefits of CIM are enormous. When a company discovers that market conditions are changing, it will be able to respond quickly, tailoring products for buyers and introducing new products to meet new demand. CIM lets us do this because new products or even product lines can be introduced with lower changeover costs. Moreover, the cost of producing the first unit will be only slightly more than producing the thousandth. The need for long runs of the same product will diminish. This substantially reduces the advantages of economies of scale and allows American firms to benefit from the economies of scope.

I do not profess to be an expert in manufacturing engineering, but I know a good idea when I see one. We can develop the factory of the future right here at home and be at the cutting edge while getting the competitive edge. The question is not whether CIM is the future; it is who will get there first. Although CIM's benefits seem obvious, American industry has moved slowly in its direction. Several reasons explain why:

One, implementing CIM is very expensive and time consuming, especially for small businesses. It may overwhelm a firm's capital budget and take several years.

Two, there is no constituency for CIM. Historical yardsticks of return on investment do not measure the benefits of CIM—they ignore the benefits of intangibles such as flexibility, better quality and shorter lead times.

Three, lack of management commitment. One Ohioan said "manufacturing seems to defy the quick fix and that is what many businessmen are looking for." Many managers with their eye on the short-term bottomline are afraid of taking "unprecedented technical risks."

Four, there simply aren't enough engineers with the technical knowledge required to develop and install CIM.

ORGANIZATIONAL AND ATTITUDINAL CHANGES

This brings us to the second major prong of a national competitiveness strategy: bringing about the changes in Government policy, in business attitudes, and in educational infrastructure that will support new rules of the game in manufacturing.

Mr. President, the U.S. Congress has a role to play in promoting what some believe will be a new era in the Industrial Revolution. Nothing is more important to the long-term prosperity of this country than the international competitiveness of American industry. And nothing is more important to the competitiveness of American industry than having a strong manufacturing base. Of course, we could sit back, wait for CIM to happen on a widespread scale—and I guarantee you that will happen—and then wave to the Japanese as they pass us by. This would be disastrous.

Free market economics teaches us that the most efficient way to allocate production is to let the market decide who will produce what. Indeed, this is usually the best way of satisfying consumer needs at the lowest cost. But the invisible hand of the free market does not guarantee that the producers will be Americans. In this fast-moving world producers could be, and increasingly are, in other countries, giving jobs to other people.

The Federal Government must take the lead in encouraging companies to take the unprecedented risk involved with implementing modern production methods. As Dr. Michael Field of Ohio said:

[T]he small manufacturing shops, which account for 75 percent of the manufacturing products in the U.S., have not as yet begun the planning and implementation of CIM. CIM is expensive and time consuming and most small companies do not have the required technical manpower and management acumen to get into CIM. * * * The small manufacturing shops need to be shown the advantages of CIM or they may find themselves falling into the wayside in the near future. They must be convinced that CIM and advanced manufacturing technology are not only desirable but will be necessary for their survival.

Another Ohioan, M. Eugene Merchant of Metcut Research Associates Inc., noted that the development of CIM will require a more collaborative effort by Government and industry:

To reap the benefits of CIM technology, both a long-term commitment and a cooperative national approach to development and implementation of such technology are required, since CIM can only be realized through a systems approach to manufacturing. American companies have great difficulty dealing with either of these two requirements under our present national environment. The governments of the other leading industrialized countries, realizing these facts about CIM technology, have organized national approaches to assist their manufacturing industries to undertake long-term commitments and to develop a cooperative national approach. We need to create the same environment in this country!

The Federal Government currently has several programs that so far have had limited, yet very successful results. Richard L. Kegg of Cincinnati Milacron describes them:

In the field of CIM the Mantech programs of the DOD and the small AMRF program of the Bureau of Standards are both positive contributions in this direction. These programs provide funding which attracts talented engineers into the manufacturing field. They also support programs which underwrite the risks associated with major thrusts in manufacturing technology. More funding for these programs and additional programs of this type would be helpful.

And Dr. Michael Field of Cincinnati had this to say about Mantech:

The Manufacturing Technology Division (Mantech) at Wright-Patterson Air Force Base has taken a positive step toward helping two small companies install a computer integrated manufacturing system into their shops. Mantech has set up a contract through Dravo Corp. entitled MIAS—Machining Initiatives for Aerospace Subcontractors. In this program the two small companies named Mayday Manufacturing Company and Castle Precision Industries are installing a flexible manufacturing cell for manufacture of their products. The Air Force is funding the implementation of manufacturing technolgy only. The two companies are purchasing the equipment themselves. The MIAS project will serve as an example of how CIM can be developed and implemented into small shops.

Mr. President, Mantech works. In the 100th Congress, I will introduce legislation that will broaden Mantech's mandate beyond the defense procurement area. I will work to establish a Mantech program for civilian agencies such as the General Services Administration so that the incentives for CIM will be available to nondefense manufacturers.

Mantech is but one step toward a comprehensive Federal CIM policy. Greater efforts must also be taken to encourage America's young people to enter scientific and engineering fields and attract them to careers in manufacturing. American schools are graduating engineers at dangerously low levels, thus threatening long-term, growth of our manufacturing industries.

Federal Government support for research and development in advanced manufacturing technology must be increased. I am ashamed to say that our investment in civilian R&D trails that of our top trade rivals as a share of national output. We should also work toward reducing the cost of capital formation, which is a major factor in determining the size of private R&D investment. This means cutting the Federal deficit and real interest rates.

Before I finish, one other issue deserves our attention. CIM raises serious questions regarding the role of blue collar workers in the factory of the future. Such factories will employ fewer workers, but the workers employed will be more skilled and possibly better paid. Automation, like foreign imports, will produce an adjustment that simply must be addressed. After all, whether its cause is CIM or foreign imports, unemployment is still unemployment. However, I would submit that traditionally rigid views of labor-management relations will cause more unemployment than a flexible view where the labor force will be given more flexibility and more re-

sponsibility in the manufacturing process. The factory floor in a factory of the future will require different skills than what we expect on the factory floor today. I would support job training programs that would give unskilled and semi-skilled workers the chance to learn the skills necessary to work in the factory of the future and elsewhere. This, of course, is only the beginning. The fate of America's rank and file will not be forgotten.

Mr. President, I conclude by pledging my strong support for congressional initiatives designed to strengthen America's manufacturing base and improve its international competitiveness. I have today accepted the invitation of my colleagues, Senator BAUCUS and Senator CHAFEE, to join the Congressional Coalition on Competitiveness. This group is a bipartisan, bicameral organization which is being formed to address the problem of U.S. international competitiveness. It will work in tandem with the Council on Competitiveness—a business-labor-university group led by John Young of Hewlett Packard and Chairman of the President's Commission on Industrial Competitiveness—and the Congressional Economic Leadership Institute, a nonporofit, private group backed by TRW, Inc., of Ohio and other corporations, unions, and organizations.

Given the state of America's trade picture, this is an idea whose time has come. I am only happy to be a part of the coalition at the very beginning so that we can move quickly to examine the cause of America's decline and recommend responsible, comprehensive solutions.●

HOME SATELLITE DISHES

● Mr. GORE. Mr. President, 2 weeks ago, the Senate had an opportunity, for the first time, to go on record in favor of fair treatment for the millions of home satellite dish owners throughout the country. It was a simple proposal that addressed the fundamental issues facing home dish owners. While we had hoped to get a clear vote on the merits of the issues in the amendment, the issue was presented as a procedural vote on the continuing resolution. Yet, despite that encumbrance, the amendment won 44 of our colleagues' votes in support of fair viewing rights for home dish owners. That is substantial progress and should carry over into next year's session.

I believe it is extemely important that our colleagues understand that this ongoing debate is not a fight between home dish owners and local cable companies. There is no logical reason why cable interests should oppose such a measure—unless, of course, they are under instructions by parent companies which also control program sources.

What the continuing scrambling debate is all about is free-market competition for a product which is new to our economy, a product which has produced a whole new industry, a new technology in mass communications. Satellite television programming and the home dish which it spawned are fast becoming a fixture for the American family, especially in rural towns, on farms, and for families not served by cable.

Those of us who have worked so hard to advance fair viewing rights for home dish owners have done so not to disadvantage local cable operations. In fact, we have very good relationships with our cable operators in our States. For my part, Tennessee cable operators have been particularly helpful in expanding public information efforts, in helping me produce a statewide cable-delivered open meeting, in finding ways to promote C-SPAN broadcasts of House and Senate proceedings. Our cable operators are business managers, good community citizens interested in serving their cable customers.

I had an opportunity to meet with a group of Tennessee cable operators the week before the Senate considered our amendment, and, while we did not totally agree on every point related to the TVRO issue, we did agree that the terms of the amendment we proposed does not fundamentally affect local cable operations. Once they understood that we had no intention to handicap local cable systems, there was a willingness to consider a common ground. I cannot say that the Tennessee cable operators supported the amendment—they simply did not want any legislation this year. But it became clear to me that we were not as far apart as some have tried to describe the TVRO-cable issues.

So, Mr. President, it is vital to our colleagues that we understand that this debate is not cable versus home dish owners.

Many of our colleagues have received hundreds, even thousands, of complaints by beleaguered owners of home dishes who believe they have been unfairly treated. 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 pricing terms for scrambled programs that are clearly anticompetitive.

The home dish is almost unique in that this technology came first to rural America. That is where the home dish has thrived and that is where its future promise will continue to be, but only if programming is to be made available in an open, competitive marketplace.

During the debate, we heard a great deal about whether or not the marketplace can solve the obvious distortions that now exist. The facts are clear:

Prices for programming are fixed at an inordinately high level for the home dish market.

Price fixing is occurring because there is virtually no competition.

There is no competition because the control over the programming we are talking about is tightly held by a very few corporations with a long history of trying to shut out families who own home dishes. There are, to use the phrase of NTIA Administrator Alfred Sykes, during a recent Senate hearing, "perverse incentives" for anticompetitive behavior in the marketing of satellite television programming.

It should come as no surprise that, as of today—almost 1 full year after scrambling plans were announced—there is still not a single package of programming available to home dish families from a noncable distributor.

So it should be clear to our colleagues that there is a problem, that the marketplace is not working to correct the problem.

Mr. President, the home dish market is quite different from the cable marketplace. There are certain economies within local cable systems, and there are other economies in distributing services to home dish families. If the marketplace were truly working in a competitive manner, these economies would be reflected in the prices and terms home TVRO owners must pay for programming.

During the debate earlier this month, I offered an analogy:

If you want to watch a movie, you can go to the theater and pay $4 or $5 per person, or you can rent a videotape of the same movie for $2 or $3 for the entire family. The experience is different—I happen to prefer the theater—but you have the choice, and that choice includes a price that reflects the difference between the two markets—the theater goer and the videotape viewer.

But what if the movie studios owned almost all of the theaters, and decreed that the cost of renting that videotape must be as high as the price of a movie ticket? Would that be fair, or even legal? Of course not.

But that is exactly what is happening in the programming, cable, and home dish markets. Programmers are owned by the same companies which own a major share of cable operations, which in turn exploit the—using this administration's term—"perverse incentives" to monopolize programming services to the competitive disadvantage of home dish owners.

It is open competition that gives us the competitive, marketplace choice as to whether we rent a tape or go to a movie. That is all we are asking for families who own home dishes—a choice among truly competitive services. That choice is already vastly restricted for those who are not served

by cable. The amendment we proposed would have simply given them a modest dose of fairness.

Mr. President, over the weeks before the floor debate, there has been a great deal of misinformation about what the amendment did and did not do. For instance, the decoder standards provision was erroneously—even maliciously—branded as a "backdoor moratorium." That was not our intent. However, in order that this accusation was completely put to rest, we eliminated the comprehensive decoder language and substituted the following simple, two-sentence statement:

Within seven days of the enactment of this Act, the Federal Communications Commission shall initiate a notice of proposed rulemaking to address issues to ensure, to the greatest extent possible, that earth station owners shall need only one device to decrypt programming. Nothing in this section shall be construed to alter or affect any encryption which was in effect or announced on the date of enactment of this Act.

We would challenge anyone to interpret this language as offering any potential for a moratorium of any kind.

To prevent any other misrepresentations, let me reiterate what the amendment did not do. The amendment was neither Federal rate regulation nor a moratorium on scrambling.

The ability to move forward with scrambling has long been the fundamental objective of programmers and cable interests. The amendment did not restrict scrambling of programming services or network signals.

Cable interests have expressed concern about any legislation which reregulates their business. The measure we proposed in no way involved the Federal Government in setting rates charged by either cable operators or programmers. There was no Federal regulation of program rates in this measure.

In addition to the simple new decoder provision, it proposed a modest "fair marketing" provision.

First, the amendment stated that, if scrambled programming is sold to cable customers, it should also be sold to home dish owners. This is little more than a restatement of the intent of the 1984 Cable Act provisions dealing with satellite television.

Next, the amendment allowed programmers to choose to sell to home dish owners only through its own systems. However, if programmers choose to market services through other distributors, they cannot discriminate among distributors.

There was no forced, third-party distribution here. Only a statement that all distributors must be treated equally.

The logic behind this provision is simple: Until there is open competition among providers of satellite television programming, the forces who monopolize this industry will continue to be able to distort the marketplace with artificial prices and terms. This fair marketing provision simply did what programmers, cable interests, dish owners, and everyone else has claimed to want from the beginning—a marketplace that is open and competitive.

The amendment also set tough new penalties for those who interfere with communications satellites, such as the notorious "Captain Midnight" incident earlier this year.

There were no radical Federal intervention proposed in our amendment. The amendment was in no way hostile to cable companies. It was the absolute least we could have done 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, I want to take a moment to address some of the principal criticisms of our measure.

It has been more than a year since programmers began announcing that they would scramble signals. Yet, today, there is still not a single package of programming available to all home dish owners. TCI, a cable company, has proposed a package, but only to dish owners within its franchise areas, and that only covers about 5 percent of the country."

And, even though some programmers have proposed potential packages, not a single programmer has agreed to offer services through noncable distributors. HBO and Showtime, the two heavyweights that drive this industry, have even declared that they have no intention of dealing with distributors other than cable.

And those programmers have set prices that are pegged to local cable prices, ignoring the obvious economies of serving the home dish market. The HBO and Showtime rebate—or kickback—arrangements reflected that distortion. And even though both have dropped those outrageous practices, HBO has openly stated that dropping the rebate will still not result in lower prices to dish owners.

The result has been price-fixing, and a distorted, anticompetitive marketplace for what even those few proposed packages that are being considered.

Mr. President, let me illustrate the problem we create if we do not ensure the viewing rights of home dish owners. Let's take the example of NFL football games. NFL games are now shown entirely on broadcast television, available to anyone with a simple television set, wherever they live, on or off cable systems.

I note for my colleagues that an article appeared in a communications trade journal recently, titled "Operators back ESPN football plan." The story notes that major cable operators are helping ESPN, a major cable programmer, to obtain exclusive rights to Monday night NFL football games and that ESPN also intends to obtain rights to regular NFL games. And more recently, USA Network, another cable progammer, announced that it has developed a plan to purchase exclusive rights to NFL games.

Mr. President, I am not suggesting that cable not be allowed to compete for the right to air those games. In fact, the more competition the better.

But if those games, which are now available to everyone, are moved to cable, we are effectively shutting off NFL football from any family who does not subscribe to ESPN or USA Network over cable—and only about half of the country even has simple access to cable.

This is only one example of the potential for clear discrimination against dish owners which could result from our unwillingness to ensure basic viewing rights for families in rural areas with no option but the home dish.

Mr. President, it has been said that "the marketplace is working, that we do not need to intervene." I would agree that the marketplace should solve its own problems, but as we've stated earlier, that simply isn't happening.

And I want to point out an ironic precedent for Government intervention in this industry. When cable systems decided that the best way to wire customers was by tying onto local telephone or electric poles, they claimed that some utilities were charging exorbitant rates for that privilege.

Now the cable industry did not simply ask that they be allowed to use those poles. The cable industry insisted that the Federal Government step in and even regulate the prices they should pay to utilities, so that those cable companies could keep their capital costs to a minimum.

So, when some in the cable industry claim that we are somehow seeking to grant an unfair advantage to dish owners by simply granting them the modest right to pay for services—not setting the prices but simply suggesting that they be able to buy services—then cable should be reminded of the major pole attachment regulation and intervention they have demanded.

Two of the country's most respected institutional voices for rural America enthusiastically supported our amendment. The National Rural Electric Cooperative Association [NRECA] and the National Telephone Cooperative Association [NTCA] represent the interests of millions who live in small communities and on farms in prctically every State.

Mr. President, I want to include the text of the NRECA and NTCA supporting letters to be placed in the RECORD at this point, in order that my colleagues with large rural constituencies fully understand the depth of

feeling in these areas about fair viewing rights for home dish owners.

Mr. President, these two organizations serve most of the 1.7 million home dish owners. And I should note that practically every one of these 1.7 million families has no other means to receive the televised proceedings of the Senate as we debated these issues. For whatever reasons, only a relative handful of the 1,500 cable systems—3 percent by C-SPAN's numbers—are carrying the Senate proceedings. Every home dish owner can be a part of this democratic process, because they have made the investment out of their own pockets to join the telecommunications revolution. Ensuring fair satellite television viewing rights is the least we, in the Senate, can do to back them up.

Mr. President, we lost that vote by a remarkably close margin, 44-54. We believe that, if we had had a standalone vote on fair viewing rights for home dish owners, we would have won. Now it is up to the market forces to interpret this vote, to follow through on claims that TVRO owners will be served fairly and in a competitive environment.

But, Mr. President, if the marketplace remains distorted by monopoly forces when we reconvene in the 100th Congress, I can assure my colleagues that we will be back with an appropriate measure of relief, to ensure that the discrimination against home dish owners will cease, and that this exciting new technology will again be allowed to thrive.●

GLOUCESTER COUNTY, NEW JERSEY, TERCENTENARY 1686-1986

● Mr. LAUTENBERG. Mr. President, I am pleased to join my colleague from New Jersey, Senator BRADLEY, in commemorating the 300th anniversary of the founding of Gloucester County, NJ.

Gloucester County has played an important role in the founding and the modern history of this Nation. Originally settled by the Dutch and Swedes, Gloucester County became home to English and Quaker settlers in the 1660's. In May 1686, the Swedes and the Quakers met to form their own government at Arwames, which is now Gloucester County. Three hundred years later, we join Gloucester County in celebrating this historic meeting.

Gloucester County was strategic in our Nation's fight for independence. Historic battles were fought at Billings-port and Fort Mercer. A monument marks the spot where courageous American soldiers battled an overwhelming Hessian attack.

In more recent times, Gloucester County was the site of the historic 1967 summit between President Johnson and Premier Kosygin at Glassboro State College. It is fitting that Gloucester County, with its roots in many cultures and its history of self-determination, should be the meeting place of the world's most powerful leaders.

Mr. President, I salute the people of Gloucester County. I am proud to recognize their achievements and share their dreams for a bright future for their country.●

THE 350TH ANNIVERSARY OF THE NATIONAL GUARD

● Mr. GLENN. Mr. President, on March 20 of this year, I introduced a resolution recognizing the 350th anniversary of the National Guard, and honoring the Army and Air National Guard for services rendered to their communities, their States, and to our Nation. Senate Joint Resolution 300 passed the Senate by voice vote on April 11. An identical resolution, House Joint Resolution 574, was introduced in the House of Representatives, but regrettably has not passed the House to date. Therefore, I would like to reiterate my pride in the Guard.

Three hundred and fifty years ago, the first settlers of the Massachusetts Bay Colony organized militia units to defend their property and lives, establishing the tradition of the citizen-soldier in the United States. They reinforced the Continental Army, and helped to win our independence during the Revolutionary War, serving under Gen. George Washington, himself a Virginia militia officer. The citizen-soldiers evolved into the National Guard and have answered the call to duty in virtually every conflict in which the United States has been involved. In peacetime the National Guard has always been ready to serve by saving lives and property when disaster strikes.

On the 350th anniversary of the National Guard, it is important for us to acknowledge the enormous contributions of the Guard to our Nation. I have attached a copy of the text of the resolution as passed by the Senate.

S.J. RES. 300

Whereas three hundred and fifty years ago, the first settlers organized militia units to defend their property and lives, establishing the tradition of the citizen-soldier in the United States;

Whereas citizen-soldiers evolved into the National Guard and have answered the call to duty in virtually every conflict in which the United States has been involved; and

Whereas the National Guard has always been ready to serve by saving lives and property when disaster has struck in peacetime: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress recognizes the National Guard for three hundred and fifty years of service, and honors the Army and Air National Guard for services rendered to communities, to States, and to our Nation.●

ELIE WIESEL, RECIPIENT OF 1986 NOBEL PEACE PRIZE

● Mr. DODD. Mr. President, it gives me great joy that my good friend Elie Wiesel has been honored this week with the Nobel Peace Prize. This is, Mr. President, a rare moment. It is a moment of understanding, of acceptance, of comprehension. It is a moment of vision. It is a moment of epiphany when humankind grows.

This week, human awareness inched closer to truth. In honoring the work of Elie Wiesel, we have taken a responsible step toward a fuller understanding of our world. Wiesel's writing, teaching, and personal testimony have born witness to an era in modern history few even spoke of for decades after its passing. It was a time when the fields where children played were transformed into a stage where evil reigned and all life was horror. A time when suffering poured into the Earth, death suffused fetid air, and the desperate cry of an entire people rang unheard into the tumult of a world at war.

Elie Wiesel bears witness to this evil. His contribution is monumental. Apart from his own work, his eloquence and his pleas have encouraged thousands of survivors of Hitler's final solution to tell their story and make known to the world the reality of the concentration camps. When none would speak, either because their mind refused to conjure what their eyes had seen, or because the horror was impossible to articulate, or because no one, they felt would believe them, Elie Wiesel could not remain silent, and he inspired the kind of testimony the world may no longer ignore.

Dr. Wiesel might well have been honored with a prize for literature. His books and essays, starting with his first on the concentration camp experience, "Night," comprise a diverse body of writings that deal not only with the destruction of the Jewish people, but of the repression of Soviet Jews, the plight of the Palestinian people, and modern politics in Germany. Realizing that suffering, genocide, and other products of human insanity are not locked away in a historical moment but thrive in all corners of the globe, he has often seen and written of Cambodians and the Miskito Indians in Central America, of Lebanon and Northern Ireland, and of Biafra and Vietnam.

Yet still his most compelling work is that which relates to his days as a prisoner of the German death machine. In testimony before the Foreign Relations Committee last year, not an eye in the room blinked as he transfixed us with his words. "Mr. Chairman," he said,

I have seen the flames. I have seen the flames rising to nocturnal heavens; I have seen parents and children, teachers and their disciples, dreamers and their dreams, and woe unto me. I have seen children thrown alive in flames. I have seen all of them vanish in the night as part of a plan, of a program conceived and executed by criminal minds that have corrupted the law and poisoned the hearts in their own land and the lands that they had criminally occupied.

Mr. President, it has been asked: why must we revisit this event with such intensity? Why must we affirm our effort to understand and acknowledge it with such fervor? Perhaps, it may even be asked, why honor the life and work of Elie Wiesel?

It is because even today, when the gas chambers and ovens stand as monuments, and the tales of survivors are read in scores of languages, there are still those disturbed and spiteful minds who dare to claim that the destruction of the Jewish people was not undertaken, that 6 million did not die in gas chambers.

That such individuals are fewer and fewer is, Mr. President, Elie Wiesel's great triumph. It is, in large part, on account of his work that the sound of names like Dachau, Treblinka, Buchenwald, Bergen Belsen, and Auschwitz shake our souls like a death-knell tolling for humanity. Elie remembers, and we remember.

We must remember, because his story is a story which transcends time and place and individuals. His responsibility is a responsibility not only to the 6 million murdered Jews, but to all forgetful men who will be condemned to relive a history they do not know. And it is a responsibility to the yet unborn. "The fear of forgetting," Wiesel has written, "remains the main obsession of all those who have passed through the universe of the damned." He understands more deeply than anyone that that fear ought be the fear of all men, in all places.

Of his imprisoned comrades he writes:

We had all taken an oath. "If by some miracle, I emerge alive, I will devote my life to testifying on behalf of those whose shadow will fall on mine forever and ever."

This is the burden Elie Wiesel has taken on for all humanity. He deserves our most solemn honor and profound gratitude. His award enriches the tradition of the Nobel Peace Prize.●

ESTABLISH AN INFORMATION AGE COMMISSION

● Mr. LAUTENBERG. Mr. President, I rise to urge the House of Representatives to act on S. 786, the Information Age Commission Act of 1986. This bill, which I joined my colleague from Georgia [Mr. NUNN] in introducing, was passed by the Senate on October 9. The bill awaits action in the House of Representatives. In the race to adjourn, I fear the proposal will fail to receive the attention it deserves.

This legislation would establish a commission, to be drawn from academia, industry, labor, and government, to help us understand more clearly the complex issues and choices presented by the advent of the "informative age." Similar legislation, introduced by Representatives SWINDALL, BARNARD, and BROWN, is pending in the House of Representatives.

Mr. President, our economy and our society have been transformed. More than 60 percent of our Nation's work force is employed in the creation, storage, processing, or distribution of information, compared to just 17 percent in 1950. We were once an agrarian society. Then, we became an industrial society. Now, we are an information age society. Leading this transformation are the communications and computer industries.

Computer and telecommunications advances have affected the way we work, the way we play, and the way we learn. With a terminal and a data link, people can and are working from their homes, tapped into a firm's headquarters miles away. Children fortunate enough to have access to computers are learning in ways we never imagined. Computer technology is revolutionizing the factory floor, assisting in the design and manufacture of products. Computer technology raises a host of questions about preserving individual privacy. From the broadest perspective changes are occurring that will have a profound affect on our society and our place in the world economy.

Mr. President, we can ride the wave of this technological change. Or, we can be swamped by it. The information age brings great benefits—increased productivity, enhanced communications, accelerating advances in science and technology. But, it poses great challenges. There are challenges to our privacy, challenges to our industrial competitiveness, challenges to our ability to educate our youth, and challenges to our ability to maintain an active and self-fulfilled work force.

We need to commence a comprehensive review of the challenges we face. The Information Age Commission would contribute to the task of conducting such a review. It would provide a forum for the public discussion of these important issues. It would synthesize work and thinking that has already been done. It would present the Congress and the Nation with its analysis of the critical choices we face.

The commission would be asked to complete its work within 2 years. While our original proposal authorized a $3 million appropriation, that authorization was deleted in committee. The commission would depend upon the contributions of private industry.

Mr. President, without the commitment of Senator NUNN to this legislation, the proposal for an Information Age Commission would not have come as far as it has. I want to applaud him for his efforts. I also want to recognize the assistance of Senator ROTH, the chairman of the Government Affairs Committee, in moving the proposal. It would be unfortunate if this proposal were to die from inaction by the House.

Mr. President, technological change is proceeding at an accelerating rate. Policymakers, individuals, workers, companies, and society as a whole has less and less time to understand the impact of those changes, and to adjust. The Information Age Commission is intended to contribute to our knowledge, our understanding, and our ability to make the change wrought by the information age changes for the better. I urge the House to pass this measure.●

ROBERT A. BECK

● Mr. LAUTENBERG. Mr. President, I rise to pay tribute to Robert A. Beck, who has announced his retirement as chairman and chief executive officer of the Prudential Insurance Co. of America. Bob Beck has led his company through a period of great growth. But, he deserves our recognition, at this pivotal stage in his career, for his exemplarly service to the public interest. He deserves our recognition for his ability to combine a demanding private career with a commitment to the improvement of our State and the Nation.

Perhaps his most significant contribution to public policy was his service on the President's Commission on Social Security. Mr. President, that was one Commission which did not produce reports that just sat on a shelf. The Commission made recommendations that served as the basis for the landmark Social Security legislation in 1983. As a result, the Social Security System is now on sound fiscal ground, and all of our citizens can be assured that it is here to stay.

We are all deeply indebted to Bob Beck and the other members of the commission for providing the basis for solving this important national problem.

Despite the enormous challenges posed by his responsibilities at Prudential, Bob Beck also led the Business Roundtable's efforts to address our No. 1 economic challenge—the Federal deficit. He served as chairman of the United Way of America and as a member of the executive committee of President Reagan's private sector survey on cost control. He has been active on the President's Commission on Executive Exchange and the Council on Physical Fitness and Sports.

Bob Beck has served as an important voice within his own industry on issues of public policy. He has served as chairman of the American Council of Life Insurance. I recall when legislation was pending in the Senate to make insurance rates sex-neutral. Bob Beck, as head of the ACLI, advocated a progressive and forward-thinking position. It was a position that earned my deep respect.

During his tenure as chairman of the Prudential, the company has made important investments in the revitalization of the city of Newark. Prudential has been a major mover in the development of The Gateway complex, which has served as an important hub for new business growth.

Bob Beck's activities reach beyond the boundaries of our home State of New Jersey. Mr. Beck has devoted his energy to cultural and sports development as vice chairman of the Kennedy Center Corporate Fund Board and chairman of the U.S. Golf Association's Capital Campaign. He also is a member of the Business Committee for the Arts and chairman and a past president of the New Jersey Historical Society.

Robert Beck is a business leader who underscored the value of education by serving as a trustee of several colleges and by inspiring his company and the Prudential Foundation to contribute financially toward helping students and scholars achieve their goals.

Mr. President, over the years, I have come to know Bob Beck personally. We have met frequently on issues pertaining to the financial services industry and broader national policy questions. He has gathered together for me on several occasions a group of New Jersey business leaders for the exchange of ideas about broad public policy questions. It has been of great value to me to have the advice and counsel of these concerned leaders.

Mr. President, while Bob Beck will soon retire from the Prudential, I know he will not retire from his active contributions to the public good. I hope to call on him in the future for his advice and counsel.●

AGE DISCRIMINATION IN EMPLOYMENT AMENDMENTS OF 1986, H.R. 4154

● Mr. QUAYLE. I want to speak in support of H.R. 4154, the Age Discriminated in Employment Amendments of 1986, as recently passed and amended by the Senate. Most importantly, H.R. 4154 eliminates the upper age cap of 70, thereby extending the protections against age discrimination in employment to all older workers. The bill also contains an exemption for State and local firefighters and police and an exemption for tenured faculty. These exemptions are for 7 years. In the meantime, studies will be carried out to explore the potential impact of the expiration of the exemptions.

The provisions of H.R. 4154, eliminating the cap, exempting State and local public safety officers, and exempting tenured faculty, are three of the four provisions contained in S. 1240, a bill I introduced at the beginning of this Congress to amend the Age Discrimination in Employment Act [ADEA]. Although some of the specifics of the provisions contained in H.R. 4154 are not exactly what I wanted and the bill does not make procedural reforms for enforcement, I think it is a good compromise between the many competing interests involved. Concessions have been made on all sides in order to reach an acceptable agreement.

The most important provision in H.R. 4154 is the elimination of the upper age cap. This a victory for all Americans, not only for those who are now over 70. I am proud to have been part of this effort to lift the cap.

In closing, I would like to take a moment to comment on one of the studies that is required by H.R. 4154. We are directing the Equal Employment Opportunity Commission to conduct a study through the National Academy of Sciences on the potential impact of the expiration of the tenured faculty exemption. The language in H.R. 4154 is fairly broadly worded in directing the study to examine the "potential consequences of the elimination of mandatory retirement on institutions of higher education."

I would like to elaborate on the purpose of the study. It would be beneficial to those of us who have supported the tenured faculty exemption to have the study include an examination of the following:

A comparative analysis of tenure systems or alternative retirement systems in a cross section of colleges and universities;

A review of State laws governing retirement policies of universities and colleges;

An assessment of the potential impact of eliminating mandatory retirement on the long term demographic trends of colleges and universities, including an analysis of trends in student-teacher ratios, hiring of new teachers, and the potential impact on retirement patterns;

An analysis of the potential impact of eliminating mandatory retirement on existing retirement systems; and

An analysis of the relationship between academic freedom and retirement systems, including consideration of the extent to which academic freedom is protected by tenure or alternative retirement systems.

I enjoyed working with my colleagues to reach a Senate agreement on amendments to the ADEA. I commend everyone involved for their patience and perservance in reaching an agreement on this very important piece of legislation during the closing weeks of this session.●

WHCT—SHOWCASE EXAMPLE

● Mr. DODD. Mr. President, I want to bring to the attention of my colleagues the successful application of the Federal Communications Commission's minority distress sale policy in Hartford, CT. This policy was adopted in 1978 and permits broadcasters designated for revocation or nonrenewal hearings to sell their licenses to minority buyers without a comparative hearing. This assists in expanding minority ownership of broadcast licenses and addresses the deplorable situation where less than 2 percent of the broadcast properties in the United States are held by minorities. But it also has a number of other benefits. The licenses of sellers in these cases are usually in jeopardy because of fraudulent advertising or some other transgression. They are permitted under this policy to recover some cost of the licenses. A protracted and costly administratve hearing is also avoided. The public is benefited because programming is diversified, broadcasting operations are usually continued without interruption, and competition is enhanced.

Some 31 sales have occurred under this policy and we are particularly aware of its benefits in Hartford, CT, where WHCT, channel 18, is a showcase example of positive results. Astroline Communications purchased WHCT-TV from its previous owner whose license was under challenge from the FCC. During the 4 years of the dispute with the FCC, the previous owner let the station's facilities become outdated, completely closed the station's studio and fired many of its employees.

Since buying the station and acquiring its license, Astroline has invested $15 million in the Hartford economy by totally rebuilding the station's studio and facilities. As a result, 40 jobs were created. One third of its managerial positions have been filled by minorities. Under the new management, the station has acquired the broadcast rights for the Hartford Whalers and other programming advances have been made. Competition in the Hartford market has been enhanced. Based on this experience, it is my strong belief that this distress sale policy should be continued.

A couple of weeks ago, channel 18 commemorated its first anniversary, and the people of Hartford applauded this milestone. Tom Condon of the Hartford Courant recently wrote about the outstanding results. I would like to bring this column to the atten-

tion of the Senate, and I ask that it be printed in the RECORD.

The column follows:

RAMIREZ IS THE STAR AT CHANNEL 18

Richard P. Ramirez, part owner and general manager of WHCT Channel 18, doesn't look like he was ever a victim of discrimination.

The 32-year-old-ex-football player is tall, good-looking and well-spoken. He could easily play himself if "WHCT in Hartford" were to become a TV series.

But he is a minority, and when he gets past Arbitron ratings and syndicated programming, he remembers the old neighborhood.

A year ago today, Ramirez flipped a switch in a building on Garden Street and put WHCT on the air. He was able to buy the station because of a federal policy giving preference to minorities.

He feels he's kept faith with that policy by hiring minorities for a third of his management positions. "I hope we become known as a station that develops first-rate talent from the minority communities," he said.

At this time last year, some said the station wouldn't make it to Halloween. So along with his hiring record, Ramirez is proud that he's about to reach Halloween II. But just like living in "Fort Apache," it hasn't been easy.

Ramirez grew up in New York City's South Bronx, the son of a Cuban father and Puerto Rican mother. He got whacked around for being Hispanic in a predominatly Irish Catholic school near home. Then he got whacked again back on his block for being fair-skinned.

"Thank God for my parents," he said. "They kept the influences of the street out of the home."

Ramirez won a football scholarship to Boston College, played linebacker, graduated and went into radio and TV marketing.

Two years ago, he began a push to get his own television station.

Channel 18, you may recall, was owned in recent years by Faith Center Inc. of Glendale, Calif., which presented hour after hour of the Rev. W. Eugene Scott wearing different hats and wailing away at government, his ex-wife and other major problems.

Scott's organization was in constant trouble with the Federal Communications Commission, and took advantage of an FCC provision allowing sale of the station to a minority-controlled group rather than risk outright loss of its license.

The buyer, for $3.1 million, was Astroline Communications, a Boston-area limited partnership set up by Ramirez.

Ramirez was immediately sued by a Rocky Hill computer consultant, Alan Shurberg, who had been trying to gain control of the station since 1983. The case is still pending.

Just before Ramirez bought the station, the FCC dropped its "must carry" rule, which forced cable operators to carry all local stations. This meant that instead of a guaranteed 660,000 cable households in the central part of the state, Ramirez had to start with 150,000. He is back up to 520,000, and growing.

He also ran into opposition from the town of Avon when he tried to build a new transmitting tower on Avon Mountain. This, too, is the subject of a pending legal challenge, but Ramirez said he has the necessary permits and expects to break ground in a matter of weeks.

On top of that, the FCC may change its rule about minority preference, which might affect WHCT.

"I can't imagine starting an independent television station under such adverse conditions, but it's growing," he said.

Ramirez's team has won a few. It landed the contract for 24 Whaler games this season, and is televising 11 University of Hartford basketball games. WHCT started with reruns and old movies, but has been able to add some public service programs along with the sports.

"They and Channel 61 [WTIC] have both done the right thing, trying to come up with programs that differentiate them from other stations," said Michael Dorfsman, executive director of the Connecticut Cable Television Association Inc.

"We're another voice, and another option for advertisers," Ramirez said. He said competition by independents has brought more Celtics and Whalers games to area viewers this year and such competition improves programming.

WHCT brought my favorite show, "Rocky and Friends," back to Hartford. The station also has brought 46 full-time jobs to the city.

Ramirez said the year has been a roller coaster of highs and lows. "It's much more of an emotional challenge than I thought. My social life has taken a distant back seat. But when I turn on the television, I can see how far we've come."●

ABORTION AND INFORMED CONSENT: MONTANA

Mr. HUMPHREY. Mr. President, all Carrie wants is for women contemplating abortions to receive more information. She is particularly concerned about the lack of information given regarding the development of the unborn child. Each day we discover more about what is actually occurring in the womb when a child is growing within. It is predictable that women who have an abortion will later, through the media or elsewhere, be informed about the true nature of the fetus, and may be distressed as a result.

I hope my colleagues will read Carrie's letter from Montana and agree that women are not currently receiving sufficient information to make an informed decision about abortion. By cosponsoring S. 2791, they can ensure that informed consent will be required prior to an abortion.

The letter follows:

To whom it may concern: My story begins in April 1977, when I met a wonderful guy who is now my husband. I became pregnant. I was 18 and scared. I knew people would think of me as a cheap tramp. My parents would be destroyed and would never forgive me.

I was so mixed-up and scared. All I wanted to do was run, but what good would that have done, I would still have been pregnant. Abortion, that's it! "That's the answer to my problem," *I thought.*

In June of '77 I went to a woman's clinic. I had a pregnancy test and, sure enough, I was 12 weeks along. I didn't know my baby was already twelve inches long. I didn't know that at 18 days its heart had started beating, by 21 days it was pumping through a closed circulatory system and it had a blood type differing from its mother's. All the organs in my baby's systems were functioning. At this point the baby breathes (fluid), swallows, digests, urinates, has tiny liquid bowel movements, sleeps, wakes, tastes, hears, feels pain and can be taught things. I had no idea my baby was as much a human being as you and I are.

When I went to have my abortion, the counselor who talked to me never led me to think that the baby inside me was a baby. She was very, very kind to me and helped me think that what I was about to do was for the best.

Why couldn't she have told me my baby wanted to live and let me know that the mental grief I would go through afterwards would be awful. I remember her smiling face as she held my hand while the doctor killed my baby by tearing it apart and sucking it into a jar.

This is something I have to live with for the rest of my life. Every time I see my three beautiful children (Alisha, Zachary and Bethany) laughing, giggling, running and playing, I remember that I took away the chance for my first baby ever to experience these things.

I cannot express enough how it hurts to know that I let my first baby be killed like this, and all because I didn't want to go through some public embarrassment.

Love and God bless all,

CARRIE REICHERT,
Billings, MT.●

THE AFRICANS

● Mr. KERRY. Mr. President, public television station WGBH in Boston, an important media influence all over the country, has been airing the nine-part series, "The Africans: A Commentary by Ali A. Mazrui," to its Boston viewers since the beginning of October. It is a series that has sparked a great deal of discussion and controversy. While I cannot endorse all of the conclusions made by the participants in the film, its showing has provided a revealing look into the history of the continent of Africa, and has provided the American people with an all-too-rare look at Africa from an African's perspective.

I ask that an analysis and commentary on the series which appeared in another Boston-based institution, the Christian Science Monitor, be included in the RECORD.

The material follows:

[From the Christian Science Monitor, Oct. 6, 1986]

AFRICAN SCHOLAR'S INTERPRETATION OF AFRICA RAISES HACKLES

(By Arthur Unger)

The Africans: A commentary by Ali A. Mazrui. PBS, Tuesday, 9-10 p.m. for nine weeks, check local listings. Writer and presenter: Ali A. Mazrui. Producers: Peter Bate and Timothy Copestake. A coproduction of WETA/Washington, D.C., and the BBC.

"The West arrived in Africa with a bang; our soil is still recoiling with a whimper," says Ali A. Mazrui in Part IV of "The Africans."

But neither in the controversial series nor in person is there any sign of whimpering

on the part of this Kenya-born professor of political science. Instead there is fury, protest, poetic but pointed analysis, defiance—and predictions of a better, black-dominated world to come.

Even before the series begins airing in America (it has already been in England), there is bitter controversy: Why such kind and gentle treatment of Libya's Col. Muammar Qaddafi, critics ask. Why such harsh treatment of the Western influences on Africa? Why a condemnation of the West for taking slaves when there is barely any criticism of the Arab world for similar practices? Why concentrate on the problems of the new Africa instead of focusing more on the glories of the continent's pre-colonial past?

The criticism comes from all sides. Lynne Cheney, who chairs the National Endowment for the Humanities, which provided $600,000 of the program's $3.5 million budget, calls the series an "anti-Western diatribe." Accuracy in Media and the National Conservative Foundation label the show "an insidious attack on the Western democracies." From the opposite end of the spectrum, the Coalition Against black exploitation in Los Angeles charges that the series will fuel latent racism in America by probing too deeply into Africa's problems.

PBS, for its part, insists that the series clearly represents one man's viewpoint and the he should be free to state what he believes.

After previewing four episodes of the series, I tend to agree somewhat with each of those criticisms.

Dr. Mazrui [interviewed next page] explores the three legacies of Africa, what he calls "the triple heritage"—African, Western, Islamic. Perhaps his own Islamic background (his father was chief Islamic judge of appeal in Kenya) explains his tendency to view many influences as "contributed" by Islam but "imposed" by the West. The Arab slave trade, from Mazrui's perspective, was mainly a pretext for Western intervention in Africa. Ironically, Mazrui complains that often the West generalizes about Africa, as he goes about generalizing about the West.

Starting with the powerful influence of Africa's ecology in Part I, the series goes on to investigate the role of the family in the continent's lifestyle; the Africanization of Christianity and Islam; exploitation during the colonial period; current political, social, and economic conflicts in African nations; successful and unsuccessful independent African nations; problems of technology and corruption; the clash of cultures, and the continent in today's world context. There seems to be an honest attempt to cover all aspects of emerging Africa.

It is in the final episode, "The Global World," that some of Mazrui's opinions have antagonized previewers. "America tried to teach black Americans to be ashamed of Africa," he states boldly. Blacks, unlike other hyphenated Americans, by dint of being brought to America as slaves, were "denied the right to nostalgia" about their place of origin, he says. "There were Irish-Americans, Jewish-Americans, Polish-Americans—and there were Negroes," he says. But then he adds inconsistently, "Forget you are African; remember you are black."

"The Africans" does just what it sets out to do; present Africa through the eyes of one outspoken African scholar. It is sometimes irritating and argumentative, sometimes biased and opinionated. But it is always bold and provocative. You may find yourself challenging many of Dr. Mazrui's interpretations of history, but the series will undoubtedly challenge your own thinking about Africa, race, and Western democracy.

PBS attempted to defuse controversy over the show by changing its title from "The Africans" to "The Africans: A Commentary by Ali A. Mazrui."

Suzanne Weil, PBS's senior vice-president, for programming, told the Monitor: "Our first concern is respect for the audience, to see that the subject matter is handled as fairly as possible. And in cases where it may not be fair, to see to it that it is clearly labeled where it is coming from. We want the person responsible to have the proper qualifications.

"We do not set out to stir people up, but we do accept the fact that people are not harmed by listening to concepts with which they may disagree. I would hope there will be other views of Africa on PBS as time goes on. As long as we are being criticized from all sides, I feel we must be doing something right."

MAZRUI: "MY LIFE IS ONE LONG DEBATE"

No dashiki for Dr. Ali A. Mazrui.

The scholar many African nationalists consider to be the proud spokesman for the "new Africa" arrives for an interview at PBS's New York headquarters dressed strictly Ivy League style—dark suit, white button-down shirt, etc. A professor of political science at the University of Michigan, he has also taught in Nigeria and Uganda.

How does he feel about the controversy still swirling about this TV series "The Africans"?

"It was almost to be expected. The whole purpose of PBS going out of its way to get a person with a non-Western point of view was not to repeat what they could have gotten from any competent Western reporter. I raise issues from inside Africa. It is not the African point of view. It would be arrogant to claim that, because there are so many."

What would he like the series to accomplish?

"I would like the series to be accepted as a medium of education. I hope it will set a precedent for the West, calling upon members of other societies to discuss their own society for Western audiences. Considering the West's power over the rest of the world, the West should be ready to hear something about what the rest of the world thinks about itself. One of my major fears now is that the series will become so controversial that never again will America call upon the third world to explain its own society to Americans. That would be very sad.

"People should have a context when they hear about riots in South Africa or a military coup in Nigeria or drought in Ethiopia. The series is partly an effort to provide a human context for the things Americans hear about on television news every night."

Dr. Mazrui believes that two African countries will make a strong bid for the leadership of Africa in the next century: "Black-ruled South Africa and Nigeria. South Africa, when it is ruled by blacks, will help us find additional sense of direction; Nigeria because of its human resources. Hopefully it will have found a better sense of organization than it has at the moment."

As we parted, I told Dr. Mazrui that, although I disagreed with many of his opinions, I found the ideas challenging.

Dr. Mazrui smiled. "Good," he said, with just the hint of a sigh. "Many people disagree with me. My life is one long debate."—A.U.●

THE ANC

● Mr. BOSCHWITZ. Mr. President, I wish to submit to the RECORD an article written recently by John Silber, president of Boston University. I was most impressed with Dr. Silber's testimony this past summer on South Africa before the Senate Foreign Relations Committee. It was both wise and insightful.

The article I now commend to my colleagues' attention concerns the African National Council [the ANC]. Dr. Silber points out that we would all do well to look at the organization dispassionately. We ought not confuse it with Martin Luther King's Southern Christian Leadership Conference that led our own civil rights struggle in the 1960's. Rather, we ought to listen to what the leaders of the ANC say about their view of the struggle, what they are prepared to do, and what their vision of a future South Africa looks like. It is a chilling article that Dr. Silber has written, but one all of us ought to read.

The article follows:

A LOOK AT THE AFRICAN NATIONAL CONGRESS

(By John Silber)

If we are to find a means of ending *apartheid* without massive bloodshed along with economic deprivation and political oppression for all South Africans, we must face squarely the nature of an organization widely regarded as the sole voice of black South African protest: the African National Congress.

The widespread view of the ANC as the South African equivalent of Dr. King's Southern Christian Leadership Conference is a tragic mistake. In recent decades, the ANC has become dominated by a strident Leninism, an ideology it has sought to implement by terrorism and murder—so far, largely against blacks. If anyone doubts the accuracy of this description, they should spend some time reading statements of various ANC leaders.

A little over a month ago, "Radio Freedom," the ANC's Ethiopia-based broadcasting station, carried a statement from Joe Modise, commander of Umkhonto we Sizwe, the military wing of the ANC, which makes quite clear the terrorist orientation of his organization. Black South Africans, he said should "organise themselves into groups, and policemen should be ambushed and their weapons taken; bombs and petrol bombs should be made from locally available materials." The people should "identify collaborators and enemy agents and deal with them."

We should remember that the policemen being talked about here are mostly blacks, as are, by definition, the "collaborators," blacks who do not agree with the ANC's program. The ANC's method of "dealing with" such people is simplicity itself. A rubber tire is soaked in gasoline, placed over the head of a "collaborator," and set alight. The device is known as a "necklace."

Lest we think that such tactics are approved only by extremists within the military wing of the ANC, we should heed the words of Winnie Mandela, spoken at Munsieville on April 13, 1986, and reported by Agence France-Presse:

Together, hand in hand with our boxes of matches and our necklaces, we shall liberate this country."

Mrs. Mandela is sometimes compared with Coretta Scott King. Her Munsieville statement demonstrates the monstrous inaccuracy of the comparison.

The ruthlessness of the ANC is perhaps best demonstrated by Johnny Makatini, the ANC representative at the United Nations, who recently speculated that "if there were only 4 million of us left after the revolution, that would be better than the present situation." He alludes here with indifference to the deaths of 17 million South African blacks. One cannot imagine such indifference on the part of Martin Luther King. Makatini regards the extermination of 80% of South African blacks as preferable to any peaceful program for the gradual ending of apartheid. He regards a death toll three times that of the Holocaust as a reasonable price to pay for immediate access to political power. Makatini is prepared to destroy black South Africa in order to save it.

These statements suggest the sort of regime the ANC would install once in power. They who strive to rule through terror usually rule by terror.

Moses Mabhida, a member of the ANC executive, has put the ANC on record as suporting the most brutal tactics: "We express our full solidarity with the Afghanistan Peoples' Democratic Party—we fully understand and support the timely assistance of the Soviet Union." This is not casual ANC support for the Soviet Union: the ANC has been perfectly frank about the sort of economic and political model it would adopt on coming to power. Mrs. Mandela told Pravda, "The Soviet Union is the torchbearer for all our hopes and aspirations. In Soviet Russia, genuine power of the people has been transformed from dreams into reality."

The best that can be said about this statement is that it reflects a terribly dangerous naivete. The worst is that Mrs. Mandela wishes to impose on her fellow South Africans a dictatorship as despicable as that imposed by the Soviet Union on the Ethiopians and the Afghans.

A Soviet style dictatorship would deny basic human rights to South Africans of all colors and reduce what is now the most dynamic economy in Africa to one like those that keep the rest of Africa in desperate poverty and encourage millions of blacks to seek work in South Africa.

When Americans demand that the South African government share power with the African National Congress, they demand power-sharing with an organization committed to terror, oppression, and poverty. The blacks of South Africa will not find a better life under an ANC dictatorship. We would be better advised to support the claims of proven democratic opponents of *apartheid* such as Chief Buthelezi, leader of six million Zulus, and Bishop Mokoena, leader of millions of blacks in Reformed Independent Church Association. In this direction alone lies hope.●

FUNDING FOR THE NATIONAL ENDOWMENT FOR DEMOCRACY

● Mr. LEVIN. Mr. President, I am pleased that the continuing resolution contains funding for the National Endowment for Democracy. This is a relatively small program that is promoting democracy around the world. It represents a small investment in a foreign policy initiative that is already beginning to pay dividends.

Those who have been critical of the Endowment since its inception 3 years ago have focused on a few controversial, and perhaps ill-conceived, programs. But they overlook the more than 260 projects that have provided practical assistance to democratic forces all over the world. A balanced review of the Endowment's accomplishments will demonstrate its contribution to the development of democracy overseas.

I have been particularly impressed by the work of the National Democratic Institute for International Affairs [NDI] which has undertaken a number of innovative projects to provide concrete support for political institutions abroad, institutions critical to the maintenance of democracy in many Third World countries.

Together with its Republican counterpart—the National Republican Institute—NDI organized the international observer delegation to the Philippine election which was credited with first exposing electoral fraud by Marcos and his supporters. NDI received bipartisan acclaim for its professional work, and for attempting to bring credibility to the electoral process.

In Chile, NDI sponsored a major international conference with the leaders of the 11 democratic parties who signed the recent "National accord." United States officials and the Chilean party leaders hailed the conference for providing a setting that enabled Chile's coalition of diverse democratic parties to reaffirm its commitment to the peaceful transition to democracy. The timing was crucial because extremist pressures on both sides had threatened to break apart the fragile National accord. NDI's conference helped keep it together.

Most recently, NDI sponsored an intensive series of workshops on electoral codes and party building with prominent Haitian political leaders. The workshops were described as an "historic event" by the Haitian participants since it was the first time these party leaders had ever assembled. One participant referred to the conference as "the most significant development toward democracy in Haiti" since President Duvalier's departure. The conference not only helped plant the first seeds of cooperation among the democratic parties of Haiti, but also resulted in practical proposals, such as formation of an elections commission, and techniques for coalition building, which will be critical to a successful transition to full democrary.

These are only a few of the many creative and productive programs the NED is implementing to help build democracy abroad.

It is ironic that West Germany, where the United States played such a pivotal role in implanting democracy, has for nearly a quarter of a century been exporting its own democratic experience. Four political party institutes now receive more than $200 million annually from the Bundestag, the West German Parliament. The result of these efforts has been seen most recently in Spain and Portugal, where the West German parties and other components in Europe's democracies helped to guide the Iberian nations into the democratic camp.

U.S. involvement in this work is long overdue. I firmly believe that the American experience is immediately relevant to many emerging democracies. The National Endowment for Democracy allows us to share our experience and thereby encourage stability and freedom.

NED is a symbol of America's commitment to democratic practices. More important, it's working. Those struggling for freedom and justice throughout the world can attest to its success. I'm pleased that the Congress has again provided the NED with the opportunity to carry on this work.●

THE RESIGNATION OF TRADE COMMISSIONER PAULA STERN

● Mr. GORE. Mr. President, I would like to pay tribute to Dr. Paula Stern, who yesterday announced her intention to resign from the U.S. International Trade Commission in January.

Over the past 8 years, Commissioner Stern has taken part in the most important trade decisions of our time. She has fought to secure fair terms for American goods abroad, and prodded American business to become more competitive at home. In June, she completed an active 2-year term as Chairwoman of the Commission.

I am proud to count Paula Stern as a friend and fellow Tennessean. She has written widely on trade and foreign policy. Many of my colleagues will remember her work as an aide to Senator Gaylord Nelson.

Dr. Stern will become a senior associate at the Carnegie Endowment for International Peace, where she will no doubt continue to make a tremendous contribution to America's trade policy.

As this country charts its economic future, we should keep in mind Dr. Stern's reflections upon leaving the Commission. She says:

> The most important thing I've learned in my experience here, is that important relief is no substitute for long-term economic strategies to become and to stay competitive.

Trade policy, she concludes, is like personal health care:

> Good habits in the private sector and domestic economic policies which take trade effect into account are worth a ton of import relief.

I know my colleagues join me in commending Commissioner Stern for her distinguished service, and wish her well in her new pursuit.●

TITLE X: THE CONGRESS' UNFINISHED BUSINESS

● Mr. HUMPHREY. Mr. President, title X of the Public Health Service Act remains one of the most controversial programs of the Federal Government. It is only one of several family planning programs, for similar activities are conducted through the Maternal and Child Health Services Block Grant under title V of the Social Security Act, Medicaid under title XIX of the Social Security Act, and the Social Services block grant under title XX of the Social Security Act. All this is in addition, let us remember, to private spending for family planning, both by individuals and by foundations, insurance companies, and various health care providers.

But title X is different from these other activities, public or private. It is the source of bitter rancor. It outrages parents, disrupts neighborhoods, and threatens to invade schools. And it remains one of the most protected and shielded government programs.

Since its enactment in 1970, title X has not been the subject of a single direct vote in the U.S. Senate.

Title X may be unique in that regard. For 16 years, it has been kept in business without recorded Senate votes. In recent years, it has been funded by appropriations bill, in the absence of any authorizing legislation. And in the process, it has been totally transformed, without the mandate of Congress and, in fact, without the knowledge of the American people.

Title X was created to provide publicly subsidized family planning services for poor people. That meant low-income, married adults. It did not mean unmarried teenagers. It did not mean impressionable kids of 13 and 14 years of age. It did not mean promiscuous children of affluent families. But that's what title X has come to mean.

Back in 1970, family planning meant contraception. It meant spacing births, and it also meant helping couples who had difficulty in conceiving a child. It most emphatically did not mean abortion; for abortion was illegal, to one extent or another, in every State. But abortion is an important part of what title X has come to mean.

Despite the clearly expressed intent of the Congress in creating title X in 1970, abortion haunts the program. Despite the annual insistence by the Congress, through various forms of the Hyde amendment, that public funds can in no way advance abortion, abortion counseling and referral are bureaucratically mandated for title X. Despite the best efforts of Members in both House and Senate to allow their colleagues to debate and to vote upon this situation, the abortion component of title X has been kept off limits to Congress. The program's proponents have gone to great lengths to avoid even dicussing this mounting scandal.

That's the main reason why title X has thus far not been reauthorized by the 99th Congress. Let's review the calendar:

May 25, 1984. The Senate passes a 3-year reauthorization of the Adolescent Family Life Program (S. 2616), with no mention of title X.

June 11, 1984. The House passes a 3-year reauthorization of title X. However, the program was combined in a single legislative package (H.R. 5600) with many others: the Adolescent Family Life Program and the Preventive Health Services Block Grant, which covers rat control, fluoridation, hypertension screening and treatment, rape crisis services, home health agencies, emergency medical services, and so on. The whole package was then brought up for a single vote, under suspension of the rules, so that no amendments were allowed. In other words, Members of the House had to accept or reject the entire laundry list. It was a clever way to force through a reauthorization of title X without giving representatives a chance to correct abuses.

August 10, 1984. In the last hours of the last day before adjournment for the August recess, the House managers of H.R. 5600 pulled off a remarkable piece of legislative legerdemain. Without any debate, S. 2616, the Senate-passed bill extending the Adolescent Family Life Program was amended with the entire text of H.R. 5600, the grab-bag containing a 3-year extension of title X. This "amended" version of S. 2616 was passed with no discussion, no vote, no prior notice, no chance for amendment or objection. Moments later, the House was adjourned until September 5.

September–October, 1984. Title X advocates now had what they wanted: a legislative vehicle that had passed both House and Senate. Even though the Senate had not included title X in its version of S. 2616, it could be put into one omnibus conference report; and if any Senators objected, they could be accused of holding up this vital legislative package at the end of the session.

October 9, 1984. Fortunately, there were Senators who were not intimidated by this tactic. Because of their resistance, title X advocates settled for a straight one-year reauthorization of both that program and the Adolescent Family Life Program.

June 18, 1985. Using the same tactic of the year before, title X advocates brought a new reauthorization to the House floor, again under suspension of the rules. Again no amendments were in order. If Members voted against the bill, they could be accused of opposing family planning altogether.

But Congressman BILL DANNEMEYER of California spoke about "how family planning has degenerated from a tool for married couples to a means whereby teenagers are able to obtain advice (and, he might have added, prescriptive drugs and devices) without the knowledge of their parents." The bill failed to pass under suspension, and rather than permit Members to amend title X, the program's advocates would let the program go unauthorized, relying on the appropriations bill alone.

May 13, 1986. A 4-year reauthorization of title X (S. 881) is reported by the Senate Labor and Human Resources Committee.

October 2, 1986. An amendment is offered to House Joint Resolution 738, the continuing resolution, by Senator JESSE HELMS. It provides that no funds appropriated under the CR, which included all the money to be spent by HHS, could be used to provide contraceptive drugs or devices to unemancipated minors without the written consent of their parents or guardians. By a vote of 34 to 65, the amendment was ruled nongermane.

Meanwhile, in response to a request from myself and four Congressmen—Representatives CHRIS SMITH, JACK KEMP, HENRY HYDE and VIN WEBER—Health and Human Services Secretary Otis Bowen announce that he would undertake administrative reform of one of the most offensive aspects of title X: the requirement that title X grantees counsel and refer for abortion.

The change is long overdue. We hope that Secretary Bowen's promised revision of the title X guidelines is but one step toward the ultimate return of the title X program that no title X recipient receive funds if it involves itself with programs involving, or related to, abortion.

I will later ask unanimous consent that a report be printed which details the original intent of Congress in this matter. But I believe that the current intent of Congress, as demonstrated by the comprehensive approach the Congress has taken, over many years, to the subject of abortion, also bears witness to the need for reform of the current title X guidelines and regulations.

In 1970, those who created title X made clear that there would be a wall of separation between the program and abortion. Since that time, in the wake of Roe versus Wade and other court decisions, the Congress and President Reagan have done all in their collective power to extend that wall of separation between abortion and government. We will not be associated with it in the Peace Corps, in De-

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partment of Defense health care, in Federal health insurance programs, in international family planning programs, in Legal Services Corporation programs, in special refugee assistance programs. When given the chance, we have enacted conscience clauses to protect the rights of those who refuse to be a party to abortion, and we have served notice on the Nation's health professions schools that they may not deny admission or benefits to anyone on the grounds of opposition to abortion.

And most significantly, we will not be associated with it in the Medicaid Program, not to mention every other program funded by the Labor, Health, Human Services, Education Appropriations bill—all of which programs are covered by the HYDE amendment's annual restriction on funds that might be used for the performance of abortion.

In that context, one cannot contend that the Congress wants HHS to require title X grantees to tell women where to get abortions. One cannot believe that the Congress, which has gone to great lengths to separate itself from the evil of abortion, intends to make title X grantees procurers of abortion.

But more importantly, section 1008 of title X, applies today as it did when first enacted in 1970: "None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning." Clearly, no title X money can be used in any program where abortion is used as a method of family planning. That's the law—today as it has been for 16 years.

It is absurd for HHS to require title X grantees to refer family planning clients for abortions when not a cent of title X money can legally be used in any program of which abortion is a part. HHS is requiring its grantees to disregard section 1008, just as HHS is disregarding it.

If reform of title X is to be undertaken by the Department, let it begin here, with section 1008 of the law. Let the Department consider the intent of Congress in that section, as expressed by Congressman Paul G. Rogers, who was Chairman of the Subcommittee with jurisdiction over title X. Speaking of section 1008, Rogers insisted, "This provision would not merely prohibit the use of such funds for the performance of abortions but would prohibit the support of any program in which abortion counseling or abortion referral services are offered."

It is clear that the very activity which HHS now requires for title X was actually intended to be a disqualifying factor for participating in the program. Again, section 1008 is still law. It still prohibits grantees from doing the abortion counseling and referral which HHS requires them to do by guideline.

A few years ago, the Department somewhat half-heartedly attempted a regulatory reform of title X. It would be a tragedy if the failure of that effort became the pattern for another faulty attempt to deal with the program avoiding or misconstruing the fundamental issues involved. To avoid that mistake, and to focus departmental attention where it belongs, I recommend an extensive legal memorandum prepared in 1981 by the Christian Action Council. Today, 5 years later, it is no less relevant to any attempt to reform title X. I ask that it be printed in the CONGRESSIONAL RECORD so that we may all better understand the origins of the title X controversy and the way in which it can best be resolved.

The material follows:

LEGAL ANALYSIS OF TITLE X

(Prepared by Christian Action Council, 1981)

BACKGROUND

In 1959, President Dwight D. Eisenhower said he "could not imagine anything more emphatically a subject that is not a proper political or governmental activity or function or responsibility" than family planning.[1] Just ten years later, Richard Nixon, in the first Presidential message in history devoted exclusively to the population issue, called for a new federal initiative to provide "adequate family planning services within the next five years to all those who want them but cannot afford them."[2]

This marked change in public policy regarding the role of the federal government in population control was the culmination of a subtle change which had been taking place throughout the 1960's. In the early part of that decade, the development of contraceptives was seen to be squarely within the domain of the private sector. The oral contraceptive and the intra-uterine device, introduced in 1960 and 1962 respectively and still viewed as the most effective birth control methods, were developed and marketed by private pharmaceutical concerns. Procurement of these was limited to those who could obtain them through private physicians or clinics.

In the mid-sixties this situation was altered somewhat with passage of the Economic Opportunity Act of 1964, which provided some family planning services to the poor. Maternal and child health formula grants and maternal infant care project grants, authorized under Title V of the Social Security Act, also gave the indigent some access to birth control.

But it was not until the Ninetieth Congress enacted the Social Security Amendments of 1967 (PL 90-248) that government involvement in population control began in earnest. This legislation was the first to make project grants specifically for family planning. It also specified that not less than six percent of the monies appropriated under Title V for maternal child health be earmarked for birth control services. In 1968 Congress amended the Economic Opportunity Act to establish family planning as a special emphasis program of the Office of Economic Opportunity. The Presidential Advisory Committee on Population and Family Planning that same year recommended increased federal involvement in population control. The Center for Population Research, funded under the general authority of section 301 of the Public Health Service Act, was also established in 1968. The Center coordinated federal activities in population-related matters by sponsoring research in contraceptive development, medical effects of contraceptives, human reproduction, and changing demographic patterns.

In October, 1969, the National Center for Family Planning Services was established in HEW's Health Services and Mental Health Administration. The NCFPS, funded under Title V of the Social Security Act, was concerned with the direct provision of family planning services to those who did not have access to them due to low income or other circumstances.

Thus, by the end of the Sixties both contraceptive research and the provision of family planning services had begun to be eased into the public sector. There was, however, no centralized authority to oversee these government programs. In September, 1967, Oscar Harkavy of the Ford Foundation collaborated with Frederick S. Jaffe of Planned Parenthood-World Population and Dr. Samuel M. Wishik of Columbia University to produce a study which was to become critical in the framing of the Tydings Act (Title X of the Public health Service Act). The Harkavy Report asserted that, despite increased federal spending in the area of population control, "it is clear that none of the DHEW Regional Offices or operating agencies presently places high priority on family planning, or is certain what precise functions it is expected to carry out in this field. If the DHEW effort is to be commensurate with the need and with the Secretary's expressed intent it must greatly increase the funds and professional staff manpower devoted to this field."[3]

To alleviate what he saw as a DHEW deficiency in this area, Dr. Harkavy called for the appointment of a Deputy Assistant Secretary for Population and Family Planning to "provide centralized direction to the total DHEW effort and service as a single 'window' for DHEW to assist applicants for federal support of family planning."[4] To accomplish this, the Deputy Assistant Secretary would be provided with "an adequate staff to assist in policy formulation, program planning and evaluation, relations with professional groups, stimulation and coordination of family planning activities within DHEW, and liaison with other government agencies and private family planning organizations."[5]

The Harkavy Report went on to call for an increase in federal spending in order to provide the disadvantaged with family planning services.

"There must be a manifold expansion of funds for family planning if DHEW is to make a real impact on unmet needs. It is estimated that some $100 million a year ($20 a year for 5 million women) is necessary to provide family planning service to women in the poor and near poor categories. This goal should be achieved in five years."[6]

It was this report that provided the basis for Nixon's Presidential Message on population control, delivered July 18, 1969. Asserting that "many of our present social problems may be related to the fact that we have had only fifty years in which to accommodate the second hundred million Americans," the former President called for the implementation of many of Dr. Harkavy's recommendations.[7] For example, as noted above, he advocated Harkavy's five-year goal.

"It is my view that no American woman should be denied access to family planning assistance because of her economic condition. I believe, therefore, that we should establish as a national goal the provision of adequate family planning services within the next five years to all those who want them but cannot afford them. This we have the capacity to do."[8]

Final impetus for Congressional action in the area of contraceptive services and research came in early 1970 when Senator Gaylord Nelson held hearings on the safety of the "pill." Evidence submitted at the hearings indicated that the risk of death from blood clotting disorders increased tenfold with use of the oral contraceptive.[9] The fallout from the hearings was immediate and significant. A Gallup poll taken during the course of the hearings indicated that some 46% of American women considered the pill unsafe, compared with just 22% three years earlier.[10] One witness charged that 100,000 "Nelson babies" would be born in 1970 as a result of the hearings.[11] The upshot of this was a Committee recommendaton for increased federal outlays for contraceptive research and development in order to find a safe alternative to the "pill." The stage was set for passage of the Tydings Bill.

A. TYDINGS ACT OF 1970 (PL 91-572)

Two pieces of legislation were introduced to provide a new federal initiative in the area of population control. The first, S. 2108, sponsored by Senator Joseph D. Tydings of Maryland, consolidated all the HEW family planning programs into a single Center for Population and Family Planning. Under provisions of the legislation, the Center would have two general purposes: (1) to encourage voluntary use of contraceptive techniques available; and (2) to subsidize development of new contraceptive techniques. To accomplish these objectives, S. 2108, which would create a new Title X of the Public Health Service Act and set authorization levels for each of the ensuing five years, beginning with FY71.

The Administration bill, S. 3219, was similar to Senator Tydings' legislation, but did not contain new authorizations for biomedical, behavioral or contraceptive research. The Nixon proposal also, in contrast to S. 2108, left authorizations open-ended.

1. Senate Hearings

Senator Thomas F. Eagleton presided over hearings in the Senate in late 1969 and early 1970. While most of the witnesses expressed strong support for S. 2108, there were few comments on the abortion issue or on whether funds appropriated under the Act would be used to pay for abortions. This was so in part because the purpose of the legislation was clearly limited to the development and dissemination of contraceptive devices, and in part because at the time of the hearings nearly every state had legally proscribed abortion except under the most extreme circumstances.

Nevertheless, a number of witnesses used the hearings as a forum to call for liberalization of anti-abortion legislation. Chief among them was Congresswoman Shirley Chisholm who, in the course of her testimony which centered on expressing her perference for S. 2108 over the Administration's bill, made an impassioned plea for Congress to move toward eliminating all statutory restrictions of abortion.[12] National Welfare Rights Organization representative Mrs. Bobby McMahon, in requesting similar action, declared, "If the woman is pregnant and wants an abortion, we think she is entitled to have one. The moral issue lies with her."[13] Statements submitted by the Population Problems Department of the United Methodist Church and by Zero Population Growth also called for legalization of abortion.

But testimony in favor of liberalized abortion laws was the exception rather than the rule. Indeed, one of the strongest arguments put forth in favor of S. 2108 was that it would reduce the number of abortions by preventing problem pregnancies in the first place. Dr. Alan Guttmacher of Planned Parenthood repeatedly argued that the Tydings Act would reduce the number of abortions—legal and illegal—being performed throughout the country.[14] Carl Flemister, appearng in behalf of both the Citizens Committee for Children and Planned Parenthood-New York City, argued that by failing to provide contraceptive services to low-income women, we were forcing "women who know that they cannot cope with another child to have illegal abortions by butchers in the neighborhood."[15] Enactment of S. 2108 would ease this situation by preventing unwanted pregnancy in the first place.

Thus, the small body of testimony devoted to the matter of abortion did not at all suggest that Title X funds would ever be used to pay either directly for them or for referral services. S. 2108 was seen as the best means of reducing the number of abortions performed by promoting the use of contraception.

2. Committee Report (S. Rept. 91-1004)

The Senate Labor and Public Welfare Committee reported favorably on the Tydings Act on July 7, 1970. The report made no mention at all of the abortion issue, apparently because the committee felt it to be irrelevant to the matter of pregnancy prevention to which funds allocated under the Act were to go.

3. Senate Floor Action

S. 2108 was considered by the full Senate on July 14. It was passed by a lopsided margin after a minimum of debate. After passage, Sen Robert Packwood, who had voted in favor of the bill, criticized it for what he perceived to by two shortcomings.

"The family planning bill that we passed earlier today is a good bill. It is not adequate, but it is a good bill. It does provide for some research, some extension of health care and planning services, and makes reasonable advances in the field of contraceptive information and distribution.

There are, however, two things lacking in the bill, which I hope the Senate will be willing to face up to in the not-too-distant future. One involves the subject of legalized abortion, and the other involves limiting tax deductions for children to two."[16]

Senator Packwood, then, was of the opinion that Title X funds could not be used for abortions or for services related to abortions, but only for "contraceptive information and distribution." This is significant since at the time of Packwood's remarks the Dingell amendment, which became section 1008 of the PHSA, had not yet been appended to the legislation.

4. House Hearings

The hearings before the Subcommittee on Health and the Environment of the House Interstate and Foreign Commerce Committee, in contrast to the Senate hearings, were marked by several exchanges between witnesses and Members on whether H.R. 19318 (the House version of the Tydings Bill) would provide for abortion.

Responding to allegations by Msgr. Alphonse S. Popek that the pending legislation would lead to abortion, infanticide, euthanasia and genocide, Congressman Tim Lee Carter said,

"I do not feel and I do not support any portion of this bill which would provide for abortions throughout this country. I am opposed to that. Naturally, I am opposed to any idea of genocide or infanticide or euthanasia. We are against these things and we will not support legislation—it is not the intent to support legislation which would permit these things."[17]

Later in his testimony, Msgr. Popek and Rep. Richardson Preyer discussed whether funds appropriated under the Tydings Act could be used to fund abortion counseling.

Msgr. POPEK. When we talk about counseling, what is there to prevent a social worker to move quickly from contraception to abortion? Is there anything—a factual human way—you can say that this will not be done by the social worker, a group of social workers, a certain agency?

Mr. PREYER. Well, we cannot prevent people from abusing any kind of law . . . The only relation of this bill to abortions, then, is that you think some social workers might abuse their position. There is nothing in this bill specifically—[18]

It was thus the position of the Subcommittee that H.R. 19318 proscribed funding, not only of abortion, but of abortion counseling as well. Such counseling, according to Rep. Preyer, amounted to an abuse of the law.

But a number of witnesses still were not satisfied that Title X funds would be used solely for pregnancy prevention. Father James T. McHugh, for example, of the U.S. Catholic Conference, urged the Committee to write into the legislation a specific prohibition of abortion.

"In the absence of any specific reference to abortion as a method of contraception, there would be some who would consider it such and would expect that the funding that this bill carries with it would be made accessible for abortion as well as for other methods of contraception.

"I feel it is the responsibility of this committee to clearly write into the legislation a prohibition of abortion as a method of contraception."[19]

And Dr. John F. Hillabrand, a private physician and proponent of the legislation, also fearing potential abuse, asked that the bill be amended to contain a proscription of abortion.

"I support the principle of this legislation but I plead with you that with the wisdom attributed to Solomon you write into these bills those safeguards which will guarantee absolute freedom of choice and insure the intrinsic values of human life. Do not permit loopholes which may generate overtones permitting even by interpretation the excesses of potential genocide, infanticide, abortion or euthanasia."[20]

In every exchange where witnesses expressed the concern that Title X funds would be used to pay for abortions or to counsel women with regard to procuring abortions, Committee members adamantly maintained that the concerns of the witnesses were unfounded. In the minds of these legislators, it was clear that the Tydings Bill dealt solely with pregnancy prevention.

Nevertheless, when the Committee reported H.R. 19318, it contained the following amendment, authored by Congressman John Dingell:

"Prohibition of Abortion.—None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning."

5. House Floor Action

The full House took up the Tydings Act as amended on November 16. The legislation passed by a 298-32 margin. Because of the differences between the House and Senate versions, the House substituted the provisions of H.R. 19318 for those of S. 2108 and passed S. 2108 in lieu by voice. This set up the necessity of a conference.

The most significant aspect of the November 16 proceedings for this legislative history, however, are the remarks of Rep. Dingell on his "prohibition of abortion" amendment. In explaining the purpose of this amendment, he said:

"During the course of House hearings on H.R. 19318 there was some confusion regarding the nature of the family planning programs envisioned, whether or not they extended to include abortion as a method of family planning. With the 'prohibition of abortion' amendment—Title X, section 1008—the committee members clearly intend that abortion is not to be encouraged or promoted in any way through this legislation. Programs which include abortion as a method of family planning are not eligible for funds allocated through this act.

"Several considerations prompt this action.

"There is a fundamental difference between the prevention of conception and the destruction of developing human life. Responsible parenthood requires different attitudes toward human life once conceived than toward the employment of preventive contraceptive devices or methods. What is unplanned contraceptively does not necessarily become unwanted humanly. Whether a conceived child is loved or unloved is dependent on factors that, at best, can only be marginally related to family planning.

"If there is any direct relationship between family planning and abortion, it would be this, that properly operated family planning programs should reduce the incidence of abortion. Dr. Joseph Beasley indicated in his testimony that the decrease in criminal abortions should be considered a major benefit of his new model program.

"Furthermore, there is evidence that the prevalence of abortion as a substitute or a back-up for contraceptive methods can reduce the effectiveness of family planning programs." [21]

Despite this rather clear explication of the intent of his amendment and strong support for that amendment by both Congressman Staggers (chairman of the full committee) and by Rev. Tim Lee Carter (ranking minority of the subcommittee), Congressman Rarick still felt that Title X monies might be misused.[22] While conceding that the legislation clearly intended to exclude from funding "abortion education" as well as the abortion procedure, Rep. Rarick feared abuses by non-governmental recipients.

"I acknowledge that this bill purports to exclude tax dollars under this act from abortion education. But we all know this exclusion is not a prohibition to the non-profit organization taken in partnership nor to the overzealous family teachers and trainees with their reverse guilt neuroses" (sic).[23]

Nevertheless, the vast majority of Members believed that they had made their intentions clear on the matter and, as mentioned above, they overwhelmingly passed the legislation.

7. Report of the Committee of Conference (H. Rept. 91-1667)

In adopting Rep. Dingell's amendment to Title X, the conferees made it clear that all money appropriated under the act was to go for pregnancy prevention. Abortion, therefore, as well as abortion counseling and referral were to be excluded.

"It is, and has been, the intent of both Houses that funds authorized under this legislation be used only to support preventive family planning services, population research, infertility services, and other related medical, information, and educational activities. The conferees have adopted the language contained in section 1008, which prohibits the use of such funds for abortion, in order to make clear this intent."

The House and Senate adopted the Conference report on December eight and tenth respectively, and President Nixon signed it into law on December 24 (PL 91-572).[24]

Tentative Conclusions

A number of conclusions about the legislative intent of the Tydings Act may be drawn from the above material.

(1) *Congress intended to establish a wall of separation between pregnancy prevention and pregnancy termination.*—Congressman Dingell stated in his remarks that there is a "fundamental difference" between contraception and aboration, and that while Title X appropriations are clearly to go to support the former, they are just as clearly not to go to fund the later. Indeed, the Congressman argued that the use of abortion as a back-up to contraceptive failure has a deletorious effect on family planning programs.

(2) *This wall of separation excludes abortion counseling and referral as well as the actual performance of abortion from public funding.*—Rep. Richardson Preyer argued that aborion counseling done in the context of a Title X family planning program would be an "abuse" of the law.

(3) *Programs in which abortion plays a prominent role are also ineligible for Title X funds.*—The wording of section 1008 does not merely prohibit the use of federal monies for the abortion procedure, but the funding of programs which include abortion as well.

(4) *Organizations which encourage or promote abortion in any way thereby disqualify themselves from Title X grants.*—Congressman Dingell, in stating the intent of section 1008, remarked that "the committee members clearly intend that abortion is not to be encouraged or promoted in any way through this legislation." This statement would seem to be broard enough to exclude from funding groups which disseminate materials which present abortion as an acceptable means of fertility limitation.

B. OMNIBUS HEALTH PROGRAM EXTENSION OF 1973 (PL 93-45)

Authorizations for family planning services under Title X, due to expire on June 30, 1973, were extended through the end of FY74 along with a dozen other health programs. S. 1136, introduced by Sen. Edward M. Kennedy on March 8, 1973, had a relatively easy time, passing the Senate by a 72-19 vote on March 27, and clearing the House on May 31 with only Philip Crane voting in opposition. In an effort to avoid an anticipated veto, the Senate agreed to the lower House level of authorizations on each item, rather than haggling for a figure somewhere between the two. The strategy apparently worked, as President Nixon signed the bill into law on June 18, 1973.

The issue of the funding of abortion and of abortion counseling under Title X did not come up at any point in the consideration of authorization extensions. This is significant because it indicates that no one in Congress felt it necessary to amend section 1008 despite the Roe and Doe rulings.[25]

The only matter of concern in this legislative history is that groups lobbying in favor of Title X extensions used as one of their chief arguments the contention that all Title X funds were earmarked for pregnancy prevention, and that, as a result, they would reduce the number of abortions performed. Russell H. Richardson, Director of the Georgia Governor's Special Council on Family Planning, testified that Title X monies "would have a great impact on removing the tragic need for abortion and eventually reducing the overall costs of family planning programs." [26] And Frederick S. Jaffe, Vice President of Planned Parenthood Federation of America, in urging an increase in authorizations for Title X programs, argued, "If family planning services are not made available, the predictable consequence is an increase in unwanted births and abortions among those who could not be served by them." [27]

Once more, then, the only connection established between Tydings Act funds and abortion presented to Congress was that Title X grants reduced the incidence of abortion.

C.S. 1708

The extension of authorizations of a number of health programs for one fiscal year was seen by Congress as a stopgap measure. It was apparent that detailed hearings would have to be held on each of the programs to determine at what level they should be funded and whether, more fundamentally, they should be continued at all. Thus it was that Sen. Cranston's Special Subcommittee on Human Resources held hearings in the Spring of 1973 on S. 1708, a bill which would provide increased levels of authorizations for Title X programs through FY76.

During the course of these hearings, several witnesses made themselves heard on the matter of abortion. Proponents of extension of family planning programs argued once again that increased federal spending on contraceptive services and research would lessen the "need" for abortion. Dr. Thomas L. Hall of the American Public Health Association stated, "Certainly one of the strongest points of the family planning program has been that it is the best alternative to abortion, and even the proponents of abortion on demand are in agreement with the rest of the population that abortion is not a preferred method of fertility limitation. Only by strengthening family planning services can abortion incidence be reduced." [28]

Dr. Louise B. Tyrer of the American College of Obstetricians and Gynecologists echoed the same sentiment when she said, "There remains no doubt in our minds that the delivery of adequate family planning services can and does create a meaningful reduction in the number of women who turn to abortion as their alternative to lack of contraception." [29]

Mrs. Grace Olivarez of the Citizens Committee on Population and the American Future, who expressed personal opposition to the Roe and Doe rulings, called for increased levels of funding for Title X projects as an alternative to a Human Life Amendment.

"In January the U.S. Supreme Court acted to wipe most abortion laws off the books. I disagree with that ruling. Since January, efforts have been mounted to amend the Constitution to overturn the Court's ruling. I oppose those efforts . . . A Constitutional Amendment won't stop them (abortions) from occurring. The Congress can demonstrate the sincerity of opposition to abortion by investing more effort and more money in contraceptive research." [30]

Much testimony centered on the meaning of section 1008's prohibition of abortion. One area of controversy was whether the restriction imposed by the section was sufficiently broad to include proscription of abortion counseling as well. Violet Malinski of the National Organization for Women said her organization could not support Title X if it did not finance abortion counseling.

"I would like to say that if this section (1008) excludes the use of funds for pregnancy testing and counseling since these are vital to us, I would oppose this section. If a woman comes to a birth control clinic for services, and is found to be pregnant, I do not think she should be thrown out into the streets without being advised of the alternatives that are possible for her, including abortion or residential homes for unwed mothers. If section 1008 would proscribe the use of funds for pregnancy testing and counseling of this nature, then I would also have to oppose it on NOW national policy grounds. I would ask instead that you specifically add pregnancy testing and counseling to the list of services available under this act." [31]

The Committee did not give Ms. Malinski a clarification of section 1008 with regard to abortion counseling. Neither did they propose specifically adding abortion counseling to the list of Title X services as she had requested. However, in light of the material presented thus far in this report, it is hard to see how one would not understand that section 1008 forbade abortion counseling and referral.

But citing the fact that a number of witnesses called for an amendment to section 1008 to "prohibit abortion referral and counseling," Sen. Alan Cranston wrote the American Law Division of the Library of Congress' Congressional Research Service for an opinion on the constitutionality of such an amendment."[32] John D. Sargent, a legislative attorney, responded to Sen. Cranston for the American Law Division, drawing on the Roe v. Wade decision of January, 1973, Sargent wrote,

"Inasmuch as a woman now enjoys a right of privacy which 'is broad enough to encompass the decision whether or not to terminate her pregnancy,' it may be argued that to deny her access to abortion referral and counseling limits that right and abridges the contitutionally protected decision 'whether to bear an unwanted child.' " [33]

Later in the correspondence, however, he argued the merits of the other position.

"In light of the fact that Congress, by the amendment, does not appear to be overtly and directly limiting the abortion decision and the fact that it does not appear that a woman, as yet, has an unqualified constitutional right to an abortion, and, presumably, abortion referral services, therefore it may very well be that the proposed amendment is not unconstitutional, but merely a legitimate condition to the receipt of federal funds." [34]

Sargent concluded his analysis by saying that the courts themselves would have to render the ultimate verdict. What is significant is the fact that, at least for Sen. Cranston, section 1008 did not by itself proscribe abortion counseling and referral. Apparently his feeling was that, while Title X did not permit the use of federal funds to pay for an abortion procedure, a further amendment would be necessary to prevent Title X monies from being allocated for abortion referral services. Moreover, the Senator apparently had some reservations about the constitutionality of such an amendment. Unfortunately, because S. 1708 never got beyond the Committee level, there was no further discussion of the implications of section 1008 for abortion counseling.

There were, however, a number of witnesses who asked that section 1008's prohibition of abortion be stricken from the law entirely. Dr. Alan Sweezy, then chairman of Planned Parenthood Federation of America, told the Senators;

"As to section 1008, some modification might perhaps be considered. Our emphasis, of course, is on family planning to prevent unwanted pregnancies. They, however, still do occur, and until we have perfected our program and our means of birth prevention, probably will continue to occur, and where unwanted pregancies occur, tragic results often follow."

* * * * *

In a letter addressed to the Subcommittee Dr. John Middleton, Vice-Chairman of the New York State Right to Life organization, also called for more restrictive Title X language when he wrote: "If the bill intends to reject abortion, it should so state much more explicitly and convincingly than it does now." [38]

What these witnesses were arguing was that section 1008 allowed organizations who received Title X funds to perform and to promote abortions so long as those monies were not used directly to finance abortion procedures. That this process has been going on is clear from the voluminous evidence submitted by Mrs. Randy Engel of the U.S. Coalition for Life to Sen. Cranston's Subcommittee.[39] But the relevant question is whether it was the intent of the prohibition of abortion to allow for such activity. On this the Senators did not comment. Sen. Cranston did write DHEW and request a written response to Mrs. Engel's charges. However, since S. 1708 did not come to the floor for full debate and consideration by the Congress, it is impossible to say whether the bill would have been amended to end what several witnesses considered to be abuses of the spirit if not of the letter, of Title X. Tentative Conclusions

In light of the Subcommittee's activity on S. 1708, we may now re-evaluate the four conclusions which we drew from the 1970 proceedings on the Tydings Act.

(1) *Congress intended to establish a wall of separation between pregnancy prevention and pregnancy termination.*—Sen. Kyros' determination to "not turn this into an abortion bill" shows clearly that Title X's purpose was to keep contraception and abortion in watertight compartments.

(2) *This wall of separation excludes abortion counseling and referral as well as the actual performance of abortion from public funding.*—This is by no means evident from the 1973 proceedings given the fact that, in response to the request of several witnesses that section 1008 be amended to explicitly proscribe such activity, Sen. Cranston sought an opinion from the American Law Division on the constitutionality of such a restriction. This would indicate that he considered that the current language did permit abortion counseling and referral. Yet, since the Committee never filed a report on S. 1708, we cannot say for sure that the Senators believed that the bill as it stood did allow for these activities.

(3) *Programs in which abortion plays a prominent role are also ineligibile for Title X funds.*—No relevant testimony was taken on this point.

(4) *Organizations which encourage or promote abortion in any way thereby disqualify themselves from Title X grants.*—The Subcommittee was silent on this issue, although it did receive testimony that some Title X beneficiaries were also performing and promoting abortion.

D. OMNIBUS HEALTH PROGRAM EXTENSION OF 1974 (H.R. 14214)

While Congress had argued that the authorization extensions through the end of FY74 were necessary to "buy time" for oversight and revision of major health programs, the Watergate scandal produced a governmental paralysis which precluded such extensive activity. So it was that once again in 1974 Congress found itself with a number of expiring health authorities. The solution again pursued was to push for passage of an omnibus extension, though this time for two years, through the end of FY76. The attempt, however, was to be ill-fated as, after months of debate on funding levels culminating in adoption of the conference report in mid-December, President Ford pocket-vetoed H.R. 14214.

Given the sweeping nature of the House bill and of its Senate counterpart (S. 3280), there was little discussion of family planning in general or of abortion in particular. However, in hearings before the House Subcommittee on Public Health and the Environment, former Senator Joseph Tydings, author of the original Title X legislation, testified that, so far from funding abortions, his legislation had actually reduced the incidence of abortion.

"There are many citizens in this country who do not believe in abortions, who do not want abortions, but last year we had 700,000 legally reported abortions. Now if there is any possible clearer testimony that we need better contraception or we need our national family planning programs to work, I don't know what better documentation than these abortions. I think no one wants abortions. But at least 700,000 women were sufficiently desperate when they didn't have access to contraceptives or the contraceptives failed, to take that step." [40]

The Subcommittee also once more heard the testimony of Dr. McKinnon White of the United Methodist Church. In his statement, Dr. White roughly outlined the reasons why he felt that organizations which performed, promoted or encouraged abortion ought not to be denied Title X funds when he said:

"For sometime the United Methodist Church has held that medically safe and legal abortions should be made available. We have not, however, considered abortion as a means of family planning, but rather as an extreme measure, to be weighed with other options thoughtfully and prayerfully in those situations where the life or health of the pregnant woman, or of her children, or of the rest of her family, is threatened by the birth of a child." [41]

Dr. White's position echoed the statement of Violet Malinsky of NOW, who in 1973 had told Sen. Cranston's Subcommittee that she did "not believe that abortion is a

method of family planning; I do not know of any woman's organization which sees abortion as a substitute for contraception."[42]

The implication of both Dr. White and of Ms. Malinsky is that since no organization views abortion as a method of family planning, on organization includes abortion as part of its family planning program. While groups who operate family planning programs might also promote, encourage or perform abortions as a "back-up to contraceptive failure," such activity does not disqualify them from receiving Title X monies, since their abortion involvement is kept separate from their family planning program.

It is beyond the scope of the present report to weigh the legal merits of this line of argument, but in passing it should be noted that the legislative history as presented thus far would seem to indicate that such an approach to section 1008 does, in effect, frustrate the intent of Congress, particularly as that intent was expounded by Mr. Dingell in his floor remarks.

E. OMNIBUS HEALTH PROGRAM EXTENSION OF 1975 (PL 95-63)

Programs which were denied authorization for FY75 were funded at FY74 levels under a continuing resolution. Shortly after convening, the new Congress proposed a two-year extension of health service programs through the end of FY77. President Ford once again vetoed the bill, complaining of excessive authorization levels, but Congress easily overrode him by a 67-15 margin in the Senate and a 384-43 vote in the House.

Again, the provisions of Title X did not receive extensive consideration either at the committee level or on the floor of either house of Congress. Legislators on both sides of the aisle seemed anxious for swift passage of S. 66, which contained many popular programs. Thus, when Congressman Rogers held hearings on the House version of the bill (H.R. 2954 and H.R. 2955), the only witness called was the Secretary of HEW, Caspar Weinberger. In a letter to Rep. Rogers, Mrs. Randy Engel, Executive Director of the U.S. Coalition for Life, questioned whether the Dingell Amendment prohibited abortion counseling and referral. Rogers' written response, part of the permanent Committee record, is critical to the legislative history of section 1008.

"The Coalition should be aware that the law is very clear as to the design and content of programs funded under Title X of the Public Health Service Act. None of the funds appropriated under Title X may be used in programs where abortion is a method of family planning. This provision would not merely prohibit the use of such funds for the performance of abortions but would prohibit the support of any program in which abortion counseling or abortion referral services are offered." [43]

The significance of this statement should not be missed. Congressman Rogers presided over the Subcommittee hearings on Title X until his retirement at the conclusion of the 95th Congress in 1978. Clearly his opinion on the intent of section 1008 with regard to abortion counseling and referral must be seen as an important one, if not as the definitive one. Given the categorical nature of Rogers' position and the remarks of Rep. Dingell on the purpose of his amendment in 1970, it seems safe to conclude that Title X moneys cannot be allocated to programs which include abortion counseling and referral.

The issue of abortion was also addressed on the Senate floor, though not in conjunction with Title X. Senator Dewey Bartlett led an unsuccessful drive to prohibit Medicaid funds from being used to pay for abortions. In the House, however, the question of what sorts of research are appropriate under Title X, a matter of a least tangential interest to the present legislative history, was taken up when Rep. Robert E. Bauman introduced an amendment which would prohibit the use of Title X funds to finance research and development of new abortion procedures. Citing section 1008 in his floor remarks, Congressman Bauman said:

"I think the intent of this (i.e., section 1008) is clear: the intent is to enforce a wall of separation between family planning and abortion, between contraception and the taking of life, between the prevention of pregnancy and termination of pregnancy. . . ."

It is still the intent of Congress that a program of providing family planning services to all women who want them but cannot afford them should be a program that is free and independent of the abortion argument. We do not want family planning to be entangled in the heated and emotional fight over the fundamental right to life.[44]

One of Bauman's chief complaints was a series of four NIH grants made to researchers employed by the Upjohn Company between 1969 and 1972 for the development of prostin F2 alpha, a prostaglandin compound whose "explicit purpose and principal effect," Bauman noted, is second trimester abortion.[45] But after assurances from Congressman Rogers that such research was already proscribed by section 1008, Rep. Bauman withdrew his amendment.

Tentative Conclusions

Congressional action on extension of expiring Title X authorities in 1975, both at the Committee level and on the floor, buttress two of the conclusions drawn earlier in this report.

(1) *Congress intended to establish a wall of separation between pregnancy prevention and pregnancy termination.*—Rep. Bauman made this point almost verbatim in his challenge of abortion research under Title X.

(2) *This wall of separation excludes abortion counseling and referral as well as the actual performance of abortion from public funding.*—Mr. Rogers' written response to Randy Engel unquestionably establishes this.

F. OMNIBUS HEALTH PROGRAM EXTENSION OF 1977 (PL 95-83)

Once again in 1977 the House and Senate put together a variety of health programs into one package and passed legislation authorizing blanket appropriations for one fiscal year. The Carter White House, however, did not share the reservations of the previous two administrations about authorization levels, so that the legislation moved smoothly and was signed into law on August 1.

Discussion and debate of Title X as it related to the abortion issue was virtually non-existent in 1977. However, the House Subcommittee on Health and the Environment heard the testimony of Henrietta Marshall, Chairperson of the Planned Parenthood Federation of America. Ms. Marshall's written statement is of some interest since she is speaking in behalf of a private organization which receives a great deal of Title X monies for its population control programs.

"Title X deals positively with the problem of unwanted fertility by *preventing* unwanted pregnancies. Indeed the law makes it clear, by excluding abortion from the services authorized under Title X, that all of the funds are to be used for prevention." [46] (Italics in original.)

This statement takes on added interest since, up until the time of this testimony, the leadership of PPFA had adamantly maintained that all Title X funds did not have to be used for pregnancy prevention. Planned Parenthood had long contended that some of them could be used for the promotion and encouragement of abortion, as well as for abortion counseling and referral. Jeannie Rosoff, for example, Vice President of the Alan Guttmacher Institute and also Vice President of PPFA, wrote in an article which appeared in *Family Planning Perspectives:*

"There is no basis for believing that the prohibition of Title X funds for 'abortion as a method of family planning' was intended to prohibit the use of such funds for abortion counseling and referral or even promotion or encouragement of abortion." [47]

The present report suggests that Ms. Rosoff may never have studied the legislative history of section 1008 with any care. But what is of at least passing interest here is that Planned Parenthood executives were on the one hand advising their affiliates to employ Title X moneys for abortion counseling and promotion, while at the same time testifying before Congress that their understanding of the law was that it required them to spend all of that money on pregnancy prevention. It is apparent that abortion referral and promotion cannot be considered pregnancy prevention, in that, by their very nature, they can only take place in cases where pregnancy has already commenced.

G. HEALTH SERVICES AMENDMENTS OF 1978 (PL 95-613)

The year 1978 was a landmark one for federal subsidy of family planning services. Not since Title X was originally enacted in 1970 had population control advocates scored such a major triumph. The authorization figures alone were impressive: $1.07 billion to be spread over three years (FY79-81), with $308.8 million authorized for FY79—an increase of more than $100 million over FY78.[48] Aside from increasing allocations for every existing program under Title X, the legislation created a new initiative: that of reaching "sexually active young adults" (ages 15-19) with family planning services.

The House version of the family planning extensions (H.R. 12370) was, as in previous years, lumped together with extensions of other health services programs. The Senate, on the other hand, initially considered the Title X authorizations as a separate piece of legislation, but the Committee on Human Resources later combined it with the Sudden Infant Death Syndrome bill before reporting it to the floor to form S. 2522.

1. Senate Action

As indicated above, one of the major thrusts of the Title X extensions was to meet the problems of adolescent pregnancy. The theory under which Congress operated was that wide dissemination of contraceptive devices and information would significantly reduce the number of teenage pregnancies. Only one witness at the Senate hearings, Frances Frech of the U.S. Coalition for Life, challenged this approach. Arguing that girls in their early teens could not avail themselves of the two most popular birth control forms (the "pill" and the IUD) because of long-term health risks, she charged that teenage pregnancies "have not been prevented; they [pregnant adoles-

cents] have simply turned to abortion to keep the child from being born."[49] She asked that, instead of forging ahead with new large-scale programs, Congress begin an investigation to determine whether Title X had been the unqualified success that proponents claimed it to be.

The Committee, however, heard much testimony on the achievements of family planning programs and on the need for increased outlays for future projects. It reported favorably on S. 2522, a bill designed: "to place new emphasis on the provision of family planning services to sexually active adolescents and to members of both sexes who want to avoid unwanted pregnancy, to ensure appropriate consideration of the needs of rural and urban area, to provide infertility services to persons seeking those services, to stress the needs of persons with limited English-language capacity, and to respond to criticisms of the program by stressing natural family planning methods in each of the programs, by ensuring that no services project employee is compelled to act regarding abortion or sterilization in a way that violates personal conscience, and by encouraging projects to urge minors to consult with their parents regarding the use of contraceptives."[50]

When the legislation came to the floor of the Senate on June 7, it was considered to be non-controversial. Only Sen. Cranston, who presided over the hearings, spoke on the bill. It passed the Senate without serious challenge.

2. House Committee Action

In contrast to the Senate Subcommittee, whose staff had arrayed a number of witnesses who spoke in favor of S. 2522, only a few individuals addressed themselves to the family planning portion of H.R. 12370 at the hearings held before the House Subcommittee on Health and the Environment. One more, the only link drawn between Title X and abortion was that increased authorizations for contraceptive research and distribution would lessen the "need" for abortion. Rep. Anthony C. Beilenson took this line when he said:

"There is no better way to stop the constantly rising numbers of abortions than by eliminating the need for abortion by providing family planning services to the millions of low-income women in our country who are not currently served due to lack of funds and to lack of effective outreach programs. We should place more emphasis on helping men and women—especially teenagers—prevent unwanted and unplanned pregnancies, rather than forcing them to choose between seeing such pregnancies through to term, or ending them.[51]

3. House Floor Action

a Suspension of Rules (September 25, 1978).—The House Committee on Interstate and Foreign Commerce reported favorably on H.R. 12370 to the whole House on May 15, 1978. But over four months later the Rules Committee still had not brought the bill to the floor. For this reason, Subcommittee chairman Paul Rogers, along with ranking minority member Tim Lee Carter called up the bill under suspension of rules. Given the fact that the programs included in the Health Service Amendments package were largely non-controversial (e.g., funds for rodent control, immunization programs, blood separation centers) and that the family planning portion had passed the Senate with ease, Rogers' hopes of passage seemed justified.

There were, however, two complicating factors. The first was that the total authorization for all programs lumped together under H.R. 12370 was over $2.3 billion. Passage under suspension of rules would mean that none of these figures could be challenged or amended. Since the Congressmen were all involved in re-election campaigns in a time when the political mood of the electorate was preceived as decidedly austere, many thought it unwise to act on the bill without extensive debate. The second factor was that pro-life legislators had heard allegations that Title X monies were being employed to help fund abortion clinics and abortion counseling and referral services.

In his opening statement, Paul Rogers set out immediately to allay the fears of prolifers by arguing that section 1008 prohibited the use of Title X funds for anything except pregnancy prevention.

"I am also aware that there are those who seek to convince my colleagues that the simple extension of the voluntary family planning program constitutes a pro-abortion vote. Nothing could be further from the truth. In fact, a vote for this bill is a vote against abortion. Title X is the only national program which will actually prevent the condition which could lead to a request for abortion."[52]

In a similar vein, Congressman Whalen of Ohio asserted that Title X was a most effective piece of anit-abortion legislation.

"Some who oppose abortion have expressed opposition to the family planning provisions of this measure. I, too, am opposed to abortion. I have always believed that life begins at conception, and that the taking of life by any means—by abortion, euthanasia, or any other method—is wrong. Because I oppose abortions, I believe that it is imperative that alternatives to abortion be offered to young women. We cannot decry abortions and at the same time fail to provide counseling and other services which will prevent unwanted pregnancies. Thus, we who oppose abortion bear an even greater obligation to support these programs which prevent the pregnancies which cause women to seek abortions.[53]

But Rep. Robert K. Dornan, speaking in behalf of pro-life Congressmen, was not satisfied that Title X funds were used soley for pregnancy prevention. Citing evidence that abortion clinics and hospitals performing abortions in 33 states and the District of Columbia were recipients of Title X monies, Dornan announced that he was prepared to introduce floor amendments to end such abuse—floor amendments which could not be tacked on to legislation being considered under suspension of rules.

When the vote was taken, those who wished to pass the legislation under suspension could garner only 193 votes, far short of the two-thirds required for passage. H.R. 12370 would have to face a full floor fight to be enacted.

b. Floor Debate (October 11 and 13, 1978).—When the legislation was opened for amendment, Rep. Tim Lee Carter introduced a stipulation requiring that educational materials be reviewed to determine whether "they will be suitable for the purposes of this title and for the population or community to which they are to be made available."[54] This was in response to the discovery that several Planned Parenthood affiliates, recipients of Title X appropriations, were publishing, promoting and distributing violently anti-Catholic materials. Carter's amendments passed the House easily.

Congressman Dornan then offered a series of amendments germane to the present legislative history. One of them would make eligible for Title X funding "projects which provide counseling respecting the alternatives to abortion."[55] But Subcommittee Chairman Rogers objected to the amendment on the grounds that all Title X moneys were required to be spent on pregnancy prevention, and that, consequently, none of them could be used for pregnancy counseling of any kind (including abortion counseling and referral).

"To adopt this amendment would simply change the whole concept of family planning. Family planning occurs before pregnancy. If the gentleman wants to set up a special program of counseling after pregnancy in some other program, I would see nothing wrong with it. But the need is too great for family planning before pregnancy . . . [We can] not wait until they get pregnant and then say, "Well, we will counsel you a little bit." Then it is too late. Spend the money where it will do the most good and prevent that welfare bill from going up to $4 or $5 billion."[56]

Dornan then proposed a further amendment, this time to proscribe funding for any "entity which directly or indirectly provides abortion, abortion counseling, or an abortion referral service."[57] Dornan had explained the purpose of this amendment on the floor of the House on October 11 when he said:

"The amendment prohibiting any money from going to grantees that perform, refer, or counsel for abortion is no more than an explicit restatement of what we in Congress thought was the law. Family planning is not abortion or abortion referral, or abortion counseling. The government should not be in the business of promoting abortion. Nowhere will anyone find that Congress has authorized abortion or its promotion. Those here who wish to destroy reputable family planning services need only link abortion or its promotion with the provision of family planning services."[58]

Rep. Rogers, in arguing against the amendment, agreed with Dornan that it was a "restatement" of the law, and asserted that for that very reason it was unnecessary.

"This is an unneeded amendment. We have a specific prohibition in the law that says no funds—none—in Title X may be used for abortion as a method of family planning. That means none. Absolutely no funds could be used. Abortion is not a method of family planning. Abortion comes after pregnancy—after pregnancy. And the gentleman misses the point of what we are doing in Title X. It is before—before. It is to let people know how to avoid pregnancy. We cannot use any funds for abortion. The amendment is not needed. I urge its defeat."[56]

In essence, Rogers' contention was that the amendment prohibiting abortion referral advocated by Dornan was unnecessary because it already was the law, and had been the law since the passage of the Tydings Act in 1970. Rogers' understanding of Title X—and as floor manager of the bill his recorded remarks are critical with respect to legislative intent—was that all moneys had to go for pregnancy prevention. Any other use of Title X funds—whether for advising a pregnant woman of her alternative to abortion or advising her of her option to have an abortion or referring her to an abortion clinic—would be an abuse of these funds.

In response to a question from Congressman Harold Volkmer, Rogers also expressed the opinion that hospitals which receive Title X allocations for family planning pro-

grams do not disqualify themselves for those funds by the performance of abortions.

Mr. VOLKMER. Do any of these people that come to the family planning clinics, do the records show that any of them when they come there are pregnant?

Mr. ROGERS. Oh, sure, some are indeed pregnant. Also you may have a hospital that may be running a family planning section in one wing and maybe they do an abortion in that hospital to save the life of the mother. It is a legal procedure. If the doctors there do not want to do it they do not have to do it . . . But you mean to say, here is a good institution and they cannot run a family planning clinic because somewhere down the hallway—somewhere in an operating room—they might have at some time or other performed an abortion, or they might perform an abortion?[60]

It is apparent from these remarks that the performance of abortions by a hospital which receives Title X funds for a family planning program must be wholly unrelated to that program. That is to say, the staff at the family planning clinic could not retain its Title X eligibility if as matter of routine it referred pregnant patients for abortions in the hospital's own surgical facilities (or in anyone else's abortion facilities). Rogers' statement assumes that the relationship between the Title X recipient and the abortion provider is not a close one. Thus, an abortion clinic which employed Title X funds to provide salaries for clerical staff could not very well claim on the basis of Rogers' response that they were legally entitled to those funds.[61]

The House rejected all of Dornan's amendments and went on to pass H.R. 12370 by a 343-27 vote. They then acted favorably on H. Res. 1408 which passed the family planning and Sudden Infant Death Syndrome portions of H.R. 12370 in lieu of S. 2522. The Senate, fearing an extended conference fight and possible floor battles with pro-life legislators, adopted the House version of S. 2522 on October 15 by voice vote.

CONCLUSIONS

(1) *Congress intended to establish a wall of separation between pregnancy prevention and pregnancy termination.*—Congressman Rogers' adamance that all family planning monies must be spent on programs which reach women before they become pregnant underscores this point.

(2) *This wall of separation excludes abortion counseling and referral as well as the actual performance of abortion from public funding.*—Dornan's proposed amendment to explicitly proscribe abortion counseling and referral went down to defeat on the basis of Rogers' argument that such a stipulation was "not needed" since section 1008 already accomplished that purpose.

(3) *Programs in which abortion plays a prominent role are also ineligible for Title X funds.*—In answer to Congressman Volkmer's query, Rogers stated his opinion that hospitals which operated a family planning clinic could receive Title X funds for the operation of that clinic, so long as its abortion facilities were kept separate from its family planning program.

(4) *Organizations which encourage or promote abortion in any way thereby disqualify themselves from Title X grants.*—The Congress did not address itself to this matter in 1978.

Title X of the Public Health Service Act was specifically designed to provide contraceptive services to women in the poor and near-poor categories and to subsidize research into the development of new contraceptive techniques. Its sole aim is to give every woman the ability to prevent pregnancy, not to end a pregnancy that has already begun. Congress, though time and again beseeched both by pro-lifers and by pro-abortionists for authority to use Title X funds for counseling after the onset of pregnancy, has adamantly maintained that Title X monies were to be used exclusively for pregnancy prevention. The legislative history could not be more clear: Title X monies can be used to subsidize neither abortion procedures nor abortion referral and counseling nor any function of an abortion clinic.

FOOTNOTES

[1] *Congressional Quarterly Almanac* (1970), p. 570.
[2] Richard M. Nixon, "Message from the President of the United States Relative to Population Growth," (H. Doc. 91-139), July 18, 1969, p. 8.
[3] Oscar Harkavy, et al., "Implementing DHEW Policy on Family Planning and Population," excerpted from hearings on S. 2108, Senate Labor and Public Welfare Committee, 91st Congress, p. 334.
[4] Harkavy, "Implementing . . .," p. 334.
[5] Harkavy, "Implementing . . .," p. 334.
[6] Harkavy, "Implementing . . .," p. 335.
[7] Nixon, "Message," p. 4.
[8] Nixon, "Message," p. 8.
[9] *Congressional Quarterly Almanac* (1970), p. 571.
[10] *Congressional Quarterly Almanac* (1970), p. 571.
[11] *Congressional Quarterly Almanac* (1970), p. 571.
[12] Hearings on S. 2108, Senate Labor and Public Welfare Committee, pp. 191-201.
[13] Hearings on S. 2108, p. 277.
[14] Hearings on S. 2108, pp. 65, 68, 78.
[15] Hearings on S. 2108, p. 99.
[16] *Congressional Record*, 91st Congress, 2d Session, Vol 116, part 18.
[17] Hearings on Family Planning Services, House Committee on Interstate and Foreign Commerce, p. 317.
[18] Hearings on Family Planning Services (House), pp. 321-22.
[19] Hearings on Family Planning Services (House), p. 359.
[20] Hearings on Family Planning Services (House), p. 382.
[21] *Congressional Record*, 91st Congress, 2d Session, p. 37375. The full text of Mr. Dingell's remarks is contained in Appendix A.
[22] Mr. Staggers stated that "this legislation does not provide for abortions, contrary to some of the rumors apparently circulating concerning it." (*Congressional Record*, 91st Congress, 2d Session, p. 37367.)
Rep. Carter said for the record that: "Section 1008 provides that none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning. I am pleased with this provision, for I am unalterably opposed to abortion except in cases of rape, incest, or to preserve the life of the mother." (*Congressional Record*, 91st Congress, 2d Session, p. 37368.)
[23] *Congressional Record*, 91st Congress, 2d Session, p. 37390.
[24] A full text of Title X appears in Appendix B.
[25] The Congress did not, however, avoid the abortion controversy completely. Sen. Frank Church offered floor amendments which would protect medical personnel from being obligated to perform abortion and sterilization procedures if it was against their religious or moral beliefs to do so.
The text of the amendment, which dealt specifically with authorizations under the Hill-Burton Act, is as follows: "Receipt of financial assistance under any of the aforementioned acts does not constitute legal basis for a judicial or administrative order requiring an individual to aid in performing a sterilization or abortion, if such activity is contrary to the individual's religious or moral beliefs. Nor does receipt of financial assistance provide legal authority for a judicial or administrative order requiring the provision of personnel or facilities by any entity for the performance of sterilization or abortion, if such activity is contrary to the religious or moral beliefs of the personnel or prohibited by the entity for religious or moral reasons." The amendment passed both the House and the Senate.
[26] Hearings on Omnibus Health Program Extension, House Interstate and Foreign Commerce Committee, p. 119.
[27] Hearings on Omnibus Health Program Extension (House), p. 174.
[28] Hearings on S. 1708, Senate Labor and Public Welfare Committee, p. 142.
[29] Hearings on S. 1708, p. 172.
[30] Hearings on S. 1708, p. 179.
[31] Hearings on S. 1708, p. 254.
[32] The text of Sen. Cranston's letter and of Mr. Sargent's response can be found in Appendix C.
[33] Hearings on S. 1708, p. 542.
[34] Hearings on S. 1708, p. 546.
[35] Hearings on S. 1708, p. 59.
[36] Hearings on S. 1708, p. 990.
[37] Hearings on S. 1708, p. 203.
[38] Hearings on S. 1708, p. 612.
[39] A complete text of Mrs. Engel's allegations of Title X abuses (as made part of the Committee record) and of HEW's response is contained in Appendix D.
[40] Hearings on H.R. 14214, House Interstate and Foreign Commerce Committee, p. 832.
[41] Hearings on H.R. 14214, p. 989.
[42] Hearings on S. 1708, p. 254.
[43] Hearings on H.R. 2954 and 2955, House Interstate and Foreign Commerce Committee, p. 260. The complete text of Rep. Rogers' comments appears in Appendix E.
[44] *Congressional Record*, 94th Congress, 1st Session, p. 17218.
[45] *Congressional Record*, 94th Congress, 1st Session, p. 17219.
[46] Hearings on Omnibus Health Program Extension, House Interstate and Foreign Commerce Subcommittee, p. 152.
[47] Jeannie I. Rosoff, "Pregnancy Counseling and Abortion Referral for Patients in Federally Funded Family Planning Programs," *Family Planning Perspectives*, VIII, January/February, 1976, p. 43.
[48] A complete table of Title X authorizations through FY78 may be found in Appendix F.
[49] Hearings on S. 2522, Senate Committee on Human Resources, p. 529.
[50] Report of the Committee on Human Resources to accompany S. 2522 (S. Rept. 95-822), p. 14.
[51] Hearings on Health Services Amendments of 1978, House Interstate and Foreign Commerce Committee, p. 51.
[52] *Congressional Record*, 95th Congress, 2d Session, P. H10601.
[53] *Congressional Record*, 95th Congress, 2d Session, P. H10611.
[54] *Congressional Record*, 95th Congress, 2d Session, P. H13287.
[55] *Congressional Record*, 95th Congress, 2d Session, P. H13288.
[56] *Congressional Record*, 95th Congress, 2d Session, P. H13288.
[57] *Congressional Record*, 95th Congress, 2d Session, P. H13289.
[58] *Congressional Record*, 95th Congress, 2d Session, P. H12244.
[59] *Congressional Record*, 95th Congress, 2d Session, P. H13289.
[60] *Congressional Record*, 95th Congress, 2d Session, P. H13290.
[61] An opinion by Elsie Sullivan, Assistant for Information and Education, Office of Family Planning, Public Health Service, DHEW, contained in a letter addressed to Congressman Dornan, is relevant here. Ms. Sullivan, quoting from an opinion by HEW's Office of General Counsel, wrote: "A mere technical allocation of funds, attributing federal dollars to non-abortion activities and other dollars to abortion actitities, in what is otherwise a discrete project for providing abortion services, would not, in our opinion, be a legally supportable avoidance of the section 1008 prohibition." Appendix G contains a complete text of the letter.●

HOUSE REPORT HIGHLIGHTS INADEQUACIES OF PRESIDENT'S STEEL PROGRAM

● Mr. HEINZ. Mr. President, I would like to take a moment to compliment my colleagues on the House Government Operations Committee on their report titled, "Adequacy of Federal Enforcement of Steel Import Program." This is the first full-scale congressional review of the administration's program since its inception over

2 years ago, and it decisively reaffirms the criticisms of the program I have been making for some time.

My primary criticism of the report is its title. It ought to read "Inadequacy of Federal Enforcement of Steel Import Program." The report states quite clearly that the American steel industry is in crisis, and that while the President's program has reduced the overall level of imports somewhat, it has by no means been effective in bringing the foreign share of the U.S. steel market into line with the administration's targets. Those targets are 18.5 percent for finish products, or a total of 20.2 percent if semifinished products are included. Despite that goal, however, actual imports for 1986 through August were 23.3 percent of our market.

Unfortunately, the very nature of the program has encouraged the difficulties we are now encountering. First, not all countries are included. Major suppliers have either been deliberately excluded, like Canada, or simply have not yet agreed to a voluntary restraint, like Taiwan, Sweden, and Argentina. Indeed, as a result of the July imports, which were sharply higher, the U.S. Trade Representative has called for consultations with the first three of those countries, and I have introduced legislation, S. 2830, to provide for quotas in those three cases if voluntary restraints are not successfully negotiated in 90 days.

The second problem is circumvention—both through fraud like mislabeling weight or country of origin, and through shipment of partially finished products to non-VRA countries for further treatment and, hopefully, a change in the official country of origin for the product when it enters the United States. The Customs Service, to its credit, has rejected a number of these requests to evade the intent of the President's program, but has not disapproved all of them.

Third, the process of negotiating agreements one at a time has had the effect of encouraging new entrants into the market, which then can rapidly increase their imports before negotiations can be concluded. As a result, countries which could not compete here under normal circumstances are making significant dents in our market because more competitive producers have been capped by the VRA's.

All these problems have reduced any benefits the program might provide the industry, and the overall situation has continued to deteriorate. In the last 4 years the industry has lost nearly $7 billion. Since 1974, 15 companies have gone out of business. Thirty plants have been closed and 560 productions units in other plants have been terminated. Thirty million tons of capacity has been eliminated, and employment has declined by over 50 percent.

I suppose that can be called adjustment, but it is adjustment with a terrible waste of human and physical resources, and it is by no means adjustment to more competitive producers, since it is the dumping and subsidization of our competitors that allow many of them into our market, not their relative efficiency.

Mr. President, there is a Turkish proverb that tell us to "Measure a thousand times, and cut once." Clearly, we have measured, analyzed, and debated this issue endlessly. This report is the culmination of that process. Now it is time to cut, and it is imports—as well as excess capacity—that need to be cut. I hope we will be able to act decisively on this when Congress reconvenes.●

THE CREATION OF AN AMERICAN CONSERVATION CORPS

● Mr. MOYNIHAN. Mr. President, I rise today in support of Senator MCCLURE's amendment to H.R. 4645. In particular, I would like to address title IV, an amended version of legislation I introduced on the first day of the 99th Congress—S. 27—to establish the American Conservation Corps.

The ACC is a program that will employ thousands of youth to perform much-needed conservation and rehabilitation work on Federal, State, local, and Indian lands. Patterned after the highly successful Civilian Conservation Corps [CCC] of the New Deal era, the ACC would provide year-round and summer employment opportunities for disadvantaged youths between ages 16 and 25. The ACC is a program replete with merit and an arduous legislative history.

As we are all painfully aware, two elements of the Great Depression still linger: youth unemployment and deterioration of our natural resources. In my own State of New York, 90,000 youths aged 16 to 19 were unemployed in the first 6 months of 1986. More than 20 percent of New York's unemployed are teenagers. And this reflects a pattern of youth unemployment that plagues the country. Nationwide, last month 18.7 percent of Americans 16-19 were unemployed; 38.3 percent of black teenagers were unemployed. Of the 8.3 million unemployed Americans last month, 38.6 percent were under the age of 25.

The legislation we have in front of us authorizes $75 million annually for fiscal years 1987-89. Eighty percent of the funds are administered by the Department of Interior—Park Service lands, 25 percent; Indian lands, 5 percent; and State grants, 50 percent—and 20 percent by the Department of Agriculture—Forest Service lands, 15 percent; and other Federal agencies, 5 percent. Fifty percent of the funds would be awarded to States and localities in the form of competitive grants. Awards would be based on: the size of the State's unemployed youth population; the conservation, rehabilitation, and improvement needs of the State's public lands; and local support for the program. States would be required to match the Federal funds, dollar to dollar.

Mr. President, I earlier referred to the ACC's torturous legislative history. Permit me to explain. The measure was first introduced as the Public Lands Rehabilitation, Conservation, and Improvement Act of 1981—H.R. 4861. This bill was passed by the House on June 9, 1982, by a vote of 291 to 102. The House voted again, in December 1982, to approve the ACC, but the Senate did not act. Nor did the Senate act on S. 2061, a companion bill that Senator MAHTIAS and I had introduced on February 3, 1982.

Thereafter, on the first day of the 98th Congress, Senator MATHIAS and I reintroduced the ACC legislation as S. 27. Our measure attracted bipartisan support from 22 cosponsors. The House overwhelmingly approved a companion bill on March 1, 1983, by a vote of 301 to 87. On May 13, 1983, the Senate Energy and Natural Resources Committee voted 18 to 1 to report H.R. 999 as a shell authorization bill, and Senator MATHIAS and I set about working with committee members to craft a compromise agreement to be offered as a substitute. Negotiations on the amendment, which was to delineate program details, required more than 1 year.

On October 3, 1984, the amendment was agreed to in the Senate by unanimous consent; 6 days later the Senate amendment was concurred to, and H.R. 999, as amended, was passed by the House by vote of 296 to 75 vote. Yet despite such persistent support, President Reagan pocket vetoed the measure.

On January 3, 1985, this bill was again introduced in the House—H.R. 99—and was passed by a vote of 193-191 on July 11, 1985. Now Mr. President, the Senate will again pass this measure; this time, I am confident it will be enacted into law.

We have estimated that the ACC would provide jobs for approximately 28,000 youths annually. The legislation specifically directs the Secretaries of Interior and Agriculture to make special efforts in recruiting and employing economically, socially, eduationally, and physically disadvantaged youths at an hourly salary just below minimum wage.

The array of available work includes wildlife habitat and conservation, rehabilitation, and improvement; urban revitalization; recreational area development and maintenance; road and trail maintenance and improvement; erosion, flood, drought, and storm damage control; insect, disease, rodent,

and fire prevention and control; and improvement of abandoned railroad beds and rights of way; and energy conservation projects.

Mr. President, it is not often we have the ability to enact legislation that will unequivocally produce successful results. The Young Adult Conservation Corps returned $1.20 in appraised conservation work for each $1 expended. The YCC returned $1.04. State programs have done even better. The budget deficit looms, yes, but so does the future of the youth of this country. Which will be with us longer? I urge my colleagues to choose the latter.●

THE 99TH CONGRESS: ACCOMPLISHMENTS AND FAILURES

● Mr. KASTEN. Mr. President, we finally have come to the end of the 99th Congress. I say finally because once again we have worked at breakneck speed, during long days and even longer nights, to complete action on a year's worth of work in just a few hectic days.

We have succeeded in completing work of which this body can be proud: The Tax Reform Act is law; the budget process, which in recent years has eluded any rational attempts at control, is now subject to Gramm-Rudman-Hollings constraints—constraints that will enable the Congress over the next few years to eliminate the huge deficits that continue to hamper strong economic growth. We have passed the Clean Water Act, Superfund, an immigration bill, important soil and wetland conservation measures.

All of these are important legislation, and it is good that we have acted in a bipartisan partnership to ensure their completed consideration.

But there are areas in which I believe that we, as a body of lawmakers, have failed: We did not successfully confront the explosive trade deficit that threatens not only jobs but also our economic recovery. We failed to continue to give our local governments a dependable financial shoulder to lean on through general revenue sharing. We failed to protect consumers from everincreasing costs by not addressing the product liability crisis.

Mr. President, I would like to take a few minutes to address our successes, and our failures, and put the work of the 99th Congress into perspective.

We can take great pride in our successes, because our legislative accomplishments will serve the best interests of all Americans for years to come.

The tax reform bill, difficult as it has been to achieve an acceptable compromise, is a landmark in our efforts to fashion fair and equitable law. I was one of the early proponents of tax reform. The evolutionary process can be traced through Kemp-Kasten and Bradley-Gephardt to Treasury 1 and Treasury 2 and finally to the Tax Reform Act of 1986.

The tax bill is fair. It will remove 6 million of the working poor from the tax rolls, giving these productive Americans pocket money to invest in their own futures. The tax bill is profamily. By dramatically lowering the personal tax rates and increasing personal exemptions, families will find more of their hard-earned wages left for their own use. And by closing tax loopholes and adding a minimum corporate tax, the bill shifts the tax burden from the working men and women of America to the huge corporations as well.

Gramm-Rudman-Hollings is probably the most dramatic piece of legislation to pass this body in a long while. It is the task-master that will ensure we act with fiscal responsibility. The day of the open checkbook is gone. The day of congressional credit-card spending is past. We now must look at every program—defense and domestic—with an eye toward reducing the growth of Government spending, with an eye toward achieving meaningful savings by cutting waste.

I believe that over the next 5 years we will witness a dramatic difference in Federal spending and that the added incentive of Gramm-Rudman-Hollings will, in fact, force us to deal effectively with the deficit.

The Soil and Water Conservation provisions of the 1985 farm bill will go a long way toward protecting fragile soils and wetlands. And by so doing, not only will we enhance the environment, we also will take out of the production many thousands of acres of farmland, with the benefit of reduced production and reduced agricultural surpluses.

The Clean Water Act, passed just this week, contains provisions for the comprehensive environmental management of the Great Lakes for which I have worked for many years.

Right now, management responsibilities for this great fresh water resource are divided among at least a dozen Federal agencies, eight States, and the Canadian Federal and provincial governments, obviously an ineffective and cumbersome management system.

The Great Lakes management provisions places overall responsibility in the hands of the Great Lakes National Program Office of the Environmental Protection Agency. This section of the Clean Water Act establishes a basinwide surveillance and monitoring program for the Great Lakes and requires a regular State of the Lakes report to be submitted to Congress.

The Great Lakes are essential to the commerce and industry in inland States such as Wisconsin and the provisions of this measure will enhance the productivity of the region while protecting its environmental integrity.

And, Mr. President, let me briefly applaud passage of the Superfund Act. It is time we get on with the task of cleaning up toxic wastes. By ensuring that polluters assume their fair share of this cleanup process we can protect not only the environment, but, more importantly, the health and safety of the people who live near toxic-waste producing industries.

Mr. President, it is my fervent hope that in the 100th Congress we will attend to three issues I regard as critically important: A comprehensive trade bill, a renewal of the General Revenue Sharing Program, and product liability reform.

America is suffering through a horrendous trade imbalance, and, frankly, the administration has done little to deal with this crisis. The most productive agricultural machine in the world, we now import more agricultural products than we export. This is unacceptable; it is unbelievable.

Our shoe and textiles industries are collapsing under the weight of cheap foreign imports. Our steel and automotive industry has been crippled by unfair foreign competition.

Competition really isn't the right term. Tade warfare is closer to the truth.

Our farmers and our workers can compete against farmers and workers anywhere on Earth. They can't compete against foreign governments. And yet, that is exactly what current trade practices force them to do.

We must begin trade negotiations anew, from ground zero. We are being outgunned, outmaneuvered, and outnegotiated at every turn in so-called trade talks. And we are losing jobs. Jobs in Wisconsin, in California, in Iowa, in Maine, everywhere. In Wisconsin, we have lost thousands of jobs in the shoe and textile industry alone.

It is time to be firm, time to insist on fair trade as well as free trade. Time to tell our trading partners that if they don't open their markets to us, they will find our markets closed to them.

I am bitterly disappointed in the veto of the textile bill, deeply disappointed that the Senate never had the chance to vote to override that veto. And I call on my colleagues to put trade at the top of their list for effective and comprehensive legislation action in the next session.

Actions taken by the House of Representatives precluded general revenue sharing from continuing for the foreseeable future by keeping GRS provisions off the continuing resolution. Many of us in the Senate were counting on the House to come through with language to keep the program alive. But the House failed, and the Senate did not move to correct that failure. And now local governments

are faced with the burden of reducing public services while having to raise local property taxes.

Since the inception of GRS in 1972, the program has greatly reduced the budgetary constraints put on 39,000 counties, municipalities, and towns throughout America by the Federal Government's imposition of mandated requirements. Mr. President, less than 2 percent of GRS funds go to the actual administrative costs of the program, which means GRS has provided local governments with direct and immediate relief. GRS is one of the most efficient and effective programs ever put in place by the Federal Government, and our failure to continue this program will hurt local governments for years to come.

Let me offer my own State of Wisconsin as an example of how effective GRS has been.

During the last fiscal year, Wisconsin received approximately $92.1 million in GRS funds. For 60 of Wisconsin's 72 counties, revenue sharing provided funds equivalent to more than 10 percent of county tax revenues. For 312 of those counties, it equaled 15 percent, and for 3 counties more than 20 percent of county tax revenues.

One such county, Forest, is among the most economically depressed in Wisconsin. GRS funding for Forest County equaled 26.1 percent of county tax revenues. To make up for the loss of these funds, the county will have to have to increase an already high property tax by 16 percent. The unemployment rate in Forest County already approaches 14 percent and it is highly unlikely taxpayers can absorb such an increase.

And what will be the result? Less police protection. Less fire protection. Poorer road maintenance. The list goes on.

We must reconsider general revenue sharing in the next Congress. If we don't, I fear for the long-term health of our local governments.

Finally, Mr. President, while I am disappointed that we ran out of time to consider product liability reform legislation, I am encouraged by the strong vote of support—with 83 of my colleagues joining me in a test vote—for liability reform.

I have been fighting this battle since I came to the Senate 6 years ago. I believe we are close to winning that battle.

Consumers and small business operators have the most to gain from comprehensive product liability reform. It is time to take liability out of the current lottery system and put into a system of fair and responsible checks and balances. We must have a national standard that protects the rights of those who have suffered from dangerous and unsafe products as well as the rights of the responsible manufacturers and sellers of products.

That is what product liability reform is all about—the protection of rights. We are close to a historic compromise, a compromise that has strong bipartisan support, that will achieve fairness and the protection of rights for consumers and manufacturers, and I hope product liability reform will be addressed early in the 100th Congress.

I would add, in closing, the significant accomplishments of the 99th Congress that will benefit Wisconsin. And I would list provisions in the tax bill that will prohibit foreign farm interests in America from receiving tax subsidies; protecting and adding as many as 1,200 defense-related jobs for Wisconsin workers through the Defense Department appropriations included in the continuing resolution; the Great Lakes Management Act; legislation authorizing the inclusion of Long Island, a fragile and environmentally significant sand spit, into the Apostle Islands National Lakeshore; and the passage of the Risk Retention Amendments Act of 1986, which will allow municipalities, professionals, hospitals, and others to form self-insurance groups for general liability coverage.

I take great pride in these legislative accomplishments because I helped to author all of them, and all of them will benefit the people of Wisconsin, whom I have had the honor to represent in this Congress.●

REMARKS OF DR. JAMES C. MANCUSO

● Mr. MOYNIHAN. Mr. President, Dr. James C. Mancuso, assistant dean of the College of Social and Behavioral Sciences at the State University of New York at Albany, was recently honored as Alumnus of the Year at the Milton Hershey School in Hershey, PA.

Dr. Mancuso, a distinguished and long-time professor of psychology at Albany, grew up in Hershey and, as he describes in two speeches given there this year, spent his formative years at the Milton Hershey School.

Mr. President, Dr. Mancuso's story is a unique and inspiring one, and in commending it to the attention of the Senate, I ask that the two speeches be printed in the RECORD.

The speeches follow:

AN APPRECIATION OF MILTON S. AND CATHERINE S. HERSHEY

(By James C. Mancuso)

(Comments offered upon acceptance of Alumnus of the Year Award; Milton Hershey School Graduation Day, June 1, 1986.)

Mr. Aichele, Mr. Fisher, Members of the Board and of the Staff, Dr. Mortel, Graduates, Parents and Guests—Can the receiver of an honor amply show appreciation when his accomplishments were made possible by those who make the award? Shouldn't there be some way that I can reward the great humanitarian achievement which gave me the superb base from which to accomplish those things for which you bestow on me the Milton Hershey School Alumnus of the Year Award—an honor I will treasure above all honors I can ever receive, because it signifies that I have kept faith with all that Mr. and Mrs. Milton Hershey had hoped for "their boys."

You all know that my presence here was guaranteed by the cycle of life which included my mother, Dolores,; my father, Vincenzo; my wife, Susan, my children—Renee, Michele, and Martin—my uncles and aunts, and the thousands of other persons who supported me as the wheel has moved toward our gathering here this evening.

And, or course, all of you know the place of Mr. Milton Hershey and Mrs. Catherine Hershey in that cycle. Nevertheless, please share some of my observations about the place of Mr. and Mrs. Hershey in our lives. Let me address my comments especially to those of you who are leaving Milton Hershey School to begin a career that, I hope, will allow each of you to become candidates for whatever honors our society can bestow on you.

Let me go back to 1939, when I first came to Hershey. I was eleven years old—a boy whose father and grandfather had been Italian immigrant coal-miners, both of whom came to the United States to work hard and to make a better place for the families they had started—and both of whom had died to leave behind their vigorous and growing families. My mother Dolores, who deserves totally to share my pleasure at being here this evening, had made the decision that my brother, Anthony, and I would profit from being enrolled in Milton Hershey School.

We arrived at "old" Brookside, as children of an Italian immigrant culture entering into the great traditions of Pennsylvania Dutch culture. Nevertheless, this school and this town welcomed us into a kindness and a warmth that anyone can still see in the faces of the portraits of the man and wife who made possible the building of this beautiful environment in this attractive Pennsylvania landscape. Behind the warmth of people like Mr. and Mrs. Harry Bomberger and the firm, wise guidance of Mr. and Mrs. Harry Stuber—our houseparents at Brookside—was the warmth of our school's founders—Mr. and Mrs. Hershey. In those days we didn't speak about our feelings toward each other as freely as you young people may speak today—but we know that the feeling of love was there, whether we spoke of it or not.

Let me invite you, the MHS class of 86, to join me in considering the values of our founders, who were the hub of that love. Consider those values as you design the models from which you will build your own lives—as you attempt to define the self that you must become.

Consider the man—Milton S. Hershey. I have seen no record of his sayings about how to live a good life. But we should agree that he would accept the maxim, "By their works shall you know them." By his every act he showed his dedication to a solid set of values—values which we all can incorporate into our personal system of values. His dedication to honest, hard work cannot be refuted. Honor your parents and their contribution to what you have become. That is a value which surely guided the life of Mr. Hershey. Love your neighbor as yourself. This whole town shows that value.

His commitment to the well-being of each individual around him cannot be denied. To focus your thinking, consider the many

ways in which a person could have accumulated a fortune when Mr. and Mrs. Hershey planned this model town and factory. Mr. Hershey chose to manufacture products which people could enjoy healthfully and beneficially. He chose—as did another great philanthropist from whose works I personally profited—to make his products easily and inexpensively available to everyone in the world. I must mention that other great philanthropist—George Eastman, who financed the main campus of the University of Rochester, at which I studied for my doctorate. I did not search the records for evidence that Mr. Hershey and Mr. Eastman knew each other, but I want to believe that these men, both of whom have had a influence on my life, knew each other and loved each other. Their lives could be compared on dozens of details. As I noted, both showed their great humanism simply by the products which they chose to manufacture. Mr. Eastman gave the world inexpensive, premium photographic film. Mr. Hershey gave the world an inexpensive, premium confection.

These great values stand out as some of those which are reflected obviously in the life and work of Mr. and Mrs. Hershey. As I look back over my experience at Milton Hershey School I, perhaps more than other people, see their lives as an expression of another great value I noted that I came to Hershey from a culture which differed markedly from the culture which dominated this part of Pennsylvania. Nevertheless, I found here an atmosphere of loving *tolerance* which I have never experienced in any other of my life situations.

Again, by their works shall we know them. Mr. and Mrs. Hershey's tolerance is evident in many, many of their deeds. The immigrant Italians who came into this community were shown open appreciation for their commitment to family life and to hard work. When Mr. Hershey made his contribution to the churches in this community, in 1935, he extended his generously to every religious group, not only to the church of his own preference.

Perhaps, above all, acceptance of and tolerance for the diverse ways in which people may lead honorable lives was best shown by the marriage of Catherine Sweeney—the daughter of an Irish ironworker—and Milton Hershey—an heir to the solid values of the Pennsylvania Dutch world. Despite their different backgrounds, Catherine Sweeney became "my Kit," to Milton Hershey. However they had become the persons they were, they shared the ideals of a vivacity, graciousness, tolerance, and love—the love and tolerance which I found all around me when I was a student at their school.

Fortunately, I frequently saw that love and tolerance in person—each time that Mr. Hershey came in to the candy shop, which was located in the same building as was the shop where we learned our baking trade. I vividly remember him arriving, accompanied, unfortunately, by his nurse, smiling in a way that always revived my childhood image of Santa Claus, saying, "Okay, boys, let's make some jellies this morning."

I was in the last graduating class to have spent all of our years at Hershey in the presence of that great, tolerant man. He was ill and he was not present when we received our diplomas in June 1945. He died the following October.

Even if Mr. Hershey's death took place many years before the birth of you young people in the Class of '86, I know that tomorrow many of you will feel in a particular way the depth of your personal connection to Catherine and Milton Hershey, to the town they built, and to our home/school. Tomorrow, as you reminisce about this glorious day and all your rich days at Milton Hershey School, you will surprise your audience, as, on the day after my Graduation Day, my mother was surprised when her big, 17-year old high school graduate began to cry—terribly "homesick" for the second time in my life.

Milton Hershey school not only was the home, it was home. My buddies Bryan Smith and Bob Newcomb—two great bakers—were deeply loved brothers.

As I close I will frevently hope that the presence of Mr. and Mrs. Hershey—which is all around us here—will speak to me, "I am proud of you, my son. We take joy from your having been named Milton Hershey School Alumnus of the Year. You have lived according to the value we had hoped our boys would chose."

Thank you, Mr. and Mrs. Hershey, and all of you who have contributed to and have shared my rich life.

THE LASTING EXPERIENCE OF GROUP LIVING

(By James C. Mancuso)

(A talk presented to the Hershey Rotary Club, at which the guest speaker was asked to speak in conjunction with his presence in Hershey to receive the Alumnus of the Year Award at Milton Hershey School.)

Mr. Hatt, Members of the Rotary Club, Guests—It gives me great pleasure to be here today, particularly under these circumstances.

Much of my pleasure comes from being in this beautiful countryside in the height of the growing season. It's splendid. I always recall these hills and farms with nostalgia—The Pennsylvania Dutch landscape—it's marvelous. They knew how to build farms.

I think of the story of Amos Zinn. He bought the old Hunsicker farm—which they had been renting out for five or six years, and then had lain empty for a year. He moved in the old house, and worked diligently for five or six years—and there it was, it looked like all the other well kept farms in the area. The house and barn were repainted—sparkling white. The fields were covered with thick crops of oats, corn, and soy beans. One evening the minister came out for dinner. Amos took him around. The Reverend Hauser looked at the healthy herd of Holsteins and raised his praise to the Lord. (In Pennsylvania Dutch accents.) "Isn't it wonderful, what the Lord can do?" He saw the corn, thick and green. "Praise to the Lord for his goodness." And on and on, praising the Lord for the beauty and the bounty of the farm. Finally Amos was becoming a bit impatient. They were looking over the family vegetable garden, and again the Reverend Hauser praised the Lord. Amos couldn't hold back—"Well, Reverend, the Lord deserves His praise, but you should have seen this place five years ago. He wasn't doing too well when He had it alone!"

Amos wanted some of the credit—and he deserved it. Look at the countryside out there. Magnificent. I love it.

It seems hard to believe that 41 years have passed since Milton Hershey School, class of 1945, were gathering in town for our graduating ceremonies. I came over here from Harrisburg, where I had been working as a pastry chef in the old Penn-Harris Hotel.

That job was my first paying job. I worked with Bill Bothe, who was an outstanding pastry chef—trained in the German apprentice system right after World War I. He was everything that one would expect a German-trained pastry chef to be—intolerant of error, meticulous to the finest detail, very highly skilled.

I was a very naive and untutored kid—I had just turned 17—and I had no idea of the tremendous variety of working persons who inhabited the work force. I stepped into that job believing that everyone came to work with precisely the same kinds of self role definitions I had acquired at MHS. I didn't realize that Bill Bothe was known as a terror who had driven away—on average—two assistants per year for the twelve years previous to my joining him. I simply took it for granted that any criticism he made of my work—if I were to be a first rate pastry chef—meant that I needed to correct whatever I was doing.

That kind of naivitee continued until I went into the Navy, after a year at the Penn-Harris. I had no idea of personnel selection, how it worked and what personnel officers tried to accomplish.

I went into the Navy, fully expecting to continue my career as a pastry chef. Instead, thanks to six years of very stimulating life at MHS and to my wide reading background, I was selected for training as a journalist's mate.

My experiences in the Navy and my association with the public information officers with whom I had worked, led me to make up my mind about what I was going to do with my life.

I figured that there must have been something wonderful about those personnel tests. It was those tests, after all, which had prompted them to pick out a baker boy who *should* become a journalist's mate. I had discovered that those tests were made up by psychologists. I had decided that I would go in to college and prepare myself to develop those wonder-working psychological tests.

I came back to Harrisburg, enrolled at Dickinson College, and started to work on my major in psychology. During my second course—a course in developmental psychology—I ran into an interesting topic. At that time psychologists admired Freud's theory. Psychologists and social workers who worked with Freud's theory were often called in to consult at children's homes, which were then called "dependency institutions." In an era which didn't have programs like social security surviviors' benefits, various religious groups and other philanthropic agencies were supporting children whose parents were unable to offer them adequate family care.

Under the influence of Freudian theory, many developmental psychologists and social workers were advocating against placing children into such institutions. It was clear that many of the institutions were doing a particularly bad job. A child reared in a typical dependency institution stood a poor chance of developing into a person who would be valued by the society.

The Freudian psychologists claimed that a child who was reared in a situation in which there were no clear cut parent figures could not pass through the stages of its development in proper order, and would end up with poor psychological development.

When I ran into this story, I could contrast my own experience to such claims. I just couldn't conclude that the 2,000, more or less, boys I had known MHS could be taken as psychological misfits.

I studied the literature on the subject very closely, and I even did my doctoral dis-

sertation on the topic. Being something of a political and professional maverick I came to two conclusions about the use of Freudian theory to explain the negative effects of institutional rearing. First, I concluded, the psychologists who were making the case against dependency institutions were really making the case against spending the money that was required to do a good job of rearing dependent children. If they could use psychological theory to argue against dependency institutions, they could help justify less expensive solutions—like foster care—which was usually the alternative recommendation.

My second conclusion was that Freudian theory just couldn't explain the child rearing process.

I have spent the last twenty-five years of my professional life trying to help to build a theory of personality development which would allow us to explain what happens during the parenting process.

I would like, at this point, to give three ideas which are at the base of the kind of theory we use, and I want then to relate them to MHS 1939-1945.

First of all, we take it that one of the most important aspects of child rearing centers around successfully getting across to a child that it must constantly take into account the ways in which other people see the world.

To illustrate this, let me simply refer to the idea of rules. Take the common rule: "Don't take something which you haven't been authorized to own." When an average child reaches about age 12, he will begin to show the ability to question the methods by which people can reach the goals which are the goals of the rule. Suppose that he begins to question the idea of ownership and distribution of property. He might decide that the rules about ownership could be changed and more equitable ownership—by his standards—could be put into effect.

If a child has developed to this point without having developed a full appreciation of the need to take into account—under all circumstances—the ways in which other people see the world, he will, very clearly, get into one social mess.

The second principle which I would like to point out relates to the first principle. In fact, it can be taken as its social opposite, so to speak. The second principle would go something like this: A child must receive a constant dose of stimulation which feeds into its way of seeing the world. On a simple level, for example, we wouldn't try to teach a young person to work with Robert's rules of order if he or she hadn't had experience with and learned something of the value of working in a group which attempts to achieve common goals. If we observe parents we will see immense differences in the ways in which they gauge their children's views of the world. Watch, for example, the notable differences in parents as they try to teach very young children not to take things from supermarket shelves. Some parents obviously take into account the ways in which their children see things, while another parent acts as if his child were an expert in jurisprudence. "Don't you know that you're not to take things that don't belong to you?" What could "belong to you" mean to a three-year-old.

The third principle—the most comprehensive principle—says that all of us try to have other people agree with the ways in which we see ourselves. A person always seeks to have a reasonable group who will say, "I know who you are. I know how you are living your life. I know what you want me to believe about you. I agree that you are a worthwhile person, who does worthwhile things." That is the central motive of our lives—I would argue. We want to be validated by a reasonable group of peers.

"Let me repeat those three principles of child development. (1) First, a child must develop the ability to take into account, at all times, the ways in which others see the world. (2) Second, sound child development is best guaranteed by parenting practices which provides a high level of stimulation which constantly takes into account the ways in which the child sees the world. (3) Third, we all seek to present ourselves in ways which will allow a meaningful group of other persons to tell us that we are real individuals—we always seek validation."

Now, let's go back to the argument about institution rearing and our experience at MHS—39 to 45.

First of all, let me point out again, that we can't look at MHS as the typical child rearing institution of those years. My comparison, Mr. Hershey saw to it that MHS was very, very well financed, and very well managed.

On top of this, when I look back over it, I can make the claim that we led a life that practically guaranteed the implementation of three important principles of child rearing which I outlined above.

We certainly had plenty of solid stimulation. Further, that stimulation was constantly graded to our level, and it came in very concrete and very goal-oriented forms. Not only in school, but particularly on the farm homes and in the homes for the younger children. We always had each other, and we always had important and meaningful things to do which would be geared to what we were about to do.

At this point, I must mention the idea of *work* as we know it at MHS. I have always looked back at our view of work with some amazement, particularly at those times when I needed to deal with my own children on the topic.

It seems strange to think of it; but we simply did not see work as an unpleasant affair. In the world of a Pennsylvania Dutch farm in which we were soaked at that time, work was something everyone did, and everyone simply did his job well. Work was always aimed at an important goal which we could see very clearly. Meticulously clean calving pens meant healthy calves. A cornfield free of weeks meant rich, thick ears of corn.

I could quote a whole string of neat little sayings which were commonplace expressions in a world guided by people like Mr. Stuber and Mr. Bomberger. "A job worth doing is a job worth doing well," and so on. They all added up to the idea that we were supposed to do our jobs well, because something clearly positive would result.

At any rate, that whole idea of work fitted into giving us stimulation which would fit in with our ways of seeing things. We were never asked to do things we couldn't do, but we always were asked to do the things we could do. As little guys we swept the aisles and washed the cows tails—that's a strange task, isn't it? My friends are always amused when I describe that one. Curry the cows and learn to milk when we were a little older—and so on—always expected to become skillful and competent at important tasks, according to our level of development.

Living and working on a farm with 22 other boys and four houseparents in that highly stimulating environment certainly gave us the skills by which we could always take into account the ways in which other people saw things. If you were being taught how to teach a calf to drink from a pail, you didn't try to invent a new technique, you tried to figure out why Mr. Stuber did it that way.

And lastly, we always had a group around us who would tell us exactly who we were—and one way which we definitely could get their approval was by showing competence at work. We always could name the best milker on the farm. To be chosen to handle a team of mules was a high honor. Anyone who could go the whole day of the threshing season was a real winner. That barley had to get in while the sun was shining or you'd have a bin full of mold rather than a bin full of golden grain. And in addition to all this, everyone in the bake shop knew that Smitty was the best cake decorator and that Bob Newcomb was the best baker—and on and on. And all of this was almost (??) as important as being a real winner with the town girls or being the star on the football team. Everybody at MHS could find a way to show his competence, and everyone could depend on the group to recognize and respect his competence.

In all, then, the Milton Hershey School that we experienced in those years was one very superior child-rearing environment. I'm not sure that Mr. and Mrs. Stuber sat around and said (in Pennsylvania Dutch accents), "Let's see, how can we give James stimulation which fits into his level of development," but they did arrange to give us very fine stimulation simply by keeping us doing the things that needed to be done on the farm. It taught us to take into account the ways in which other people see things. And, it gave us a very meaningful set of self definitions.

Sometimes my friends call me a "workaholic. I find it very hard to convince them that I just can't think of myself as someone who would not be involved in pursuing competence and skill. MHS simply filled my head that way—and I wouldn't have it any other way.

I enjoy that self-identity.

The nice thing about it has been that our society rewards us for following a self identity like the one we acquired here at MHS.

Indeed, here I am in the strange position. Milton Hershey School is going to give me special recognition for living out an identity which was given to me by my experiences at Milton Hershey School.

I almost feel guilty accepting it—but I'm going to accept it anyhow.

I am certainly grateful. And, I am happy that you have given me the attention you have given me here.

Thank you.●

THE ACHIEVEMENTS OF A YOUNG NEW YORK ARCHITECT

● Mr. MOYNIHAN. Mr. President, the architecture firm of Skidmore, Owings & Merrill is well-known here, in New York, and indeed around the world. Each year, this firm sponsors the Skidmore, Owings & Merrill Traveling Fellowships to encourage promising students of architecture. After winning first place in the 1985 SOM Masters Program—$12,000—an accomplished young architect and constituent of mine, Mr. Adam Yarinsky of Princeton University, has recently re-

turned from a year of travel and study in the United States and Europe.

Mr. Yarinsky's honor was detailed in Progressive Architecture magazine, and, as part of the tribute I mean to pay this fine young New York architect today, I ask that the article, "SOM Travels," be printed in the RECORD.

The article follows:

[From the Progressive Architecture, August 1985]

SOM TRAVELS

Now in its fifth year, the Skidmore, Owings & Merrill Traveling Fellowships have become something of an academic institution, one emulated by other major firms that seek to support and recognize outstanding architectural students and their schools. This year the program was expanded to include a fellowship for undergraduate architecture students. The seven-member jury composed of five SOM partners and two visitors—Henry Cobb of I.M. Pei & Partners and Ronald Krueck of Krueck and Olsen, Chicago—selected a total of eight finalists on the basis of portfolio submissions (each dean may nominate up to three candidates). After interviews, they awarded first place ($12,000) in the Masters Program to Adam Yarinsky of Princeton University, second place ($10,000) to David Hotson of Yale University, and third ($8,000) to Madeleine Sanchez, also of Yale. Pamela Butz of Cornell and Frank Michielli of U. Va. were cited for Honorable Mention.

In the Bachelors Program, the jury divided the first prize between Kit Krankel of University of Texas at Austin and Guy Perry of Rice, each of whom received $4,000. Robert Carpenter of the University of Cincinnati was cited for Honorable Mention.

An awards ceremony in New York City honored both winning students and their schools. According to partner David Childs, the Foundation may expand the program yet again to reward teachers with travel stipends as they now do students.—Daralice D. Boles.●

DOUBLE TAXATION

● Mr. KASTEN. Mr. President, during the Senate's consideration of tax reform, we adopted a strong minimum tax program. I support this program.

A potential unintended consequence has been brought to my attention—double taxation. It is my belief that the Treasury and Internal Revenue Service are aware of this potential problem. It is my expectation that in writing regulations, this uncertainty will be resolved so as to prevent double taxation.

During debate on the tax bill, Senator PACKWOOD and I conducted a colloquy on this potential problem. As part of that June 24 colloquy, Senator PACKWOOD acknowledged that when a corporation purchases "Tax and Loss Bonds," double taxation should not occur.

There appears to be some ambiguity in this provision as finally adopted. I hope in writing the implementing regulations the Treasury and IRS will prevent the possibility of double taxation.●

THE ARTS IN NEW JERSEY

● Mr. LAUTENBERG. Mr. President, I would like to bring to the attention of my colleagues an excellent series of articles that appeared in the October issue of Horizon, a magazine dedicated to the arts. Horizon has paid a fine tribute to the arts in New Jersey, and to the people who have made them thrive.

New Jersey is home to some of the worlds greatest artists, writers, musicians, and actors. According to Horizon, approximately 37,000 artists reside in the State. They include such people as Donald Delue, the most prolific modern sculptor; Dizzie Gillespie, the great jazz artist; and Joyce Carol Oates, one of the most gifted American writers. We have such talented performers as Bruce Springsteen and Whitney Huston, Celeste Holm, and Jerome Hines. These artists share a love for the State and a strong dedication to their work.

The arts in New Jersey are undergoing a major explosion of talent, and New Jersey residents are responding with overwhelming support. The New Jersey Symphony Orchestra, the Paper Mill Playhouse, the New Jersey Chamber and Music Society, and the Garden State Ballet produce some of the State's best artists, and draw outstanding performers from around the world. Renowned poets, novelists, musicians, and dancers appear frequently throughout the State.

These artists could not have come to the State without the dedication and love for the arts of local arts councils. Cultural and heritage commissions and arts councils make it possible for New Jersey residents to enrich their lives—to enjoy live theater and music in their own towns.

Mr. President, New Jersey has a great patron of the arts in its Archbishop of Newark, Theodore McCarrick. As assistant to then-Archbishop of New York Terrence Cardinal Cooke, Archbishop McCarrick helped establish the Friends of Vatican Art in the United States, of which Cooke was president. He is also actively involved in creating art. The Archbishop plans to help celebrate the 200th anniversary of the establishment of the church in the United States by organizing a special mass, one which he hopes will be "just as beautiful" as the 1789 mass.

The Archbishop's admiration for the arts can perhaps be best expressed by his personal view of art: "All great art lies in the mystery of the presence of God. All true art is, in some sense, an attempt to represent this mystery. Faith makes the distinction between the descriptive essay and the poem; between the photo snapshot and the truly great painting; between the sound and the song."

REVITALIZATION OF CAMDEN

Mr. President, just as a great painting, work of literature, or piece of music can be admired as art, so can a beautiful city. And the work that goes into making a great city is achieved by people dedicated to its growth and development.

Horizon has focused on the revival of downtown Camden, NJ, as a city worthy of this description. Plans for Camden's $150 million revitalization include a newly landscaped Ulysses S. Wiggins Waterfront Park, an amphitheater, a marina and dry dock, the New Jersey State Aquarium complex, a festival market, and a 250-room hotel conference facility. This project will bring jobs, entertainment, and a unique recreational experience for Camden's residents and visitors.

As many who have visited the city know, Camden contains some of the most beautiful remnants of the Victorian era of architecture. Camden was the home of the poet Walt Whitman during the final days of his life. Whitman's vision of Camden as a city for poets lives on. Today, Camden has a strong cultural community and serves as the location for the Walt Whitman Center for the Arts and Humanities.

The city is committed to restoring the Cooper Grant Historic District—a four-block square enclave of Italianate and Second Empire row and semidetached houses. Through the initiative of Mayor Primas and the city council, Rutgers University, the Campbell Soup Company, RCA, and many other supporters, Camden is drawing the investment dollars and the talent needed to make the city thrive.

Mr. President, I am proud of New Jersey's contribution to the arts. I am proud that we have individuals dedicated to the cultural, spiritual, and aesthetic enrichment of our lives.●

EXPORTS: BE PATIENT OR PANIC?

● Mr. HELMS. Mr. President, the Food Security Act of 1985—the formal name of the 1985 farm bill—substantially improved our agricultural policy by authorizing signficant reductions in price support levels for wheat and feed grains. These reductions have sharply improved the competitiveness of U.S. grain in international markets.

Information to date on the 1986 crops, the first for which these reduced-price supports have gone into effect, indicates that the price-support cuts have contributed to increased export volume for wheat and feed grains. Wheat export inspections for the current marketing year, for example, are about 29 percent ahead of last year's pace. For the week ending October 2, 1986, corn export inspections were more than 50 percent higher than the same week a year ago.

While these figures indicate a substantial turnaround in our agricultural export picture, some have expressed dissappointment that the improvement has not been more dramatic. Indeed, some have suggested that because the reduced price supports have not brought prosperity to the American Farm Belt overnight, a radical change in the opposite direction—toward higher price supports and massive acreage reductions—is necessary.

In the September 1986 issue of Farm Journal magazine, economist John Marten gave an interesting commentary on whether the Nation should act in panic—or with patience—with regard to agricultural exports. Mr. Marten argues strongly in favor of patience; in his closing statement, he asks, " * * * why not give the new policy at least 18 months to work?"

I ask that the article be printed in the RECORD in its entirety and commend it to the consideration of Members of the Senate.

The article follows:

EXPORTS: BE PATIENT OR PANIC?

(By John Marten)

"It won't happen." That's what one depressed farm magazine editor recently concluded. The question: Will lowering the loan—and market price—lead to an increase in corn exports? My answer is the opposite. Unless the laws of economics have been repealed, 1986-crop exports will rise rapidly!

"Farm policy panic" is the latest farmbelt disease. Those afflicted lose their ability to think clearly, their memory fails, their conclusions aren't logical. Here are some typical symptoms.

"Year skipping" is common once the panic grips you. You claim that the new farm bill hasn't helped corn exports and that it's producing bigger surpluses. Odd—since the policy doesn't even start until Sept. 1 for corn.

Perhaps reviewing these corn facts will reduce the fever: (1) The old-crop corn loan was held at its maximum $2.55 by John Block; (2) The U.S. dollar peaked in 1984/85, leaving exports weak in 1985/86, assuming a typical one-year lag (see chart); (3) Competing exporters are pushing sales to beat our coming shift to lower prices; and (4) Buyers typically don't buy on the day before a well-advertised sale.

"Supplyitis" is the second key panic indicator. At its feverish peak, the panic renders you unable to either spell or pronounce the word DEMAND! Key words you use are surplus, stockpiles, bulging bins, world supplies, etc. All you can think about is that every farmer everywhere in the world is growing too much—and that this will be a permanent condition!

The best treatment for this malady might be to remember the mid-'70s—when yields had plateaued, food demand was outgrowing supply, shortages and starvation were imminent. Why do those forecasts all look silly today?

Because price changes, the economic climate and farm policy solved that crisis. Higher prices cured the shortage—there is no shortage of $3 corn! It was $1 corn that was in short supply.

My point: We have a surplus of $2.80 corn in the mid-'80s. But will we have a surplus of $1.80 corn in 1990? Maybe not. Demand may increase sharply this fall and push exports up each year—the normal result of lower prices. Usage will grow and acreage will stabilize, then drop in competing countries.

"Mystery math": If a politician's pitch favoring a "reasonable" corn loan at $3.25 (and wheat at $5) is starting to sound good—head for the hospital! Your case is critical! What these "friends" aren't telling you is that: (1) We export the production of 40 percent of U.S. acreage now—up from just 4 percent in 1940! (2) You'd have to idle 40 percent of your corn base (60 percent for wheat) to hold those prices until about 1990; (3) Exports would cease and imports start pouring in by 1995.

But there's no mystery to our farm growth math since 1940. It's as simple as 1, 2, 3. Namely: 1 percent annual growth in the domestic market: 2 percent annual productivity (yield) gains; and 3 percent annual export market growth!

Now isn't it obvious what our choices are? If we follow the "no exports" approach, agriculture will need to shrink 1 percent each year!

"Patience, please" should have been the final section of the 1985 farm bill—attacked in July as a "collossal failure" in a Des Moines Register editorial. Prudence suggests we wait to see if it works. (Usually folks get married before filing for divorce!)

Why the panic? Maybe it's just politics. The 1985 farm bill contains a near-perfect set of politics to get agriculture on the road to recovery. Like:

(1) lower loan supports to boost demand and whack production overseas and on noncomplying U.S. farms. Cotton acreage already dropped worldwide, and all major-crop export orders are up sharply for '86;

(2) target prices to protect family incomes while we make the transition to lower prices. Net farm income looks solid near $30 billion for 1986;

(3) export promotion via blended credit, PL-480, BICEP (or EEP) and matching funds for commodity developed projects; and

(4) supply-control options like ARPs, paid diversion, PIK bids with an extra $20,000 limit, etc. Secretary Lyng has the tools to cut production and use no cash!

The falling-dollar bonus will speed up the export demand improvement I expect. As the chart shows, without exception, exports move in the opposite direction of the dollar, after a year passes. This suggests a major export rebound, especially once lower prices go into effect.

So Sept. 1 marks the dawn of a new farm-policy era—lower prices, bigger government checks, lots of PIK, lower costs, level farm incomes and huge increases in demand. Believe it! Even if you don't agree, why not give the new policy at least 18 months to work? Tell those suffering from farm policy panic disease to stand back and give you a chance to compete!●

TELECOMMUNICATIONS TRADE WITH EUROPE

● Mr. DANFORTH. Mr. President, I would like to bring to the attention of my Senate colleagues some recent developments in Europe involving telecommunications trade. Last year, France's state-owned Cie. Generale d'Electricite [CGE] and a joint venture of AT&T and N.V. Philips of the Netherlands reached an important memorandum of understanding. As a result of that accord, AT&T-Phillips would obtain improved access to the French telecommunications market through acquisition of the digital switch market currently held by the state-owned Cie. Generale des Constructions Telephoniques [CGCT].

Many of us had looked on this accord as a positive market-opening step by the French. Unfortunately, recent developments in Europe suggest that this accord is very much in jeopardy. In this regard, we now learn that the West German Government wants Siemens A.G.—not AT&T-Philips—to get the share of the French digital switch market currently held by CGCT. Apparently, the German Government has threatened to undercut the pending CGE acquisition of ITT's telecommunications operations in Europe by withdrawing German Government business from ITT's German subsidiary, Standard Elektrik Lorenz A.G., if Siemens does not get the share of the market held by CGCT.

I look upon these developments with great concern. This appears to be nothing less than an attempt to bring about the cartelization of the European telecommunications market at the expense of U.S. companies.

Mr. President, the international situation with respect to telecommunications trade is unique. The United States is virtually the only country in the world with a private telecommunications system. Practically all other industrialized countries have monopolistic telecommunications entities that are controlled by—if not owned and operated by—their governments.

The world over PTT's—post, telegraph, and telephone entities—are protected, nurtured, and supported by their governments. Equipment procurement is confined to the extent possible to domestic manufacturers, who in turn use government financial support to develop new equipment and to promote their export drives. And export they must—because in this day of highly sophisticated, R&D-intensive telecommunications equipment, economies of scale dictate that few home markets are big enough to provide adequate returns on investment.

The comparative advantage that American producers currently enjoy in the telecommunications sector would lead us to expect the United States to run a substantial trade surplus in the telecommunications area. In stark contrast to the logic of the marketplace, however, is the large and growing trade deficit of the United States in this sector—reaching close to $2 billion in 1986. There can be no question that U.S. telecommunications exports are only a small fraction of what they would be under open market conditions.

Notwithstanding any other factors affecting U.S. trade in telecommunications, one finds throughout the world that virtually all major telecommunications markets are closed. Many of my colleagues familiar with market access problems faced by American producers in Japan might be surprised to learn that the situation in Europe is as bad, if not potentially worse, then that in Japan.

The European Common Market may be an EC-wide market for many products but that is certainly not the case with telecommunications. In Europe, almost every country has its own system and each government inures the protection of its home market producers. These telecommunications monopolies remain largely unwilling to procure substantial amounts of foreign equipment and will purchase a domestic product even when better and less expensive American equipment is available. Moreover, it has become evident that attempts to open the EC market for telecommunications are increasingly threatened by efforts on the part of certain European governments to systematically exclude all non-European entrants.

In this regard, I find it ironic that Germany—often America's most important ally in liberal trade endeavors—is probably more protectionist in the area of telecommunications than any other major industrialized nation.

Mr. President, in the closing hours of the 99th Congress, I am sorry to note that we have missed a unique opportunity this year to enact into law telecommunications trade legislation that would have given the administration a useful tool in dealing with problems such as that we are encountering in Europe. The Telecommunications Trade Act, (S. 942), enjoys widespread support among industry and labor groups concerned with trade in this sector. It was approved unanimously by the Senate Finance Committee in September of 1985 and awaits action on the Senate floor. A similar measure was passed by the House of Representatives earlier this year.

Although the administration has been less than enthusiastic about this measure, I would hope that administration officials will reconsider their position next year—when I fully intend to move forward this legislation and see it enacted into law.●

AMERICAN LEAGUE CHAMPION BOSTON RED SOX

● Mr. KERRY. Mr. President, it was the ninth inning of the fifth game of the American League Championship Series. The California Angels were leading the Boston Red Sox 5-4. There were two outs and two strikes on Red Sox reserve outfielder David Henderson. Angels' star reliever Donnie Moore was on the mound, and was one strike from eliminating the Red Sox and capturing the American League Penant. Anaheim Stadium was set to explode as the California fans pushed toward the field in anticipation of their seemingly inevitable championship. Angels' bat boys were already uncorking the champagne in the locker room.

Yet, the Red Sox still had one more swing—one more glimmer of hope to salvage this magical summer season in Boston. In one of the most unforgettable moments in baseball history, David Henderson smashed a two-run home run to silence the fans and breathe life into a team considered all but dead by friends and foe alike. To the disbelief of California and Boston fans, the Red Sox survived this near extinction, and brought the series back to Boston for two final games. With ease, the Red Sox won these two critical games at Fenway, capturing the American League flag for only the fourth time in 67 years.

Mr. President, I rise today to express the incredible excitement and anticipation now felt by my home city of Boston, my home State of Massachusetts, and the entire New England region. While there have been many teams in the annals of sports that have suffered ignominious defeats, no team has endured the frustration of failed potential more than the Boston Red Sox. This week, the 1986 version of the Olde Towne Team atoned for the past, partially erasing the memory of some of the horrific ghosts of 1946, 1967, 1975, and 1978. If patience is a virtue, and Yogi Berra confirmed that it is with his famed statement that "it ain't over 'til it's over," then Boston's patient Fenway faithful have upheld their virtue once again, and can celebrate.

But one more task lies ahead. With four more wins against the New York Mets, Boston can finally claim a baseball champion.●

A TRIBUTE TO SIMON WIESENTHAL

● Mr. D'AMATO. Mr. President, I rise today to pay tribute to Simon Wiesenthal, a remarkable man who, for nearly 40 years, has devoted his energies to the pursuit of some of the most brutal murderers in the history of mankind. Through his tireless efforts, Wiesenthal has been responsible for the capture of more than 1,100 Nazis. A victim of Hitler's camps himself, Simon Wiesenthal has never forgotten those who perished as part of the "Final Solution."

He was born in Lvov, Austria, just after the turn of the century, and received his training in architectural engineering at the University of Prague. His family was exposed to brutality shortly after the outbreak of the Second World War when his stepfather was arrested by the Soviet secret police and imprisoned. He was never to be heard of again—another victim of the gulag.

Shortly after the Soviets were displaced by the Germans in 1941, Simon Wiesenthal and his wife, Cylia, were sent off to a concentration camp and eventually imprisoned in a forced labor camp. By the end of 1942, nearly 100 of their family members had perished. Wiesenthal was successful in spiriting his wife out of the camp. She made her way to Warsaw with the assistance of the Polish underground and lived there for 2 years. In October 1943, Simon Wiesenthal escaped from camp but was recaptured in June 1944. As the Third Reich began to crumble he found himself caught between the Nazis and the advancing Soviets. Wiesenthal was only 1 of 34 camp prisoners still alive when the Americans liberated Mauthausen on May 5, 1945. Nearly 150,000 were murdered by the Nazis in this camp alone. Simon Wiesenthal and his beloved Cylia were reunited at the end of 1945, following months of uncertainty as to whether the other had survived.

Shortly after he was freed, Wiesenthal began his work documenting Nazi atrocities. He worked closely with the war crimes section of the U.S. Army and the Office of Strategic Services. He was selected to head the Jewish Central Committee in the American zone of Austria. Wiesenthal opened the Jewish Historical Documentation Center in Lenz to serve as a clearinghouse for information on the Holocaust. Through his efforts, the elusive Nazi architect of Hitler's "Final Solution," Adolph Eichmann, was brought to justice. Simon Wiesenthal has been instrumental in the capture of more than 1,100 Nazis. He played an integral role in the investigation sourrounding Dr. Joseph Mengele, the infamous "Angel of Death" of the Auschwitz concentration camp. Through our combined tireless efforts, Wiesenthal and I were successful in forcing the United Nations to open its extensive war crimes archives containing information on an estimated 30,000 Nazis.

Mr. President, I commend Simon Wiesenthal for his dedicated service in the cause of justice, human decency, and international law.●

FATHER JERZY POPIELUSZKO MEMORIAL SQUARE

● Mr. MOYNIHAN. Mr. President, this Sunday, October 19, marks 2 years since the abduction and murder of the Reverend Jerzy Popieluszko of Warsaw, Poland. It is only appropriate that on this day, the city of New York will dedicate a square in the Green Point section of Brooklyn in his memory. It will guarantee that Father

Jerzy, and the cause of freedom he died protecting, will not be soon forgotten.

A beloved Roman Catholic priest, Father Jerzy boldly spoke out against the Polish Government's efforts to abolish solidarity, Poland's first free and self-governing trade union. For these public expressions of protest, Father Jerzy was beaten and murdered by three officers of the Interior Ministry. This was not just an act against the ideals of Solidarity, but an attack on the Catholic Church, the freedom to practice religion and on freedom itself.

The cause of Solidarity remains close to the heart of Poles and Americans alike. Father Jerzy was defending the Polish people from the abridgement of basic human rights and civil liberties. The very thought a man's life would be taken for defending such fundamental human rights is repulsive.

So, in remembering Father Popieluszko, the dedication scheduled for 1:15 p.m. will be preceded by an 11:15 a.m. "Mass for the Homeland" at St. Stanislaus Kosta Church. Worshippers will then march in solemn procession to the Father Jerzy Popieluszko Memorial Square. I want to especially recognize the efforts of the Downstate New York Division of the Polish American Congress in organizing this most proper ceremony.

Mr. President, 14 days after the brutal death of Father Jerzy, 200,000 Polish citizens stood together in the streets of Warsaw to hear Solidarity's founder eulogize: "We bid you farewell, servant of God, pledging that we shall never bow to oppression." Upon hearing this, the throngs interrupted and chanted, "we pledge, we pledge." Two years later, through both great and simple deeds, and through the prayers in our hearts, we join in honoring that pledge.●

VICTIMS OF COMMUNISM

● Mr. D'AMATO. Mr. President, as Americans, we are proud of the many freedoms and liberties we share. From the conception of our Republic, our Nation has been based upon the principle that our Government exists to serve the people and protect our individual rights to life liberty, and the pursuit of happiness. Thomas Jefferson once wrote, "The freedom and happiness of man are the sole objectives of all legitimate government." Unfortunately, many of us take these precious freedoms for granted.

Today, more than 1.3 billion individuals live under Communist domination. These people are deprived of even the most basic human rights. The spread of communism poses a direct threat to all freedom-loving people. Ruthless dictators and their cronies have been responsible for the slaughter, deportation, exile, and imprisonment of millions of innocent men, women, and children throughout Eastern Europe, Asia, Africa, and the Americas. In addition, these totalitarian despots pursue policies designed to eliminate every vestige of native culture and national identity in the lands they have conquered. The result has been the elimination of centuries-old languages, religions, literature, art, and music in a score of captive nations. The policy of russification has resulted in the destruction of thousands of priceless works of art, particularly those of a religious nature. The people of the captive nations have been the victims of decades of Soviet-inspired and sometimes directed repression.

Communist leaders in Eastern Europe have relied upon brute force to oppress their fellow countrymen. When they have been unable to maintain total control, the Soviets have been quick to intervene, replacing one puppet with another. The human rights and the right to self-determination of the people of Russia, Ukraine, Armenia, Azerbaijan, Byelorussia, Cossika, Georgia, Idel-Ural. North Caucasia, Turkestan, Mongolia, Estonia, Latvia, Lithuania, Albania, Bulgaria, Czechoslovakia, East Germany, Hungary, Poland, Romania, Yugoslavia, and Afghanistan have been flagrantly violated by Communist totalitarians. These regimes have deprived their citizens of fundamental human rights—the right to life, the right to property, the right to follow one's religious beliefs, the right to choose one's job, freedom of the press and of assembly, and the right to freely choose one's leaders.

As Chairman of the Commission on Security and Cooperation in Europe, I am painfuly aware of the plight of those living under communism. I urge my colleagues to join me in speaking out in support of the victims of communism. We have a moral responsibility to demonstrate our solidarity with the brave men and women who valiantly struggle to break the chains of Soviet domination.●

SIGNING OF H.R. 2005, SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

● Mr. MITCHELL. Mr. President, I want to express my strong approval of the President's acton today in signing the Superfund Amendments and Reauthorization Act of 1986, H.R. 2005. I and many colleagues in the Senate and House spent long hours over many months in developing this legislation, and its enactment is vital to the protection of the health of Americans in many parts of the Nation. With the signing of this legislation, containing the programmatic changes and the taxing authorities necessary to support an expanded program, and action today on the fiscal year 1987 appropriation for this program, progress on cleanups may resume at an accelerated pace. I want to express my appreciation to my colleagues who have joined me in efforts to persuade the President to sign this critically important legislation.

I would also like to take this opportunity to clarify some of my earlier remarks regarding the Superfund conference report.

Cleanup standards have been a major issue of concern to me, which is why I devoted so much of my time during the conference developing a satisfactory provision. My primary interest in this provision has been to assure what every American wants at Superfund sites: adequate protection of the public health. Public health protection is the essence of Superfund and of all of our environmental laws. Any provision that dilutes or diminishes this goal would be unacceptable to me.

Section 121, the standards provision, permits limited use of a regulatory process for setting alternate concentration levels [ACL's]. As I stated at the subconference meetings, I do not believe the ACL process is sound policy under subtitle C of the Solid Waste Disposal Act [RCRA] nor do I believe that it is authorized by law. RCRA does not mention nor envision a mechanism such as ACL's, which are used to diminish the amount of protection we are providing to the public. I cannot conceive that congressional silence on a concept developed by EPA after enactment of the Solid Waste Disposal Act can constitute approval of such a process.

I am willing to authorize use of the ACL process in setting Superfund cleanup standards, but only when other standards are not applicable. Since the ACL process is used to provide less protection to public health, any other outcome would be to admit that we cannot protect the public around Superfund sites as well as we protect other citizens. It has and continues to be my opinion that all citizens deserve equal protection under the law. Children drinking water that originates from a Superfund site should not be exposed to higher concentrations of contaminants than other children. The reason is fairly simple: The adverse effect on human health remains the same and we cannot in good conscience knowingly endanger the public health.

Some of my colleagues in the House appear to argue that the mention of the ACL process opens up the standards provision to a free for all that is controlled by cost. I cannot disagree more strongly with this position. Superfund is not a cost-saving mechanism; it is a health protection mecha-

nism. We have not spent so much time and so much debate on this bill to finally conclude that we will protect people only so long as such protection is cheap.

One of my colleagues stated that, "The most important standards in section 121 requires the Administrator to select cost-effective remedies that protect the public health. * * * The Administrator must select the most cost-effective remedy that achieves this level of protection."

This is not a program that is intended to be a bargain-hunter's paradise for the simple reason that cleaning up contaminated ground water that people drink is not cheap. Removing contaminated soil is not cheap. These are expensive activities that we as a society have decided must be undertaken to protect people from toxic substances. This is the primary purpose of Superfund, and the only reason that justifies the tremendous scope and funding level of the Superfund Program.

Similarly, there are some who argue that the selection of a remedial action can be made by considering costs only. It is disappointing to hear some of my colleagues, with whom this issue was discussed during the conference, revisit this issue and direct EPA to consider cost first and protection of public health second. I was reluctant to include any mention of cost effectiveness in this section, in part because compliance with the National Contingency Plan already takes into account cost effectiveness. Repetition of the provision concerned me, but I was assured that protection of the public health clearly was the first priority. It is my belief, and on this basis I support section 121, that EPA must first select a remedial action that protects the public health. Only after that decision has been made may the Agency then determine which is the least costly alternative to implement that remedial action.

Similarly in selection of remedial action, EPA is to select the remedial action that serves the purpose of protecting the public health. Only after the basic need has been determined and a solution selected can EPA choose the most cost-effective alternative. Protection of public health is meaningless if cost overrules all other considerations.

If EPA selects a remedial action, what happens to the hazardous substances that are to be removed from the Superfund site? Clearly it is no improvement if they are transported to another site that is environmentally unsound. In order to prevent this outcome, we included in section 121(d) a provision that incorporates and strengthens EPA's offsite policy. Hazardous substances from a Superfund site can only be transferred to a facility operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act, for example. The unit receiving the substances, as my colleagues in both Chambers agree, cannot be leaking substances into the ground or surface water or soil. Similarly, all releases from other units must be controlled by a corrective action program. Clearly the intent of this provision is to assure that only the most secure facilities receive the hazardous substances from a Superfund site, or we have just compounded our problem by creating more Superfund sites.

As I stated earlier, "such facilities can ordinarily only meet the second requirement if the corrective action has already been performed." One of my House colleagues appeared startled by my observation that in the ordinary course of things such an approach would be applied. I did not state this as a mimimal requirement in the offsite policy, but included it as a practical and, in my view, obvious result of this requirement.

Do we want to suggest to EPA that it is good policy to transfer hazardous substances to a facility that is in the process of controlling releases, but has not quite managed to do so? I do not believe this is the kind of public health protection we were elected to provide. They expect that hazardous substances taken from a Superfund site should be transferred to a facility that all agree will not leach contaiminants into ground water or the soil. Anything less exacerbates an already serious national problem.

There also seems to be some confusion about EPA's obligation to meet the section 121 standards provision in the 30 days after enactment. As I stated earlier, there is a nondiscretionary duty on the Administrator to apply the requirements of section 121 in selecting remedial actions during the 30-day period following enactment. This was a difficult issue to resolve and I agreed to the compromise based on the understanding that this was a nondiscretionary duty: EPA must apply the section 121 standards in the 30 days after enactment and must certify in writing that such requirements have been complied with to the maximum extent practicable. One of my House colleagues suggests that the language "to the maximum extent practicable" makes this duty discretionary. I disagree with this view and would note that elsewhere in the bill where we have imposed a nondiscretionary duty, it has been clearly stated. The provision states clearly that the Administrator "must" certify in writing, not "may" or "should".

One last issue strikes very close to home, and this is the issue of preemption. Two of my House colleagues argued that Superfund is a preemptive law. Nothing could be farther from the truth. In fact, one of the motivations for reauthorization was the opportunity to correct the Supreme Court ruling in Exxon versus Hunt, in which the Court held that New Jersey's Superfund was preempted. H.R. 2005 corrects that misinterpretation and section 114(c) so that discussion need not be repeated here. The sole reason offered for concluding that preemption was part of the Superfund scheme is that "[it] could not be otherwise given the structure of the statute." I strongly disagree, as do a clear majority of conferees. None of our other environmental statutes, with a limited exception in the Clean Air Act, are preemptive. This is an issue of great importance to many of us, and we have stated repeatedly in this bill that there is no preemption. Any other conclusion is wholly without foundation.

These House Members suggested that section 113(h) covers all lawsuits under the authority of any law, State or Federal, concerning the response actions that are performed by EPA and other Federal agencies, by States pursuant to cooperative agreements, and by private parties pursuant to an agreement with the Federal Government. Under this suggestion, section 113 would become preemptive in a way never contemplated or intended by the Congress, in any case in which the executive branch took or endorsed response action. Such a construction would be inconsistent with the evolution of the "preenforcement review" provisions, as well as the explicit language of the bill and Statement of Managers and of sections 114(a) and 320(d) of existing law.

As passed by both the House and Senate, section 113(h) began as follows:

> No court shall have jurisdiction to review any challenges. * * *

Because of a concern about the very result urged by my two House colleagues, the language was changed to read as follows:

> No Federal court shall have jurisdiction under Federal law other than under section 1332 of title 28 of the United States Code (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 121 (relating to cleanup standards) to review any challenges. * * *

An interpretation of the original text may have been to extinguish the jurisdiction of any court to review any challenge. Clearly, the conference substitute no longer does this. It limits the jurisdiction of specified courts to review challenges arising out of specified laws. The final language has become much more narrow and targeted. Clearly preserved, for example, are challenges to the selection or adequacy of remedies based on State nuisance law, or actions to abate the hazardous

substance release itself, independent of Federal response action.

The conference language would permit a suit to lie in either Federal court—where jurisdiction could be based on diversity of citizenship—or in State court, where based on nuisance law. This construction is confirmed by the statement of managers explanation that "New section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants or contaminants."

Section 113 of CERCLA governs only claims arising under the act. Whether or not a challenge to a cleanup will lie under nuisance law is determined by that body of law, not section 113. New subsection (h) governs only the suits filed under the circumstances enumerated in paragraphs (1) through (5) for the review of "challenges to removal or remedial action selected under section 104, or to review any order issued under 106(a)". There is no support whatsoever in the original CERCLA law, in H.R. 2005 as now signed by the President, or in the statement of managers for the proposition that "any controversy over a response action selected by the President, whether it arises under Federal law or State law, may be heard only in Federal court and only under circumstances provided" in section 113. That statement is contrary to the express legislative language and the statement of managers.

The view of the courts on this reauthorization will not be known for some time. Some try to discount the views that have been expressed in floor statements to the extent the floor statements do not coincide with their view. I do not believe that courts will go wrong if the purpose of Superfund is kept clearly in mind: protection of public health and the environment. I have repeatedly stated the public health concern since that is the most salient issue.

Superfund can ony work if the sites are cleaned up enough that people need not live in fear of the sites any longer and if the environment is no longer threatened. Our ability tc overcome the threat posed by hazardous substances that are found at Superfund sites are limited, as amply demonstrated by the all-too familiar stories of children with leukemia and other diseases. A program that does not recognize this delicate balance is a failure for which we and generations to come will have to pay. Such an outcome is unacceptable and is the main reason why I have fought so hard for a strong Superfund program.●

MANUFACTURING CLAUSE OF THE COPYRIGHT LAW

● Mr. D'AMATO. Mr. President, the amendment to the manufacturing clause offered by the distinguished chairman of the Senate Judiciary Committee would prevent the loss of tens of thousands of American jobs and the crippling of America's sixth largest industry. It is the product of months of deliberation and negotiations, and has been structured so that it is fully consistent with both our country's international trade obligations and the administration's recent initiatives to establish stronger fair trade policies.

Although we have the largest economy in the world, there is a growing realization that we must do more to ensure that foreign countries do not take advantage of our open trade policies by flooding our markets with their products while they continue to block us from selling our goods and marketing our services in their countries. If we allow the manufacturing clause to expire, we will soon be flooded with printed materials from cheap-labor countries. I therefore am pleased to join with my colleagues who believe that we should encourage the economies of developing countries, but not if they pirate works copyrighted by U.S. citizens; not if they erect trade barriers to our printed materials; and not if they fail to respect the most basic of international worker rights.

That is the strength of the Thurmond compromise amendment. It opens out market to imports of printed materials to those countries which engage in fair trade practices. And it does this in a manner which is carefully designed to abide by our commitments to GATT and to meet our other international trade obligations.

Let us not forget that those who will lose their jobs if we do not act on the Thurmond amendment are the ones who will be least able to recover. In book manufacturing, for example, 60 percent of the workers are either semiskilled or unskilled. As of the last quarter, the United States became a net importer of books for the first time in its history.

Three-fourths of the 1.3 million workers in our domestic printing industry work in firms that employ 20 or fewer workers. In New York alone, more than 5,000 printing plants employ 165,000 workers, with a total payroll of $3.5 billion.

A portion of the work done by almost every one of the several thousand printing firms in this country is covered by the manufacturing clause. If that work is lost to foreign countries, it will deal a crippling blow to our printing industry. Perhaps one or two of the largest printing companies will choose to move offshore to cheap labor countries in order to compete. But that option is not available to most domestic printing companies—nor should we encourage it as an option.

Allowing the manufacturing clause to expire is a unilateral trade concession which will actually serve to undermine the administration's efforts to develop a fair trade policy. For 95 years, the manufacturing clause has been the only trade policy for our printing industry. Allowing it to expire would place the U.S. printing industry at a significant competitive disadvantage when compared to the tariff and nontariff barriers erected by our trading partners.

Mr. President, the Thurmond compromise is supported by both labor and industry. It is a commonsense approach to an issue which will affect the very survival of a major U.S. industry. I urge my colleagues to give it their wholehearted support.●

TRANSFORMATION IN AMERICAN POLITICS AND THEIR IMPLICATIONS FOR FEDERALISM

● Mr. DURENBERGER. Mr. President, last month the Advisory Commission on Intergovernmental Relations published a major study of great interest to every member of this Chamber entitled "The Transformation in American Federalism: Implications for Federalism." This sweeping study summarizes nearly 200 years of political history in our republic, traces the evolution from corporate to entrepreneurial politics, identifies problems stemming from this evolution, and makes practical recommendations to redress these problems. Specifically, it traces the historic role played by political parties in our system of Government; it describes the dramatic changes in the relationship between national, State, and local party committees; it analyzes the political transformations wrought by the mass media and modern interest groups; and it examines the dramatic effects of campaign finance laws on political parties and elections.

Above all, this study demonstrates that if we are to deal responsibly with the difficult issues confronting Congress today, we must reform our electoral process in ways that place the collective interests of society above the growing multitude of narrow, special interest claimants. For however worthy each individual cause may be, this Nation can no longer afford a political process that separates complex problems into tiny fragments, blindly hoping that the cumulative will somehow total the general public interest.

Mr. President, our electoral system historically has relied upon our political parties to perform this important representative function of combining disparate interests into broad coalitions, each representing a distinct

public philosoply about the proper role of Government in society. Our political parties have never been rigid and disciplined collections of single-minded ideologues—they allowed ample room for expressing indiviudal interests and opinions. But the parties were by far the most important organizations in our electoral system, providing a framework of shared ideals within which different points of view could be debated. And because our parties were decentralized, they provided avenues for representing regional and local values within the Federal Government as well as social and economic concerns.

In recent years, the broadly based system of representation provided by the parties has been eroded. Though still important, the parties' role in Government and elections has been diminished by the rise of new forms of campaign finance, heightened reliance on narrow interest organizations, and new modes of political communication. According to the ACIR report:

America's political system has changed substantially since 1960. Patterns of politics based upon lasting commitments to party and place—community, state, and region—have eroded significantly. They are being replaced an increasingly national political marketplace in which competing candidates, interest groups, and parties vie for media attention and rely upon modern marketing techniques to win support from an even more volatile and skeptical public. The past 25 year have witnessed the final withering away of once powerful political "machines"; the development of a new process for nominating Presidents, characterized by the proliferation and heightened influence of presidential primaries and by the declining role of state and local party leaders at national conventions; and the rise of television as possibly the most important single force in modern politics. As strong party loyalties have waned, the role of independent politicians, voters, and issue-oriented activists has expanded in contemporary elections. There has been an explosion of organized interst groups, "single issue" politics, and new group-related sources of campaign finance.

These are important and in some respects disturbing trends, with important implications for how Congress operates, for the messages we have, an for the kinds of laws we enact. Most disturbing of all is evidence that Federal election laws have contributed to party decline, limiting party involvement in elections which favoring other forms of political activity. Thus, in 1972, 2 years before Congress established the current system of campaign contribution and expenditure limits, political parties provided approximately 17 percent of the contributions to candidates for the House of Representatives. Just 10 years after the landmark amendments to FECA in 1974, and despite historic fundraising efforts by both political parties, political party contributions to House condidates have fallen to less than 3 percent of total contributions, and the situation in the Senate was even worse.

Part of this decline was caused by the unrealistically low limits which FECA placed on party contributions to congressional candidates—limits which have not been raised since they were first passed in 1974. State and local political parties have been particularly constrained by Federal election laws.

During the same period that the party role in campaign finance has been declining, the number of non-party political action committees increased from 608 to 3,525, and the value of PAC contributions to congressional campaigns increased from $11.2 million in 1974—16 percent of total contributions—to $102 million in 1984—29 percent of all contributions. This does not mean, as we so often hear, that PAC's are corrupting our electoral system or brazenly undermining the integrity of the legislative process. So long as we require adequate disclosure—which we do—PAC's are a legitimate an constitutionally protected form of public involvement in the political arena. The problem with PAC's and other expressions of the current interest group explosion is that they encourage citizens and Congress alike to deal with complex issues on a parochial, ad hoc basis. They encourage us to look at every problem in simple terms of "what's in it for me, right here, right now." They make it easy to avoid, if only temporarily, the tough but unavoidable decisions we all must make to reconcile our competing goals with the resources available and to consider how our individual interests fit within a framework of the broader interest of society at large.

This problem cannot be solved by simple patchwork solutions like the Boren amendment, which futilely attempt to lower the limits on PAC contributions. To address such issues, the parties must be actively involved. They begin the process of building coalitions, of identifying areas or consensus, of focusing attention on priorities. Far from limiting the role of parties in our electoral process, as we have done in recent years, we should be raising and removing limitations on party contributions in campaigns.

I want to emphasize that this is not a matter of partisan advantage or debate. Although many Democrats believe they have some catching up to do in terms of fundraising, leaders of both parties are in agreement on the basic goal of easing limitations on effective party competition. As former DNC director Eugene Eidenberg expressed it:

The political process should be regulated by government only to the degree necessary to insure the integrity and legitimacy of its results. I support the principle of political parties being free to make unlimited expenditures in behalf of their candidates.

Or, in the words of RNC Chairman Frank Fahrenkopf:

There is a legal limit on what each party can contribute to its candidates. As the cost of campaigns continues to grow, the percentage of funding from non-party sources must and will continue to grow. If the concern is really on the amount of money going to candidates from PAC's, a simple logical solution is readily apparent. There should be no limit on the amount political parties can spend or contribute to candidates for public office.

The important point is that enhancing the electoral roles of our political parties provides the surest way of improving communications between citizens and their elected officials, of promoting greater public confidence in our electoral system, and of protecting the performance and integrity of the legislative process. That case is convincingly made in the accompanying report.

Mr. President, I ask that the introductory chapter from this report, entitled "Federalism and American Politics: New Relationships in a Changing System," be printed in the RECORD.

The material follows:

CHAPTER 1

FEDERALISM AND AMERICAN POLITICS: NEW RELATIONSHIPS IN A CHANGING SYSTEM

American political institutions have undergone enormous changes in recent years, changes of such magnitude that prominent scholars now speak regularly of a "new" American political system, the "changing" American voter, the evolution of a of a "new Congress," "transformations" of the American party system, the rise of a "new federalism," and the "nationalization" of state government.[1] If one attempted to distill a single message from such works, it might be that government—especially at the national level—is doing more, yet people seem to be enjoying it less. Power is more widely and, in some ways, more democratically dispersed, yet public confidence in governmental institutions is down, participation in elections has declined, and people's sense of political efficacy has diminished.

One area in whcih these trends of change and underlying discontent are particularly evident is that of federalism and intergovernmental relations. Changes in intergovernmental relations have been so substantial that some respected scholars now believe the United States no longer has a truly federal form of government but has become instead a decentralized unitary state.[2] Al-

[1] See "The New American Political System," Anthony King, ed. (Washington: American Enterprise Institute, 1978); Norman Nie, Sidney Verba, and John Petrocik, "The Changing American Voter" (Cambridge, MA: Harvard University Press, 1976); "The New Congress," Thomas Mann and Norman Ornstein, eds. (Washington: American Enterprise Institute, 1981); Everett C. Ladd, Jr. and Charles Hadley, "Transformations of the American Party System" (New York: W.W. Norton, 1975); Michael Reagan, "The New Federalism" (New York: Oxford University Press, 1972); and "The Nationalization of State Government," Jerome Hanus, ed. (Lexington, MA: D.C. Heath, 1981).

[2] See for example, Theodore J. Lowi, "Europeanization of America? From United States to United State," in Theodore J. Lowi an Alan Stone, eds., "Nationalizing Government: Public Policies in America" (Beverly Hills, CA: Sage Publications, 1978); and Stephen L. Schechter, "The State of American Federalism in the 1980s," in Robert B. Hawkins, Jr., ed., "American Federalism: A New Partnership for the Republic" (San Francisco: Institute for Contemporary Studies, 1982).

though this diagnosis may be premature, both structural and political centralization have occurred in the federal system. Most attention to date has focused on the former: structural changes in the scope, methods, financing, and degree of intergovernmental sharing of public services. Developments in this area have been studied and documented extensively by this Commission, among others, in its treatments of The Intergovernmental Grant System; The Federal Role in the Federal System: The Dynamics of Growth; and Regulatory Federalism: Policy, Process, Impact, and Reform.[3] In depicting the evolution of intergovernmental relations beteen 1960 and 1980, such studies have traced, among other things:

The expansion of federal involvement into virtually all existing fields of governmental activity—including many of the most traditionally local ones—and the stimulation of new public functions;

The relative shift in the locus of policy initiation and decision making to the national level;

The growing number and expenditures of federal grants to state and local governments;

Increased state and local financial dependence on federal aid;

The growing tendency of federal aid to bypass states and go directly to a multiplicity of local governments;

The creation and rapid expansion of new and increasingly intrusive forms of federal regulation of state and local governments; and

The expanded caseload, reach, and nationalizing thrust of the federal judiciary.

These developments have strengthened the role of the federal government vis-a-vis state and local governments. At the same time, such studies have also documented a number of countervailing tendencies that indicate areas of continued state and local vitality and opportunities for independent decision making:

Increased federal assistance has been accompanied by, and has helped to stimulate concomitant growth in state and local spending and employment.

State and local governments have greatly expanded hearing involvement in certain federally inspired activities like public employment, job training, and many aspects of environmental regulation.

State and local administrators continue to dominate the actual delivery of most domestic services.

Dramatic extensions of civil rights protections and the reapportionment of state legislatures have made state governments far more representative of their citizens.

State and local governments have substantially expanded national lobbying efforts using public interest groups.

The cumulative impact of multiple grants to individual state and local governments sometimes produces greater fiscal flexibility and discretion.

The consolidation of many narrow categorical grants into broader and more flexibile block grants has helped mitigate some of the negative effects of the federal aid system in certain areas.

Nevertheless, most observers agree that the net effect of recent developments in intergovernmental relations has been strongly centralizing in character, and the relative extent of state-local autonomy in the federal system has diminished.

Alongside such structural developments has been a set of complementary changes in the political process that has not yet been studied extensively. The dimension of political change involves far-reaching alterations in the conduct of the American political system that has permitted and propelled structural changes and centralization. Such political changes focus, above all, on the diminishing influence and role of political parties and on the rise of competing, often national, political groupings, institutions, and processes.

Because America never had ideologically coherent, mass membership parties on the European model, political scientists generally think American parties are relatively weak and loosely organized bodies. Yet, the party system traditionally has been the single most important political institution in American politics. This central role was most clearly illustrated by the large urban machines, but the importance of political parties extended well beyond the cities.

In the late 19th century, political parties mobilized the electorate so fully and effectively that they were compared to "armies drawn up for combat."[4] At that time, parties dominated the popular press, controlled large numbers of government positions, and—through parades, clubs, and gatherings—provided a major source of popular entertainment. More important, until the mid-20th century, American parties retained a paramount role in the most basic electoral functions of representative democracy: recruiting and nominating candidates for office, structuring debate on public issues, organizing and mobilizing the electorate, financing politics, and informing citizens about candidates and government policies. Consequently, it is not surprising that some of the earliest research in political behavior underscored the influence of parties at both ends of the representational process—in elections and in government. A citizen's identification with one or the other political party was found to be the single most important factor in predicting how an individual would vote,[5] while in Washington, a representative's party affiliation was found to be the best indicator of what his position would be on majority of roll call votes.[6]

Most important for this study, the structure of traditional American parties was intimately linked to the maintenance and operation of the federal system. American parties were traditionally organized in a highly decentralized manner. Indeed, less than 30 years ago a major authority on parties declared that:

There is perhaps no point on which writers on American politics are so . . . agreed as that our state and local party organizations, taken collectively, are far more powerful than our national party organizations. As Professor Macmahon put it, "Considered nationally, political parties in the United States may be described as loose alliances [. . . of state and local party organizations] to win the stakes of power embodied in the Presidency."[7]

Under this system, politicians in the national government owed their election to state and local party organizations and were closely attuned to the vagaries of local politics. "In the United States," wrote Edward Banfield and James Q. Wilson, "the connection between local and national politics is peculiarly close. . . . Congressmen and Senators are essentially *local* politicians, and those of them who forget it soon cease to be politicians at all."[8]

Accordingly, the party system provided broad channels for representing the interests of state and local officials in national policy making and strong mechanisms for protecting those interests in the political arena. As Morton Grodzins expressed it:

The parties . . . disperse power in favor of state and local governments. . . . States and localities, working through the parties, can assume that they will have an important role in many national programs. . . . [They] are more influential in federal affairs than the federal government is in theirs.[9]

In addition to enhancing state and local influence on federal policy, the absence of coherent parties on the national level was viewed as a critical obstacle to federal legislation and activism in many program areas. Thus, the decentralization of American parties was credited by Grodzins and other prominent scholars with shaping and preserving the federal system itself:

The nature of American political parties accounts in largest part for the nature of the American governmental system. The specific point is that the parties are responsible for both the existence and form of the considerable measure of decentralization that exists in the United States.[10]

Current treatments of American parties and politics depict a very different political system operating today. Though still important among voters, partisan identification has become increasingly attenuated. The number of citizens calling themselves "independents" has doubled over the past 30 years, and the incidence of voters crossing party lines to support candidates[11] of another party has risen precipitously. Party affiliation has eroded to the point that when citizens in a recent poll were asked to choose whether organized interest groups or the major political parties best represented their political interests today, 45 percent of the public chose organized groups and only 34 percent chose either of the two major parties.[12]

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[3] Advisory Commission on Intergovernmental Relations (ACIR), "The Intergovernmental Grant System," 14 vols. (Washington: U.S. Government Printing Office, 1977-1978); ACIR, "The Federal Role in the Federal System: The Dynamics of Growth," 11 vols. (Washington: U.S. Government Printing Office, 1980-81); ACIR, "Regulatory Federalism: Policy, Process, Impact, and Reform," A-95 (Washington: U.S. Government Printing Office, 1984).

[4] Walter Dean Burnham, "Critical Elections and the Mainsprings of American Politics" (New York: W.W. Norton, 1970), p. 72.

[5] Angus Campbell, et al., "The American Voter," abridged edition (New York: John Wiley and Sons, 1964).

[6] Julius Turner, "Party and Constituency: Pressures on Congress" (Baltimore: Johns Hopkins Press, 1951).

[7] Austin Ranney and Willmoore Kendall, "Democracy and the American Party System" (New York: Harcourt, Brace, & World, 1956), pp. 160, 161.

[8] Edward Banfield and James Q. Wilson, "City of Politics" (New York: Vintage Books, 1963), p. 2. Added emphasis.

[9] Morton Grodzins, "Centralization and Decentralization in American Federal System," in "A Nation of States," ed. Robert Goldwin (Chicago: Rand McNally, 1968), pp. 7, 9.

[10] Morton Grodzins, "The American System," ed. Daniel Elazar (Chicago, IL: Rand McNally, 1966), p. 254.

[11] Everett Carill Ladd, "Where Have All The Voters Gone?" (New York: W.W. Norton, 1982), p. 78.

[12] ACIR, "Changing Public Attitudes on Government and Taxes, 1983," S-12 (Washington, DC: U.S. Government Printing Office, 1983), p. 3.

Moreover, party organizations have lost major elements of their traditional functions to other, often national, political institutions:

Party control over nominations for elective office has been sharply eroded by the growth of primaries.

Voter contact is now dominated by independent mass media and by new techniques like direct mail solicitations.

Expert assistance in conducting campaigns is increasingly provided by independent consultants.

Campaign finance is now frequently provided by nonparty sources; government, interest groups, political action committees, and by wealthy candidates themselves.

The already tenuous party role in Congress has been further strained by procedural reforms and by exploding numbers and new types of interest groups and associations seeking to affect policy in Washington.

Because political parties are generally viewed as important instruments of effective government and as crucial vehicles of citizen participation and representation in modern, large-scale democracies, these developments have raised many concerns about the future of democracy in a period of party decline. Moreover, to the extent that an active and decentralized party system has helped maintain intergovernmental balance in the federal system, the erosion of political party influence has eliminated important avenues of influence for state and local officials in the political process and undermined their traditional leverage over national policy making. Not only have established channels of influence been foreclosed, but competing political institutions like the mass media and new forms of interest groups appear to be more heavily national in orientation. The relative degree of political decentralization has been further undermined as the national government and the federal courts have become more active in financing and regulating politics. Finally, where parties have successfully modernized and reversed their organizational decline, reforms often have been led by the national party organizations. Especially in the Democratic Party, this appears to have reduced the relative degree of decentralization in the party itself.[13]

Among proponents of federalism, therefore, the fear has been expressed that state and local officials may be losing the ability to influence decision making in Congress effectively. Such a loss would undermine a key component in the Constitutional design of checks and balances. As Dr. Robert Hawkins has suggested:

* * * the influence of state and local political leaders within both parties has waned. * * * Congressmen and Senators no longer feel the need to work within state party systems. This weakening of state and local influence has also been seen in Washington, where our elected representatives do not feel the real need to consult local party leaders on the development of policy and legislation.[14]

If this diagnosis is correct, then diminished state and local party influence in Congress comes at an ironic moment for the system. In 1985, the Supreme Court overturned an earlier decision establishing constitutional limitations on Congress' ability to regulate the states.[15] In *Garcia* v. *San Antonio Metropolitan Transit Authority*, it ruled that states are not constitutionally protected from intrusive national legislation by the Tenth Amendment, but rather by the "structure of the federal government" and by the corresponding political process which "insures that laws which unduly burden the states will not be promulgated." [16] In so ruling, the Court removed itself as an arbiter of future controversies pitting the Congressional power to regulate interstate commerce against state sovereignty claims. Paradoxically, then, states and localities have been abandoned to the political fray at the moment when their ability to effectively represent themselves in that arena may have reached an historic low.

These concerns about the scope and ultimate ramifications of political change and centralization form the subject of this study on Transformations in American Politics and Their Implications for Federalism. This volume will examine the historic role played by parties in our governmental system and track its evolution over time, focusing especially on those developments affecting state and local party organizations and their relative position vis-a-vis national party structures. It will trace the rise of competing political institutions that have assumed traditional party functions and explore the growth of new forms of political and electoral behavior—from new sources of campaign finance to new means of organizing and conducting campaigns. It will examine the effects of these developments on the relationships between elected officials and their constituents and between national and state-local politicians, seeking insights into the effects of these changes for intergovernmental policy making.

Ultimately, the study seeks to assess the implications of these developments for the maintenance of federalism and for public participation and influence in politics and policy making generally. As the influence of state and local political institutions wanes, important avenues of public participation may wither. Indeed, to the extent that local governmental and political bodies constitute "training schools of democracy," as de Tocqueville put it, the civic foundations of democratic government may be adversely affected by these political developments. The erosion of federalism's role in the political system—providing a territorial dimension to representation that is distinct from the functionalism of interest group pluralism—may also rob governing bodies of a useful and important perspective in the making of public policy.[17] Thus, the stakes in the evolution of American politics extend beyond issues of distributing power and influence among the different levels of government, ultimately addressing the wellsprings and vitality of democracy itself.●

[13] See, for example, Leon Epstein, "Party Confederations and Political Nationalization," Publius 12 (Fall 1982).

[14] Robert B. Hawkins, Jr., "Conclusion: Administrative versus Political Reform," in Hawkins, ed., *American Federalism: A New Partnership for the Republic*, p. 249.

[15] *National League of Cities* v. *Usery*.

[16] *Garcia* v. *San Antonio Metropolitan Transit Authority*, 53 LW 4135 (1985).

[17] Samuel H. Beer, "Federalism, Nationalism, and Democracy in America," American Political Science Review 72 (1978).

CHEMICALS IN THE OZONE LAYER

● Mr. STAFFORD. Mr. President, in about 6 weeks, negotiations will begin in Geneva, Switzerland, on an international agreement which could decide the future of a family of chemicals with a virtually unpronounceable and forbidding name: chlorofluorocarbons, commonly called CFC's.

These chemicals destroy the ozone layer. There is so little scientific disagreement on this fact that even the DuPont Corp., the leading U.S. manufacturer of CFC's, has conceded the fact.

CFC's also are a greenhouse gas. By that I mean that they rise into the upper atmosphere where they act like panes of greenhouse glass, trapping warmth. The Earth's temperature has already increased by as much as 1 degree and is predicted to rise much further, depending on whether mankind takes some action.

CFC's are valuable to humanity. They are widely used for air conditioning, refrigeration, the manufacture of foam insulation and cushions, and a wide variety of other items.

But for all of their good uses, there are others about which one could raise some questions, such as flash-freezing corn on the cob.

But good or bad, CFC's destroy the ozone layer and increase the Earth's temperature. It may be that these effects are not much of a problem. On the other hand, it may turn out that they are a problem of monstrous proportions. We do not know. We cannot know. The level of the risk which humanity is running as long as it continues along the path of inaction toward CFC's and the other compound which contribute to ozone depletion and global warming is immeasurable.

When negotiations begin in Geneva, several proposals will be on the table. There may be one to limit production to present levels. Another to limit it to peak-year levels. Others may propose limits on the rate of increase of production and use, rather than absolute ceilings.

But one proposal is not on the table, and I must ask why. That proposal would be to eliminate the production of CFC's altogether by a date certain.

This would be a difficult task. But it would not be impossible. This is, after all, a chemical which existed not at all 50 years ago. It appears nowhere in nature, and used wholly by man, exclusively for the purposes of the human race.

And some of those uses are important. Refrigeration makes it possible to avoid the loss of billions of dollars in spoilage, and undoubtedly saves thousands and thousands of lives. But, Mr. President, the body of evidence implicating CFC's in damages of global magnitude is growing in both bulk and persuasiveness.

Some of this evidence includes the following:

Every spring, a depletion "hole" opens in the ozone layer over the Antarctic. The ozone hole has been growing steadily, and is roughly the size of

the North American continent. It cannot be explained by any currently established scientific theory, nor is it consistent with the model predictions. But it is real, because it has been measured by ground instruments and confirmed by satelite observations.

Recently, another hole, similar to, but smaller than that at the opposite pole, appears to be opening over the Arctic.

Other studies indicate that a small, but significant, decrease in ozone levels may have occurred over the past several years over the entire globe.

Measurements indicate that the Earth's temperature has probably increased about 1 degree in the last century due to humanity's activities. Nearly all of such an increase would be attributable to trace gases other than CFC's, but scientists have recently concluded that they would account for up to one-third of the future increases.

Most of the CFC's have an atmospheric residence time of between 75 and 125 years.

After bottoming in 1975 due to concern over their use in spray cans as aerosols, worldwide production and use of CFC's has steadily increased and has now returned to peak levels.

Scientists cannot predict with precision the consequences of either a worldwide warming trend or a decrease in the thickness of the ozone layer. But they can characterize the potential consequences generally. They could include increases in a variety of skin diseases such as melanomas and nonmalignant cancers; increased mortality of the shellfish larvae and other aquatic organisms; and crop damage.

If the global warming trend were to continue unabated, "supercomputer" models have predicted that the breadbaskets of the world located in North America, Europe, and the Soviet Union would experience dustbowl conditions similar to those of the 1930's in the Southwest. What else might happen, we can only speculate. Oceans might rise due to thermal expansion or glacial melting, flooding lowland agricultural areas and wiping out entire ecosystems.

Mr. President, relatively little has been accomplished in the United States in terms of concrete progress toward solving any of these problems. But however little this country may have done, it is vastly more than the rest of the world. The United States has, at least, banned the nonessential use of CFC aerosol propellants. And what may in the long term prove to be more important, this country has maintained an active and reasonably well-funded research program.

But this is as it should be. The United States is the country that gave CFC's to the world. We have benefited enormously from them, in terms of both money and well-being. From that perspective, it would seem to some that perhaps the United States has a special obligation.

Frankly, Mr. President, it is politically difficult to suggest that consideration should be given to phasing out the manufacture of CFC's. But hard questions are the ones which deserve to be asked.

Perhaps it is beyond the capacity of this world and this society to eliminate CFC's. Perhaps it is not necessary to do so. But we will never know the answer to either of those questions, or hundreds of others, unless the basic question confronting the world's policymakers is put squarely to them.

Mr. President, during the period from the end of this Congress and the beginning of the next, I will be seeking my own answers to these questions. But in the interim, I believe it would be helpful to this country, and the world, if the question were also put to the international community as well. The time and place for that to happen is in Geneva 6 weeks from now.●

NAUM AND INNA MEIMAN: LET THEM GO

● Mr. SIMON. Mr. President, as this session of Congress comes to an end, I am saddened that the case of Naum and Inna Meiman has not been resolved. Every day, since March 6, 1986, I have made a statement on behalf of the Meimans in the hope that the Soviets would release this couple. Although I will not be able to make statements on the floor of the Senate while we are out of session, I will be doing all that I can to work on this case.

Inna is critically ill and may not be alive when the Senate convenes in January. For humanitarian reasons, I implore the Soviets to allow Inna and Naum to emigrate to Israel so that Inna may obtain treatment for her cancer.

In recent days, we have seen gestures of humanitarianism from the Soviets. We are pleased to see the release of David Goldfarb, Tanya and Benjamin Bogolmolny, and Inessa Frelov, who will be able to either receive or give medical treatment. The case of Inna Meiman is similar.

I strongly encourage the Soviets to allow Inna and Naum Meiman permission to emigrate to their homeland, Israel.●

FARM BANKRUPTCY TECHNICAL CORRECTION

● Mr. GRASSLEY. Mr. President, the conference report on the Bankruptcy Judges, U.S. Trustees, and Family Farmer Bankruptcy Act of 1986, H.R. 5316, is awaiting the President's signature. I sincerely urge him to sign it into law because it is urgently needed by our family farmers.

But in reviewing the conference report, I have noticed a technical, typographical error in the farm bankruptcy section, that merits at least a mention now, and a technical correction amendment next year.

The error is in section 1228, the "discharge" section. In this section, there are three references to section "1228(b)(10)." This should instead read "1228(b)(9)." Mr. President, this is simply a transcribing error, not found in earlier drafts worked on by the conferees.

I have raised the fact of this typographical error with Representative SYNAR, the chief House sponsor, and he agrees that this is an inadvertent mistake.

Mr. President, while this could be a significant problem if left uncorrected, I would point out that this typographical error would have no practical impact for at least 3 to 5 years, since no eligible farm debtor will go through a discharge before that time. Long before the discharge section is at issue in a chapter 12 case, we will make the appropriate technical correction.●

ADOPTION EXPENSES DEDUCTION

● Mr. HUMPHREY. Mr. President, one of the great accomplishments of the 99th Congress is the tax reform bill which will soon be sent to the White House for President Reagan's signature. I supported tax reform, but I have serious concerns about the immediate effect one of the provisions will have on adoptive parents.

Current law provides an itemized deduction for up to $1,500 of expenses incurred by an individual in the legal adoption of a child with special needs. Deductible expenses include reasonable and necessary adoption fees, court costs, and attorney fees. The criteria in the adoption assistance program authorized under title IV-E of the Social Security Act are used to define "a child with special needs." Generally, these are older children, those in sibling groups, children who are mentally, physically or emotionally disabled, or children who belong to minority groups.

The current deduction was authorized under the Reconciliation Act in 1981, when Congress recognized the need to remove the barriers to adoption of the large numbers of children in foster care in this country. The limited deduction was intended to encourage, and reduce the financial burdens in connection with, the adoption of children who have special needs.

Because of limitations in available data, we do not know exactly how many adoptive parents have utilized

the adoption expenses deduction. But we do know the number of special needs adoptions has risen in recent years, and the number of children in foster care has dropped. Undoubtedly many factors have contributed to this progress in special needs adoptions, but clearly the tax deduction helps reduce one important barrier to adoption, the cost.

The Senate tax reform bill retained the current adoption expenses deduction, but the conference agreement followed the House bill in repealing the deduction. In place of the deduction, the agreement amends the adoption assistance program in title IV-E of the Social Security Act to provide matching funds as an administrative expense to reimburse adoptive parents for their one-time adoption expenses when they adopt, in accordance with State and local law, a child with special needs.

The repeal of the deduction takes effect for taxable years beginning with 1987 and the direct payment substituted for the deduction is to be effective for adoption expenditures made after December 31, 1986.

My concern is that although adoptive parents will lose the tax deduction immediately, the new system under which States will directly reimburse parents for adoption expenses is a long way from being in place. The Federal Government, State title IV-E adoption assistance agencies, and private adoption agencies will all be involved in working out procedures to guarantee reimbursement to eligible adoptive parents. Arrangements and agreements to establish these procedures have yet to begin and according to adoption experts, the Department of Health and Human Services will have to issue regulations under the title IV-E adoption assistance program. I have no doubt that those involved have the best of intentions, but the wheels of bureaucracy may not be able to move fast enough to ensure that those entitled to reimbursements will receive it in a timely fashion.

Financial considerations are a necessary concern for parents who adopt any child. The adoptive parents entitled to this reimbursement are the individuals and couples who give a permanent home to children who need it most. They are people who are willing to take on large responsibilities in order to build a family and bring joy to a child who needs a home. We recognize that we need to remove the financial barriers which keep these children, especially those in need of medical and psychiatric care, from permanent adoptive homes. The new reimbursement plan could go a long way toward removing this barrier for some of these families and children. Unwittingly because of the necessary delay before the plan can be implemented, we may be leaving these families and children out in the cold with no help financially.

The current adoption expenses deduction was straight forward and simple and procedures and forms were well established under the Tax Code. It is my understanding that the new system of direct reimbursement is anything but simple. It had been my hope that the final tax agreement would provide a transition period during which the deduction was retained until procedures for direct reimbursement were established. This would have guaranteed that adoptive parents would not suffer a delay while administrators struggle to develop a reimbursement system. There is no transition period in the tax bill.

As a cochairman of the congressional coalition on adoption, I simply want to raise these concerns and urge those who are responsible for working out the new reimbursement system to move quickly, to ensure that adoptive parents do not have to endure a costly wait. I look forward to learning of their progress during the coming months, and pledge my cooperation if I may be of assistance in any way in their efforts.●

ORDER OF PROCEDURE

Mr. STEVENS. Mr. President, has my good friend from Hawaii anything further or any business he wishes to conduct?

Mr. MATSUNAGA. No.

ORDERS FOR SATURDAY

RECESS UNTIL 11 A.M.

Mr. STEVENS. Mr. President, if there be no further business to come before the Senate, I ask unanimous consent that once the Senate completes its business today, it stand in recess until the hour of 11:00 a.m., on Saturday, October 18, 1986.

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

ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, following the recognition of the two leaders under the standing order, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond the hour of 11:30 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. STEVENS. Mr. President, at 11:30 a.m., the Senate will turn to the consideration of any legislative or executive calendar items cleared for action. A number of items have been cleared and will pass by unanimous consent. Rollcall votes will not occur, and the Senate is not likely to be in session late on Saturday afternoon.

I am informed that the Senate will adjourn sine die mid- or late-afternoon on tomorrow, which will be good news for all of us.

Mr. MATSUNAGA. Speaking for those on this side, certainly it is good news.

RECESS UNTIL 11 A.M. TODAY, SATURDAY, OCTOBER 18, 1986

Mr. STEVENS. Mr. President, if there be no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess in accordance with this order we have just entered.

There being no objection, at 12:48 a.m., the Senate recessed until today, Saturday, October 18, 1986, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate October 17, 1986:

FEDERAL HOME LOAN BANK BOARD

Lawrence J. White, of New York, to be a member of the Federal Home Loan Bank Board for the term of 4 years expiring June 30, 1990, vice Mary A. Grigsby, resigned.