

## SENATE—Tuesday, October 4, 1988

(Legislative day of Monday, September 26, 1988)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Acting President pro tempore, the Honorable JOHN BREAU, a Senator from the State of Louisiana.

## PRAYER

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

Let us pray:

*The Heavens declare the glory of God; and the firmament sheweth his handiwork.*—Psalm 19:1.

Gracious God, our loving Heavenly Father, Your Word admonishes, "In everything give thanks \* \* \*" and we have much for which to be thankful. Thank Thee for the successful mission of *Discovery* and for the safe return of the astronauts yesterday.

Lord of Heaven and Earth, Who " \* \* \* hath made of one blood all nations of men for to dwell on all the face of the Earth \* \* \* ."—Acts 17:26. Thank Thee for the success of the Olympics in Korea, for its demonstration of the beauty and strength of unity in diversity. Thank Thee that it was not disrupted by any acts of terrorism or violence. Give us the grace to live at peace with one another, in our homes, at work, throughout our days. In the name of the Prince of Peace. Amen.

## RECOGNITION OF THE MAJORITY LEADER

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

Mr. BYRD. I thank the Chair.

## ORDER OF PROCEDURE

Mr. BYRD. Mr. President, the Senate is operating under cloture now. I ask how many hours have been used from the 30.

The ACTING PRESIDENT pro tempore. The Chair states to the majority leader that 10 hours and 36 minutes have been used.

Mr. BYRD. I thank the Chair.

Mr. President, I will not ask for a period for morning business. Senators who wish to speak out of order may do so simply by asking unanimous consent to do so.

Under cloture, Senators should speak on the subject matter that has been clotured and have their speeches germane and relevant thereto. But if they ask unanimous consent to speak

out of order, they may speak on any subject they wish. The time will run against the 30 hours.

I yield the floor, but I ask unanimous consent that Mr. DOLE have his time reserved.

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

Mr. STAFFORD. Mr. President, I ask unanimous consent that I may be allowed to speak out of order.

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

## ATMOSPHERIC CONTAMINATION—XVI

Mr. STAFFORD. Mr. President, this is the final, or 16th, of the short talks on atmospheric contamination that the Senator from Vermont has been delivering over the last 2 weeks. There will be one more summary of what I have said, before the week is out.

Mr. President, if we can agree that the solution to the depletion of our atmospheric ozone layer is obvious—the banning of chlorofluorocarbons; we know them as freon—then the solutions to acid rain, ground level ozone and global climate change are just as plain—the elimination of air pollution.

This goal cannot be accomplished in this century, of course, and probably not in the next. But, there is certainly no reason why we should not direct our efforts toward the smokeless use of coal, oil, and gas.

In the meantime, there are objectives that are less ambitious and more achievable in the short term.

About 75 percent of the carbon dioxide emitted in the United States comes from electric powerplants, motor vehicles, and homes. Those same sources also are responsible for most of the other air pollutants—sulfur dioxide, oxides of nitrogen, and carbon monoxide.

Vast amounts of each of these pollutants could be eliminated by simply increasing the efficiency of the polluting sources.

Powerplants in the United States operate at about 28 percent efficiency at present. New units in this country achieve 38 percent efficiency, while the Japanese claim 43 percent efficiency.

Simply replacing old units with new ones would reduce each air pollutant released from a powerplant by between 30 and 50 percent.

Even greater gains can be made in automobiles.

Cars in this country get about 24 miles on a gallon of gasoline. Volvo has a prototype family sedan that gets 60 miles to a gallon. Toyota has a car about the size of its Corolla model that gets 98 miles on a gallon of gasoline. And, these are real-world autos.

Efficiencies of equal magnitude are available in home furnaces, air conditioners, and hot water heaters. Models now commercially available are between 50 and 100 percent more efficient.

As matters stand now, this Nation wastes between 50 and 75 percent of the coal, oil or gas we burn in our furnaces, automobiles, and homes. That waste adds to our air pollution problems, and is unnecessary today. For the future, we can do even better.

Scientists tell us that powerplant efficiencies of 75 percent are not out of reach. They describe technologies that convert coal into elemental carbon and hydrogen, which would allow one to be buried and the other to be burned.

For those who argue the cost of these new efficiencies is too great, the answer is that our present inefficiencies are costing us money by raising the prices of our products. And, of course, we are poisoning ourselves, our environment and our future by dumping unburned fuel into the atmosphere.

We are keeping ourselves hostage to energy-rich nations by wasting fuel and we are placing our products at a disadvantage in world trade because they bear the added cost of wasted fuel.

Earlier this year, I introduced S. 2666, the Global Environment bill. It proposes a comprehensive series of solutions to the contamination of our atmosphere. I ask that a summary of that bill be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. STAFFORD. Mr. President, I would, of course, be delighted if that bill were enacted into law by some miracle before I left this body. But even that would not solve the air pollution problems we have inflicted upon our planet. Indeed, we need more than all the laws that could be passed by all the legislative bodies of the world.

We need a reappraisal of our responsibility to this planet and to all of its

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

inhabitants, present and future. That reappraisal must be undertaken by all of our institutions—including government, industry, business and science. There is no lack of solutions to the problem—there is only a lack of resolve to do the right thing.

Our world is hotter than ever before. Our ozone shield is thinner than ever before.

Our atmosphere is increasingly saturated with chemicals that threaten our very existence.

And none of this is necessary. While the prospect of necessary change may be daunting, surely it also presents us with an opportunity to correct past errors and to free our planet from technologies that have outlived their usefulness.

Surely we can do no less than attempt our own rescue. If we succeed, our legacy to our children—and to their children—will be not just a better life, but life itself.

EXHIBIT 1

GLOBAL ENVIRONMENT BILL OUTLINE

The general approach of the bill will be to have five titles, as follows:

Title I: Regulation of Global Change Pollutants.

Title II: Climate Change Adjustment and Mitigation.

Title III: International Cooperation.

Title IV: Elevation of EPA to a Cabinet Level Agency.

Title V: Development of Non-Polluting Power.

*Reductions:* Initial rough calculations are that the bill would reduce CO<sub>2</sub> emissions in the United States by about 35 percent in the year 2010 assuming, conservatively, no growth in the size of the vehicle fleet. CFCs would be completely eliminated, except for essential medical uses, by 2000. In the absence of an adequate computer model to measure the effects of such changes, a best guess of the bill's effect on warming trends is that it would eliminate one to two degrees of the projected eight degree F global temperature increase.

TITLE I—REGULATION OF GLOBAL CHANGE POLLUTANTS

1. Coverage:

- a. Chlorofluorocarbons (CFCs)
- b. Carbon dioxide (CO<sub>2</sub>)
- c. Ozone (O<sub>3</sub>) (via oxides of nitrogen (NO<sub>x</sub>) and hydrocarbons (HC))
- d. Methane (CH<sub>4</sub>)

*Regulatory programs: CFCs*

Goal: complete elimination of halogenated CFC use and sale by 1999.

1. Bans on production and sale:

A. Fully halogenated CFCs: six years from the date of enactment, the production of fully halogenated CFCs is prohibited. Uses, except for essential medical uses, are banned five years later.

B. Partially halogenated CFCs: ten years from the date of enactment, the production of partially halogenated CFCs is prohibited. Uses, except for essential medical uses, are banned five years later.

C. Exceptions:

i. essential medical uses are excluded from the bans on production and sale.

2. Regulations on production and disposal:

A. Effective 24 months after the date of enactment, the use of CFCs except in a totally enclosed system is prohibited. Totally enclosed systems must—

i. Preclude the release of any more than 5 percent of the original charge during the life time of the equipment;

ii. Be equipped with servicing apertures to allow removal and storage of CFCs during repair or maintenance of the equipment.

B. Effective 12 months from the date of enactment, the storage, treatment and disposal of CFCs, or appliances or goods containing CFCs, must be regulated under subtitle C of RCRA, which shall require all waste CFCs to be incinerated to 99.999 percent destruction of disposed CFCs (or a chemical treatment equivalent thereof). (Recycling is not disposal under RCRA)

*Regulatory programs: CO<sub>2</sub>*

Goal: The achievement of a 50 percent reduction in emissions of CO<sub>2</sub> by the year 2000.

1. Regulation of new sources

A. Vehicles: effective with model year 1990, vehicles are required to achieve CO<sub>2</sub> emissions reductions below 1985 as follows:

	Percent
1990 .....	10
1995 .....	25
2000 .....	50
2010 .....	75

B. Stationary sources:

i. Powerplants: fossil-fuel fired electricity generating plants are required to achieve CO<sub>2</sub> emission limits reflecting the following efficiencies:

	Percent
1990 .....	35
2000 .....	50
2010 .....	75

ii. Residential units: effective five years from the date of enactment, all new homes are required to be equipped with furnaces and hot water heaters emitting CO<sub>2</sub> in an amount not exceeding the equivalent of the best efficiencies currently available commercially and air conditioners with an energy efficiency rating of not less than 15.0.

*Regulatory programs: methane*

1. Source identification: require EPA to inventory and report on all sources of CH<sub>4</sub> emissions by January 1, 1991.

2. Interim requirements:

A. Wells and refineries: effective January 1, 1994, prohibit the mass releases or flaring of methane.

B. Landfills:

New: require new landfills opened after January 1, 1993 to be designed, constructed and operated to minimize emissions of methane and other air pollutants;

Existing: require all existing landfills to be retrofitted by January 1, 1993 to minimize emissions of methane and other air pollutants.

TITLE II—GLOBAL CHANGE ADJUSTMENT AND MITIGATION

1. NEPA amendment: amend NEPA to (a) require preparation of environmental impact statements on the effects of proposed action on the global environment; and (b) minimize the impacts of the proposed action on the environment.

2. Federal public works survey: require the Federal government to undertake a comprehensive survey of all Federally-owned lands (national parks, wilderness areas, etc.) and public works (highways, buildings, military bases, etc.) to determine their vulnerability to global changes. Also, require the development of site-specific mitigation plans.

3. Private investment: require a Presidential report recommending actions and policies to preclude public or private investment in susceptible areas.

4. Corps of Engineers: expand the authority of the Corps of Engineers to include climate change mitigation measures, including—

a. Identification and mapping of areas likely to be adversely affected by increases in sea level or other environmental changes; and

b. Provision of water supplies for ground-water recharge.

2. Regulation of existing sources:

A. Powerplants: effective in 1995, establish a mandatory retirement age of 30.

B. Industrial/commercial: effective in 1995, establish a mandatory retirement age of 35.

C. Residential: effective in 1995, require that all furnace and CAC replacements meet the standards described above.

*Regulatory programs: ozone*

1. Oxides of nitrogen:

A. Vehicular sources: a tailpipe NO<sub>x</sub> limit of .4 (down from the current law's requirement of 1.0) grams per mile is established. Nationwide I&M and a 10 year/100,000 mile warranty are required.

B. Stationary sources:

i. New: effective in 1991, require a 90 percent reduction in emissions of oxides of nitrogen from each newly constructed source.

ii. Existing: effective in 1995, require each major utility source to reduce NO<sub>x</sub> emissions by 90 percent upon reaching its 30th anniversary and each major industrial/commercial source to reduce NO<sub>x</sub> emissions by 90 percent upon reaching its 35th anniversary.

2. Hydrocarbons

A. Vehicular sources: a tailpipe HC limit of .25 (down from the current law's requirement of .41) grams per mile is established. On-board vapor recovery is also required.

B. Stationary sources:

i. New: 50-state BACT by 1993.

ii. Existing:

Require each major source to install BACT on its 30th anniversary of operation or 1995, whichever is later.

Require new regulations for the control of specified categories of existing sources to be promulgated.

TITLE III—INTERNATIONAL COOPERATION

1. Governmental cooperation: require the President to petition the United Nations to establish a temporary new agency, to be headed by the director of the United Nations Environmental Program, to—

a. Coordinate international efforts to minimize and mitigate the effects of unavoidable environmental alterations;

b. Provide financial, technical and other assistance to developing nations to enable improvements in the standard of living while avoiding aggravation of global, continental and subcontinental scale environmental damages.

2. Deforestation: require the President to petition the United Nations to establish a temporary program of forestation to—

a. Halt deforestation and desertification; and,

b. Reforest areas already cleared.

TITLE IV—ELEVATION OF EPA TO CABINET LEVEL

Without increasing the authorities of the Environmental Protection Agency, confer on it cabinet status.

TITLE V—NON-POLLUTING ENERGY SOURCES

Nuclear: establish a temporary National Commission on Inherently Safe Nuclear

Energy to report to the Congress by January 1, 1994 on—

a. The reasons for public fears and apprehensions regarding the safety of nuclear energy and ways to allay such fears by responding to them substantively (e.g. building in safety margins which engineers might consider unnecessary, etc.).

b. The prospects for developing inherently safe nuclear technologies.

c. The reasons for different safety records between domestic companies and between the United States and other nations, and ways to assure that the best records become the industry standard.

General: establish as a national goal of the United States to generate 100 percent of the nation's power from non-polluting energy sources by the year 2050.

#### PARENTAL AND TEMPORARY MEDICAL LEAVE

The ACTING PRESIDENT pro tempore. The clerk will report the pending business.

The bill clerk read as follows:

A bill (S. 2488) to grant employees parental and temporary medical leave under certain circumstances, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Byrd motion to recommit the bill, with instructions to report back forthwith, with an amendment, as contained in Byrd Amendment No. 3308, in the nature of a substitute.

(2) Byrd Amendment No. 3309, in the nature of a substitute for the instructions.

(3) Byrd Amendment No. 3310 (to Amendment No. 3308), of a perfecting nature.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that I may speak for 5 minutes, notwithstanding the cloture situation that is in effect now.

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

#### WHAT'S WRONG WITH THE NUCLEAR WEAPONS FREEZE?

Mr. PROXMIRE. Mr. President, one of the most unfortunate developments in the Presidential campaign is the decision by Vice President BUSH to deride the nuclear freeze. Why the derision? What's wrong with the freeze? Is it somehow out of the mainstream? Consider the record. Almost exactly 6 years ago on September 14, 1982, the people of Wisconsin voted in the first statewide referendum in the Nation on the nuclear freeze. They voted in what was the biggest primary election turnout in the history of our State. This was an off-year primary. Few elections were vigorously contested in our State that year. But hundreds of thousands came out to vote on that referendum. What was the result? The people of Wisconsin voted for the nuclear freeze proposition by a smashing 631,375 to 202,245. The support was statewide. The referendum received solid support

from city, from suburb, from rural Wisconsin. The Republican Governor supported the freeze referendum. As the incumbent U.S. Senator running for reelection, I supported it. It was debated in thorough detail throughout the State. The U.S. State Department sent speakers into the State to oppose the referendum. That referendum was specific and clear. Here is the way Wisconsin voters read it when they cast their votes:

Shall the Secretary of the State of Wisconsin inform the President and the Congress of the United States that it is the desire of the people of Wisconsin to have the Government of the United States work vigorously to negotiate a mutual nuclear weapons moratorium and reduction with the appropriate verification with the Soviet Union and other nations?

This was the proposition that was so resoundingly supported by the people of our State.

Wisconsin was the first State that submitted this proposition to a referendum. It was not the last. In nine States the people had a chance to vote on a freeze referendum. The freeze carried the day in eight of those nine States. In other States, Americans voted at town meetings on the freeze. The freeze consistently won. In the House of Representatives, a nuclear weapons freeze resolution was carried by a smashing bipartisan 278 to 149 margin. How close to the mainstream can you get?

Now, Mr. President, the first test, not the only test, but the first test, of any policy of government in this democracy is whether the people approve of it. Isn't that what democracy means? Of course the people may be wrong. They may be misinformed. Their decision could be biased. They may have been swayed by a deceptive idealism. The emotion of the moment may have swept the public along. But none of that applies in this case. The discussion and debate of this issue was intense. Opponents of the freeze had ample opportunity to express their view. They spoke with the prestige and support of the Presidency, the State Department and the Defense Department. Radio, television, and newspapers carried the issue to Americans everywhere.

The freeze never had the solid support of some of the most powerful opinion leaders in the country. Not only did the Reagan administration oppose it, so did two of the country's most respected newspapers—the New York Times and the Washington Post. Time magazine carried a strong editorial in opposition to the freeze.

The New York Times called on freeze advocates to support the "build down" proposal instead of the freeze. The build down proposal would permit "modernization" of the nuclear arsenal as long as we reduce by two missiles or two warheads for every one missile or warhead we brought into

our arsenal. What's wrong with that? Plenty. Here's what this Senator said on the floor of the Senate about this New York Times proposal in April of 1983:

How would we administer a build down? Our ancestors would trade two swords for one bullet-firing musket any day, and two bullet-firing muskets for one machinegun, and two machineguns for a single conventional airplane dropped bomb, and two conventional bombs for one fat A-bomb of the kind we dropped at Hiroshima, and two fat A-bombs for a hydrogen bomb. Get the idea? 'Build down' sounds great. We would destroy two of our stationary land-based missiles for one submarine missile, just as accurate but with far greater mobility and far less vulnerability. Does anyone really believe that either the Soviet Union or the United States would trade two for one unless they believed they were enhancing their military security and power? Of course not. Does anyone believe that the "build down" would not simply turn to our scientific labs with an incentive to come on like gangbusters, with even newer and more devastating superweapons?

Mr. President, if anyone really argues that a "build down" would work, let him consider what has happened to the superpowers' nuclear arsenals in the past 20 years. Without any arms control agreements at all both superpowers have been "building down" our nuclear arsenals since 1968. Both sides have 20 percent fewer, that's right, I said fewer missiles than they had 20 years ago. Both sides have far less megatonnage. But both sides have far more devastating, more accurate, more reliable, less vulnerable and more deadly nuclear arsenals. That's what happens with a "build down" seasoned with "modernization." The United States as a matter of record has enormously increased its spending on our nuclear missile arsenal during this period of unconscious but effective modernizing "build down." In the process the U.S.S.R. and the U.S.A. have both made the world a potentially more destructive planet than ever.

So, why the freeze? The advantage of a negotiated, mutual, verifiable freeze is that it would halt so-called modernization. It would freeze modernization by stopping nuclear weapons testing. Testing is quintessential to the technological nuclear arms race. And of course, the technological nuclear arms race is another name of modernization. So the freeze would keep the nuclear standoff exactly where it is: at the point where both sides recognize that a nuclear war would be the supreme folly because both sides would lose. Both sides would suffer such widespread destruction and death that there will remain absolutely no incentive for a nuclear attack. A freeze will give us a fighting chance to keep it that way.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator yields the floor.

The Senator from Nevada, Senator REID.

Mr. REID. Mr. President, I ask unanimous consent that I may speak on a subject not related to the matter before the Senate.

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

The Senator is recognized.

#### MEDICARE URBAN RURAL REIMBURSEMENT DIFFERENTIAL

Mr. REID. Mr. President, rural hospitals are closing at an alarmingly high rate. Since 1980, 161 rural community hospitals have closed. Almost 25 percent of the remaining rural hospitals are in a real and present danger of closing. If rural hospitals continue to close at the amazingly high rate that they are now closing, people living in small towns, on farms and ranches, or anywhere off the beaten path, will go without the health care they need. Those of us in Government and in the health-care field must focus our attention on the future of rural health care.

There are many reasons why rural hospitals are being forced to close: Fluctuation and in many cases decreases in occupancy rates, out-dated equipment, increases in the number of uninsured poor rural residents who cannot pay for their care, malpractice insurance, competition for patients from urban hospitals, and inadequate Medicare reimbursement rates.

Why keep the rural community hospitals open?

There are a lot of reasons, and in some cases, it simply is not financially feasible to keep full-service, fully staffed facilities open. But in most instances health service centers are not only an important health-care delivery item but they are also a development source. They draw residents to a community and draw job-producing businesses and industries. A recent Oklahoma study indicated that for every physician's practice, not including the physician's own employees, 13 non-medical jobs are created in the community for every physician. In addition to the health-care delivery needs, there are very real economic advantages to keeping health-care facilities open.

Most important, though, we must insure a high level of quality health services to rural residents. Government studies show those living in rural areas have greater rates of serious chronic illness, accident, and disability than do city dwellers. Rural residents have a demonstrated greater need for quality health care, yet it is their hospitals that are closing. This must be stopped.

My own State of Nevada is no luckier than any other State with expan-

sive rural areas. Rural hospitals are closing.

Mr. President, in the 1850's California ranchers, seeing greener pastures, so to speak, moved over the Sierra Nevada Mountains to a place called Mason Valley. An area of beautiful, green, lush meadows; in fact it was so beautiful and so green, that those that first settled in Mason Valley called it Greenfield. Later the name was changed to Pizen Switch and finally, at the turn of the century, the area once called Greenfield was incorporated as the city of Yerington.

Now in Mason Valley, more than 100 years after those few wise Californian pioneers moved there, there are just almost 10,000 valley residents. Well, these people are in danger of losing the only hospital they have in the area. The South Lyon County Hospital will lose approximately \$800,000 this year and perhaps as much as \$1 million next year.

The reason I point out briefly the history of this community and this area is that this is really no different than any other spot in rural America that is losing a hospital. The names and places may be different, but the basic history is the same: Pioneers came and developed an area, progress came, a hospital was built, and now in Lyon County and all over America we are in danger of losing these facilities.

As I indicated, in Lyon County they expect to lose \$800,000 this year and perhaps as much as \$1 million next year. If this were a large, urban hospital, a \$1 million dollar loss might not be devastating. But South Lyon is an 18-bed facility! A hospital of this size simply cannot endure such losses.

In some cases closure is the only reasonable alternative. For example, if the services offered at Lyon were duplicated in a nearby facility, residents still would be able to receive comparable care at the neighboring hospital. Closure would harm the economic stability of the area, but at least care would still be available.

There is no neighboring facility in Lyon County. If the Lyon County facility closed, people in need of major in-hospital care would have to travel more than an hour to receive the care they need. This cannot be allowed to happen here or in other parts of rural America. The health of the entire community would suffer. The residents would not have adequate care available, and the area's actual income would decrease as its attractiveness to new residents and businesses would decrease. And Yerington is certainly not the only rural community in Nevada, or in America, facing the possible loss of a health care facility.

Far too many facilities all across America are being forced to close, and rural health and economy will suffer.

What can we do here in Washington? We can do plenty. Of course, one

piece of legislation cannot possibly address all the problems facing rural hospitals. However, I do believe that we can begin by changing that which we have most direct control over, and that is the Medicare reimbursement rate.

Rural hospitals are routinely reimbursed at levels below that of urban hospitals. You would think it would be just the opposite, but it is not. Rural hospitals are routinely reimbursed at levels below that of urban hospitals.

This difference between what Medicare pays rural hospitals and what it pays urban hospitals has been a part of the Medicare prospective payment system since its inception in 1983. The lower payments to rurals became the policy in 1983 because rural hospitals were believed to have lower operating costs than their urban counterparts.

However, in 1988 we find this is not the case. We now find rural hospitals reimbursed by Medicare at rates that are inequitably low—significantly lower than those received by their urban counterparts. Most hospitals under the prospective payment system did not incur operating losses. However, of the 8.7 percent that lost money while under the system, four out of five were rural hospitals. I do not suggest that a change in the reimbursement rate will keep all rural hospital doors open, nor do I suggest that Congress move to save rural hospitals by inflating rates of reimbursement to the rurals. But I do suggest a basic policy of fairness.

Congress has indeed recognized the inequity, and taken action. Last year's Omnibus Budget Reconciliation Act included Medicare reimbursement rate updates with a greater percentage increase for rural hospitals than for urban hospitals. This is a start, but we must continue toward the goal of bringing equity to reimbursement.

I am hopeful that last week's release of the long-awaited Hsiao Report on the prospective payment system will renew interest in the urban/rural differential formula. The 2½ year study will undoubtedly inspire much debate and I plan to specifically look into revision of the way payments to rural hospitals are determined.

Our rural hospitals must be given every possible chance to survive.

The health of our Nation depends on it.

I yield the floor.

Mr. FOWLER. Will the Senator yield to me?

Mr. REID. I am happy to yield.

Mr. FOWLER. I commend my colleague from Nevada on the excellence of his remarks and I would like to associate myself with them.

I can think of no greater challenge, often overlooked, than the challenge of quality care in the rural hospitals. There is a compelling case of discrimi-

nation, as the Senator has so firmly addressed. I thank him for bringing this to the body's attention and wish to associate myself completely with his remarks.

Mr. REID. I appreciate the Senator from Georgia's comments. I think this is a perfect illustration of how this really has application across this Nation. A State like Georgia and a State like Nevada, a lot of people would not think have anything in common, but they have a great deal in common. They both have metropolitan areas, they have rural areas, and these rural areas are all the same. I gave the example of a small rural county in Nevada called Lyon, but I am sure you have dozens of counties in Georgia where the names are different, places are different, but the problems are the same.

Mr. FOWLER. We have 12 dozen; 159 separate counties, second only to Texas.

Mr. REID. I appreciate so much the kind comments of the Senator from Georgia.

Mr. FOWLER. Mr. President, I suggest the absence of a quorum and ask unanimous consent that it be charged equally to both sides.

The ACTING PRESIDENT pro tempore. Without objection, the time will be charged to both sides.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The Senator from Georgia is recognized.

Mr. FOWLER. Mr. President, I ask unanimous consent to speak out of order and that the time I use be charged under the pending cloture petition.

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

The Senator from Georgia is recognized.

#### OUR NATIONAL PASTIME

Mr. FOWLER. Mr. President, we are on some extraordinarily serious matters right now involving legislative questions, long pending and long worked on, which are important to the families of our country, important to our communities and important to the Nation; those matters being the care of our children, policies dealing with the needs of families who have new children born into them, and families who choose adoption to care for children who do not have parents.

We have a serious matter concerning child pornography, one of the more scurrilous and unattractive menaces to

children, and a legislative remedy that attempts to deal with that.

All these matters, I say to my colleagues and to those within the sound of my voice, are under negotiation right now to see how we can bring this matter to a close and bring this matter to a vote and to devise policies which we believe to be in the best interests of our citizens.

Since there are so many negotiations going on off the floor right now, rather than sit through a quorum call I thought I might take the time, awaiting the next speaker, to join in a little celebration that comes around every October and that is the celebration of our true national pastime, which is not politics, but baseball.

This evening the National League playoffs will begin in Los Angeles. Tomorrow the American League playoffs will begin in Boston. And we will, once again, have our attention diverted from the ongoing questions of gray areas of political choice to the precision and the structure and the accountability of our Nation's pastime.

I say that because baseball, in its many dimensions, does reflect pure accountability, something often missing for those of us who have chosen the responsibilities, and sometimes the frustrations, of public service.

In baseball, I say to my friend from Connecticut, a great fan of the Boston Red Sox, the Senator from Connecticut, Mr. Dobb, in baseball there are no gray areas. There could not be debate in the dugout about what is fair and what is foul.

In baseball, there are not these shades of gray that we have to deal with in the Senate as to what is precision and what is right. In baseball we have the purity of the diamond, and when a screeching line drive kicks up the chalk along the right-field line we have to abide by the decision of the umpire as to whether or not it was fair or whether or not it was foul and an inch or two, yes, does make a difference. But when it is decided by the umpire, then there are no areas of gray, no muddy waters of political interpretation to determine whether or not the game is played under the rules or whether or not there is this interpretation or another.

Pure accountability. Oh, how we would like to have it under a democratic system. We believe we have it. We try to have it. We try to explain to our constituents why we vote the way we do and to assure them that in our representative capacity we are voting in what we believe to be the best interests of our constituencies and our country. But often that is open to interpretation.

Tonight, as hopefully I get to watch a man, Orel Hershiser, who just broke Don Drysdale's consecutive scoreless innings streak—59 innings—versus the great doctor, some would even say, if

he were a politician, spin Doctor Dwight Gooden—we are joined again in a great celebration and reaffirmation of our national pastime. The Senator from Connecticut, if he is not negotiating these legislative matters, and I will at least get together in the cloakroom every once in a while to check on the ball game.

No account of media consultants, no army of pollsters, no squadron of advertising agents can separate the vision of the American people and U.S. Senators from the pure accountability that the ball will either go through the shortstop's legs, or he will catch it. A batter will swing and hit it, or he will miss it. A ball will be caught against the right field wall, or he will drop it in front of all our eyes. There will be no misinterpretation, and no managers will run out at the end of the game and try to put spin control on what happened.

All these doctors, all these consultants, all these people are not necessary because the American people will see what we sometimes do not see in our politics and in our debates, and that is: pure accountability. We will know what happened. The guy either performed with excellence or he failed, and everybody will know it; everybody will know it simultaneously, and we will have a reaffirmation of excellence or we will not, depending on our interpretation of the particular event that decided the game.

A few weeks ago, major league baseball in an unprecedented election unanimously chose A. Bartlett Giamatti—former president of Yale, Italian renaissance scholar, long-time Boston Red Sox fan, student of the game, prolific author of baseball—unanimously the owners elected him as the new commissioner of baseball. He is a man of learning, a man of literature, a man of grace, a man of academic excellence, and a man pledged to uphold the worthy and sturdy traditions of the game as a reflection of the excellence of the sport and the continued hopes that it will be an inspiration through sport of life's metaphors of excellence.

I want to join his many friends in the U.S. Congress in congratulating Commissioner-elect Giamatti, and pledge to him that those of us who care for the game and understand a bit of its grace and a bit of its importance will know that he has much underpinning and backing in the U.S. Senate.

I do not know who is going to win tonight. I do not know who will be in the World Series. The great eternal questions will again reign: Will the Red Sox break our hearts all the way from New England to New Georgia, where I come from?

Will the New York Mets live up to their big braggadocio tradition, with

the finest pitching staff, the greatest bench and all the hubris New York brings out in all of us? Who knows?

Will the ghost of Ebbets Field come back, the Dodgers returning to New York on the other side of the river? But, oh, the challenges they bring from the nouveau riche and nouveau cuisine of California back to the franks and sodas in Mets Stadium from Ebbets back to Flushing Meadow.

What will happen? We can only watch the other boys from California and Oakland. Why, why, why, I ask, do their baseball fans insist on wearing those softball uniforms? But with their extraordinary firepower, the first man, Jose Canseco in his 40 steals and 40 home runs, a murderer's lineup worthy of Mantles, Marises, and Gehrigs.

Will they decimate the boys from Bean Town and end up the American League representative in the World Series? We do not know. We do not ask what the future holds, nor do we know who holds the future. But we all can celebrate the fact that even in the midst of a Presidential campaign, the Nation once again can be appropriately diverted, asking some serious questions through the metaphor of sports about what is excellence, what is accountability, and how we can reaffirm those two tenets of democracy on the playing fields of our country, just as we should in the voting booths of our Nation.

Mr. DODD addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, I just want to commend our distinguished colleague from Georgia for reminding us what we are all individually aware of that occasionally this body ought to be used as a forum when one can describe, as he has, in beautiful rhetoric, the graceful game of baseball.

My colleague from Georgia is absolutely correct. I am an unabashed, unapologetic supporter of the Red Sox, and my colleague is correct, for 40 years they have broken my heart. But my heart remains ever faithful and confident that this year love will blossom and the Red Sox will prevail, but tomorrow afternoon when the Red Sox take the field in Fenway Park, one of the great stadiums of this country, we shall see whether or not that good fortune will once again, after four decades, prevail.

But let me commend him for his eloquent comments and the association between the accountability of baseball and the too often unaccountability of the political process and thank him for his remarks this morning.

Mr. President, I yield the floor.

Mr. DOMENICI addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, parliamentary inquiry. Is it in order for the Senator from New Mexico to speak on a matter that is not before the Senate?

The ACTING PRESIDENT pro tempore. The Senator is correct if he asks unanimous consent to proceed.

Mr. FOWLER. Will the Senator ask unanimous consent to speak out of order so that we can continue with the time?

Mr. DOMENICI. Mr. President, I ask unanimous consent that I be permitted to speak up to 10 minutes.

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

Mr. DOMENICI. Mr. President, I was not on the floor when my good friend, the junior Senator from Georgia, spoke about the great game of baseball. I wish I was. I wish I would have had an opportunity to hear him. I will tell him I am going to read what he had to say.

I am not so sure he or my good friend from Connecticut know that I have fond memories of baseball. I was a professional once myself. I pitched professional baseball. I can remember how it happened that I quit. I was pitching to a manager who was also the catcher. He had been in the major leagues during the Second World War when almost anyone could make it, but he did not know that.

On the way down, he became the manager, and he used to tell all the batters that I had nothing but a fast ball and that I was a wild—forgive me, but I am Italian—he used to call me the "Wild WOP Rookie." He used to tell every batter that.

I was in a ball park in Texas, and I was known for either walking the batter or striking him out, at least when I signed professionally. When I played college or semipro, I did not walk so many, but somehow being a professional caused that to happen. He used to tell this huge left-handed batter who has a record for all-time home runs—I think 75 in the minor leagues, maybe 80—he used to tell him on a three-two pitch another fast ball from this wild rookie, and this great big batter would hit a line drive. You can just hear it ricochet off the wooden fence. He did that twice while the manager sat back there telling him another fast ball from the wild rookie. And so he suggested, handing me \$5 as we came back through this town on the bus, "Rookie, here is \$5; go buy a hammer and nails and fix that fence that he broke on you the night before last." In such an august body as this, I cannot even tell my good friend what I told him. But I must suggest to you that that was my last episode.

Mr. FOWLER. If the Senator will yield, certainly the Senator from Connecticut and myself can now attest

before all of our colleagues that the Senator from New Mexico may have only had a fast ball in the days of his misspent youth, but he has demonstrated a legislative change of pace, an extraordinary curve, and occasionally even a spitball.

Mr. DOMENICI. I sure do want the Senator to send word to that manager. He still lives in the city of Roswell. You might pass that on to him. But I did want to close by saying I am going to take a flight of fantasy back into my youth Sunday in Albuquerque. Believe it or not, I am going to pitch in an oldtimer's game. If I can make it to the mound and wind up, I am going to pitch to a batter order that includes Bucky Dent leading off, and I cannot remember the second batter, but the third one will be Frank Robinson and the fourth is going to be Harmon Killebrew. Now, you understand that my goal is to never have to face Killebrew. So, I am going to have to strike out the first three so that I will have to pitch against him, or I will have to go get a little protection I think. In any event, that is not what I sought consent for, but it was a great deal of fun to talk about that. As the beginning of our World Series starts, it is an exciting event for all Americans.

(The remarks of Mr. DOMENICI relating to the introduction of legislation are printed later under Statements on Introduced Bills and Joint Resolutions.)

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

The ACTING PRESIDENT pro tempore. The absence of a quorum is noted. The clerk will please call the roll.

The assistant legislative clerk proceeded to call the roll.

[Disturbance in the gallery.]

The PRESIDING OFFICER (Mr. CONRAD). The Sergeant-at-Arms will restore order in the Chamber.

I ask that the Sergeant-at-Arms escort the people out of the gallery.

The Sergeant-at-Arms will restore order to the Chamber.

The clerk will continue the call of the roll.

The legislative clerk resumed the call of the roll.

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

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

#### TRIBUTE TO JUDGE HENLEY

Mr. PRYOR. Mr. President, I think at this moment in the Senate it would be very timely to pay tribute to a very, very distinguished public servant, a native Arkansan.

On Halloween in 1958, J. Smith Henley was sworn in as U.S. district judge for the eastern and western dis-

tricts of Arkansas. He said that ever since that swearing in on Halloween it has been a "spooky" time sitting as a judge. As Judge Henley approaches the 30th anniversary of his investiture, he is still hard at work serving his country as a senior circuit judge on the U.S. Court of Appeals for the Eighth Circuit.

But Judge Henley's career as a public servant did not begin with his investiture as a Federal judge. He was born in St. Joe, AR, in 1917 and received his law degree from the University of Arkansas in 1941. He practiced law in Harrison, AR, for several years, and from 1943 to 1945 he served as a part-time referee in bankruptcy for the western district of Arkansas.

In 1954 he was called to Washington to work for the Eisenhower administration as associate general counsel for the Federal Communications Commission. He has said that he felt secure in moving because he left his law office in Harrison as it was, simply picking up his hat and coat and locking the door. He knew that if he did not like Washington he could return to Harrison, hang up his coat and hat, and pick up where he left off with his practice. Judge Henley later became director of the Office of Administrative Procedure in the Justice Department.

On Washington's Birthday in 1958, as the Little Rock school integration situation was becoming a crisis, President Eisenhower nominated Judge Henley to the district bench. He served as chief judge for the eastern district of Arkansas for his entire tenure as district judge, and he earned a reputation as one of the finest trial judges in Arkansas' history.

As a district judge, Judge Henley was faced with a number of difficult cases, and Arkansas' prison system was the subject of one of his toughest and most well known decisions. In *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970), he found conditions in the Arkansas prison system to be unconstitutional, saying "[f]or the ordinary convict a sentence to the Arkansas Penitentiary today amounts to a banishment from civilized society to a dark and evil world completely alien to the free world, a world that is administered by criminals under unwritten rules and customs completely foreign to free world culture."

But not all of his decisions were difficult. Mr. President, one of the cases that Judge Henley relishes telling since he has been on the bench is about one occasion in the mountains of northern Arkansas. One of the best stories on Judge Henley involved a district court case where a defendant was charged with "moonshining." Several different versions of this story have been told, but this one is my favorite. The prosecution introduced as evidence of the crime a Pepsi bottle con-

taining a dirty liquid. The liquid, which was gathered from the floor of the defendant's truck, was all that remained of the defendant's shipment by the time police forced him to stop.

Judge Henley asked the prosecutor if the liquid had been checked to determine if it was whiskey. The prosecutor responded that the liquid smelled like alcohol, but that it had not been tasted. Judge Henley promptly tasted it, assured the jury that it was indeed moonshine, and admitted it as evidence.

In 1975 Judge Henley was appointed by President Ford to the U.S. Court of Appeals for the Eighth Circuit, and since that time he has authored and participated in numerous landmark decisions by that court, especially in the area of criminal law, prison conditions and civil rights.

A great number of cases that make it to the court of appeals level are criminal matters, and many of these cases involve writs of habeas corpus filed by prisoners who claim that they are wrongly confined. Some of these writs are legitimate and warrant serious consideration, and some border on the ridiculous.

One of Judge Henley's favorite writs involved a claim by a prisoner that his confinement violated his right to free exercise of his Christian faith. He argued that the Bible told him to go forth, be fruitful and multiply, and as long as he was in prison he could not accomplish these tasks.

Even though he elected to take senior status in 1982, Judge Henley has continued to work very hard, hearing a substantial number of cases with the eighth circuit, acting as a visiting judge in other circuits, and trying a number of district court cases in an effort to reduce the huge backlog in the judge-poor eastern and western districts of Arkansas.

J. Smith Henley is one of the those rare individuals who has dedicated his life to public service. Throughout his career, his decisions have been marked by an unwavering commitment to the law and a keen sense of justice. As his 30th anniversary as a Federal judge approaches, I want him to know that his hometown of Harrison, his State and his country appreciate him. And so I thank Judge Henley for his years of dedicated public service, and I look forward to the years to come.

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

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

#### PARENTAL AND TEMPORARY MEDICAL LEAVE

The Senate continued with the consideration of the bill.

Mr. DODD. Mr. President, the pending matter before the Senate is of course the parental leave bill, and a cloture motion for 30 hours of debate.

May I ask—parliamentary inquiry—as to how much time remains on the cloture motion?

The PRESIDING OFFICER. Eighteen hours and forty-six minutes.

Mr. DODD. Mr. President, I thought I might take some time this morning. We have spent a great deal of time, I inform my colleagues, in the last 24 hours trying to resolve differences between the minority, or at least the majority of the minority, and the majority to see if we could resolve differences in the parental leave legislation, the child care legislation. There really are no differences on the child pornography legislation that is also pending.

I regretfully report, Mr. President, we have not been able to resolve those differences, and that it in fact would appear as though we are coming down to a difference not about the specifics of the legislation, albeit there are some who would like to see fewer weeks of unpaid leave provided to parents under the parental leave proposition. There are some who would like to see fewer Federal standards in the child care legislation. But in all candor, Mr. President, those are really not the differences.

The differences come down to a philosophical difficulty. There are those who believe that the Government ought not to be telling anyone how important child care is, or how important parental leave is, and that in fact those decisions ought to be left up entirely to the individual.

While that certainly has a great deal of merit, while we wait for individuals or individual corporations to make up their mind about whether or not they think this is a good policy, speaking specifically of parental leave, thousands, if not millions, of children and their families go wanting in this area.

We waited, and I recall the debates on occupational safety and health standards, and fair labor standards. I was obviously not a Member of this body when the child labor laws were being discussed. But I can tell the President that in those times during those debates the very same arguments we are hearing today in opposition to parental leave were being made on those matters. We ought not to be interfering with businesses when it comes to occupational safety and health standards. We ought not to be interfering when it comes to fair labor standards. There is an intrusionary action on the part of the Government; is that we have no business being involved in trying to provide some relief for people in crisis situations or tragic situations.

So, Mr. President, I am still hopeful that we will be able to resolve these

differences, and get to a vote on these matters. We have now spent over a week of the Senate's time on this matter. And other than dealing with the child pornography statutes, we really have not had any meaningful ideas offered on how we might resolve some of these other questions.

Mr. President, it has been suggested that the parental leave bill and the child care legislation are really only the ideas of organized labor or one committee of Congress; that no one else is really interested in parental leave; that this is a narrow constituency that wants to see the Congress of the United States enact into law parental leave policy, and the President sign it.

Mr. President, I should like to take a few minutes this morning to share with my colleagues the comments of some others who do not fall into a narrow constituency and who are strong supporters of this parental leave bill. There are over 150 organizations which are supporting parental and medical leave. I ask unanimous consent that the list of all 150 organizations be printed in the RECORD.

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

ORGANIZATIONS ENDORSING THE REVISED  
PARENTAL AND MEDICAL LEAVE ACT  
[As of June 1988]

ACORN./Association of Community Organizations for Reform Now.  
AFL-CIO.  
Alabama Coal Mining Women's Support Team.  
Amalgamated Clothing and Textile Workers.  
Amalgamated Transit Union.  
Ambulatory Pediatric Association.  
American Academy of Child and Adolescent Psychiatry.  
American Academy of Pediatrics.  
American Adoption Congress.  
American Association for International Aging.  
American Association of Retired Persons.  
American Association of University Women.  
American Association on Mental Deficiency.  
American Baptist Churches, USA.  
American Bar Association.  
American Civil Liberties Union.  
American Federation of Government Employees.  
American Federation of State, County, and Municipal Employees.  
American Federation of Teachers.  
American Home Economics Association.  
American Jewish Committee.  
American Jewish Congress.  
American Medical Women's Association.  
American Nurses Association.  
American Occupational Therapy Association.  
American Postal Workers Union.  
American Psychiatric Association Committee on Women.  
American Psychological Association.  
American Society on Aging.  
Americans for Democratic Action.  
Asociacion Nacional Pro Personas Mayores.

Association for Children and Adults with Learning Disabilities.  
Association for Gerontology in Higher Education.  
Association for Retarded Citizens.  
Association of Flight Attendants.  
Association of Junior Leagues.  
Association of Women Psychiatrists.  
B'nai B'rith.  
Catholic Golden Age.  
Center for Law and Social Policy.  
Child Welfare League.  
Children's Defense Fund.  
Church of the Brethren.  
Church Women United.  
Citizen Action League.  
Coal Employment Project.  
Coalition of Labor Union Women.  
Colorado Coal Mining Women's Support Team.  
Colorado Psychiatric Association.  
Commission on Human Rights, Archdiocese of St. Louis.  
Committee for Children.  
Committee of Interns and Residents.  
Communication Workers of America.  
Department of Occupational Safety, AFL-CIO.  
Disability Rights Education and Defense Fund, Inc.  
Eastern Kentucky Coal Mining Women's Support Team.  
Economic Policy Council, United Nations Associations.  
Epilepsy Foundation of America.  
Families for Private Adoption.  
Fathering Support Services.  
Federally Employed Women.  
Feminists for Life of America.  
Food and Allied Service Trades Department, AFL-CIO.  
Gray Panthers.  
Hadassah.  
Highlander Research and Education Center.  
Illinois Coal Mining Women's Support Group.  
Indiana Coal Mining Women's Support Team.  
Industrial Union Department, AFL-CIO.  
Institute for Child Mental Health.  
Institute for Women's Policy Research.  
International Brotherhood of Teamsters.  
International Ladies Garment Workers Union.  
International Union of Electrical Workers.  
Jewish Labor Committee.  
Lady Miners of Utah.  
Leadership Conference on Civil Rights.  
Leadership Council of Aging Organizations.  
Longshoremen's and Warehouseman's Union, International.  
March of Dimes.  
Maritime Trades Union, AFL-CIO.  
Men's Rights, Inc.  
Mennonite Central Committee, U.S. Peace Section, Washington, D.C.  
Mental Health Law Project.  
Mexican American Business and Professional Women's Clubs of San Antonio.  
Mothers Matter.  
NA'AMAT USA.  
NAACOG: Nurses Association of the American College of Obstetricians and Gynecologists.  
National Adoption Center.  
National Alliance for the Mentally Ill.  
National Assembly of Voluntary Organizations.  
National Association of Area Agencies on Aging.  
National Association of Developmental Disability Councils.

National Association of Foster Grandparents Program Directors.  
National Association of Letter Carriers.  
National Association of Mature People.  
National Association of Meal Programs.  
National Association of Older American Volunteer Program Directors.  
National Association of Protection and Advocacy Systems.  
National Association of RSVP Directors, Inc.  
National Association of Senior Companion Project Directors.  
National Association of Social Workers, Inc.  
National Association of State Units on Aging.  
National Association of Protection and Advocacy Systems.  
National Caucus and Center on Black Aged, Inc.  
National Coalition of 100 Black Women, Capitol Hill Chapter.  
National Conference of State Legislators.  
National Conference of Women's Bar Associations.  
National Congress for Men.  
National Consumers League.  
National Council for Children's Rights.  
National Council for Research on Women.  
National Council of Catholic Women.  
National Council of Jewish Women.  
National Council of Senior Citizens.  
National Council of the Churches of Christ in the USA.  
National Council on Family Relations.  
National Council on the Aging.  
National Down's Syndrome Congress.  
National Education Association.  
National Federation of Business and Professional Women's Clubs.  
National Federation of Federal Employees.  
National Federation of Housestaff Employees.  
National Federation of Housestaff Organization.  
National Interfaith Coalition on Aging.  
National Jewish Community Relations Advisory Council.  
National Mental Health Associations.  
National Multiple Sclerosis Society.  
National Organization for Women.  
National Parent Teacher Association.  
National Perinatal Association.  
National Society of Children and Adults with Autism.  
National Treasury Employees Union.  
National Union of Hospital and Health Care Employees.  
National Woman's Party.  
National Women's Health Network.  
National Women's Law Center.  
National Women's Political Caucus.  
NETWORK: A Catholic Social Justice Lobby.  
New Jersey Coalition for Parental and Disability Leave.  
Newspaper Guild.  
New Ways to Work.  
New York Committee for Occupational Safety and Health.  
9 to 5 National Association of Working Women.  
Northeastern Gerontological Society.  
Northern West Virginia Coal Mining Women's Support Team.  
Northwest Women's Law Center.  
NOW Legal Defense and Education Fund.  
Office and Professional Employees International Union.  
Older Women's League.  
OURS, Inc.  
Parents without Partners.

Pennsylvania Coal Mining Women's Support Team.

Pension Rights Center.

Public Employees Department, AFL-CIO.

Retired Members Department-United Auto Workers.

San Francisco Board of Supervisors.

Service Employees International Union.

Southeast Women's Employment Coalition.

Southern West Virginia Women Miner's Support Team.

Southwestern Virginia Coal Mining Women's Support Team.

Texas Coalition of Nontraditional Professions.

Union of American Hebrew Congregations.

Union of Orthodox Jewish Congregations of America.

United Auto Workers.

United Cerebral Palsy Associations, Inc.

United Food & Commercial Workers International Union.

United Methodist Church, General Board of Church and Society.

United Mine Workers of America.

United States Catholic Conference.

United Steelworkers of America.

United Synagogue of America.

United Synagogue-Women's League for Conservative Judaism.

Villiers Advocacy Associates.

Washington Council of Lawyers.

Wider Opportunities for Women, Inc.

Women Employed.

Women in Communication.

Women on the Job.

Women's American ORT.

Women's Bar Association of the District of Columbia.

Women's City Club of New York.

Women's Equity Action League.

Women's Equity Action League of Ohio.

Women's Lawyers Association of Michigan.

Women's Legal Defense Fund.

YWCA of the USA, National Board.

Mr. DODD. Mr. President, rather than going through the entire list, let me just mention some of these organizations, which hardly fall into the category of organized labor or one committee of Congress:

American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American Baptist Churches, American Bar Association, American Jewish Committee, American Medical Women's Association, American Nurses Association, Association of Junior Leagues, Child Welfare League, Children's Defense Fund, March of Dimes, National Alliance for the Mentally Ill, National Association of State Units on Aging, National Council of Jewish Women, National Council of Senior Citizens, National Federation of Business and Professional Women's Clubs, National Parent-Teacher Association.

Mr. President, the list goes on and on of organizations that hardly would be called organizations that have some narrow agenda or do not represent a broad spectrum of American society.

Let me also share with my colleagues some editorial comment on this legislation.

On September 21, 1988, a Washington Post editorial entitled "Mr. Bush and Family Leave." I will quote in part from this editorial, and I ask unanimous consent that the editorial be printed in the RECORD.

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

[From the Washington Post, Sept. 21, 1988]

MR. BUSH ON FAMILY LEAVE

George Bush has deftly revived the mainly Democratic legislation he opposes to require businesses above a certain size to provide unpaid parental leave. Both House and Senate committees had approved such legislation, which then stalled. In the House, even many Democrats—reluctant to offend business by voting for a "labor" bill that wasn't going anywhere—wanted the Senate to act first, which the Senate seemed unlikely to do.

Two weeks ago, Mr. Bush, as part of a shift in positions that also saw him endorse an increase in the minimum wage, said: "We also need to assure that women don't have to worry about getting their jobs back after having a child or caring for a child during a serious illness. . . . We've got to do something about that."

The purring Democrats propose to give him a chance. If not a bill, they'd be happy with a Republican vote against. Moderate Republicans in both houses, having successfully eased the terms of the bills, have joined in sponsoring them. With so many women in the work force, they no more than Mr. Bush's advisers want the party to be the naysayer on this issue.

The bills would require employers to allow parents (not just mothers, women's groups insisted) up to 10 weeks of leave every two years to care for children when born, adopted or seriously ill. The employer would be required to keep up any health insurance payments previously made and to guarantee the employee the same or a comparable job on her or his return. The House bill would also require leave to care for a sick parent, and both would require leave if the employee became ill.

The bills would cover only employees who had worked for a company for a year, and the Senate bill, only companies with more than 20 employees, exempting nearly 90 percent of all businesses and more than half of all workers. The House would exempt even more. Many larger businesses already provide some family leave. Thus the cost of the legislation would be modest; not all women could even afford all the unpaid leave it would provide. The opponents mainly fear what might follow. They see it as part of a broader effort by Congress to require business to provide benefits the government cannot afford. A higher minimum wage would be one such; mandatory health insurance another; paid family leave someday a possible third.

The Republican platform thus called for steps to "encourage employers . . . to voluntarily address their employees' child care needs," and the Bush campaign is exploring tax incentives. But these would again cost money the government doesn't have. The problem of paid benefits can be left for later. Unpaid maternity leave is a modest requirement in a society as dependent as this on women's work. Small business is amply not to say excessively protected. The pending legislation may not be what Mr. Bush had in mind, but Congress should thank him and pass it anyway.

Mr. DODD. Mr. President, without reading the entire editorial, let me quote some of the poignant paragraphs of the editorial:

Two weeks ago, Mr. Bush, as part of a shift in positions that also saw him endorse an increase in the minimum wage, said: "We also need to assure that women don't have to worry about getting their jobs back after having a child or caring for a child during a serious illness. . . . We've got to do something about that."

Mr. President, we are here this morning trying to do something about that. But what is becoming blatantly clear is that the Vice President and others who are associated with him really do not want to do anything about it. They want to talk about it. They want to be on record as supporting parental leave. But their solution to the problem is basically to maintain the status quo, to let businesses and let organizations out there decide for themselves whether or not they are going to do anything. I would associate myself with that effort if it were doing anything, but it is not.

So we have the Vice President, a candidate for President, saying we also need to assure—and as I understand the meaning of the word "assure," it is to guarantee. The only way you guarantee anything is that you require it, and you require it by mandating it.

So we crafted a bill that says to 95 percent of the business in this country, "You are exempt," because we are not worried about the small businesses. But for 5 percent of the businesses, we want to assure—using the words of the Vice President—"that women don't have to worry about getting their jobs back after having a child or caring for a child during a serious illness."

If the Vice President is serious about doing something about that, and he says he is—and you understand that we have spent months on this bill—then here is a wonderful opportunity for him to call on his colleagues, who share the same political banner, to join with us in the remaining hours of the 100th Congress and do just what the Vice President has said he wanted to do: assure, for a few short weeks, with unpaid leave, that people be able to retain their jobs while they take care of a crisis at home.

If we sit here and go through 18 or 19 hours engaging in a charade and do not do anything about this issue, when it has been pending before Congress for almost 2 weeks, then we will know exactly how serious the Vice President's words were, how much he intended to do something about this problem, or whether in fact it was merely campaign rhetoric, just designed to say, "I am for something," without doing anything about it.

Congress is now prepared to deal with this issue. Had we not done our work over the last 2 years, and had we

tried to spring up a bill in the last hour of Congress to create something that did not exist before, and present it to Congress, then the criticisms of the minority in this body would be legitimate: "You are springing a bill on us in the last hours, no hearings, no work, no committee preparation at all." That would be legitimate, and those of us who tried to do it would be guilty of the charge. But that is not what has happened here. There have been national hearings in seven cities on this bill. There has been all sorts of input from professionals all across this land. There was markup of this legislation in the Labor Committee.

This bill has been pending for the last month and a half. We brought it to the floor in a timely fashion. That is the way legislation is supposed to be crafted. It came out of the Labor Committee with an 11-to-6 vote, almost 2 to 1. This was not a one-vote majority that brought this bill to the floor. Almost one-quarter of the membership of the minority in this body are cosponsors of this bill; eight or nine members of the minority are cosponsors of this bill, serious Senators. Yet, we cannot get to a vote on it.

Let me read further from this editorial:

The bills would cover only employees who had worked for a company for a year, and the Senate bill only companies with more than 20 employees exempting nearly 90 percent of all businesses and more than half of all workers.

There they say 20 employees, and we have raised the threshold to 50 employees.

The House would exempt even more. Many larger businesses already provide some family leave. Thus the cost of the legislation would be modest; not all women could even afford all the unpaid leave it would provide.

That is true:

The Republican platform thus called for steps to "encourage employers . . . to voluntarily address their employees' child care needs," and the Bush campaign is exploring tax incentives. But these would again cost money the government doesn't have. The problem of paid benefits can be left for later. Unpaid maternity leave is a modest requirement in a society as dependent as this on women's work. Small business is amply not to say excessively protected. The pending legislation may not be what Mr. Bush had in mind, but Congress should thank him and pass it anyway.

This is from the Atlanta Constitution, Mr. President, and I ask unanimous consent that an editorial of May 7, 1988, be printed in the RECORD.

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

#### A NATIONAL POLICY FOR MOTHERHOOD

Tomorrow, the nation pauses to honor its mothers. Enormous sums will be expended by grateful sons and daughters on flowers, gifts, greeting cards and journeys home. There will be breakfasts in bed and blessings by preachers. Nursing homes will buzz

with unaccustomed activity, and long-distance phone lines will be busy all day.

And in the centers of government, glowing tributes will be paid to the women who changed the diapers, bandaged the knees and wiped away the tears of America. Few institutions inspire the reverence heaped annually on motherhood.

But the nation has yet to back up these ritual observances with the most fundamental protections for parents: time off from work to have and care for their babies, with protection against firing.

Bills that would require employers to provide unpaid family leave of up to 10 weeks, at no cost to taxpayers, have been stalled in committees of the House and Senate for most of the last three years. And, though one sponsored by Rep. Patricia Schroeder (D-Colo.) has finally emerged and been scheduled for a House vote sometime this spring or summer, it has turned into one of the hottest potatoes ever to be tossed around those chambers.

Southerners, especially, have been reluctant to push publicly for a measure many admit privately would be difficult to vote against. Of Georgia's staunchly pro-family House delegation, only one member, John Lewis, is co-sponsoring Schroeder's relatively modest Family and Medical Leave Act, covering 47 percent of the nation's work force. It would apply initially, as part of a compromise worked out with House Republicans, only to firms employing 50 or more.

The problem, congressional insiders say, is that many lawmakers feel pressured to classify themselves as either pro-family or pro-business, a conflict perpetrated by misrepresentations of the U.S. Chamber of Commerce. The Chamber sowed panic three years ago with its estimate that an earlier version of the bill would have cost a staggering \$20 billion. It later whittled that estimate down to \$2 billion. But the cost of the compromise would be closer to \$188 million, the General Accounting Office said after factoring in actual employment and demographic statistics.

The act is, to put it bluntly, the most overtly "pro-family" measure in decades, closing an unconscionable family gap with our own trading partners. Sweden provides parental leaves of up to a year, at 90 percent of salary for 38 weeks; Germany, fully paid leaves of up to 14 weeks. Even Chile provides paid leaves of up to 18 weeks.

This act would provide no salaried leaves, just job protection for those returning after 10 weeks' parental (or up to 15 weeks' medical) leave. Workers would have to be employed for a year to be covered.

But it would, at last, put into practice a notion to which most of us give only lip service: that families, and especially mothers, are valued. Workers ought to be able to have babies without risk of being fired.

Mr. DODD. Mr. President, let me quote if I can a bit from the editorial. The editorial says:

The problem, congressional insiders say, is that many lawmakers feel pressured to classify themselves as either pro-family or pro-business, a conflict perpetrated by the misrepresentations of the U.S. Chamber of Commerce. The Chamber sowed panic 3 years ago with its estimate that an earlier version of the bill would have cost a staggering \$20 billion. It later whittled that estimate down to \$2 billion.

I might add, Mr. President, those were the mailings that went out all across this country telling businesses

this is what this bill would cost if it were signed into law. But the costs of the compromise would be closer, and here it says \$188 million. In fact, Mr. President, the cost of this legislation estimated by the General Accounting Office is some \$167 million. That is the total cost of the parental leave bill. That is approximately \$2.67 per covered worker per year. That is less than a penny a day, a penny a day for parental leave.

But do you think the Chamber sent out mailings all across this country to businesses saying, "I am sorry; we were wrong. It is not \$20 billion; it is not \$2 billion. It is \$188 million?"

You never saw such a mailing. In fairness to the Chamber, Mr. President, I would tell you that the Chamber today uses for public discussion the figure of \$188 million or \$190 million, the cost of the bill as it was presented to Congress 2 months ago. They use the General Accounting Office numbers when people ask them.

But you know as well as I, as my colleagues do here, that they did not send out a mailing correcting the egregious mistake of suggesting the cost of this bill was going to be \$20 billion or even \$2 billion when they modified it. Oh, no, no, no. They engaged in scare tactics.

This editorial goes on to say:

This act is, to put it bluntly, the most overtly "pro-family" measure in decades, closing an unconscionable family gap with our own trading partners. Sweden provides parental leave of up to a year, at 90 percent of salary for 38 weeks; Germany, fully paid leaves up to 14 weeks. Even Chile provides paid leave of up to 18 weeks.

In fact, Mr. President, let me share with you the kind of company we keep on this issue. Of all the industrialized nations in the world, every one of them, there are only two that do not have a simple parental leave policy. I am not suggesting we do anything like Sweden or Germany or what Japan does. But of all the industrialized nations in the world only two do not have a parental leave policy: The United States and South Africa. That is the unique company we keep on this issue.

Every single member of NATO has a parental leave policy. Our major competitors and trading partners have a parental leave policy. They think it works to their benefit. We are so caught up in 19th century thinking on these issues that we assume it is going to be a great burden, and yet I would share and I will share with my colleagues the testimony of businesses that have had parental leave in place, in some cases for a number of years. Not many of them, but you ought to hear their testimony about what it has done for their business. Put aside, if you will, whether or not you care about this issue, because it tries to provide some relief for families in a

crisis environment: birth, adoption, serious illness of your child. Put aside that, if you will, and just look at this issue from the point of view that despite what business thinks, this actually contributes to the overall success of businesses.

The irony is, Mr. President, and I know my distinguished colleague who is presiding at this particular moment has been through this experience as well, you have a hearing, you have witnesses who actually are living an experience. I had panels of business representatives at every hearing pro and con. The chief executive officer of a business who would get up and say, "Senator, we have had a parental leave policy for the last year, 5 years, 10 years, and here has been our experience: It is good for business; it has been good for us. We have lower absenteeism. We have lower turnover. We have higher productivity. We made the decision and have maintained it because it is a good business decision. We have seen a parental leave policy contribute to the success of our business. We believe we are a stronger and a better company today because of this." That is witness one.

Witness 2 gets up and says: "Senator, I think that if we adopt this policy that it is going to cost us jobs, that it is going to be far too expensive, that it is going to make us noncompetitive either domestically or in international markets. We cannot afford to do that. This is what we think will happen to us if we adopt this policy."

And both witnesses want to be given equal treatment or equal weight.

Obviously, the business that has had the experience, who can talk about the business effects of having a parental leave policy, ought to, in my view, be given more weight than the witness who says "this is what I think will happen if we adopt this program."

And I will share with my colleagues reams of testimony from witnesses who come from businesses or represent industry where they have parental leave. So the notions somehow, the hypothetical notions, that parental leave is going to hobble or strap or make it impossible for business to compete to be successful are just not borne out by the facts. The facts are that businesses who do this are the ones that ought to be listened to when it comes to the effect on business of a parental leave policy.

Again to share, to look at what other nations do, and I am not suggesting we ought to do this because other nations do it, I do not buy that at all, just because Germany or Japan does something does not mean the United States has to do it, but when I see countries that are being more successful than we are economically and when you see the kind of working relationship that exists between labor and management in those countries, and we see a mind

set here that still refuses to accept some of the basic concepts that have evolved in this century and face the demographics, I have often wondered what would happen if women in the work force just decided for a month or two—obviously this would not happen—but I would be kind of interested to see if it did—just to say "We can't work any longer," what managers would say. How important that element of our work force is today economically to this country.

And yet we also want people to be out and raising families, staying at home, caring for those children, making sure they do not end up in drugs, drop out of school, all of those problems we face. We are going to pass a drug bill, I presume, before we adjourn here, and it is going to throw the book at every pusher, at every kingpin.

We are going to raise sentences. We are going to make it more difficult for those engaged in the illegal drug business to avoid the grasp of the law. We are going to indict foreign countries that are involved in production. We are going to cut off their foreign aid. We are going to penalize States that do not have tougher local sentences. We are going to be tough on drugs. We are going to be tough.

And yet I do not know anybody that spends any time looking at the drug problem in this country who does not suggest also that there is a fundamental problem in this society when you have preteenagers who are consumers. Why has that happened? What has happened to a generation that all of a sudden they become drug users, subject to the appeal of the pusher?

Well, I am not so naive as to suggest that parental leave is going to solve the problem. But I do know that if you do not strengthen and make it possible for the American family to survive, then you are contributing to the problem. And I do not care how many laws you pass to make it tougher on the pusher or how many laws you pass to go after the kingpins, if you do not do something to restore and to protect the basic unit of our society—the American family—then you are ultimately not going to succeed in solving that problem.

All I am suggesting here with this parental leave approach is to make it possible for families to be together in the earliest stages of their relationship, that bonding period, which psychologists will tell you is so important; that you make it possible for middle-income folks to adopt kids who are abandoned and end up as kids on the streets of our urban centers—the run-aways, leaving foster homes, ending up in the gutter, child prostitutes, pushers, runners—you make it possible for decent people who would like to adopt some of these kids and give them a chance.

But if you say to them you are going to lose your job if you try to adopt a child and bring them into your hearts and your home because you want to take a few weeks—which most adoption agencies require you to do, where one or the other parent is home developing that relationship with that new child that has come into that house—then you are not going to get that.

Mr. President, statistically the very rich do not adopt kids and the very poor cannot do it. The ones who do it are middle-income folks, working people, who hold jobs, where both the mother and the father in an intact family have to work. And if you want them to adopt some of these kids and minimize that problem you have to do something that says to them simultaneously: "You can do it for a few weeks. You are not going to get paid, but you are not going to lose your jobs, either." And that does not exist in this country, and it ought to.

So when I hear people talk about the drug problem, and when I hear people talk about families, I do not know of a single candidate this year running for public office that does not have a spot on television or on the radio where they are embracing a child, sitting in a child care center, hugging a child. Do you know why? Because it is politically important to people. So everybody is for kids, everybody is for families. And yet we are involved in a filibuster for a week and a half to try to come up with an unpaid leave policy for this country, a child care policy and, to do something about child pornography. What is going on? The rhetoric and the actions do not come together.

The Los Angeles Times, Mr. President, a third editorial, and the New York Times—I do not want to take the time of this body and go through each one of these editorials, but just to give you some notion, some idea. I ask unanimous consent, Mr. President, that both those editorials be printed in the RECORD.

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

[From the Los Angeles Times, May 11, 1988]

#### THE FAMILY GAP

Presidential candidates and other politicians from both major parties are proclaiming their concern this year with helping the American family. But, as Rep. Patricia Schroeder (D-Colo.) points out, there is nonetheless a huge "family gap." Congress seems to feel no urgency about grappling with two questions that are of daily concern to millions of voters—getting time off to be with a newborn or sick child and finding decent day care.

The Family and Medical Leave Act is ready for consideration by the full House of Representatives. This legislation would allow parents to take as much as 10 unpaid weeks off after the birth or adoption of a child, or to care for a seriously ill child or parent, and return to the same job or an

equivalent one. Employees could also take 15 weeks of unpaid leave to recuperate from a serious illness themselves. The measure would cover only employers with more than 50 workers.

The opposition complains that businesses would have to spend too much money on temporary replacements for workers on leave. It strikes us that whatever money they did have to spend would be buying long-term worker satisfaction; when more experienced workers hold onto jobs because they are happy where they work, fewer new people must be trained, and productivity remains high.

Despite the merits of the legislation, it languishes, as does the major child-care bill proposed by Sen. Christopher J. Dodd (D-Conn.) and Rep. Dale E. Kildee (D-Mich.), not to mention a more modest measure by Sen. Orrin G. Hatch (R-Utah) and Rep. Nancy L. Johnson (R-Conn.). The Hatch-Johnson bill would provide tax incentives to encourage employers to establish child-care facilities, and would give states grants to subsidize day care for low-income people. It does not have the vast scope of the Dodd-Kildee bill, but it also doesn't have that bill's \$2.5-billion price tag.

Those costs are indeed large, but so is the task that the broader bill sets for itself. This measure would put most of its money into subsidies to help low- and moderate-income people pay for day care. It also would finance training programs for child-care workers and provide grants to help child-care centers and home-care programs meet safety requirements and other regulations. The bill also would require states to review and strengthen licensing laws.

Child care is essential to the working poor. As a House committee found recently, 35 percent more two-parent families would live in poverty if the wives were not employed.

The scope of federal involvement in child care threatens to be the next battleground in the country's continuing ideological battles that swirl around the family. Congress could head off that unfortunate development by acting decisively. Instead of making promises and kissing babies, the politicians should help close the family gap by passing these bills to help American parents.

[From the New York Times, Jan. 18, 1987]

#### PREGNANCY LEAVE FOR WOMEN, AND MEN

For women serious about both career and family life can quickly become a difficult balancing act. A new Supreme Court decision promises to make the balancing a bit easier. It allows states to guarantee job-protected leave to pregnant workers.

The Court upheld a California law that requires most private employers with five or more workers to give women unpaid pregnancy disability leave of up to four months. They would be entitled to reinstatement to the same job on their return. Is such special treatment inconsistent with Federal laws prohibiting sex discrimination?

By a 6-to-3 vote, the Court said no. Federal law does mandate that pregnant employees be treated no worse than nonpregnant employees, Justice Thurgood Marshall reasoned, but that does not prevent an employer from treating them slightly better. In fact, he said, the California law furthers the Federal goals of equal employment opportunity for women because it "allows women, as well as men, to have families without losing their jobs."

The California law, he noted, does not compel favorable treatment of pregnant

workers by employers. It merely establishes minimum standards that an employer could extend to all workers.

Women are more likely to work in smaller companies, which may balk at the implications. Yet by now working mothers are so large a fact of business life that employers would do well to confront the issue. More than 70 percent of all working women are of childbearing age and, according to one estimate, more than 90 percent of them are likely to be come pregnant during their working lives. Some people fear that the decision may actually generate a harmful backlash as employers simply refuse to hire women.

That is a legitimate worry. The best response, however, isn't to deny pregnancy leave to women but to permit more leaves for everyone. That is the thrust of a proposed Parental and Medical Leave Act, co-sponsored by Representatives Patricia Schroeder of Colorado and William Clay of Missouri. Their bill would grant new parents up to 18 weeks of unpaid leave to care for newly born, newly adopted or seriously ill children. It would also protect the job of any employee who needs up to 26 weeks to recover from any serious health condition.

Such a national policy, promoting health, job and family stability, would show, again, how the goals of the women's movement turn out to benefit men.

Mr. DODD. Let me share with my colleagues just the closing paragraph of the Los Angeles Times editorial of May 11, 1988.

The scope of federal involvement in child care threatens to be the next battleground in the country's continuing ideological battles that swirl around the family. Congress could head off that unfortunate development by acting decisively. Instead of making promises and kissing babies, the politicians should help close the family gap by passing these bills to help American parents.

The New York Times, January 18, 1987. For those, Mr. President, who suggest that I sprung this piece of legislation last week somehow, here is an editorial that is almost 2 years old on this legislation.

I will quote in part from that editorial.

Women are more likely to work in smaller companies, which may balk at the implications. Yet by now working mothers are so large a fact of business life that employers would do well to confront the issue. More than 70 percent of all working women are of childbearing age and, according to one estimate, more than 90 percent of them are likely to become pregnant during their working lives. Some people fear that the decision may actually generate a harmful backlash as employers simply refuse to hire women.

That is a legitimate worry. The best response, however, isn't to deny pregnancy leave to women but to permit more leaves for everyone. That is the thrust of a proposed Parental and Medical Leave Act. . . .

Such a national policy, promoting health, job and family stability, would show, again, how the goals of the women's movement turn out to benefit men.

As I pointed out earlier, Mr. President, this is called parental leave. And while two out of every three women in the work force are either the sole providers of their families or have hus-

bands that earn less than \$15,000 a year, there are over a million men in this country who are the sole providers of their families and those numbers are growing. I do not applaud that trend. I do not like to see it happen. But today only 1 in every 10 families is intact in the United States—1 in 10.

And so this is parental leave. It says that fathers, too, can be with their children. That is an encouraging thing. That is something that more of the newer generation wants to be involved in, wants to do, wants to be part of that bonding and that child rearing and being there for crisis intervention.

So this is a parental leave bill, not just a maternal leave bill. It says that the dad can take time off without being paid to be with that sick child. And that ought to be encouraged.

Parental leave. I am told by some, Mr. President, that the reason they are opposed to the child care bill—the other bill that is a part of this package—is because it takes kids out of the home; it encourages the mother or the father to go into the work force when it is not really necessary. We are going to socialize children in this country. We are going to institutionalize them, as happens in the Eastern bloc or in the Soviet Union or in the People's Republic of China, stripping children away from their parents. That is what child care is really all about.

Well, I will come to that argument in time, Mr. President, but the reason I cite that argument is because I find it somewhat ironic that the very people who raise those arguments in opposition to the child care bill are also opposed to the parental leave bill. The parental leave bill says that during times of crisis and if you are in the work force you ought to be home with that child. There is an effort to try and bring families together where you have to work I do not quite understand that those who oppose child care for the reasons I cited a moment ago are also opposed to parental leave. That does just what the people who are opposed to child care would like to have done. It makes it possible for parents to be with their children, at least during a crisis situation.

Let me share a letter of September 23, 1988, from the Reverend John W. Gouldrick. He is the director of the National Conference of Catholic Bishops' Committee for Pro-Life Activities.

Before I get into this letter, Mr. President, let me make it clear that I disagree with the church's position on whether or not women ought to have the right to an abortion. I disagree with them. I think that is up to a woman to make up her own mind whether or not she is going to. So we disagree on that.

But I thought it might be instructive to hear what the Catholic Conference has to say about the parental leave legislation because many of the people who oppose the parental leave legislation are also the strongest prolife activists in this body.

DEAR SENATOR: You may soon have an opportunity to vote on S. 2488, the Parental and Medical Leave Act. I am aware that many organizations have expressed views of S. 2488 from a variety of viewpoints. I would like to address this proposal in terms of its potential for protecting innocent human life.

Our achievement-oriented society tends to dismiss far too easily the dignity and worth of certain classes of human beings. This is certainly true of the unborn child, the most vulnerable member of our human family. Unfortunately, women in the work force sometimes face a dilemma when they become pregnant: either have an abortion, or risk the loss of job and livelihood by giving birth and taking maternity leave. A male employee can also be forced to choose between job and family responsibilities if his wife will require special medical care during or after pregnancy.

Similar pressures can operate to the detriment of newborn children. There have been instances when parents were persuaded to withhold ordinary life-saving medical treatment from their handicapped newborn child, on the grounds that the child would require time-consuming care if he or she survived.

By guaranteeing that employees will not lose their jobs if they must take medical leave or must care for a seriously ill child, the Parental and Medical Leave Act helps to ameliorate some of these pressures. The House version, H.R. 925, also provides appropriate help to those who must care for an elderly family member with a serious illness.

We do not, Mr. President, as you know, in our bill.

This letter goes on and concludes:

It has been said that by allowing employees to take unpaid leave in such emergencies these bills would impose new burdens on employers and even on other employees. But protecting and nurturing vulnerable human life always involves burdens, and is seldom as easy in the short run as solutions that neglect or destroy life. Our society can help individuals and families in need by ensuring that some of their burden will be shared among the rest of us. Because it offers a reasonable means for achieving this goal, the Parental and Medical Leave Act merits your support.

Mr. President, I ask unanimous consent that this letter of September 23, 1988 from the National Conference of Catholic Bishops be printed in the RECORD at this point as well.

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

NATIONAL CONFERENCE OF CATHOLIC BISHOPS' COMMITTEE FOR PRO-LIFE ACTIVITIES,  
Washington, DC, September 23, 1988.

DEAR SENATOR: You may soon have an opportunity to vote on S. 2488, the Parental and Medical Leave Act. I am aware that many organizations have expressed views of S. 2488 from a variety of viewpoints. I would like to address this proposal in terms of its

potential for protecting innocent human life.

Our achievement-oriented society tends to dismiss far too easily the dignity and worth of certain classes of human beings. This is certainly true of the unborn child, the most vulnerable member of our human family. Unfortunately, women in the work force sometimes face a dilemma when they become pregnant: either have an abortion, or risk the loss of job and livelihood by giving birth and taking maternity leave. A male employee can also be forced to choose between job and family responsibilities if his wife will require special medical care during or after pregnancy.

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It has been said that by allowing employees to take unpaid leave in such emergencies these bills would impose new burdens on employers and even on other employees. But protecting and nurturing vulnerable human life always involves burdens, and is seldom as easy in the short run as solutions that neglect or destroy life. Our society can help individuals and families in need by ensuring that some of their burden will be shared among the rest of us. Because it offers a reasonable means for achieving this goal, the Parental and Medical Leave Act merits your support.

Sincerely,

REV. JOHN W. GOULDRICK, C.M.,  
Director.

Mr. DODD. Mr. President, that is not a labor organization and that is not just a committee of the Congress talking. The views of the Catholic conference represent the views of an awful lot of churches and organizations in this country, with similar views on that same point.

Mr. President, let me go on further and share some views of some different organizations on this particular bill that is considered such a terrible intrusion, an egregious intrusion into the lives of the largest corporations of this country.

My good friend from Montana has been trying for the last week to bring up the technical corrections amendments to the tax reform bill that is pending. He has been on the floor a good part of this morning. I know he has talked to the leader. He wants to get that bill up. It is an important bill, Mr. President. It is an important bill because it is going to take care of a lot of the folks back home.

I have some folks in that bill that are going to do very well under that technical corrections bill. Quite candidly, it is "gimmies," little pieces of

the Tax Code that would protect and make more profitable some of our businesses. And I have some goodies in that bill, Mr. President. I have some Connecticut corporations that are going to do better under that piece of legislation.

But for the life of me I do not understand why that bill should be considered more important than parental leave or child care. And, yet, that is the argument that we receive.

Let me share, Mr. President, with my colleagues—Mr. President, let me postpone for a moment.

I will be glad to yield to my colleague from Arkansas.

Mr. PRYOR. Mr. President, I ask unanimous consent—Mr. President, I ask that I may have the right to yield 30 minutes of my time allocated under the cloture, postcloture provision, to the Senator from Connecticut.

The PRESIDING OFFICER. Is there objection?

Mr. COCHRAN. Reserving the right to object, Mr. President.

Mr. BYRD. There is no objection in order. The Senator has a right to yield 30 minutes to the manager and, if you are the manager on that side—

Mr. COCHRAN. Mr. President, does the distinguished Senator—did the distinguished Senator from Arkansas ask unanimous consent?

Mr. BYRD. The Senator does not need unanimous consent.

Mr. COCHRAN. This Senator essentially was reserving the right to object to determine what the request was, Mr. President.

The PRESIDING OFFICER. Yes, the Senator is correct. The majority leader is correct. The Senator has a right to yield additional time to the Senator from Connecticut. He does not require unanimous consent to do so.

The Senator from Arkansas has yielded an additional 30 minutes to the Senator from Connecticut.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut retains the floor.

Mr. DODD. Does my colleague wish me to yield?

Mr. DIXON. If my colleague would be so kind, I am delighted to yield him 30 minutes as well, and I wonder in the course of doing that if I may inquire of my distinguished colleague from Connecticut about when I could proceed out of order for approximately 10 minutes to introduce an important resolution.

Mr. DODD. I did not hear. I apologize.

Mr. BYRD. The Senator wants at some point to speak out of order.

Mr. DIXON. Oh, the Senator did not hear me?

Mr. DODD. I apologize.

No problem at all. I will be glad to yield at any point. In fact, if he is prepared to address the matter now, I can withhold.

Mr. DIXON. If my distinguished colleague would do that, I do yield him 30 minutes, and I would like to impose on the Senate out of order for a brief period not in excess of approximately 10 minutes, to make a brief statement, submit a resolution that I consider of some importance.

Mr. DODD. I would be glad to do that for my colleague.

I know the country is waiting with bated breath to hear the remainder of my remarks, but I will be glad to yield.

Mr. DIXON. I cannot speak for the rest of the country, but I can assure my colleague I await the rest of his remarks with bated breath.

The PRESIDING OFFICER. Is there objection to the Senator's proceeding for 10 minutes out of order?

Mr. BYRD. He would also need unanimous consent to introduce a measure as in morning business.

Mr. DIXON. I ask that unanimous consent as well, may I say to the distinguished majority leader.

Mr. BYRD. Oh, yes, and the time will continue to run against the 30 hours.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Illinois?

If not, without objection, it is so ordered.

Mr. BYRD. Mr. President, will the Senator yield to me?

Mr. DIXON. Yes, of course. Always.

Mr. BYRD. Under the cloture rule, to the 1 hour that has been yielded from the time of other Senators to the manager of the matter that was clotured, a total of 1 additional hour may be yielded by Senators without unanimous consent to the manager. And the same may be done with the majority leader and the same may be done for the minority leader and the same may be done for the minority member who is handling the measure.

May I ask, who is that? Who is the Senator?

Mr. DODD. Senator COCHRAN.

Mr. BYRD. Senator COCHRAN, as manager on this side or as opponent or whatever his position may be, he, likewise, is entitled to a yielding of similar amounts from Senators on his side, without unanimous consent.

Beyond that, then they have to get unanimous consent.

Mr. DIXON. Mr. President, do I understand I have consent now to proceed out of order as though in morning business to introduce a resolution, make brief remarks, to be charged against the time?

The PRESIDING OFFICER. The Senator also has unanimous consent to introduce the resolution.

The Senator from Illinois may proceed.

(The remarks of Mr. DIXON pertaining to the introduction of legislation are located in today's RECORD under Concurrent and Senate Resolutions.)

#### PARENTAL AND TEMPORARY MEDICAL LEAVE

The Senate continued with the consideration of the bill.

Mr. DODD. Mr. President, let me pick up where I left off and just share with my colleagues, again, comments from some of the organizations in this country that hardly wear a political label and how they feel about this.

The National Adoption Center: I made the point at other times, Mr. President, and I will make it again and it comes to the issue of parental leave and how important it is in the context of adoption. I think people understand it in the case of a newborn child, and they understand it in the context of a seriously ill child, but adoption is a serious matter in this country. We have tried in the Congress over the years to support and promote and to financially help promote adoption, particularly of the hardest to place children, retarded children, physically handicapped children, older children, minority children.

Mr. President, to accommodate some other matters that need to be addressed, I will return to this matter at the expiration of other business that must be conducted. At this point, Mr. President, I yield the floor.

#### THE CALENDAR

Mr. BYRD. Mr. President, I inquire of the distinguished acting Republican leader, Mr. COCHRAN, as to whether or not the following calendar orders have been agreed to and are ready for action on his side: 914, 994, 1023 and 1027?

Mr. COCHRAN. Mr. President, if the distinguished leader will yield, those matters have been cleared, and we are ready to proceed to take them up.

#### LICENSING AND USE OF CERTAIN INTELLECTUAL PROPERTY

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 438.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 438) to modify the application of the antitrust laws to encourage the licensing and other use of certain intellectual property.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

#### TITLE I—INTELLECTUAL PROPERTY

Sec. 101. This title may be cited as the "Intellectual Property Antitrust Protection Act of 1988".

#### PROHIBITION OF MARKET POWER PRESUMPTION

Sec. 102. In any action in which the conduct of an owner, licensor, licensee, or other holder of an intellectual property right is alleged to be in violation of the antitrust laws in connection with the marketing or distribution of a product or service protected by such a right, such right shall not be presumed to define a market or to establish market power, including economic power and product uniqueness or distinctiveness, or monopoly power.

Sec. 103. For purposes of this title—

(1) the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); and

(2) the term "intellectual property right" means a right, title, or interest—

(A) in subject matter patented under title 35 of the United States Code, or

(B) in a work, including a mask work, protected under title 17 of the United States Code.

#### TITLE II—PATENT MISUSE DOCTRINE REFORM

Sec. 201. Section 271 of title 35, United States Code, is amended—

(1) by redesignating subsection (c) as paragraph (1) of subsection (c);

(2) by redesignating subsection (d) as paragraph (2) of such subsection (c); and

(3) by inserting after subsection (c) the following new subsection:

"(d) No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his or her licensing practices or actions or inactions relating to his or her patent, unless such practices or actions or inactions, in view of the circumstances in which such practices or actions or inactions are employed, violate the antitrust laws."

Mr. THURMOND. Mr. President, I rise in support of S. 438, the Intellectual Property Antitrust Protection Act of 1988. This legislation, although not as strong as the legislation which was originally proposed, is nevertheless a step in the right direction for reforming the doctrine of patent misuse and clarifying the treatment of intellectual property rights under the antitrust laws.

The bill has two main sections. The first section eliminates the presumption of market power in antitrust cases involving patents, copyrights, and mask works, that is, semiconductor chip designs. The second section provides that a patent owner, otherwise entitled to relief for patent infringement, will not be denied relief or deemed guilty of misuse or illegal extension of the patent right, unless the

licensing practices violate the anti-trust laws.

In the various hearings concerning both these issues, there has been much testimony about the need for clarification and reform of the treatment of intellectual property rights under the antitrust laws. The denial of certiorari by the Supreme Court in *Digidyne Corp. v. Data General Corp.*, 734 F. 2d 1336 (9th Cir. 1984), cert. denied, 473 U.S. 908 (1985), and the Court's earlier decision in *Jefferson Parish Hospital Dist. No. 2 v. Hyde*, 466 U.S. 2 (1984), suggest the need for such clarification as to the presumption of market power. As was noted by Justice White in his dissent in *Data General*, by denying certiorari the Court refused to address, and thus left unclear, what effect should be given to the existence of a copyright or other legal monopoly in determining market power. Justice White continued: "At stake is more than the resolution of this single controversy or even the clarification of what may seem at times to be a collection of arcane legal distinctions. In the highly competitive, multibillion dollar a year computer industry, bundling of software and hardware, or of operating systems and central processing units, is somewhat common, and any differentiated product is especially attractive to some buyers. The reach of the decision in this case is potentially enormous. . . ."

Likewise, concerning the misuse doctrine, Robert P. Taylor, in a letter submitted to the Subcommittee on Patents, Copyrights and Trademarks, on behalf of the American Bar Association, section of antitrust law, stated that a change in the misuse doctrine was needed "to promote and encourage the licensing of new technology. In many situations, the misuse doctrine in its present form forces the owner of new technology to choose between either not licensing at all or licensing under circumstances which place at risk the enforceability of this property and contractual rights to that technology."

Mr. President, although I would have preferred a stronger bill in this area, as I said at the outset, I am happy that we are able to bring before the Senate legislation that is a step in the right direction. I am pleased to support S. 438 and urge all my colleagues to do likewise.

Mr. LEAHY. Mr. President, the creative spirit of America's innovators has made our Nation the world's leader in high technology. America's economic future rests on the shoulders of individual inventors and innovators working in small firms and large corporations. We need to encourage continued innovation in high technology and to help American inventors and businesses recoup their tremendous investment in research and development. One way to do that is to facili-

tate the dissemination of America's new technology and innovative products.

With these goals in mind, several of my colleagues joined me last year in introducing S. 438, a bill to promote the licensing and other uses of intellectual property. As amended, this legislation will eliminate unfair penalties imposed by two outdated judicial doctrines that punish innovators engaged in procompetitive distribution and licensing practices. Those doctrines are: First, the presumption of market power in antitrust suits involving intellectual property rights; and second, the patent misuse doctrine, a defense in patent infringement suits.

S. 438 will provide greater flexibility in the dissemination of intellectual property and innovative products. It does so by first, clarifying the treatment of intellectual property rights under the antitrust laws by prohibiting courts from presuming the market power necessary for liability from the existence of an intellectual property right. Second, the bill would reform the doctrine of patent misuse by requiring that a practice rise to the level of an antitrust violation before it can be condemned as patent misuse.

Mr. President, our intellectual property and antitrust laws should operate together to encourage innovation by rewarding individual inventors and creators, and to promote competition by ensuring that those inventors and creators have access to open and competitive markets. Nonetheless, because of doctrines like the presumption of market power and patent misuse, it is almost common for business people and scholars to say that our antitrust and intellectual property laws are in conflict.

This legislation will help America's businesses meet the challenges they face in domestic and international markets. It does so by harmonizing our intellectual property and antitrust laws.

Our intellectual property laws encourage investment in innovation. By recognizing intellectual innovations as property, these laws provide inventors and other innovators with incentives through exclusive rights to the use of their inventions and original works for a limited time. By encouraging the publication of these inventions our intellectual property laws also encourage the dissemination of new technology, and thus promote technological progress.

Now, let me explain how these basic intellectual property principles can get stymied in certain antitrust suits. Courts often presume the requisite market power for antitrust liability from the mere existence of a patent or copyright. This presumption evolved because courts mistakenly characterized intellectual property rights as economic monopolies and thus treated

patents and copyrights unnecessarily harshly in antitrust cases.

As a result, American businesses may be forced to avoid agreements that would permit them, for example, to cut costs by developing efficient distribution schemes for functionally related products. In some cases, the threat of antitrust liability even deters American companies and particularly, small businesses and individual inventors from developing new technology. For example, if an inventor's ability to license his product or the intellectual property rights to that product, is seriously threatened by the fear of treble damages being imposed in an antitrust suit, he likely will decide at the outset not to invest the time and money to research and develop that idea. This is especially true in our high technology industries whose products have short shelf lives.

Last year the Judiciary Committee's Technology and Antitrust Subcommittees held a joint hearing on S. 438. I remember Mr. Sanford Feman from the Hewlett-Packard Co. medical products group used a heart monitoring system to illustrate the real problems American companies face because of the antitrust laws' treatment of copyrighted products. To control quality and prevent malfunctions caused by use of the heart monitor's components with other manufacturers' equipment, Hewlett-Packard sells the copyrighted software and the hardware together as one heart monitoring system.

Because of a 1984 antitrust decision mistakenly applying the presumption of market power, however, American manufacturers may need to separate the components of such sophisticated high technology equipment. They may be forced to treat complex, interrelated computer technology as if it were a mattress and a bed. The fear of antitrust liability may force businesses to sell one component without the other regardless of its effects on consumers. In Mr. Feman's example, those consumers are hospitals and their patients.

By discouraging common sense dissemination of complex high technology equipment, current antitrust law harms consumers as well as manufacturers. No doubt some manufacturers, fearing they will incur product liability because of a malfunction in another manufacturer's component, will stop manufacturing their products altogether.

That troubling 1984 Court decision I referred to is *Digidyne Corp. v. Data General Corp.*, 734 F.2d 1336 (9th Cir. 1984), cert. denied, 473 U.S. 908 (1985). There, the Court of Appeals for the Ninth Circuit treated the defendant's refusal to license copyrighted computer software except to purchasers of its computer hardware as a per se unlawful tying arrangement. A tying ar-

agement is a form of package sale in which a seller conditions the sale or lease of one product upon the sale or lease of a second product. Under certain circumstances, the antitrust laws condemn tying arrangements as per se unlawful. The elements of per se illegal tying arrangements are described in *Jefferson Parish Hospital Dist. No. 2 v. Hyde*, 466 U.S. 2 (1984). Some of the problems this poses for America's high technology industry are outlined in Justice White's dissent from the denial of certiorary in the Data General case.

Sufficient economic power in the tying product market to restrain competition in the tied product market appreciably is one of the elements of a per se unlawful tying arrangement. Relying on the presumption of market power, the Ninth Circuit in the Data General case found that the software system's copyright established the software's distinctiveness as a matter of law. It held that there was sufficient evidence from which the jury reasonably could have concluded that the software was sufficiently unique and desirable to an appreciable number of buyers to enable the defendant to force those consumers to buy the hardware.

But in evaluating the evidence, the Court specifically rejected the defendant's evidence that functionally equivalent substitutes existed for the copyrighted software. It said that the existence of substitutes for the software was not relevant to whether sufficient economic power existed for an illegal tie-in.

Data General is only one of many cases in which the courts have presumed market power from the existence of a patent or copyright. Courts have been applying the presumption at least as far back as 1962 and continue to do so today. See, for example, *United States v. Loew's, Inc.*, 371 U.S. 38 (1962); *Outlet Communications, Inc. v. King World Productions, Inc.*, 685 F. Supp. 1570 (M.D. Fla. 1988). And State courts also have relied on the presumption in applying State antitrust laws. See, for example, *Jerry Day and Cory Day v. Le-Jo Enterprises, Inc.*, 521 So. 2d 175 (Fla. Dist. Ct. App. 1988).

Legal and economic scholars have sharply criticized the presumption of market power. Hovenkamp says in his *Economics and Federal Antitrust Law*, "The economic case for 'presuming' sufficient market power to coerce consumer acceptance of an unwanted tied product simply because the tying product is patented [or] copyrighted . . . is very weak." See, 8.3 at 219 (1985). See also Note, *The Presumption of Economic Power for Patented and Copyrighted Products in Tying Arrangements*, 85 Colum. L. Rev. 1140, 1156 (1985).

S. 438's elimination of the presumption of market power is intended to reduce the likelihood that antitrust claims will be brought against intellectual property owners who should not be subject to antitrust liability. S. 438 clarifies that although patents and copyrights constitute legally enforceable property rights, they do not necessarily constitute economic monopolies. Similarly, the bill clarifies that although the "uniqueness" or "distinctiveness" of a particular product may be essential to the award of a patent or copyright, the patent or copyright does not necessarily result in economic power when evaluated under standard antitrust principles.

As stated in the Judiciary Committee's report on this legislation (Report 100-492), the elimination of the presumption will simply require plaintiffs to assume their proper burden of proof in antitrust cases involving patents, copyrights, or semiconductor chip designs. It will require that courts evaluate practices involving intellectual property rights under the same antitrust principles that are applied to practices involving other forms of property.

I would like to emphasize that S. 438's elimination of the presumption of market power will require courts to make a factual assessment of whether the holder of an intellectual property right has market power within an economically significant market in the same way as they do in other tying cases and in antitrust cases in general. Thus, courts will have to assess whether there are available substitutes for the protected tying product or service, as did the court in *A.I. Root Co. v. Computer Dynamics, Inc.*, 806 F.2d 673 (6th Cir. 1986).

Title I of S. 438 is also intended to preclude a plaintiff from establishing that a defendant has the requisite market share for antitrust liability by asserting that an intellectual property right constitutes its own market. Without proof of the absence of substitutes for the patented or copyrighted product, an intellectual property right does not itself constitute a market.

I understand some concern has been raised that by including in section 102, the terms "economic power," "product uniqueness or distinctiveness," and "monopoly power" along with "market power," we will somehow be setting in stone the definition of market power for antitrust cases outside the scope of this bill. Let me underscore right now that that is not our intent. Courts have used different terms when they refer to the presumption generally described as the presumption of "market power." Section 102 includes all of those terms to avoid an unduly narrow reading by some future court. We want to be sure that whatever they call it—"defining a market," "estab-

lishing market power," "economic power," "product uniqueness or distinctiveness," or "monopoly power"—courts do not foreclose thorough market analysis because of an intellectual property right.

I should also point out that the bill's elimination of the presumption does not apply to trademarks or trade secrets. The reason is simple. Under current law, courts tend not to view these rights as giving rise to a presumption. Thus, S. 438 is not intended to change current law in this respect. Nor is it intended to invite a finding that a trademark or trade secret creates a presumption of market power.

Mr. President, let me just say that title I of S. 438 rejects the presumption of market power because the presumption inhibits the development and dissemination of new technology. The patent misuse doctrine also inhibits the development and dissemination of new technology. That is why the Judiciary Committee added title II to S. 438 during our markup.

Patent misuse is a defense in patent infringement suits. It penalizes a patent holder who attempts to extend the patent beyond the limited statutory monopoly. The sanction for misuse is harsh: A patent owner loses the right to enforce his patent, at least until the conduct that has constituted misuse has ceased and its effects have been purged.

As outlined in the Judiciary Committee's report, courts have been inconsistent in their application of the misuse doctrine to analogous practices. Misuse has been found even where the conduct has no anticompetitive effect or where it has not injured the infringing party who raises misuse as a defense.

Reform of patent misuse will ensure that the harsh misuse sanction of unenforceability is imposed only against those engaging in truly anticompetitive conduct. Currently, courts impose the misuse doctrine using vague and shifting public policy grounds. As Prof. Donald Chisum has recognized:

Unfortunately, decisions considering analogous practices are not always consistent. In part, this is attributable to the absence of a clear and general theory for resolving the problem of what practices should be viewed as appropriate exercises of the patent owner's statutory patent rights.

4 D. Chisum, *Patents 19-91* (1987).

Title II of S. 438 is intended to reduce the chilling effect on a patent owner's willingness to consider flexible arrangements for the development of the patented technology. It clarifies that where licensing conduct is challenged on grounds related to competition, the challenge should be resolved the way that competitive challenges to other conduct are resolved, by resort to antitrust analysis.

Reforming the patent misuse doctrine by requiring courts to judge

misuse by antitrust principles has substantial scholarly support. As the Court said in *USM Corp. v. SPS Technologies, Inc.*, "If misuse claims are not tested by conventional antitrust principles, by what principles shall they be tested? \* \* \* [I]t is rather late in the day to try to develop [alternative concepts of monopolistic abuse] without in the process subjecting the rights of patent holders to debilitating uncertainty." 694 F.2d 505, 512 (7th Cir. 1982), cert. denied, 462 U.S. 1107 (1983); See also Comment, *Standard Antitrust Analysis and the Doctrine of Patent Misuse: A Unification under the Rule of Reason*, 46 U. Pitt. L. Rev. 209 (1984).

The patent misuse provision of S. 438 is taken verbatim from title II of S. 1200, which was approved unanimously by the Judiciary Committee, passed by the Senate, and incorporated into the Senate trade bill last year. However, the House trade bill, H.R. 3, did not contain a provision addressing patent misuse because the House had not yet held hearings to study patent misuse. That changed on May 11, 1988, when my friend BOB KASTENMEIER, chairman of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Committee held a hearing on patent misuse legislation. The House hearing focused on the Senate-passed patent misuse reform and H.R. 4086, a patent misuse reform bill Chairman KASTENMEIER introduced.

Mr. President, the Judiciary Committee unanimously passed this version of S. 438. It is sponsored by Senators HATCH, THURMOND, HUMPHREY, BAUCUS, DECONCINI, KENNEDY, and METZENBAUM. It is supported by high technology companies, the administration, and the American Bar Association. The American Intellectual Property Law Association also has expressed support for the bill's provision reforming the patent misuse doctrine. I urge my colleague to join me in supporting this measure.

In closing I would like to thank the following Judiciary Committee staff members for their fine work in getting this legislation to the point of Senate passage: Randy Rader who was invested in the court of claims last week after working for many years for Senator HATCH, and Abby Kuzma counsel to Senator HATCH; Patricia Vaughan and Terry Wooten with Senator THURMOND; George Smith with Senator HUMPHREY; Diana Huffman with Senator BIDEN; Ed Baxter and Tara McMahon with Senator DECONCINI; Eddie Correia and Priscilla Budeiri with Senator METZENBAUM. Finally, I would like to thank my own staff on this legislation: Milo Civdanes who recently returned to private practice and my chief counsel, Ann Harkins.

Let me also thank Chairman RODINO and Chairman KASTENMEIER and mem-

bers of their staff, Elaine Mielke, Mike Remington, Jon Yarowsky and David Beier, for their hard work in the House on this important legislation.

And speaking of hard work, special thanks and tribute go to Congressman HAM FISH who first introduced the House companion measure to the bill Senator HATCH and I introduced in the 99th and 100th Congresses. Congressman FISH's chief counsel, Alan Coffey deserves a great deal of credit for his work on this legislation as well.

Mr. HATCH. Mr. President, on February 3, 1987, I joined Senators LEAHY, THURMOND, and HUMPHREY in introducing S. 438, the Intellectual Property Antitrust Protection Act. Today I am pleased to speak again in its support. The purpose of this legislation is to promote competition in the international market of ideas, an endeavor of increasing importance as we approach the 21st century. This act strengthens the ability of American companies to compete in the international high-technology market. It will encourage innovation by permitting small inventors and entrepreneurs to recover their tremendous investment in research and development.

This act was introduced in response to judicial decisions which created uncertainty in the high-technology community by invalidating licensing practices which had no anticompetitive effects. These decisions failed to consider all competitive effects of agreements involving intellectual property rights. Such decisions subject American companies to possible treble damage liability for normal competitive practices which have no adverse effects upon the consumer. Needless to say, that discourages technological innovation at the very time we critically need to encourage it. This act will send a reliable signal to inventors and entrepreneurs that courts will no longer needlessly discourage technological innovation in this manner.

The judicial decisions to which I refer reflected a tension between the antitrust laws and the intellectual property laws. By recognizing intellectual innovations as property, the intellectual property laws provide inventors, authors, artists, and other creators, with exclusive rights to the use of their inventions and creations for a limited time. These rights enable innovators to capture some of the economic rewards of their efforts. The antitrust laws, on the other hand, protect consumers and businesses by ensuring open and competitive markets. They prevent combinations in restraint of trade and accumulation of monopoly power. Their goal is to preserve for the benefit of consumers a truly free market.

The intellectual property laws appropriately concentrate economic power, in very limited spheres, in the hand of one individual to reward him

for his efforts. The antitrust laws are intended to keep economic power dispersed.

Many courts have presumed the requisite market power for antitrust liability from the mere existence of a patent or copyright. However, mere possession of a patent or copyright hardly constitutes an automatic grant of monopoly power. In fact, quite the opposite is often the case: the recipient of a new patent may be intending to challenge existing participants in an established market. The mistaken characterization of intellectual property rights as automatically granting power over a particular market has led to unnecessary harsh treatment of patents and copyrights in some antitrust cases.

For example, the decision in *Digidyne Corp. v. Data General Corp.*, 734 F.2d 1336 (9th Cir. 1984), cert. denied, 473 U.S. 908 (1985), can be interpreted to mean that the existence of a copyright automatically leads to a presumption of economic power. In that case, the ninth circuit specifically rejected the lower court's market analysis which focused on functionally equivalent substitutes for the copyrighted software. All it takes to illustrate the problem with the ninth circuit's reasoning is a simple example.

Suppose you buy a new personal computer, which you intend to use mainly for word processing. Does that mean you are in the market for the Word Perfect Program? No; it means you are in the market for any one of several word processing programs that meet your needs. The holder of the various intellectual property rights relating to Word Perfect may have monopoly power over the Word Perfect market, but he hardly has monopoly power over the entire word processing market.

This example shows the foolishness of treating intellectual property rights more poorly than other property rights. S. 438 merely levels the playing field so that all property rights are treated equally in litigation.

Another judicial decision causing concern in this regard is *Jefferson Parish Hospital Dist. No. 2 v. Hyde*, 466 U.S. 2 (1984). In that case, a majority of the Supreme Court asserted in dictum:

[I]f the Government has granted the seller a patent or similar monopoly over a product, it is fair to presume that the inability to buy the product elsewhere gives the seller market power.

*Jefferson Parish Hospital Dist. No. 2 v. Hyde*, 466 U.S. 2, 16 (1984). This assertion, coupled with the denial of certiorari in the *Data General* case, has caused intellectual property owners using package distribution schemes to fear that they may be the target of antitrust suits relying on the market power presumption.

Mr. President, we must not let the antitrust laws and intellectual property laws work at cross purposes. This legislation would lessen the tension between them by continuing to ban practices shown to be anticompetitive under an analysis of all competitive conditions, but by preventing courts from invalidating practices which do not have anticompetitive consequences—and which, in fact, are pro-competitive because they encourage the development of intellectual property. This clarification of our antitrust laws will help American high-technology companies compete effectively in the highly competitive international marketplace.

Specifically, this act provides that when the holder of an intellectual property right is alleged to violate antitrust laws, the intellectual property right itself shall not be presumed to define a market or establish market power. This act further provides that one who merely licenses a patent cannot automatically thereby be deemed guilty of misuse or illegal extension of the patent.

This legislation is a necessary element of our efforts to provide American companies the environment they need to stay competitive in world markets. It requires that agreements to convey intellectual property rights be evaluated for antitrust purposes upon consideration of all relevant economic factors, including their procompetitive benefits, rather than upon unwarranted presumptions of market power. This is an eminently reasonable step. The threat of antitrust liability acts as a disincentive to the creation and distribution of new technology. Even after new technology has been created and distributed, the threat of antitrust liability diverts resources away from further innovation. The status quo is clearly harmful to innovation without being beneficial to consumers.

I reiterate that this bill does not undercut the legitimate authority of the antitrust laws. In fact, it encourages the dispersion of economic power, which is the goal of the antitrust laws, by allowing the little guy the wherewithal to compete. Often, the holder of a patent may not possess sufficient capital to further develop or market his innovation. In order for him to receive any benefit from his invention—or, for that matter, for the public to receive any benefit—it may be necessary to license the patent. This bill permits that to happen without the threat of antitrust liability. It will enable a licensor to devote his efforts to considering how best to commercialize his product rather than to worrying about possible litigation.

The application of the presumption of market power forecloses a court's consideration of factors that the court would consider relevant in antitrust cases involving a nonpatented or non-

copyrighted product. It prevents courts from considering the availability of substitute products for a patented product used in a tying arrangement. Again, the inevitable result is the hindrance of the development and distribution of innovative technology.

The elimination of the presumption will require only that courts evaluate practices involving intellectual property rights under the same antitrust principles that are applied to practices involving other forms of property. This act merely levels the playing field. Given the importance of research and development of new technology to our economic security and progress, this measure ought to pass promptly.

So far I have been discussing title I of the act, which prohibits the market power presumption. Let me now turn to title II, which reforms the doctrine of patent misuse. Much of that which I have already said is equally applicable to this title, but I wish to add a few points.

The doctrine of patent misuse provides that a patent owner may not enforce its patents if it has engaged in conduct deemed "misuse." Misuse thus renders the patent unenforceable, but not void. One branch of the doctrine involves fraud before the Patent Office. Such conduct is unaffected by this act. The other branch of the misuse doctrine developed through judicial interpretations which found misuse present because of alleged anticompetitive extensions of the owner's patent rights.

I have no objection to finding misuse where the antitrust laws have been violated. But under current law, misuse may also be found where the patent owner's conduct has not violated the antitrust laws, where the conduct has not demonstrated anticompetitive effect, and even where the conduct has not injured the infringing party who raises misuse as a defense. This is clearly an abuse.

In a letter to the Subcommittee on Patents, Copyrights, and Trademarks, where I serve as the ranking minority member, Robert P. Taylor, of the American Bar Association's Section of Antitrust Law, stated:

In many situations, the misuse doctrine in its present form forces the owner of new technology to choose between either not licensing at all or licensing under circumstances which place at risk the enforceability of this property and contractual rights to that technology.

Mr. Taylor further stated:

That the misuse doctrine in its present form means that creative and innovative licensing schemes are rarely ever used, because any license provision that is even slightly questionable is likely to place the entire patent at risk whenever an enforcement proceeding is brought.

The patent misuse doctrine has come to provide a defense even to a person who knowingly infringes a

valid patent and is not affected by the conduct held to be misuse. If there ever existed a reason for this harsh result, it is long gone. At the very least it is outweighed by considerations of fairness to intellectual property owners and by concerns over American competitiveness. This bill remedies the deficiencies in the doctrine, without eviscerating the doctrine altogether. This bill also encourages the development of new technology without compromising our commitment to the antitrust laws.

As you well know, Mr. President, the Judiciary Committee includes Senators of deeply felt and widely divergent political views. Nevertheless, the committee unanimously ordered the bill as amended favorably reported. Joining me in cosponsoring this proposal are several colleagues from both sides of the aisle. This act corrects two deficiencies in current law: the presumption of market power and the patent misuse doctrine. It will encourage innovation and enhance our national competitiveness in the international market. It will be of particular value to individuals and small enterprises who might not, without its protections, be able to develop and market important and useful new technologies.

For all these reasons, I am pleased to be a cosponsor of this bill. I urge its prompt consideration and approval. Thank you.

**THE PRESIDING OFFICER.** The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

**THE PRESIDING OFFICER.** The bill having been read a third time, the question is, Shall it pass?

So the bill (S. 438) was passed.

**MR. BYRD.** Mr. President, I move to reconsider the vote by which the bill was passed.

**MR. COCHRAN.** I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### PINE RIDGE INDIAN RESERVATION SETTLEMENT ACT

**MR. BYRD.** Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1305.

**THE PRESIDING OFFICER.** The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1305) to settle certain claims arising out of activities on the Pine Ridge Indian Reservation.

The **PRESIDING OFFICER.** Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Indian Affairs, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

S. 1305

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) in full settlement of all claims, legal and equitable, against the United States arising out of activities on the Pine Ridge Indian Reservation that were the subject of the findings of fact and recommendations submitted to the Senate by the Chief Commissioner of the United States Court of Claims (Congressional Reference 4-76) in response to a request of the Senate made in Senate Resolution 378 (94th Congress, agreed to on August 9, 1976), the Secretary of the Treasury is authorized and directed to pay, out of funds in the Treasury of the United States not otherwise appropriated, the following amounts:

(1) \$731.05 to Joe Leavitt (claimant No. 1),  
 (2) \$118,771.10 to William Leavitt (claimant No. 2),  
 (3) \$10,954.48 to Dwight W. and Francis Afraid of Hawk (claimant No. 3),  
 (4) \$15,073.31 to Stella Bear Shield (claimant No. 4),  
 (5) \$3,582.00 to Samuel Crooked Eyes (claimant No. 5),  
 (6) \$2,955.00 to Seth Eagle Bear (claimant No. 6),  
 (7) \$4,095.00 to Frank and Gonne A. Grooms (claimant No. 7),  
 (8) \$2,537.00 to Vera High Hawk (claimant No. 8),  
 (9) \$21,092.00 to John and Nancy Hussman (claimant No. 9),  
 (10) \$2,245.00 to Jackson and Carolyn Iron Horse (claimant No. 10),  
 (11) \$4,467.00 to Frances Ice Chase (claimant No. 11),  
 (12) \$1,838.60 to Eugene Kills in Water (claimant No. 12),  
 (13) \$3,161.00 to Victoria Little Moon (claimant No. 13),  
 (14) \$4,929.00 to Clement and Verla Locke (claimant No. 14),  
 (15) \$11,672.50 to Charles and Martha Moose (claimant No. 16),  
 (16) \$12,812.00 to Warfield Moose (claimant No. 17),  
 (17) \$8,025.00 to Patrick and Sophia Pumpkin Seed (claimant No. 18),  
 (18) \$6,161.25 to Oliver and Margaret Red Eagle (claimant No. 19),  
 (19) \$24,562.00 to Paul and Eva Red Star (claimant No. 20),  
 (20) \$7,768.00 to Lillian and Steve Sitting Eagle (claimant No. 21),  
 (21) \$1,685.10 to Joseph Spotted Bear (claimant No. 22),  
 (22) \$5,897.25 to Elizabeth Breast (claimant No. 23),  
 (23) \$3,340.33 to Elmer and Nettie Two Two (claimant No. 24),  
 (24) \$7,653.00 to Francis and Marie Randall (claimant No. 25),

(25) \$5,603.00 to Fannie Bear Eagle (claimant No. 26),  
 (26) \$3,597.00 to Eugene Black Bear, Jr. (claimant No. 27),  
 (27) \$2,571.00 to Anthony and Linda Black Elk (claimant No. 28),  
 (28) \$15,833.90 to Homer and Irene Black Elk (claimant No. 29),  
 (29) \$8,762.75 to Rachel Eagle Bull (claimant No. 30),  
 (30) \$4,723.00 to Florine (Ice) Hollow Horn (claimant No. 32),  
 (31) \$6,050.40 to Oscar and Rachel Hollow Horn (claimant No. 33),  
 (32) \$4,134.40 to Verlean Ice (claimant No. 34),  
 (33) \$6,880.00 to Claudia Iron Hawk Sully (claimant No. 36),  
 (34) \$7,735.55 to Paul R. Littlebear-Taylor (claimant No. 37),  
 (35) \$3,248.10 to Hobart Keith (claimant No. 38),  
 (36) \$1,350.00 to Mathew H. King (claimant No. 39),  
 (37) \$4,285.00 to Dallas and Roselyn Little Bear (claimant No. 41),  
 (38) \$3,053.60 to Julia Little Bear (claimant No. 42),  
 (39) \$2,083.09 to Mrs. Theresa R. Means (claimant No. 43),  
 (40) \$3,842.00 to Carol E. Red Star (claimant No. 44),  
 (41) \$1,194.00 to John Mark Red Star (claimant No. 45),  
 (42) \$3,793.50 to Neville C. Red Star, Sr. (claimant No. 46),  
 (43) \$3,525.00 to Darlene Rosane (claimant No. 47),  
 (44) \$14,882.00 to Garry Rowland (claimant No. 48),  
 (45) \$2,485.00 to Beverly Running Bear (claimant No. 49),  
 (46) \$4,025.00 to Rose Shott (claimant No. 50),  
 (47) \$24,276.00 to Sub-Community of Wounded Knee (claimant No. 51),  
 (48) \$3,750.00 to Paul Thunder Horse (claimant No. 52),  
 (49) \$3,593.00 to Robert E. & Lorene E. Thunder Horse (claimant No. 53),  
 (50) \$5,949.22 to Timothy H. and Audrey K. Thunder Horse (claimant No. 54),  
 (51) \$1,900.00 to Lester White Butterfly (claimant No. 55),  
 (52) \$1,455.00 to Daniel Dodge (claimant No. 56),  
 (53) \$1,100.00 to Mr. & Mrs. Manfred Fast Horse (claimant No. 57),  
 (54) \$2,207.00 to Helen S. Grant (claimant No. 58),  
 (55) \$4,715.00 to Florine Hollow Horn ex rel. Bernard Ice, Sr. (claimant No. 59),  
 (56) \$1,245.00 to Frank Jealous of Him (claimant No. 60),  
 (57) \$5,756.10 to Matthew and Bessie J. High Pine (claimant No. 61),  
 (58) \$5,305.00 to Cecilia (Little Moon) Fast Horse (claimant No. 62),  
 (59) \$4,901.50 to Mabel I. Whiteface (claimant No. 63),  
 (60) \$3,288.00 to Rachel White Dress (claimant No. 64),  
 (61) \$2,422.30 to Dorothy Fast Wolf (claimant No. 65),  
 (62) \$13,018.40 to Frank H. and Wilma Grooms (claimant No. 66),  
 (63) \$4,334.67 to Jessie and Raymond Red Shirt (claimant No. 68),  
 (64) \$28,467.95 to Carol J. Deckert Sager (claimant No. 69),  
 (65) \$2,484.45 to LeRoy "Sunshine" Janis (claimant No. 70),  
 (66) \$16,754.70 to Rudolph Fire Thunder (claimant No. 71),

(67) \$1,535.50 to Messiah Episcopal Church (claimant No. 72),  
 [(68) \$600 to Faye Yellow Bird Steele (claimant No. 73).]  
 (69) \$1,984.26 to Ivy Goings (claimant No. 74),  
 (70) \$2,679.60 to Dorothy Mae Richards (claimant No. 75),  
 (71) \$1,640.00 to Elizabeth Bradshaw (claimant No. 77),  
 (72) \$6,184.00 to Charles Dixon Sasse (claimant No. 78),  
 (73) \$5,740.70 to Orville and Emma Lansberry (claimant No. 79),  
 (74) \$2,129.00 to Oscar Jealous of Him (claimant No. 80),  
 (75) \$1,984.26 to Delores Apple (claimant No. 82),  
 (76) \$2,502.80 to Chris Hatchett (claimant No. 83),  
 (77) \$1,920.00 to Gilbert L. and Mary A. Matthews (claimant No. 85),  
 (78) \$5,623.00 to Irene Jumping Eagle (claimant No. 86),  
 (79) \$69,461.83 to St. Paul Insurance Companies (claimant No. 87),  
 (80) \$1,850.00 to John Siers (claimant No. 88),  
 (81) \$5,505.00 to Ameilia M. Clark (claimant No. 89),  
 (82) \$50,975.94 to George and Violet Coats (claimant No. 90),  
 (83) \$51,290.45 to James A. Czywczynski & Jeanette J. Czywczynski (claimant No. 91),  
 (84) \$18,436.58 to Federal Insurance Co. (claimant No. 92),  
 (85) \$1,650.00 to Stephen E. and JoAnne Ferace (claimant No. 93),  
 (86) \$12,331.14 to Guy and Jean Fritze (claimant No. 94),  
 (87) \$7,000.00 to C and F Trucking (claimant No. 95),  
 (88) \$16,615.00 to Clive A. and Agnes Gildersleeve (claimant No. 96),  
 (89) \$12,763.08 to Gordon G. and Lorraine F. Greenamyre (claimant No. 97),  
 (90) \$21,917.51 to H and R Plumbing and Heating, Inc. (claimant No. 98),  
 (91) \$39,298.25 to Home Insurance Co. (claimant No. 99),  
 (92) \$21,457.92 to Janis Roofing (claimant No. 100),  
 (93) \$6,431.95 to Milbank Mutual Insurance Company (claimant No. 101),  
 (94) \$4,468.00 to Mary F. Pike (claimant No. 102),  
 (95) \$67,511.54 to R and S Construction Company (claimant No. 103),  
 (96) \$12,405.00 to Estate of Wilbur A. Riegert (claimant No. 104),  
 (97) \$19,620.00 to Orville G. Schwarting (claimant No. 105),  
 (98) \$490,934.44 to Sioux, Inc. (claimant No. 106),  
 (99) \$8,275.02 to Stuyvesant Insurance Co. (claimant No. 107),  
 [(100) \$8,028.65 to Oglala Sioux Tribe (claimant No. 108).]  
 (101) \$28,374.00 to Oglala Sioux Housing Authority (claimant No. 109),  
 (102) \$37,679.50 to Aaron DeSersa-Sron (claimant No. 110),  
 (103) \$5,181.45 to Lydia Black Bear (claimant No. 111),  
 (104) \$887.50 to Thomas Casey (claimant No. 112),  
 (105) \$3,984.00 to Roy and Pauline White Butterfly (claimant No. 113),  
 (106) \$3,495.00 to Eleanor Big Owl for George Iron Teeth (claimant No. 114),  
 (107) \$3,168.09 to Standard Oil (Indiana) (claimant No. 115),  
 (108) \$7,335.00 to Shirley Blunt Horn (claimant No. 116),

(109) \$1,866.00 to Eugene and Vera Hunts Horse (claimant No. 118),

(110) \$2,650.40 to Clayton and Vernice Jealous of Him (claimant No. 119),

(111) \$1,021.00 to Keva A. and Reuben R. Mesteth (claimant No. 120),

(112) \$4,234.70 to Hobart Spotted Bear (claimant No. 121), and

(113) \$1,425.00 to Employers Mutual Companies (claimant No. 122).

(b)(1) No portion of any payment made to any person under subsection (a) in excess of 10 percent of the amount of such payment shall be paid or delivered to, or received by, any agent or attorney on account of services rendered in connection with the claim for which such payment is made, and the same shall be unlawful, notwithstanding any contract to the contrary. Violation of the provisions of this paragraph is a misdemeanor punishable by a fine not to exceed \$1,000.

(2) Notwithstanding any other provision of law, no portion of any payment made to a person under this Act shall be included in the income of such person for purposes of any Federal, State, or local income tax. Notwithstanding any other provision of law, payments made to a person under this Act may not be considered as income or resources or otherwise used as the basis for denying or reducing—

(A) any financial assistance or other benefit under the Social Security Act—

(i) to which such person, or the household of such person, is otherwise entitled, or

(ii) for which such person, or the household of such person, is otherwise eligible, or

(B) any other financial assistance or benefit—

(i) to which such person, or the household of such person, is otherwise entitled, or

(ii) for which such person, or the household of such person, is otherwise eligible,

under any program for which part or all of the funding is provided by the Federal Government.

(c) Pursuant to the recommendations of the Chief Commissioner of the United States Court of Claims, the Secretary of the Treasury is authorized and directed to pay, out of funds in the Treasury of the United States not otherwise appropriated, \$26,486.44 to the Dakota Plains Legal Services (formerly South Dakota Legal Services Corporation) for services rendered in connection with the proceeding conducted pursuant to section 2509 of title 28, United States Code, which was initiated by reason of Senate Resolution 378 (94th Congress, agreed to on August 9, 1976).

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendments.

The committee amendments were agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read a third time, the question is, Shall it pass?

So the bill (S. 1305) was passed, as follows:

#### S. 1305

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in full settlement of all claims, legal and equitable, against the United States arising out of activities on the Pine Ridge Indian Reser-*

vation that were the subject of the findings of fact and recommendations submitted to the Senate by the Chief Commissioner of the United States Court of Claims (Congressional Reference 4-76) in response to a request of the Senate made in Senate Resolution 378 (94th Congress, agreed to on August 9, 1976), the Secretary of the Treasury is authorized and directed to pay, out of funds in the Treasury of the United States not otherwise appropriated, the following amounts:

(1) \$731.05 to Joe Leavitt (claimant No. 1),

(2) \$118,771.10 to William Leavitt (claimant No. 2),

(3) \$10,954.48 to Dwight W. and Francis Afraid of Hawk (claimant No. 3),

(4) \$15,073.31 to Stella Bear Shield (claimant No. 4),

(5) \$3,582.00 to Samuel Crooked Eyes (claimant No. 5),

(6) \$2,955.00 to Seth Eagle Bear (claimant No. 6),

(7) \$4,095.00 to Frank and Gonne A. Grooms (claimant No. 7),

(8) \$2,537.00 to Vera High Hawk (claimant No. 8),

(9) \$21,092.00 to John and Nancy Hussman (claimant No. 9),

(10) \$2,245.00 to Jackson and Carolyn Iron Horse (claimant No. 10),

(11) \$4,467.00 to Frances Ice Chase (claimant No. 11),

(12) \$1,838.60 to Eugene Kills in Water (claimant No. 12),

(13) \$3,161.00 to Victoria Little Moon (claimant No. 13),

(14) \$4,929.00 to Clement and Verla Locke (claimant No. 14),

(15) \$11,672.50 to Charles and Martha Moose (claimant No. 16),

(16) \$12,812.00 to Warfield Moose (claimant No. 17),

(17) \$8,025.00 to Patrick and Sophia Pumpkin Seed (claimant No. 18),

(18) \$6,161.25 to Oliver and Margaret Red Eagle (claimant No. 19),

(19) \$24,562.00 to Paul and Eva Red Star (claimant No. 20),

(20) \$7,768.00 to Lillian and Steve Sitting Eagle (claimant No. 21),

(21) \$1,685.10 to Joseph Spotted Bear (claimant No. 22),

(22) \$5,897.25 to Elizabeth Breast (claimant No. 23),

(23) \$3,340.33 to Elmer and Nettie Two (claimant No. 24),

(24) \$7,653.00 to Francis and Marie Randall (claimant No. 25),

(25) \$5,603.00 to Fannie Bear Eagle (claimant No. 26),

(26) \$3,597.00 to Eugene Black Bear, Jr. (claimant No. 27),

(27) \$2,571.00 to Anthony and Linda Black Elk (claimant No. 28),

(28) \$15,833.90 to Homer and Irene Black Elk (claimant No. 29),

(29) \$8,762.75 to Rachel Eagle Bull (claimant No. 30),

(30) \$4,723.00 to Florine (Ice) Hollow Horn (claimant No. 32),

(31) \$6,050.40 to Oscar and Rachel Hollow Horn (claimant No. 33),

(32) \$4,134.40 to Verlean Ice (claimant No. 34),

(33) \$6,880.00 to Claudia Iron Hawk Sully (claimant No. 36),

(34) \$7,735.55 to Paul R. Littlebear-Taylor (claimant No. 37),

(35) \$3,248.10 to Hobart Keith (claimant No. 38),

(36) \$1,350.00 to Mathew H. King (claimant No. 39),

(37) \$4,285.00 to Dallas and Roselyn Little Bear (claimant No. 41),

(38) \$3,053.60 to Julia Little Bear (claimant No. 42),

(39) \$2,083.09 to Mrs. Theresa R. Means (claimant No. 43),

(40) \$3,842.00 to Carol E. Red Star (claimant No. 44),

(41) \$1,194.00 to John Mark Red Star (claimant No. 45),

(42) \$3,793.50 to Neville C. Red Star, Sr. (claimant No. 46),

(43) \$3,525.00 to Darlene Rosane (claimant No. 47),

(44) \$14,882.00 to Garry Rowland (claimant No. 48),

(45) \$2,485.00 to Beverly Running Bear (claimant No. 49),

(46) \$4,025.00 to Rose Shott (claimant No. 50),

(47) \$24,276.00 to Sub-Community of Wounded Knee (claimant No. 51),

(48) \$3,750.00 to Paul Thunder Horse (claimant No. 52),

(49) \$3,593.00 to Robert E. & Lorene E. Thunder Horse (claimant No. 53),

(50) \$5,949.22 to Timothy H. and Audrey K. Thunder Horse (claimant No. 54),

(51) \$1,900.00 to Lester White Butterfly (claimant No. 55),

(52) \$1,455.00 to Daniel Dodge (claimant No. 56),

(53) \$1,100.00 to Mr. & Mrs. Manfred Fast Horse (claimant No. 57),

(54) \$2,207.00 to Helen S. Grant (claimant No. 58),

(55) \$4,715.00 to Florine Hollow Horn ex rel. Bernard Ice, Sr. (claimant No. 59),

(56) \$1,245.00 to Frank Jealous of Him (claimant No. 60),

(57) \$5,756.10 to Matthew and Bessie J. High Pine (claimant No. 61),

(58) \$5,305.00 to Cecelia (Little Moon) Fast Horse (claimant No. 62),

(59) \$4,901.50 to Mabel I. Whiteface (claimant No. 63),

(60) \$3,288.00 to Rachel White Dress (claimant No. 64),

(61) \$2,422.30 to Dorothy Fast Wolf (claimant No. 65),

(62) \$13,018.40 to Frank H. and Wilma Grooms (claimant No. 66),

(63) \$4,334.67 to Jessie and Raymond Red Shirt (claimant No. 68),

(64) \$28,467.95 to Carol J. Deckert Sager (claimant No. 69),

(65) \$2,484.45 to LeRoy "Sunshine" Janis (claimant No. 70),

(66) \$16,754.70 to Rudolph Fire Thunder (claimant No. 71),

(67) \$1,535.50 to Messiah Episcopal Church (claimant No. 72),

(68) \$1,984.26 to Ivy Goings (claimant No. 74),

(69) \$2,679.60 to Dorothy Mae Richards (claimant No. 75),

(70) \$1,640.00 to Elizabeth Bradshaw (claimant No. 77),

(71) \$6,184.00 to Charles Dixon Sasse (claimant No. 78),

(72) \$5,740.70 to Orville and Emma Lansberry (claimant No. 79),

(73) \$2,129.00 to Oscar Jealous of Him (claimant No. 80),

(74) \$1,984.26 to Delores Apple (claimant No. 82),

(75) \$2,502.80 to Chris Hatchett (claimant No. 83),

(76) \$1,920.00 to Gilbert L. and Mary A. Matthews (claimant No. 85),

(77) \$5,623.00 to Irene Jumping Eagle (claimant No. 86),

(78) \$69,461.83 to St. Paul Insurance Companies (claimant No. 87),

(79) \$1,850.00 to John Siers (claimant No. 88),

(80) \$5,505.00 to Amellia M. Clark (claimant No. 89).

(81) \$50,975.94 to George and Violet Coats (claimant No. 90).

(82) \$51,290.45 to James A. Czywczynski & Jeanette J. Czywczynski (claimant No. 91).

(83) \$18,436.58 to Federal Insurance Co. (claimant No. 92).

(84) \$1,650.00 to Stephen E. and JoAnne Ferace (claimant No. 93).

(85) \$12,331.14 to Guy and Jean Fritze (claimant No. 94).

(86) \$7,000.00 to C and F Trucking (claimant No. 95).

(87) \$16,615.00 to Clive A. and Agnes Gildersleeve (claimant No. 96).

(88) \$12,763.08 to Gordon G. and Lorraine F. Greenamyre (claimant No. 97).

(89) \$21,917.51 to H and R Plumbing and Heating, Inc. (claimant No. 98).

(90) \$39,298.25 to Home Insurance Co. (claimant No. 99).

(91) \$21,457.92 to Janis Roofing (claimant No. 100).

(92) \$6,431.95 to Milbank Mutual Insurance Company (claimant No. 101).

(93) \$4,468.00 to Mary F. Pike (claimant No. 102).

(94) \$67,511.54 to R and S Construction Company (claimant No. 103).

(95) \$12,405.00 to Estate of Wilbur A. Riegert (claimant No. 104).

(96) \$19,620.00 to Orville G. Schwarting (claimant No. 105).

(97) \$490,934.44 to Sioux, Inc. (claimant No. 106).

(98) \$8,275.02 to Stuyvesant Insurance Co. (claimant No. 107).

(99) \$28,374.00 to Oglala Sioux Housing Authority (claimant No. 109).

(100) \$37,679.50 to Aaron DeSersa-Sron (claimant No. 110).

(101) \$5,181.45 to Lydia Black Bear (claimant No. 111).

(102) \$887.50 to Thomas Casey (claimant No. 112).

(103) \$3,984.00 to Roy and Pauline White Butterfly (claimant No. 113).

(104) \$3,495.00 to Eleanor Big Owl for George Iron Teeth (claimant No. 114).

(105) \$3,168.09 to Standard Oil (Indiana) (claimant No. 115).

(106) \$7,335.00 to Shirley Blunt Horn (claimant No. 116).

(107) \$1,866.00 to Eugene and Vera Hunts Horse (claimant No. 118).

(108) \$2,650.40 to Clayton and Vernice Jealous of Him (claimant No. 119).

(109) \$1,021.00 to Keva A. and Reuben R. Mesteth (claimant No. 120).

(110) \$4,234.70 to Hobart Spotted Bear (claimant No. 121), and

(111) \$1,425.00 to Employers Mutual Companies (claimant No. 122).

(b)(1) No portion of any payment made to any person under subsection (a) in excess of 10 percent of the amount of such payment shall be paid or delivered to, or received by, any agent or attorney on account of services rendered in connection with the claim for which such payment is made, and the same shall be unlawful, notwithstanding any contract to the contrary. Violation of the provisions of this paragraph is a misdemeanor punishable by a fine not to exceed \$1,000.

(2) Notwithstanding any other provision of law, no portion of any payment made to a person under this Act shall be included in the income of such person for purposes of any Federal, State, or local income tax. Notwithstanding any other provision of law, payments made to a person under this Act may not be considered as income or resources or otherwise used as the basis for denying or reducing—

(A) any financial assistance or other benefit under the Social Security Act—

(i) to which such person, or the household of such person, is otherwise entitled, or

(ii) for which such person, or the household of such person, is otherwise eligible, or

(B) any other financial assistance or benefit—

(i) to which such person, or the household of such person, is otherwise entitled, or

(ii) for which such person, or the household of such person, is otherwise eligible,

under any program for which part or all of the funding is provided by the Federal Government.

(c) Pursuant to the recommendations of the Chief Commissioner of the United States Court of Claims, the Secretary of the Treasury is authorized and directed to pay, out of funds in the Treasury of the United States not otherwise appropriated, \$26,486.44 to the Dakota Plains Legal Services (formerly South Dakota Legal Services Corporation) for services rendered in connection with the proceeding conducted pursuant to section 2509 of title 28, United States Code, which was initiated by reason of Senate Resolution 378 (94th Congress, agreed to on August 9, 1976).

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

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

The motion to lay on the table was agreed to.

#### USE OF DEGRADABLE PRODUCTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 412.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 412) expressing the sense of the Senate with regard to the use of degradable products.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. PRESSLER. Mr. President, Senate Resolution 412 directs the Environmental Protection Agency and General Services Administration to encourage the use of degradable plastics. On April 14, 1988, I submitted the resolution with 15 cosponsors. Since that time, six additional cosponsors have been added. The Senate Environment and Public Works Committee unanimously reported Senate Resolution 412 on September 23, 1988.

We are all aware of the garbage disposal problems cities are facing. Plastics constitute about 10 percent of packaging waste. Recycling technologies are being developed, but are not readily available. As a result, most of this plastic garbage is being buried in landfills, where it will remain for thousands of years.

Landfills are filling up and alternative sites are becoming less available due to increasing urbanization. For example, New York State will close landfills on Long Island by 1990. The U.S. Conference of Mayors recently estimated that more than 50 percent of the Nation's municipalities have fewer than 10 years of landfill capacity left. State and local governments have taken action to encourage the use of degradable plastics. At least 12 States, several local communities, and foreign countries, such as Italy and Denmark, have enacted or proposed bans on various nondegradable plastic products.

Despite our long "Keep America Beautiful" campaign, persistent litter still mars our highways, parks, and communities. We also have become aware of the deadly threats to fish and wildlife from entanglement, strangulation, and consumption of discarded plastic materials.

Although new technologies are being developed to recycle more plastics, at this time these technologies are not readily available for plastics waste. Most community recycling centers do not accept plastics. Waste-to-energy incineration systems are not widespread yet.

Plastics are made from petrochemicals. Our Nation's increasing demand for petroleum, and our need for sources that cannot be jeopardized by foreign interests, have stimulated a wide range of proposals for energy development and conservation. Some of these proposals are controversial and/or costly.

On the other hand, the Nation's agricultural sector is confronted with serious financial concerns. Farmers are faced with depressed commodity prices, while Federal farm program costs are at near record levels. Expanded markets using agricultural commodities for industrial feedstocks could increase commodity prices, reduce farm-program costs and in some areas create new industrial jobs.

New technologies are being developed to address these problems. One currently marketed new technology uses cornstarch to produce biodegradable plastics. It can be used in storage bags and agricultural mulches. One company now uses 20,000 bushels of corn per day for the production of degradable plastic film and estimates future growth could reach 70,000 bushels per day if appropriate market applications could be developed in North America. Other potential degradable plastic products include time-release medication and pesticide delivery systems, noncorrosive road deicers, biodegradable bottles and other packaging containers, biodegradable disposable diapers, and disposable toys.

Another technology undergoing development is cornstarch-based blown-foam containers which could replace

polystyrene foam containers currently popular in the fast-food industry. Polystyrene foam is produced with chlorofluorocarbons [CFC's] which are implicated in global warming and ozone depletion.

Many innovative researchers and developers are making progress in their efforts to make these technologies feasible, economical, and practical. Some observers argue that these efforts will not result in significant improvements in overcoming any of these problems, but I believe that even small improvements are meaningful. They encourage further efforts to cope with pollution. Many useful plastics have been developed, for which other materials are not suitable, and it is true that degradable plastics are not suitable for all uses. However, it is time for the U.S. Senate to recognize, encourage, and applaud these research, development, and implementation efforts.

My resolution urges the Environmental Protection Agency to encourage the development and use of degradable plastics. It also encourages the General Services Administration to use degradable plastic products whenever it is possible to do so. The resolution does not require EPA or GSA to take any action but urges them to take a leadership role through development and use of degradable plastics.

Mr. President, I urge the Senate to agree to this resolution.

The resolution was agreed to.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

The resolution, and the preamble, as amended, are as follows:

#### S. RES. 412

Whereas society is increasing its attention to the issue of solid waste, and plastic waste in particular, for environmental and economic reasons;

Whereas at least twelve States, several local communities, and foreign countries, such as Italy and Denmark, have enacted or proposed bans on various non-degradable plastic products;

Whereas a recent estimate by the United States Conference of Mayors indicated that more than 50 per centum of the Nation's municipalities have less than ten years of landfill capacity left;

Whereas despite our long "Keep America Beautiful" campaign, persistent litter still is strewn about our highways, parks, and communities;

Whereas deadly threats to fish and wildlife exist from entanglement, strangulation, and consumption of discarded plastic materials; and

Whereas recycling technologies are not as available to manage the plastics waste stream as are available for metals, glass, and paper; and

Whereas farmers are faced with depressed commodity prices, while the Federal Government pays for price supports and surplus crop storage costs which could be alleviated by expanded markets; and

Whereas new technologies are being developed which address these problems, such as currently marketed applications that use cornstarch to produce biodegradable plastics: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that the Environmental Protection Agency encourage the use of biodegradable plastic bags and other degradable plastic applications through its pertinent regulatory and informational programs.

Sec. 2. The General Services Administration should implement, when possible, the use of biodegradable bags and other degradable plastic products in its operations.

#### ACCEPTANCE OF DONATIONS BY THE PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4529.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4529) extending permission for the President's Commission on White House Fellows to accept certain donations.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

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 reading and passage of the bill.

The bill (H.R. 4529) was ordered to a third reading, was read the third time and passed.

#### RICHARD CRONIN NATIONAL SALMON STATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1055.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4365) to designate the Sunderland National Salmon Station located in Sunderland, MA, as the "Richard Cronin National Salmon Station."

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the bill (H.R. 4365) was considered, ordered to be read a third time, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

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

The motion to lay on the table was agreed to.

#### JAMES T. FOLEY UNITED STATES COURTHOUSE

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of H.R. 4188 and that the Senate proceed to its immediate consideration.

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

The assistant legislative clerk read as follows:

A bill (H.R. 4188) to designate the U.S. Courthouse located at 445 Broadway in Albany, NY, as the "James T. Foley United States Courthouse."

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the bill (H.R. 4188) was considered to be read a third time, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

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

The motion to lay on the table was agreed to.

#### LIBRARY SERVICES AND CONSTRUCTION ACT AUTHORIZATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 720.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4416) to extend the authorization of appropriations for titles V and VI of the Library Services and Construction Act through fiscal year 1989.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

#### AMENDMENT NO. 3403

Mr. BYRD. Mr. President, on behalf of Senators PELL, STAFFORD, BRADLEY, and MATSUNAGA, I send a substitute amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], (for himself, Mr. PELL, Mr. STAFFORD, Mr. BRADLEY, and Mr. MATSUNAGA), proposes an amendment numbered 3403.

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

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

The amendment is as follows:

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

**TITLE I—LIBRARY SERVICES AND CONSTRUCTION REAUTHORIZATION**

**SEC. 101. PROGRAM REAUTHORIZED.**

Section 4(a) of the Library Services and Construction Act (20 U.S.C. 351b(a)) is amended by striking out "1988" each place it appears in paragraphs (4) and (5) and inserting "1989".

**TITLE II—NATIONAL GEOGRAPHY STUDIES**

**SEC. 201. SHORT TITLE.**

This title may be cited as the "National Geography Studies Centers Act".

**SEC. 202. PROGRAM AUTHORIZED.**

Part F of title IV of the Elementary and Secondary Education Act of 1965 is amended—

(1) by redesignating section 4607 as section 4608;

(2) by striking out "section 4606" in section 4608(a) (as redesignated by paragraph (1)) and inserting in lieu thereof "sections 4606 and 4607"; and

(3) by adding after section 4606 the following new section:

**"SEC. 4607. NATIONAL GEOGRAPHY STUDIES CENTERS.**

"(a) PROGRAM AUTHORIZED.—(1) The Secretary is authorized to enter into a contract with the Education Foundation of the National Geographic Society in order to pay the Federal share of the cost of the establishment and operation of National Geography Studies Centers. Each Center shall be for the study of geography in elementary and secondary schools.

"(2) For the purpose of this section—  
"(A) the term 'contractor' means the Education Foundation of the National Geographic Society; and  
"(B) the term 'Centers' mean the National Geography Studies Centers assisted under this section.

"(b) REQUIREMENTS OF CONTRACT.—The contract described in subsection (a)(1) shall provide that—  
"(1) funds made available to the contractor pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and operating the Centers in accordance with this section; and  
"(2) the contractor will carry out the provisions of this section.

"(c) ESTABLISHMENT OF CENTERS.—In carrying out the provisions of this section, the contractor may enter into contracts with or make grants to local educational agencies, State educational agencies, State higher educational agencies, institutions of higher education, or consortia thereof, to establish and operate the Centers.  
"(d) FUNCTIONS OF THE CENTERS.—(1) Each Center assisted under this section shall—  
"(A) support programs for the study of geography for elementary and secondary school students, that may include laboratory schools and summer institutes;  
"(B) support programs which provide elementary and secondary school teacher retraining and inservice training in geography and may make provision for teacher stipends for the period of participation in the program; and  
"(C) establish procedures, through an advisory panel, for selecting elementary and secondary school students and teachers for the programs supported through the centers.

The selection procedures under subparagraph (C), to the extent practicable, shall take into account geographic distribution

and the needs for greater access to, and participation in, geography studies by students and teachers from historically underrepresented groups including females, minorities, and individuals with handicaps.

"(2) Each Center may—  
"(A) support the development and dissemination of innovative curriculum in geography;

"(B) develop geography curriculum to be used in other subject areas such as environmental studies, science, international culture and politics, history, and foreign language studies; and  
"(C) provide technical and resource assistance in geography to elementary and secondary schools in the region served by the Center.

"(e) FEDERAL SHARE.—The Federal share for each fiscal year shall be 75 percent."

**SEC. 203. AUTHORIZATION OF APPROPRIATIONS.**

Section 4608 of the Elementary and Secondary Education Act of 1965 (as redesignated by section 202) is amended by adding at the end thereof the following new subsection:

"(d) There are authorized to be appropriated \$5,000,000 for the fiscal year 1989, and each succeeding fiscal year ending prior to October 1, 1993, to carry out section 4607."

**TITLE III—UNITED STATES INSTITUTE OF PEACE**

**SEC. 301. REAUTHORIZATION.**

Section 1710(a) of the Department of Defense Authorization Act, 1985 (22 U.S.C. 4609(a)) is amended to read as follows:

"Sec. 1710. (a)(1) For the purpose of carrying out this title (except for paragraph (9) of section 1705(b)), there are authorized to be appropriated \$10,000,000 for fiscal year 1989; \$10,000,000 for fiscal year 1990; \$10,000,000 for fiscal year 1991; \$15,000,000 for fiscal year 1992; and \$15,000,000 for fiscal year 1993.

"(2) Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended."

(b) Section 1707(f)(2) of the United States Institute of Peace Act (22 U.S.C. 4606(f)(2)) is amended by striking out the first sentence thereof.

Mr. PELL. Mr. President, I rise to voice my support for the amendment to the Library Services and Construction Act currently before us.

First, the amendment reauthorizes two titles of the Library Services and Construction Act through fiscal year 1989 in a straight extension. Title V provides discretionary grants of up to \$15,000 for the acquisition of foreign language materials by state and local public libraries. Title VI authorizes discretionary grants up to \$25,000 for planning and conducting literacy programs in public libraries.

In addition, we have included a \$5 million authorization to support regional geography studies centers in a program spearheaded by the National Geographic Society. These centers would use the considerable expertise of the National Geographic Society to strengthen geography instruction in elementary and secondary schools. This authorization would enable the centers to provide year-round and summer teacher training programs, to develop model curricula, and to assist

school districts in offering districtwide programs in geography education.

This amendment is an outgrowth of the concern that my colleague Senator BRADLEY raised about the appalling degree of geography illiteracy in this country. It is a modification of S. 2642, legislation both Senator STAFFORD and I introduced to address the need to improve our awareness of geography. I would like to commend the other half of the firm of PELL and STAFFORD for his strong interest in geography education and his assistance in developing this legislation. Senator STAFFORD, through his distinguished work on environmental matters, has long recognized that progress in solving environmental crises can only be reached when our citizenry has a fundamental understanding of world geography.

Finally, the bill includes a 5-year reauthorization of the Peace Institute. Since the Institute was established in 1984, it has done a great deal to promote scholarship and research in areas essential for understanding and promoting peace.

The Institute is the realization of a dream as old as our Constitution. In the late 1700's, some of our Nation's early leaders sought to establish a Peace Office equal in stature to that of the War Department. As Benjamin Banneker and Dr. Benjamin Rush wrote:

It is hoped that no objection will be made to the establishment of (an office for promoting and preserving perpetual peace in our country) \* \* \* for as the War-Office of the United States was established in the time of peace, it is equally reasonable that a Peace-Office should be established in the time of war.

Senator MATSUNAGA has taken these words to heart as he has fought tirelessly during his tenure in the Senate to see this idea become a reality. It is through his efforts that we have this reauthorization before us today.

The amendment to the Library Services and Construction Act, then, is a good measure worthy of strong Senate support. I urge my colleagues to vote in favor of passage.

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

The amendment (No. 3403) was agreed to.

Mr. MATSUNAGA. Mr. President, I rise in strong support of H.R. 4416 which would extend vital portions of the Library Services and Construction Act.

I also strongly urge the adoption of an amendment to the bill, which would extend the authorization of the U.S. Institute of Peace for 5 years, through fiscal year 1993. This amendment, relating to the Peace Institute, is being offered with 64 cosponsors, a fact which reflects the growing sup-

port for the Institute in Congress and throughout the Nation.

Created by Congress in 1984, the Institute is mandated to provide peace research, education and training for individuals and organizations in both the public and private sectors. The Institute may accomplish these goals through its own in-house research and training programs, by providing grants or contracts to develop and strengthen peace research, education and training programs at other institutions, through its public outreach programs, and through the Jennings Randolph Program for International Peace.

The Institute's Board of Directors was nominated by President Reagan and confirmed by the Senate in 1985, and sworn into office in February 1986. Under the able leadership of Board Chairman John Norton Moore, the Institute established its headquarters here in Washington, DC, and hired a modest staff. During its first 2 years of operations, the first Jennings Randolph Program fellows were appointed, and nearly \$2 million in grants to other institutions and individuals were awarded. The Institute also launched its first in-house research project, an "intellectual map of the international peace field," and initiated several public outreach projects including a high school essay contest, a newsletter, and a pilot television program on summity which was broadcast by a number of public television stations last December, on the eve of the Reagan/Gorbachev summit in Washington, DC.

As predicted, Mr. President, the Institute of Peace is providing a unique and much needed boost to peace research, education and training in this country. The Institute is ready, now, to do much more in this area and it deserves the continued support of the Congress to help make the United States a real leader in the search for world peace. I urge the adoption of this amendment.

Mr. STAFFORD. Mr. President, I rise in support of H.R. 4416, a bill to extend the authorization of appropriations for titles V and VI of the Library Services and Construction Act, and for several other purposes. The effect of this legislation will be to put titles V and VI of LSCA on the same reauthorization schedule as the remaining titles of the bill.

Also included in H.R. 4416, are two amendments which are of particular interest and importance to this Senator. First, this bill will authorize a new program titled the "National Geography Study Centers Act." It is a modest initiative—\$5 million—which will serve a vital purpose. The establishment of National Geography Study Centers around the Nation will mark the beginning of a much needed, and long overdue, thrust toward geographic literacy. The National Geographic Socie-

ty is the established leader in training teachers in the disciplines related to geographic literacy, and developing curriculum for elementary and secondary school classrooms. This legislation directs the Secretary of Education to work in cooperation with the National Geographic Society to expand those teacher training opportunities through the establishment of regional centers.

Mr. President, our Nation's leadership in world affairs is dependent on American citizens who are informed about global issues. Over the past year, because of heightened congressional interest and increased public awareness about the importance of geographic literacy, we have seen schoolchildren once again learning about the physical and cultural features of our planet. These are important steps forward which the passage of this legislation will further encourage.

The second amendment attached to H.R. 4416 reauthorizes the U.S. Institute for Peace for 5 years with a modest increase in funding. I urge my colleagues to join Senator PELL and myself in quick adoption of this important legislation.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and 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 a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 4416), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

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

The motion to lay on the table was agreed to.

#### JOHN DENT POST OFFICE BUILDING

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be discharged from further consideration of H.R. 4433 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER (Mr. WIRTH). Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4433) to designate the United States Post Office Building in Jeannette,

Pennsylvania, as the "John Dent Post Office Building."

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. HEINZ. Mr. President, I am pleased to join my House colleague, Representative JOHN MURTHA, in sponsoring legislation to recognize the achievements of our former colleague, the late Representative John Dent of Jeannette, PA.

Congressman Dent's record of service to Pennsylvania and the Nation was long: he served in the U.S. Marine Corps, was a Jeannette City Councilman, and a member of the Pennsylvania State House and the State Senate, where he served as the Democratic floor leader. As a Member of the U.S. House of Representatives and chairman of the House Subcommittee on Labor Standards, John Dent is remembered as a thoughtful legislator and as an expert in the area of labor and pension law. John Dent retired from the House in 1978 due to health reasons after 20 years of service.

In honor of this exemplary Member of Congress, I am pleased to support this legislation to give recognition to this man's achievements through the establishment of the John Dent Post Office Building.

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 bill.

The bill (H.R. 4433) was ordered to a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

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

The motion to lay on the table was agreed to.

#### JAMES DOMENGEAUX POST OFFICE BUILDING

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be discharged from further consideration of H.R. 4276, and that the Senate proceed to its immediate consideration.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4276), to designate the Post Office Building located at 1105 Moss Street in Lafayette, LA, as the "James Domengeaux Post Office Building."

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. BREAUX. Mr. President, I am glad to see the Senate take up consideration today of H.R. 4276, a bill to rename the Post Office in Lafayette, LA after James Domengeaux.

James Domengeaux is remembered as a friend to thousands who were touched by his sense of service and dedication to America. In 1944, when he was serving as the U.S. Congressman from the third District of Louisiana, Mr. Domengeaux resigned to serve in the Armed Forces during World War II. He was only the third Member of Congress since the Civil War to have made this sacrifice.

James Domengeaux was reelected to Congress after the war and continued to serve the Third District until 1948. When he left Congress, he went into private practice as an attorney but did not leave behind his commitment to serving Louisiana. He was an original member of the State's Tidelands Committee and served as the secretary of the Louisiana Science Foundation.

Possibly his greatest contribution, though, came from his work with CODOFIL. This organization, the Council for the Development of French in Louisiana, was and remains dedicated to preserving Louisiana's unique French language and culture. James Domengeaux was a founder of CODOFIL and served as its chairman for many years. He worked to preserve Louisiana's unique culture by bringing together State and local officials, parish school boards and community leaders. He convinced them of the need to promote and encourage the revival of the French heritage and culture that he saw beginning to fade away.

Mr. Domengeaux was instrumental in sending many teenagers from Louisiana to places where they could learn the French language and immerse themselves in French culture. He sent kids to Quebec, Canada and to France and Belgium. His efforts were a catalyst in a renaissance of the French language and a new-found sense of pride in the area's Acadian background.

James Domengeaux died recently, but his dedication and achievements will be remembered for a long time in Acadiana and throughout the State of Louisiana. It is a fitting tribute that we are bestowing today—naming one of our public buildings after one of our favorite sons. I thank my colleagues for their help in passing this dedication and commend the example set by James Domengeaux's service to all who have the privilege to serve in the U.S. Congress.

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 bill.

The bill (H.R. 4276) was ordered to a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

#### MEMORIAL FOR MAHATMA GANDHI

Mr. BYRD. Mr. President, I ask unanimous consent that H.R. 3455, a bill establishing a memorial in the District of Columbia for Mahatma Gandhi, be discharged from the Committee on Energy and Natural Resources and be referred to the Committee on Rules and Administration.

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

#### BILL PLACED ON CALENDAR—S. 2856

Mr. BYRD. Mr. President, I ask unanimous consent that S. 2856, an age-discrimination bill, introduced earlier today by Senator METZENBAUM and others, be placed on the calendar.

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

#### ABANDONED INFANTS ASSISTANCE ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 945.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 945) entitled "An Act to require the Secretary of Health and Human Services to make grants to local governments for demonstration projects to provide respite homes and other assistance for infants abandoned in hospitals, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause and insert:

##### SECTION 1. SHORT TITLE.

*This Act may be cited as the "Abandoned Infants Assistance Act of 1988".*

##### SEC. 2. FINDINGS.

*The Congress finds that—*

(1) throughout the Nation, the number of infants and young children who have been exposed to drugs taken by their mothers during pregnancy has increased dramatically;

(2) the inability of parents who abuse drugs to provide adequate care for such infants and young children and a lack of suitable shelter homes for such infants and young children have led to the abandonment of such infants and young children in hospitals for extended periods;

(3) the vast majority of these infants and young children will be medically cleared for

discharge, yet remain in hospitals as boarder babies;

(4) hospital-based child care for these infants and young children is extremely costly and deprives them of an adequate nurturing environment;

(5) training is inadequate for foster care personnel working with medically fragile infants and young children and infants and young children exposed to drugs;

(6) a particularly devastating development is the increase in the number of cases of acquired immune deficiency syndrome in infants and young children, and the number of such cases has doubled within the last 13 months;

(7) more than 80 percent of infants and young children with acquired immune deficiency syndrome have at least one parent who is an intravenous drug abuser;

(8) infants and young children with acquired immune deficiency syndrome are particularly difficult to place in foster homes, and are being abandoned in hospitals in increasing numbers by mothers dying of acquired immune deficiency syndrome, or by parents incapable of providing adequate care;

(9) there is a need for comprehensive services for such infants and young children, including foster family care services, case management services, family support services, respite and crisis intervention services, counseling services, and group residential home services; and

(10) there is a need for the development of funding strategies that coordinate and make the optimal use of all private resources, and Federal, State, and local resources, to establish and maintain such services.

#### TITLE I—FOSTER CARE AND RESIDENTIAL CARE OF INFANTS AND YOUNG CHILDREN ABANDONED IN HOSPITALS

##### SEC. 101. ESTABLISHMENT OF PROGRAM OF DEMONSTRATION PROJECTS.

(a) IN GENERAL.—The Secretary of Health and Human Services may make grants to public and nonprofit private entities for the purpose of developing, implementing, and operating projects to demonstrate methods—

(1) to prevent the abandonment of infants and young children;

(2) to identify and address the needs of abandoned infants and young children, particularly those with acquired immune deficiency syndrome;

(3) to assist abandoned infants and young children, particularly those with acquired immune deficiency syndrome, to reside with their natural families or in foster care, as appropriate;

(4) to recruit, train, and retain foster families for abandoned infants and young children, particularly those with acquired immune deficiency syndrome;

(5) to carry out residential care programs for abandoned infants and young children, particularly those with acquired immune deficiency syndrome;

(6) to carry out programs of respite care for families and foster families of infants and young children with acquired immune deficiency syndrome; and

(7) to recruit and train health and social services personnel to work with families, foster care families, and residential care programs for abandoned infants and young children, particularly those with acquired immune deficiency syndrome.

(b) CASE PLAN WITH RESPECT TO FOSTER CARE.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, if the applicant ex-

pend the grant to carry out any program of providing care to infants and young children in foster homes or in other nonmedical residential settings away from their parents, the applicant will ensure that—

(1) a case plan of the type described in paragraph (1) of section 475 of the Social Security Act is developed for each such infant and young child (to the extent that such infant and young child is not otherwise covered by such a plan); and

(2) the program includes a case review system of the type described in paragraph (5) of such section (covering each such infant and young child who is not otherwise subject to such a system).

(c) **ADMINISTRATION OF GRANT.**—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees—

(1) to use the funds provided under this section only for the purposes specified in the application submitted to, and approved by, the Secretary pursuant to subsection (d);

(2) to establish such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement and accounting of Federal funds paid to the applicant under this section;

(3) to report to the Secretary annually on the utilization, cost, and outcome of activities conducted, and services furnished, under this section; and

(4) that if, during the majority of the 180-day period preceding the date of the enactment of this Act, the applicant has carried out any program with respect to the care of abandoned infants and young children, the applicant will expend the grant only for the purpose of significantly expanding, in accordance with subsection (a), activities under such program above the level provided under such program during the majority of such period.

(d) **REQUIREMENT OF APPLICATION.**—The Secretary may not make a grant under subsection (a) unless—

(1) an application for the grant is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) **TECHNICAL ASSISTANCE TO GRANTEEES.**—The Secretary may, without charge to any grantee under subsection (a), provide technical assistance (including training) with respect to the planning, development, and operation of projects described in such subsection. The Secretary may provide such technical assistance directly, through contracts, or through grants.

(f) **TECHNICAL ASSISTANCE WITH RESPECT TO PROCESS OF APPLYING FOR GRANT.**—The Secretary may provide technical assistance (including training) to public and nonprofit private entities with respect to the process of applying to the Secretary for a grant under subsection (a). The Secretary may provide such technical assistance directly, through contracts, or through grants.

**SEC. 102. EVALUATIONS, STUDIES, AND REPORTS BY SECRETARY.**

(a) **EVALUATIONS OF DEMONSTRATION PROJECTS.**—The Secretary shall, directly or through contracts with public and nonprofit private entities, provide for evaluations of projects carried out under section 101 and for the dissemination of information developed as result of such projects.

(b) **STUDY AND REPORT ON NUMBER OF ABANDONED INFANTS AND YOUNG CHILDREN.**—

(1) The Secretary shall conduct a study for the purpose of determining—

(A) an estimate of the number of infants and young children abandoned in hospitals in the United States and the number of such infants who have acquired immune deficiency syndrome; and

(B) an estimate of the annual costs incurred by the Federal Government and by State and local governments in providing housing and care for such infants and young children.

(2) The Secretary shall, not later than 12 months after the date of the enactment of this Act, complete the study required in paragraph (1) and submit to the Congress a report describing the findings made as a result of the study.

(c) **STUDY AND REPORT ON EFFECTIVE CARE METHODS.**—

(1) The Secretary shall conduct a study for the purpose of determining the most effective methods for responding to the needs of abandoned infants and young children.

(2) The Secretary shall, not later than April 1, 1991, complete the study required in paragraph (1) and submit to the Congress a report describing the findings made as a result of the study.

**SEC. 103. DEFINITION.**

For purposes of this title, the term "abandoned infants and young children" means infants and young children who are medically cleared for discharge from acute care hospital setting, but who remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives.

**SEC. 104. AUTHORIZATION OF APPROPRIATIONS.**

For the purpose of making grants under section 101, there are authorized to be appropriated \$10,000,000 for fiscal year 1989, \$12,000,000 for fiscal year 1990, and \$15,000,000 for fiscal year 1991.

**SEC. 105. TERMINATION OF PROGRAM.**

No grant may be made under section 101 after September 30, 1991.

**TITLE II—MEDICAL COSTS OF TREATMENT WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME**

**SEC. 201. STUDY AND REPORT ON ASSISTANCE.**

(a) **STUDY.**—The Secretary shall conduct a study for the purpose of—

(1) determining cost-effective methods for providing assistance to individuals for the medical costs of treatment of conditions arising from infection with the etiologic agent for acquired immune deficiency syndrome, including determining the feasibility of risk-pool health insurance for individuals at risk of such infection;

(2) determining the extent to which Federal payments under title XIX of the Social Security Act are being expended for medical costs described in paragraph (1); and

(3) providing an estimate of the extent to which such Federal payments will be expended for such medical costs during the 5-year period beginning on the date of the enactment of this Act.

(b) **REPORT.**—The Secretary shall, not later than 12 months after the date of the enactment of this Act, complete the study required in subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made as a result of the study.

**TITLE III—GENERAL PROVISIONS**

**SEC. 301. DEFINITIONS.**

For purposes of this Act:

(1) The term "acquired immune deficiency syndrome" includes infection with the etiologic agent for such syndrome, any condition indicating that an individual is infected with such etiologic agent, and any condition arising from such etiologic agent.

(2) The term "Secretary" means the Secretary of Health and Human Services.

Amend the title so as to read: "An Act to authorize the Secretary of Health and Human Services to make grants for demonstration projects for foster care and residential care of infants and young children abandoned in hospitals, and for other purposes."

Mr. BYRD. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

### INSPECTOR GENERAL ACT

Mr. BYRD. Mr. President, I submit a report of the committee of conference on S. 908 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 908) to amend the Inspector General Act of 1978 to establish Offices of Inspector General in certain departments, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the Record of September 30, 1988.)

Mr. GLENN. Mr. President, I commend to my colleagues passage of the conference report on S. 908, a bill to amend the Inspector General Act of 1978 to establish Offices of Inspector General in certain departments, and for other purposes. This bill is the result of one of my first initiatives as chairman of the Governmental Affairs Committee—to review the status of audit and investigative coverage throughout government. Specifically, I sought to determine whether a case could be made for expanding the inspector general concept to departments, agencies and other federally-funded entities not currently covered by the 1978 Inspector General Act.

That law, which will be 10 years old on October 12, established permanent Offices of Inspector General in 12 departments and agencies, to join the two already in the Department of Health, Education and Welfare and the Energy Department. These offices, as well as several more created by subsequent legislation, were established to serve as an important check on gov-

ernment waste, fraud and mismanagement and to aid the Congress' oversight committees by providing invaluable information from their audits, investigations and analyses. In short, they were set up to maintain and elevate public confidence in Government.

With the assistance and cooperation of the Ranking Minority Member, Senator ROTH, the committee held three hearings in 1987 on the operations and needs of the inspector general community and conducted numerous interviews with knowledgeable Government officials. The statistics the committee heard from the current IG community were quite impressive:

From March 1981 through fiscal year 1987, the current inspectors general claim that over \$100 billion in Federal funds have been saved or put to better use as a result of management actions on their findings and recommendations;

During this same period, the IG's claim responsibility for over 23,000 successful prosecutions against wrongdoers who defrauded Federal programs and over 8,000 administrative sanctions against unscrupulous individuals and firms doing business with the Government.

The accomplishments of the IG community in fulfilling the mandate of the 1978 legislation and the Governmental Affairs Committee's own review made it clear that there was a need to establish better audit and investigation capabilities in a number of departments, agencies, and federally funded entities not covered by the 1978 law.

I introduced S. 908 in April 1987. The bill, which was cosponsored by every member of the Governmental Affairs Committee, passed the Senate in February 1988 by a vote of 85 to 0. H.R. 4054, the House version of the bill, introduced by Congressmen BROOKS and HORTON, was adopted on July 26 by voice vote.

There were several important substantive differences between the two bills which were resolved in conference. S. 908 will extend the statutory inspector general concept to nearly 40 additional departments, agencies, and designated Federal entities. In addition, S. 908 contains some long needed amendments to the Inspector General Act of 1978 by providing uniform definitions, standards, and authorities applicable to all inspectors general. S. 908 includes several changes made to the bill by the House which, in my judgment, have the effect of strengthening and clarifying the IG's role in government. All of these changes are important and timely adjustments of the IG system, so that it will work even more successfully in the years to come.

S. 908 creates Offices of Inspector General—headed by Presidentially appointed, Senate-confirmed IG's—in

the Departments of Justice and the Treasury, the Office of Personnel Management, the Federal Emergency Management Agency, and the Nuclear Regulatory Commission. The creation of these new Offices of Inspector General is supported by the General Accounting Office.

All of these agencies were left out of the original law 10 years ago. But they are major agencies, with huge budgetary authority, important missions, and programs that require strict controls against fraud, waste, and abuse. In particular, the committee's investigation of serious deficiencies in the audit and investigation functions at the NRC demonstrated the need for a truly independent inspector general in that independent regulatory agency. Unlike the current situation at the NRC, a statutory inspector general would have the authority and expertise to investigate wrongdoing wherever it occurs, even if it may involve the office of an NRC Commissioner.

Currently, the Justice and Treasury Departments are the only two Cabinet-level Departments without statutory Offices of Inspector General. In April 1981, President Reagan supported legislation creating additional inspectors general "who will have powers tailored to the specific needs of the Departments of \* \* \* Treasury, and Justice."

However, the administration subsequently retreated from this position and over the years the two Departments at issue resisted enactment of such legislation, arguing that no legislative formulation specifically met their particular needs.

The Governmental Affairs Committee's recent, in-depth reviews of the Justice and Treasury Departments indicate that such opposition to inspector general legislation is unjustified. These departments, like the 19 Federal agencies before them, share the basic need for the leadership of an independent statutory inspector general. Such an individual will better assist the department heads and their program managers to make the most efficient, effective and legal use of the resources available for their law enforcement and myriad other missions. Moreover, the semiannual reports summarizing the IGs' audit and investigative activities will aid the Treasury Secretary's, Attorney General's and Congress' oversight of the departments' programs and operations.

At the same time, the committee recognizes the propriety of including "special provisions" for these departments designed to accommodate their specific needs and unique missions. The precedent for this was established in 1982 legislation creating the IG Office at the Defense Department.

With regard to the Treasury Department, the "special provisions" which were included in the initial Senate bill

have been retained, with one major revision. Unlike the Senate-passed bill, the conference agreement does not include a separate IG for the IRS. Instead, the conference agreement provides that the single Treasury IG must abide by procedures governing access to and disclosure of taxpayer returns and return information. The Treasury Department and IRS do not object to S. 908, as revised in conference.

The Justice Department was not included in the initial Senate bill to provide the Senate with more time to fully evaluate the GAO's 1986 recommendation for a statutory IG in the Department. In May 1987, the Governmental Affairs Committee held a hearing that focused in part on the status of the audit and internal investigative functions at the Justice Department. Among the many concerns expressed at the hearing was the fact that the audit activities were not consolidated in one Department-level office, and that too many individuals were responsible for this function. The Justice Department indicated that it was proposing a reorganization of its audit activities by creating an "Office of Audit and Review" that would be a single, independent office reporting directly to a high-level official. This proposal would not have transferred the Department's Office of Professional Responsibility or any other internal investigation offices into the Office of Audit and Review.

This reorganization never occurred. Since the Governmental Affairs Committee's hearing, the Legislation and National Security Subcommittee of the House Committee on Government Operations has finished its review of the problems in Justice's 14 separate audit and internal investigations units. In June 1988 the committee published the results of its study for use in considering the House bill to extend the statutory IG concept to the Departments of Justice and the Treasury.

Frankly, the most difficult issue for the conference committee to resolve was the relationship between the Justice Department's Office of Professional Responsibility, known as "O-P-R," and the proposed Office of Inspector General. OPR is a small unit of 6 to 8 attorneys, who supervise and carry out internal investigations of Department and bureau employees. Normally, such a function would be automatically transferred to the new Office of Inspector General.

The conference agreement reflects an effort to accommodate the Attorney General's concern about impinging upon the Attorney General's authority to investigate allegations of misconduct by officers and employees of the Justice Department, especially those who perform attorney, criminal investigations, or other law enforcement functions. In deference to the

specific request of the current Attorney General, who assisted in the creation of OPR in 1975, the Senate receded to the House and retained OPR outside the Office of Inspector General.

In addition, the conference agreement requires the IG to refer to the head of OPR, for investigation, any information or allegations relating to alleged misconduct on the part of Justice Department attorneys, criminal investigators, and law enforcement personnel. Under this arrangement, I expect that every effort will be made by the IG and the head of OPR to coordinate efforts, share resources and combine their expertise to provide the Attorney General and the Department's program managers with the best possible audit and investigative coverage.

In the future the Attorney General may determine that the Office of Professional Responsibility and several other audit, internal investigation, and inspection units remaining outside the Office of Inspector General should be consolidated in that Office. Pursuant to the Inspector General Act, the Attorney General is authorized to effect the transfer of resources and functions necessary to achieve this consolidation. Such a transfer would be consistent with the inspector general concept, and I urge that the Attorney General give early and careful consideration to this action.

Mr. President, this administration was initially unwilling to consider extending the statutory inspector general concept to the Justice and Treasury Departments.

However, with diligence and hard work, we were able to bring the administration to the negotiating table to work out a reasonable and workable compromise. In view of the extensive discussions held with representatives of this administration to reach agreement on this legislation, particularly the former Secretary of the Treasury and the current Attorney General, I am confident that this bill specifically meets the particular needs of these two Departments.

I ask unanimous consent to insert into the RECORD a September 26, 1988, letter from Attorney General Thornburgh to me stating that the Department of Justice will not object to the enactment of S. 908, as revised in conference.

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

OFFICE OF THE ATTORNEY GENERAL,  
Washington, DC, September 26, 1988.

HON. JOHN GLENN,  
Chairman, Committee of Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Several days ago, in light of an apparent consensus among the Members of Congress that an Inspector General for the Department of Justice should be included in the report resulting

from the Conference of the House and the Senate on S. 908, I authorized my staff to work with yours to develop language that would meet our basic concerns with the House bill.

As I indicated in my letter of September 13, I believe that any Attorney General must have the authority to investigate allegations of misconduct by officers and employees of this Department, especially, investigative, prosecutorial, and law enforcement personnel. I argued that the Office of Professional Responsibility (OPR), which was created during my previous tenure in the Department, has handled this function efficiently and with unquestioned integrity. The proposed compromise responds, in large part, to that issue by recognizing the existence of OPR, and by requiring the Inspector General to refer to OPR any allegations relating to the conduct of attorney, investigative, or law enforcement personnel.

The proposed compromise also provides authority for the Attorney General to prohibit the IG from carrying out certain audits or investigations, if to do so would involve sensitive matters involving ongoing investigations or proceedings, undercover operations, confidential sources, or intelligence and other national security matters.

I want you to know that I very much appreciate the considerable efforts that you and the Senate Committee staff, on both sides of the aisle, have made to craft language that retains OPR and that attempts to address the other reservations reflected by my letter. While we have made significant progress, thanks in large part to the willingness of you and Senator Roth to work with us, points of disagreement still remain.

Specifically, the bill treats differently the law enforcement agencies within the Executive Branch. The U.S. Marshals Service, the Immigration and Naturalization Service, and the Bureau of Prisons are, unlike comparable agencies such as the Secret Service and the Bureau of Alcohol, Tobacco, and Firearms, required to transfer to the new Inspector General all of their internal affairs or internal investigative resources. In my judgment, no law enforcement agency should be precluded from having the authority to investigate and to react instantly to situations that strike at the very heart of its mission. We appreciate your attempt to address this issue by including in the compromise a provision that requires the IG to transfer back to OPR 20 positions, which will give OPR additional resources to conduct misconduct investigations throughout the Department.

In addition, I remain concerned about the effect that an Inspector General may have on some of the Department's unique investigative and law enforcement functions, particularly those of the Federal Bureau of Investigation and the Drug Enforcement Administration, as well as the effect on the exercise of prosecutorial and litigative discretion.

Mr. Chairman, I continue to believe, personally, that a statutory Inspector General for the Department of Justice is unnecessary and unwarranted as a matter of policy and law. This has been the long-standing position of the Department as well, both in this and in previous Administrations. However, I recognize and am grateful for your good faith and responsible efforts to address our heartfelt concerns, and I accept the fact that the legislative environment precludes us from going any further at this time. On that basis, I intend to recommend to the

President that we not oppose adoption of the agreed-upon Conference provisions.

Sincerely,

DICK THORNBURGH,  
Attorney General.

Mr. GLENN. Before turning the floor over to the distinguished ranking minority member of the Governmental Affairs Committee, I would like to take this opportunity to revisit an early action of the Reagan administration and sound a note of caution for future administrations concerning the IG community. Under the law, the IG's are required to be appointed by the President "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financing analysis, law, management analysis, public administration, or investigations." Unlike most Presidential appointees, inspectors general are not permitted to engage in partisan, political activities. An Inspector General may only be removed by the President and if removed, the President must communicate the reasons to both Houses of Congress.

On January 20, 1981, as one of his first official acts, President Reagan ordered the mass removal of all incumbent inspectors general. In his letter to the Speaker of the House and the President of the Senate, President Reagan made clear that the inspectors general were being treated in the same manner as other political appointees. I believe President Reagan's wholesale removal of all incumbent inspectors general without any meaningful examination of their qualifications and performance was a serious mistake that should not be repeated by any future President. Such mass removal gives the appearance of an attempt to politicize these nonpolitical offices, an act which flies in the face of the spirit, if not the letter of the law.

Mr. President, Senator ROTH, the ranking minority member of the Governmental Affairs Committee and an original cosponsor of S. 908, deserves special tribute for his leadership in the area of fighting Government waste, fraud and abuse. During the time we have served together on the Governmental Affairs Committee, he has tirelessly worked for more efficient Government. Over the years he has consistently introduced or cosponsored legislation to improve and fine-tune the Inspector General system. His contribution to crafting this legislation has been considerable and I greatly appreciate his cooperation in moving it forward so we have it under consideration today. I also want to give particular credit to the staff members of the Governmental Affairs Committee who were instrumental in producing this legislation and negotiating it through the Senate and the conference.

Dr. Leonard Weiss, the staff director, planned the project with me and supervised it from the beginning. Lorraine Lewis and Stephen Ryan, counsels to the committee, carried the heavy day-to-day burden of investigations, hearings, and negotiations needed to bring the legislation to its final form and to a successful conclusion. The assistance and cooperation of the minority staff, particularly John Parisi and Martha Morrison, who also put in long hours to work out the necessary details of this legislation, were essential to this success.

I also would like to thank the other members of the conference committee—Senators CHILES, SASSER, PRYOR, STEVENS, and HEINZ—and their staffs, for contributing to the success of this bill and doing such an outstanding job.

With those comments, Mr. President, I yield the floor.

Mr. ROTH. Mr. President, I am pleased to join the distinguished Governmental Affairs Committee chairman, my friend, JOHN GLENN, to urge our colleagues to support the conference report on S. 908, the Inspector General Act Amendments of 1988. This is a most important piece of legislation that has been forged with strong bipartisan support. I believe it is particularly appropriate that we are considering this legislation now—during the 10th anniversary of the Inspector General Act of 1978.

As my colleagues know, the IG Act was designed to improve the auditing and investigative functions in Federal agencies so that American taxpayers could be more confident that their tax dollars are being spent appropriately and wisely. Each Office of Inspector General established was intended to consolidate under one independent official the responsibility of preventing and detecting waste, fraud, and abuse in Federal programs, as well as to promote the efficiency and effectiveness of those programs.

Charging the IG's with the responsibility to carry out all audits and investigations related to management efficiency, Congress intended that the IG's would be our first line of defense in attacking waste, fraud, and abuse. Because of their responsibility to report semiannually to Congress on their findings and activities, and to immediately notify Congress whenever they encounter a particularly flagrant example of fraud or mismanagement, the IG's have a unique role in our Government.

The concept has proven over the past decade to be highly successful in improving the use of Federal resources. The inspectors general more than pay for themselves in terms of misspent funds recovered as well as costs avoided. In fact, in a statement delivered recently before a congressional panel, Joe Wright, Deputy Director of OMB, testified that "for

every dollar we spend on the IG's, we have gotten about \$45 in return in better use of funds and recoveries."

Moreover, the President's Council on Integrity and Efficiency [PCIE] has reported that in fiscal year 1987 alone, the inspectors general reported \$20 billion in recoveries, savings, and avoidance of unnecessary expenditures; 4,365 convictions; and 2,059 administrative sanctions against persons or firms doing business with the Government. I think my colleagues will agree that the IG's have collectively achieved some very notable successes in the fight against poor management and fraudulent activities.

As I have stated in the past, I believe it is very important that we continue to extend the IG concept to those establishments that have not had the benefit of this checkpoint. The conference report we bring to the floor today will do just that by establishing new statutory Offices of Inspector General with Presidentially appointed IG's in the Departments of the Treasury and Justice—the only two remaining Departments in the Federal Government without statutory IG's—as well as the Federal Emergency Management Agency, the Nuclear Regulatory Commission, and the Office of Personnel Management.

As the chairman has indicated, the statutory establishment of these Presidentially appointed IG's has been recommended by the General Accounting Office on several occasions. While the President has in the past supported the establishment of statutory IG's "who will have powers tailored to the specific needs of the Departments of \* \* \* Treasury and Justice," there has been considerable resistance within the Departments themselves to the idea. Consequently, we have made very concerted and sincere efforts to respond to the legitimate concerns of Treasury and Justice Department officials.

This conference agreement represents many long, difficult hours of negotiation with representatives of both Departments. We have attempted to remain sensitive to the important and unique roles of these two Departments by granting the Treasury Secretary and the Attorney General, respectively, the authority to halt the IGs' work to preserve the confidentiality of sensitive information or to protect the national interests of the United States. We have reiterated the facts that the IG Act; First, specifically prohibits the IG from disclosing information that is "prohibited from disclosure by any other provision of law;" and second, specifically prohibits the transfer of any program operating responsibilities to the IG.

Moreover, in direct response to the specific request of the Attorney General, we have agreed to keep the Office of Professional Responsibility

intact and outside the Office of Inspector General.

In addition to establishing these Presidentially appointed IG's, I am very pleased that our conference agreement addresses the audit and investigative needs of the smaller agencies and federally funded entities by establishing Offices of Inspector General in 33 "designated Federal entities." The IG for each of these designated entities will be appointed by the head of the entity and will be responsible for reporting activities to the agency head as well as Congress. As I indicated in February during Senate consideration of S. 908, the need to bring the concepts embodied in the Inspector General Act to these entities has been thoroughly documented by the General Accounting Office and the President's Council on Integrity and Efficiency. The administration has expressed support for our efforts to extend the IG concept to smaller entities as well.

The conference agreement includes a number of amendments to the Inspector General Act that have been advocated for several years. Among these changes are modifications to the reporting requirements intended to assure more uniformity and attention to audit follow-up; a uniform salary level for all Inspectors General; separate appropriations accounts for Offices of Inspector General; and conformation of existing OIG's at the Departments of HHS and Energy and Railroad Retirement Board under the IG Act.

Mr. President, the conference agreement we have before us is a reasonable compromise that I believe merits the support of our colleagues. I am very proud of my longstanding involvement in promoting the Inspector General concept and this legislation builds logically and realistically on the original act. For his exemplary leadership, I want to congratulate Senator GLENN and to commend him for his tireless efforts and personal commitment to reach agreement on this legislation. I truly appreciate all that he has done and all that his fine staff, particularly Steve Ryan and Lorraine Lewis, have done to lead us to this juncture. The conference agreement is a true bipartisan effort and I commend it to my colleagues.

Mr. SASSER. Mr. President, I rise today in support of the conference report on the Inspector General Act Amendments of 1988.

I am pleased to have been an original cosponsor of this important piece of legislation. Inspectors general are watchdogs for the American taxpayer—a front line of defense against waste and fraud in the Federal Government.

These amendments establish an office headed by a Presidentially ap-

pointed inspector general in the following five agencies: the Department of the Treasury, the Internal Revenue Service, the Office of Personnel Management, the Nuclear Regulatory Commission, and the Federal Emergency Management Agency.

This bill also extends some of the provisions of the Inspector General Act to 33 smaller Federal agencies, such as: the Equal Employment Opportunity Commission, the National Science Foundation, the National Labor Relations Board, the Federal Communications Commission, and the Federal Trade Commission.

For many years I have been a staunch supporter of inspectors general and I have made the fight against waste and fraud in the Federal Government a priority during my service in the Senate. In my work on the Committee on Government Affairs I have seen that the work of inspectors general can result in significant savings to the American taxpayer.

In fact, Joseph J. Wright, Deputy Director of the Office of Management and Budget, reported that since 1978 when the Inspector General Act was enacted, more than \$120 billion in Federal funds have been saved by these inspectors general.

The hearing record on this legislation is replete with testimony supporting the value of inspectors general. For example, between 1981 and 1987, there were 23,000 successful prosecutions against wrongdoing as the result of the work of inspectors general. These prosecutions resulted in the imposition of 8,000 administrative sanctions against individuals or firms.

The intent of this bill is to give some real teeth to the audit and investigative capabilities of a Federal agency. As our conference report indicates, all too often audits and investigations are not conducted in an effective manner. Or, they may be conducted—but are not followed up on—by agency heads. In that case, the audit function is underutilized.

But with this legislation, inspectors general, heads of internal audit units, and agency heads have a responsibility to see audits and investigations through to their logical conclusion—promoting more efficient and economical agency operations.

This bill very wisely creates four new statutory inspectors general and requires centralized internal audit units in more than 30 smaller agencies. Another set of very small Federal agencies is required to follow more uniform audit and review procedures.

We conferees have been involved in extensive negotiations with the Departments of Justice and Treasury on this bill. The Justice Department has been particularly resistant to a Presidentially appointed inspector general. The Department prefers its existing Office of Professional Responsibility

to a statutory inspector general. The record however does not support the view that the Office of Professional Responsibility is effectively policing the Justice Department.

But after long, hard negotiations, we have reached a compromise wherein the Office of Professional Responsibility will deal with issues of professional ethics and the Office of Inspector General will investigate fiscal matters.

Congress has indicated strong support for the inspector general concept. S. 908 was reported by a unanimous vote from the Senate Governmental Affairs Committee, passed the Senate by a unanimous vote of 85 to 0 on February 2, and the House on July 26 (H.R. 4054). That vote indicates strong bipartisan support for this legislation.

Given the overwhelming support for this measure, I would urge all of my colleagues to vote for this conference report—thereby expressing a resounding vote of confidence for the inspector general concept.

Mr. PRYOR. Mr. President, I rise today in support of the conference report on S. 908, a bill that makes several important changes to the Inspector General Act of 1978. The bill establishes Offices of Inspector General in the Departments of Justice and the Treasury, the Nuclear Regulatory Commission, the Office of Personnel Management and the Federal Emergency Management Agency.

Though there are presently some level of internal audit and program review capacities at these agencies, this bill elevates these offices to Presidentially appointed inspectors general. We have seen, over the 10-year history of the original Inspector General Act, the importance of having these offices as independent as possible. I believe that the improvements required by this bill will greatly increase the ability of the Federal Government to fight waste, fraud, and mismanagement. Furthermore, this strengthening of the inspectors general will greatly assist the Congress in performing its vital oversight function.

Mr. President, while there is much to commend in this bill, I want especially to draw attention to the elevation of the inspector general at the Department of the Treasury from being a creation of the Department to being one that is statutory. As most of you know, the taxpayers bill of rights is one of my top legislative priorities for this Congress. A key aspect of the taxpayers bill of rights is the creation of a statutory inspector general at the Department of the Treasury. As a conferee on this bill, I have been most interested in making sure this important component of the taxpayers bill of rights was included.

For far too long the Department of the Treasury has thrown a protective mantle around the Internal Revenue Service and kept it away from ade-

quate internal review. This is all part of a calculated attempt to keep the IRS both mysterious and frightening to the average citizen. With the creation of a statutory inspector general at Treasury, both the Congress and the public will be assured that the IRS, like almost every other Government entity, is subject to sufficient internal oversight.

Mr. President, I should point out that while we have given the inspector general the authority to audit and review the internal workings of the IRS, we have also maintained the safeguards that govern the access to information contained on the returns of taxpayers.

As chairman of the Senate Finance Subcommittee with oversight over the IRS, I have become increasingly convinced that a strong and independent inspector general is vital to correcting some of that agency's all too frequent abuses. In a series of hearings that I have chaired over the past 2 years, I have heard testimony time and time again from average taxpayers, small business owners, and even from IRS employees, of cases in which the IRS was acting inappropriately. Having a statutory inspector general will give these parties an effective avenue through which they can express their grievances. IRS employees, business people, and taxpayers shouldn't have to wait for a congressional hearing to have someone review the potentially inappropriate activity of a Government agency, especially when it is an agency like the IRS that touches all of our lives.

Mr. President, in closing, I am delighted that a key portion of the taxpayers bill of rights is today one step closer to becoming the law of the land. My colleagues can rest assured that I will continue working to see that the rest of the taxpayers bill of rights is enacted.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

MOTION TO RECEDE FROM DISAGREEMENT WITH THE HOUSE ON THE TITLE

Mr. BYRD. Mr. President, I move that the Senate recede from its disagreement to the amendment of the House to the title of the bill.

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

The motion was agreed to.

#### UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD. Mr. President, I ask unanimous consent that the majority leader, after consultation with the minority leader, may proceed to the consideration of S. 1301, a bill to implement the Berne Convention for the Protection of Literary and Artistic

Works, and that it be considered under the following time agreement:

That 20 minutes on the bill equally divided and controlled between Senators DECONCINI and HATCH and 5 minutes under the control of Senator LEAHY and 10 minutes under the control of Senator COCHRAN.

That 20 minutes on one amendment to be offered by Senators LEAHY, DECONCINI, and HATCH making technical changes to the committee-reported substitute and establishing a 2-tier registration system.

That no other amendments be in order, with the exception of the committee-reported substitute.

That there be 20 minutes equally divided on any debatable motion, appeal, or point of order if submitted by the Chair for debate.

That no motion to recommit, with or without instructions, be in order.

That the agreement be in the usual form and that following the adoption of the committee-reported substitute amendment and third reading of the bill, as amended, the Senate proceed to the immediate consideration of Calendar No. 672, H.R. 4262; that all after the enacting clause be stricken and that the text of S. 1301, as amended, be substituted in lieu thereof; that the bill be immediately brought to third reading and passed, as amended.

I further ask unanimous consent, as if in executive session, that the majority leader, after consultation with the minority leader, may proceed to the consideration of Executive Calendar No. 10, Treaty Document No. 99-27, the Berne Convention for the Protection of Literary and Artistic Works, and that the treaty be considered to have passed through all of its parliamentary stages up to the presentation of the resolution of ratification, that no amendments thereto be in order and that debate thereon be limited to 15 minutes equally divided and controlled by the two leaders or their designees.

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

The text of the agreement follows:

*Ordered*, That at 10:30 a.m. on Wednesday, Oct. 5, 1988, the Senate proceed to the consideration of S. 1301, a bill to implement the Berne Convention for the Protection of Literary and Artistic Works, and that no amendments be in order except the committee reported substitute and an amendment to be offered by Senators Leahy, DeConcini, and Hatch, making technical changes to the committee reported substitute and establishing a 2-tier registration system, on which there shall be 20 minutes.

*Ordered further*, That debate on any debatable motion, appeal, or point of order if submitted by the Chair for debate shall be limited to 20 minutes, equally divided and controlled.

*Ordered further*, That no motion to recommit, with or without instructions, be in order.

*Ordered further*, That debate on the bill be limited to 20 minutes, to be equally divided and controlled by the Senator from Arizona [Mr. DeConcini] and the Senator from Utah [Mr. Hatch], with an additional 5 minutes under the control of the Senator from Vermont [Mr. Leahy], and an additional 30 minutes under the control of the Senator from Mississippi [Mr. Cochran].

*Ordered further*, That following the adoption of the committee reported substitute amendment and third reading of the bill, as amended, the Senate proceed to the immediate consideration of H.R. 4262 (Cal. Order No. 672), that all after the enacting clause be stricken, that the text of S. 1301, as amended, be substituted in lieu thereof, and that the bill be immediately brought to third reading and passed, as amended.

#### THE EXECUTIVE CALENDAR

Mr. BYRD. Mr. President, as in executive session, I ask unanimous consent that the Commerce Committee be discharged from further consideration of Coast Guard promotions received on September 28, 1988, and that these nominations be placed directly on the Executive Calendar.

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

#### PROTECTION AND ADVOCACY FOR MENTALLY ILL INDIVIDUALS AMENDMENTS ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2393.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives.

*Resolved*, That the bill from the Senate (S. 2393) entitled "An Act to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize such Act, and for other purposes", do pass with the following Amendments:

Strike out all after the enacting clause and insert:

##### SECTION 1. SHORT TITLE.

*This Act may be cited as the "Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988".*

##### SEC. 2. REFERENCES IN ACT.

*Except as otherwise specifically provided, whenever in this Act there is an amendment or repeal of a section or provision, the amendment or repeal shall be considered to be made to that section or provision of the Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1986 (42 U.S.C. 10801 et seq.).*

##### SEC. 3. SCOPE OF COVERAGE.

(a) ABUSE OR NEGLECT RESULTING IN DEATH.—Section 102 (42 U.S.C. 10802) is amended—

(1) in paragraph (1), by striking "injury to a mentally ill individual" and inserting "injury or death to a mentally ill individual"; and

(2) in paragraph (4), by striking "injury" each place it appears and inserting "injury or death".

(b) INDIVIDUALS COVERED BY ACT.—Paragraph (3)(B) of such section is amended—

(1) by striking "(B) who is an inpatient or resident" and inserting "(B)(i) who is an inpatient or resident";

(2) by striking the period at the end and inserting the following: ", or who is in the process of being transported to such a facility for the purposes of being admitted as an inpatient or resident; or"; and

(3) by adding at the end the following new clause:

"(iii) who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense."

##### SEC. 4. ESTABLISHMENT OF GOVERNING BOARD FOR SYSTEMS.

(a) DESIGNATION OF CURRENT ADVISORY BOARDS AS ADVISORY COUNCILS.—Section 105(a)(6) (42 U.S.C. 10805(a)(6)) is amended by striking "board" and inserting "advisory council".

(b) RULES FOR SYSTEM GOVERNING BOARDS.—Section 105 (42 U.S.C. 10805) is amended by adding at the end the following new subsection:

"(c)(1) Each system established in a State under section 103 to protect and advocate the rights of mentally ill individuals shall have a governing authority. Such governing authority shall—

"(A) together with the advisory council described in subsection (a)(6), have the responsibility for jointly developing the annual priorities of the system; and

"(B) have the final responsibility for the planning, design, implementation, and functioning of the system.

"(2) If the governing authority of such system is a multi-member governing board, such board shall include members (to be selected not later than October 1, 1990) who broadly represent the clients served by the system. In the case of a system organized as a private non-profit entity whose governing authority is a multi-member governing board, the chairperson of such system's advisory council shall serve as a member of the governing board."

##### SEC. 5. REQUIREMENTS FOR SYSTEM ADVISORY COUNCIL.

(a) ADVISORY FUNCTIONS OF COUNCIL.—Section 105(a)(6)(A) (42 U.S.C. 10805(a)(6)(A)) is amended—

(1) by striking "policies and priorities" and inserting "ongoing policies and priorities"; and

(2) by striking "; and" and inserting "; and on annual plans, priorities, and reports of the system; and".

(b) ANNUAL REPORT.—Section 105(a)(7) (42 U.S.C. 10805(a)(7)) is amended—

(1) by striking "describing the activities" and inserting "which describes the activities"; and

(2) by striking the period at the end and inserting the following: ", and which includes a section prepared by the advisory council describing the activities of the council and its assessment of the operations of the system;".

##### SEC. 6. RECORDS COVERED UNDER ACCESS PROVISIONS.

(a) RECORDS OF MISSING INDIVIDUALS.—Section 105(a)(4)(B)(i) (42 U.S.C. 10805(b)(4)(B)(i)) is amended by striking "such access;" and inserting "such access (including an individual who has died or whose whereabouts are unknown);".

(b) DEFINITION.—Section 106(b) (42 U.S.C. 10806(b)) is amended by adding at the end the following new paragraph:

"(3) As used in this section, the term 'records' includes—

"(A) reports prepared by any staff of a facility rendering care and treatment, or by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility, which describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents; and  
 "(B) discharge planning records."

SEC. 7. MISCELLANEOUS PROVISIONS.

(a) SUBCONTRACTING.—Section 104(a)(2) (42 U.S.C. 10804(a)(2)) is amended by striking "which, on the date of enactment of this Act" and inserting ", including groups run by individuals who have received or are receiving mental health services, or by the family members of such individuals, which".

(b) TECHNICAL ASSISTANCE LIMITATIONS.—

(1) STATE ASSISTANCE.—Section 104(b)(2) (42 U.S.C. 10804(b)(2)) is amended by striking "5 percent" and inserting "10 percent".

(2) ASSISTANCE BY THE SECRETARY.—Section 115 (42 U.S.C. 18025) is amended—

(A) by striking "shall provide technical assistance" and inserting "shall use not more than 2 percent of the amounts appropriated under section 117 to provide technical assistance"; and

(B) by striking the period at the end and inserting the following: "; consistent with requests by such systems for such assistance."

(c) ADDITIONAL SYSTEM REQUIREMENTS.—Section 105(a) (42 U.S.C. 10805(a)) (as amended by section 5), is further amended—

(1) in paragraph (6)(B) by striking "; and" and inserting a semicolon; and

(2) by adding at the end the following new paragraphs:

"(8) on an ongoing basis, provide the public with a mechanism for commenting on the priorities established by, and the activities of, the system; and

"(9) establish a grievance procedure for clients or prospective clients of the system to assure that mentally ill individuals have full access to the services of the system."

(d) AUTHORIZATION OF APPROPRIATIONS.—

Section 117 (42 U.S.C. 10827) is amended by striking "\$10,000,000 for fiscal year 1986," and all that follows and inserting "\$13,000,000 for fiscal year 1989, and such sums as may be necessary for fiscal year 1990 and fiscal year 1991."

SEC. 8. EFFECTIVE DATE.

The provisions of this Act shall take effect on the date of the enactment of this Act or on October 1, 1988, whichever comes later.

Amend the title so as to read: "An Act to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize appropriations for activities under such Act, and for other purposes."

Mr. HARKIN. Mr. President, I rise today as chairman of the Subcommittee on the Handicapped and on behalf of the other members of the subcommittee, Mr. WEICKER, Mr. KENNEDY, Mr. HATCH, Mr. SIMON, Mr. STAFFORD, Mr. ADAMS, Mr. COCHRAN, and Mr. METZENBAUM, to urge that the Senate concur in the amendment to the House of Representatives to S. 2393, with a substitute amendment.

On August 2, 1988, the Senate passed S. 2393, the Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988. On September 20, 1988, the House passed H.R. 5155 and amended the Senate bill with

the provisions from H.R. 5155. After extensive discussions between the two bodies, a substitute to the Senate bill, as amended by the House, hereinafter referred to as "the Substitute," has been developed.

The substitute is a bipartisan compromise that has the support of both bodies. It incorporates the major provisions of the Senate bill and the House amendment.

Set out below is a section-by-section analysis of the substitute prepared by both bodies. This analysis is in lieu of a conference report.

Section 1 of the substitute specifies that the bill may be cited as the Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988.

Section 2 of the substitute specifies that references in the bill to a section of the act are to the Protection and Advocacy for Mentally Ill Individuals Act of 1986.

Section 3 of the substitute amends section 102 of the act to make clarifications of several definitions included in the act. Specifically, the substitute amends the definition of "abuse" and "neglect" to add "death" to the list of manifestations of "abuse" and "neglect." Currently, the act only includes "injuries."

In addition, section 3 of the substitute amends the definition of the term "mentally ill individual" to include an inpatient or resident in a facility even if the whereabouts of such inpatient or resident are unknown and a person who is in the process of being admitted to a facility rendering care of treatment, including persons being transported to such a facility.

The intent of these changes is simply to clarify that the act covers mentally ill individuals in these two situations and not to change the nature of a protection and advocacy system's, hereinafter referred to as "PAMI system" or "system," authority under the act. Thus, for example, it is not our intent to authorize the system to provide assistance at civil commitment hearings. Furthermore, consistent with section 301 of the act, these amendments do not establish any new rights for mentally ill individuals. Thus, for example, if a mentally ill individual being transported to a facility does not otherwise qualify for admission by the facility, such an individual does not gain that right by virtue of this provision.

Furthermore, section 3 of the substitute amends the definition of the term "mentally ill individual" to include a mentally ill individual who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense. The intent of this provision is not to authorize representation by the system in criminal proceedings that may lead to incarceration.

Finally, section 3 of the substitute amends the definition of the term "neglect" to clarify that the failure to provide a safe environment may include the failure to maintain adequate numbers of appropriately trained staff. Consistent with section 301 of the act and the statement of intent set out on page 9 of Senate Report No. 99-109, this amendment does not grant any new rights to mentally ill individuals but reaffirms the original intent of the act establishing a system of advocacy to help protect established rights articulated in Federal and State laws or under the Constitution of the United States.

Section 4 of the substitute amends section 105 of the act in order to clarify the relationship between the advisory council and the governing authority of the PAMI system. Specifically, the substitute amends the act to rename the "board"—established to provide advice—to be called the advisory council. Second, each PAMI system is directed to have a governing authority.

In situations in which the governing authority is organized as a multi-member governing board, such governing board must be selected according to the policies and procedures of the governing authority. In addition, the membership of the governing board must include members who broadly represent or are knowledgeable about the needs of the clients served by the PAMI system. In the case of a system organized as a private nonprofit entity, the governing board must also include the chairperson of the advisory council of the system.

Finally, section 4 of the substitute specifies that the responsibilities of the governing authority include the planning, design, implementation, and functioning of the PAMI system. The bill also specifies that consistent with these responsibilities the governing authority shall jointly develop with the advisory council the system's annual priorities. We included the latter provision to ensure full and active participation of the advisory council in the discussion and development of the system's annual priorities. We recognize, however, that the final authority for the planning, designing, implementing, and functioning of the system continues to rest with the governing authority. Thus, the final decision regarding priorities remains with the governing authority.

Section 5 of the substitute amends section 105 of the act to include a new requirement for inclusion in the annual report submitted by the system. This new section should be prepared by the advisory council and should describe both the activities of the council and its assessment of the operations of the system.

Section 6 of the substitute amends section 105 to clarify that, consistent with section 3 of the bill a system's authority to access the records of mentally ill individuals includes access to records of mentally ill individuals who have died or whose whereabouts are unknown.

Section 6 of the substitute also amends section 106 to clarify the meaning of the term "records." As amended by the substitute, the term "records" includes discharge planning records as well as records prepared by any staff of a facility or by an agency charged with investigating reports of incidents of abuse, and neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents.

The term "agency" in this section refers to any State, county, or municipal agency charged with the responsibility of investigating incidents of abuse and neglect in public residential facilities for the treatment of mentally ill individuals. It is not the intent of this amendment to change in any way the requirements set out in section 106 of the act governing access to records.

Section 7 of the substitute includes a number of miscellaneous provisions. First section 7(a) of the bill amends section 104 of the act to clarify that in their use of allotments, an eligible system should consider entering into contracts with organizations, including in particular groups run by individuals who have received or are receiving mental health services or the family members of such individuals. Contracts entered into with these groups and others must be consistent with the provisions of the act, thereby assuring that contractors will be held to the same standards of compliance with the act as the PAMI system.

Second, section 7(b)(1) of the substitute amends section 104(b)(2) of the Act to increase the percentage of funds that may be used by PAMI systems for training and technical assistance from 5 to 10 percent. In addition, section 7(b)(2) of the substitute amends section 115 of the act to direct the Secretary to use not more than 2 percent of the amount appropriated to provide technical assistance to eligible systems, consistent with the stated needs as identified by the systems.

Third, section 7(c) of the substitute amends section 105 of the act to add requirements for one, public input in the setting of priorities by the system, and two, establishment of a grievance procedure for clients or prospective clients of the system.

Fourth, section 7(d) of the substitute amends section 111 of the act to clarify that applications and assurances shall remain in effect for a 3-year period. We do not intend that this provision should restrict the Sec-

retary's current authority to conduct program reviews and take appropriate administrative action against a system, if deemed necessary.

Fifth, section 7(e) of the substitute amends section 112(a) of the act to increase the minimum allotment for States from \$125,000 to \$140,000, if there is at least a \$13 million appropriation. The bill also directs the Secretary to increase the minimum administratively under the same circumstances applicable to protection and advocacy systems under the Development Disabilities Assistance and Bill of Rights Act, regardless of whether or not the \$13 million level of appropriations is reached.

Finally, section 7(f) of the substitute provides authorization of appropriations of \$14.3 million for fiscal year 1989, and such sums as may be necessary for fiscal year 1990 and fiscal year 1991.

Section 8 of the substitute specifies that the effective date of the amendments made by the substitute, other than the amendment concerning the authorization of appropriations, is the date of enactment. The effective date for the section authorizing appropriations is October 1, 1988.

Mr. BYRD. Mr. President, I move that the Senate concur in the amendment of the House to the bill S. 2393, with a further amendment, No. 3402, now at the desk.

#### AMENDMENT NO. 3402

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. HARKIN, proposes an amendment numbered 3402.

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

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

The amendment is as follows:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988".

#### SEC. 2. REFERENCES.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision,

the reference shall be considered to be made to a section or other provision of the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.).

#### SEC. 3. SCOPE OF COVERAGE.

Section 102 (42 U.S.C. 10802) is amended—

(1) in paragraph (1), by inserting "or death" after "caused, injury";

(2) in paragraph (3)—

(A) by inserting "(i)" after the subparagraph designation in subparagraph (B);

(B) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof the following: ", even if the where-

abouts of such inpatient or resident are unknown"; and

(C) by adding at the end thereof the following new clauses:

"(ii) who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility; or";

"(iii) who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense."; and

(3) in paragraph (4)—

(A) by inserting "or death" after "injury" each place such word occurs; and

(B) by inserting before the period at the end thereof the following: ", including the failure to maintain adequate numbers of appropriately trained staff".

#### SEC. 4. ESTABLISHMENT OF A GOVERNING AUTHORITY.

Section 105 (42 U.S.C. 10805) is amended—

(1) in subsection (a)(6), by striking out "a board" and inserting in lieu thereof "an advisory council"; and

(2) by adding at the end thereof the following new subsection:

"(c)(1)(A) Each system established in a State, through allotments received under section 103, to protect and advocate the rights of mentally ill individuals shall have a governing authority.

"(B) In States in which the governing authority is organized as a private non-profit entity with a multi-member governing board, or a public system with a multi-member governing board, such governing board shall be selected according to the policies and procedures of the system. The governing board shall be composed of—

"(i) members (to be selected no later than October 1, 1990) who broadly represent or are knowledgeable about the needs of the clients served by the system; and

"(ii) in the case of a governing authority organized as a private non-profit entity, members who broadly represent or are knowledgeable about the needs of the clients served by the system including the chairperson of the advisory council of such system.

"(2) The governing authority established under paragraph (1) shall—

"(A) be responsible for the planning, design, implementation, and functioning of the system; and

"(B) consistent with subparagraph (A), jointly develop the annual priorities of the system with the advisory council.".

#### SEC. 5. ADVISORY COUNCIL REPORT.

Section 105(a)(7) (42 U.S.C. 10805(a)(7)) is amended by striking out the period and inserting in lieu thereof the following: ", including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;".

#### SEC. 6. ACCESS TO RECORDS.

(a) SYSTEM REQUIREMENT.—Section 105(a)(4)(B) (42 U.S.C. 10805(a)(4)(B)) is amended by striking out "any individual" and inserting in lieu thereof "any individual (including an individual who has died or whose whereabouts are unknown)".

(b) DEFINITION OF RECORDS.—Section 106(b) (42 U.S.C. 10806(b)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) As used in this section, the term 'records' includes reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of inci-

dents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

"(B) An eligible system shall have access to the type of records described in subparagraph (A) in accordance with the provisions of subsection (a) and paragraphs (1) and (2) of subsection (b)."

**SEC. 7. MISCELLANEOUS PROVISIONS.**

(a) **SUBCONTRACTING.**—Section 104(a)(2) (42 U.S.C. 10804(a)(2)) is amended by striking out "which, on the date of enactment of this Act" and inserting in lieu thereof "including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which".

(b) **TECHNICAL ASSISTANCE LIMITATIONS.**—

(1) **STATE ASSISTANCE.**—Section 104(b)(2) (42 U.S.C. 10804(b)(2)) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent".

(2) **ASSISTANCE BY THE SECRETARY.**—Section 10 (42 U.S.C. 18025) is amended to read as follows:

**"TECHNICAL ASSISTANCE**

"Sec. 115. The Secretary shall use not more than 2 percent of the amounts appropriated under section 117 to provide technical assistance to eligible systems with respect to activities carried out under this title, consistent with requests by such systems for such assistance."

(c) **ADDITIONAL SYSTEM REQUIREMENTS.**—Section 105(a) (42 U.S.C. 10805(a)) (as amended by section 5), is further amended by adding at the end thereof the following new paragraphs:

"(8) on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system; and

"(9) establish a grievance procedure for clients or prospective clients of the system to assure that mentally ill individuals have full access to the services of the system."

(d) **APPLICATIONS.**—Section 111 (42 U.S.C. 10821) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end thereof the following new subsection:

"(b) Applications submitted under this section shall remain in effect for a 3-year period, and the assurances required under this section shall be for the same 3-year period."

(e) **ALLOTMENT FORMULA.**—Section 112(a) (42 U.S.C. 18022(a)) is amended—

(1) in paragraph (2) to read as follows:

"(2) Notwithstanding paragraph (1) and subject to the availability of appropriations under section 117—

"(A) if the total amount appropriated in a fiscal year is at least \$13,000,000—

"(i) the amount of the allotment of the eligible system of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall be the greater of—

"(I) \$140,000; or

"(II) \$125,000 in addition to the amount determined under paragraph (3); and

"(ii) the amount of the allotment of the eligible system of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall be the greater of—

"(I) \$75,000; or

"(II) \$67,000 in addition to the amount determined under paragraph (3); and

"(B) if the total amount appropriated in a fiscal year is less than \$13,000,000, the amount of the allotment of the eligible system—

"(i) of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall not be less than \$125,000 in addition to the amount determined under paragraph (3); and

"(ii) of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall not be less than \$67,000 in addition to the amount determined under paragraph (3)."; and

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

"(3) In any case in which the total amount appropriated under section 117 for a fiscal year exceeds the total amount appropriated under such section, as in effect on the day before the date of enactment of this paragraph, for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary shall increase each of the allotments under clauses (i)(II) and (ii)(II) of subparagraph (A) and clauses (i) and (ii) of subparagraph (B) of paragraph (2) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

"(A) the total amount appropriated under section 117 for the fiscal year for which the increase in minimum allotment is made, minus;

"(B) the total amount appropriated under section 117 for the immediately preceding fiscal year,

bears to the total amount appropriated under section 117 for such preceding fiscal year."

(f) **AUTHORIZATION OF APPROPRIATIONS.**—Section 117 (42 U.S.C. 10827) is amended to read as follows:

**"AUTHORIZATION OF APPROPRIATIONS**

"Sec. 117. For allotments under this title, there are authorized to be appropriated \$14,300,000 for fiscal year 1989, and such sums as may be necessary for fiscal year 1990 and fiscal year 1991."

**SEC. 8. EFFECTIVE DATE.**

(a) **IN GENERAL.**—The amendments made by this Act, other than the amendment made by section 7(f), shall become effective on the date of the enactment of this Act.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—The amendment made by section 7(f) shall become effective on October 1, 1988.

The **PRESIDING OFFICER.** The question is on agreeing to the motion. The motion is agreed to.

**EXECUTIVE CALENDAR**

Mr. BYRD. Mr. President, I inquire of the acting Republican leader if the following nominations on the Executive Calendar have been cleared: Calendar Order No. 801 on page 4, Department of Energy; nominations under the Department of Justice; then, going over to page 5, nominations under the Department of

Energy; on page 6, nominations under Department of State; and Calendar Order No. 873 on page 6.

Mr. COCHRAN. Mr. President, if the majority leader will indulge me for a moment, I will be able to respond to that inquiry.

Do I correctly understand the majority leader to indicate Calendar Order No. 801, under Department of Energy?

Mr. BYRD. Yes. No. 801 on page 4, Department of Energy.

Mr. COCHRAN. Mr. President, that has not been cleared on this side of the aisle, I have to advise the leader.

Mr. BYRD. If that cannot be done, Mr. President, I exclude from the list that I earlier enumerated the five nominations on page 5 under Department of Energy.

So that the remaining nominations that I inquire of the distinguished acting Republican leader concern calendar orders numbered 810, 811, and 812 on page 4; 870, 871, 872, and 873 on page 6 of the Executive Calendar.

Mr. COCHRAN. Mr. President, I must advise the majority leader that Calendar Order No. 871 has not been cleared on this side of the aisle.

Mr. BYRD. Then, Mr. President, I will exclude all the nominations.

I thank the distinguished acting Republican leader.

Mr. President, I take it that the three nominations on page 4 under Department of Justice have been cleared on the other side.

Mr. COCHRAN. I am advised, I say to the majority leader, that 3 out of the 4 have been cleared.

Mr. BYRD. There are only 3—810, 811, 812—shown under Department of Justice.

Mr. COCHRAN. Those have been cleared on this side of the aisle.

Mr. BYRD. I thank my friend.

**EXECUTIVE SESSION**

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nominations on the Executive Calendar numbered 810, 811, 812; that they be considered en bloc, agreed to en bloc; that a motion to reconsider en bloc be laid on the table; that the President be immediately notified of the confirmation of the nominations.

Mr. President, I state for the RECORD that although the Executive Calendar does not have "stars" by the nominees under Department of Justice, I am informed that all three nominees have committed to respond to requests to appear and testify before any duly constituted committee of the Senate and that their confirmation by the Senate today is subject to such a commitment.

The **PRESIDING OFFICER.** Without objection, the nominations are

considered en bloc and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF JUSTICE

Francis Anthony Keating II, of Oklahoma, to be Associate Attorney General, vice Stephen S. Trott.

Harold G. Christensen, of Utah, to be Deputy Attorney General, vice Arnold I. Burns, resigned.

Edward S.G. Dennis, Jr., of Pennsylvania, to be an Assistant Attorney General, vice William F. Weld, resigned.

NOMINATION OF HAROLD G. CHRISTENSEN TO BE DEPUTY ATTORNEY GENERAL

Mr. HATCH. Mr. President, I would like to encourage my colleagues to support the nomination of Mr. Harold Christensen to be Deputy Attorney General of the Department of Justice. The President could not have chosen a more qualified individual for this important position.

Mr. Christensen comes before us with a long and distinguished legal background. He graduated from the University of Utah in 1949 and received his juris doctorate from the University of Michigan Law School in 1951. He was admitted to the Utah State Bar in 1952 and joined the prominent Salt Lake City law firm of Snow, Christensen & Martineau in 1953. He remained with the firm, eventually serving as chairman of the board, until his recent appointment as Acting Deputy Attorney General.

During his career, Mr. Christensen has been affiliated with the Salt Lake County Bar Association, where he served as president from 1972 to 1973; the Utah Bar Association, where he served as president from 1975 to 1976; the American Bar Association; the American College of Trial Lawyers, where he served as the Utah State chairman from 1986 to 1987; the American Bar Foundation; the American Inn of Court I, where he was the charter president; and the American Inns of Court Foundation. He has also participated in numerous legal committees ranging from an American Bar Association and Utah Bar Association Joint Committee, which published the "Appellate Advocacy Handbook for the Utah Supreme Court," to the U.S. Judicial Selection Commission.

Mr. Christensen is a recognized legal scholar with several published articles and he regularly participates in legal seminars and conferences as a lecturer.

This distinguished background speaks highly of an individual who is cited as one "whose life has been devoted to the law." A fellow Salt Lake City attorney has stated that at various social events Harold Christensen "inevitably ends up in a corner in a bull session with another lawyer talking shop. He eats, breathes and sleeps law. He has an all-consuming interest in the law."

At the same time, Mr. Christensen is a devoted family man. He has many interests, but as he recently stated, "[his] basic goal is to discharge the responsibilities of [his] office for the balance of the Reagan administration \* \* \*."

I am proud to represent a State that can produce such a well-qualified candidate. He has the tools and experience necessary to handle the administrative responsibilities that will be required of him and he has a commitment to upholding and executing the law. He will be an excellent Deputy Attorney General, and I would hope my colleagues will recommend his confirmation to the full body of the Senate.

Mr. President, one indication of the unquestionable merit of this nominee is the support he has received from all points of the political spectrum in Utah. In the first place, he was warmly and persuasively endorsed by the Governor of Utah, Norm Bangerter. In addition, the former Democratic Gov. Scott Matheson wrote to pledge his support for Mr. Christensen's nomination. Both the current chairman of the Democratic Party in Utah, Randy Horiuchi, and the current chairman of the Republican Party, Craig Moody, joined in a wholehearted endorsement of this nomination. In addition, the immediate past chairmen of both parties, Pat Shay for the Democrats and Larry Lunt for the Republicans, noted their deep respect for this fine professional. Suffice it to say, Mr. President, that when all of these Utahns agree on anything, it is the political equivalent of the arrival of Halley's comet. It happens once a century. Hal has brought forth this universal approval and that speaks volumes.

In fact, the only Utah official that has any questions about him is me. After all, he enticed my extremely talented administrative assistant, Dee Benson, to leave for Justice Department service. In truth, this is just further evidence of his good judgment. Mr. Benson will be a great value to the entire Department.

In conclusion, I remember distinctly that Hal Christensen was always held up in Utah as the model for all practicing attorneys. He was considered the most proficient trial lawyer in the State. I have no doubt that he will improve the entire Department of Justice with his remarkable skills. Therefore, it is without reservation that I commend my friend, Hal Christensen, to this body for approval as Deputy Attorney General.

Mr. BYRD. Mr. President, the only action that has been taken in executive session has been that of confirming the three nominations under Department of Justice—namely, Calendar Orders 810, 811, and 812.

The PRESIDING OFFICER. The majority leader is correct.

Mr. BYRD. I thank the Chair.

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

Mr. BYRD. Mr. President, I thank the distinguished Senator from Maine, Mr. MITCHELL, for his indulgence and courtesy in allowing the actions to be taken on the aforementioned measures, and I thank him for his patience. I yield the floor.

PARENTAL AND TEMPORARY MEDICAL LEAVE

The Senate continued with consideration of the bill.

Mr. MITCHELL. Mr. President, I ask unanimous consent to be permitted to speak out of order.

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

The Senator from Maine is recognized.

CLEAN AIR ACT

Mr. MITCHELL. Mr. President, the quality of the natural environment and the quality of human life are inseparable.

Indeed, if the most threatening predictions about the greenhouse effect come true, the very survival of human life may be determined by the quality of the environment.

Indiscriminate use of the atmosphere and the oceans as dumps for our wastes has poisoned the atmosphere and fouled the oceans.

We have not been oblivious to the problems. To the contrary, we have invested substantial resources and have made some progress.

The Clean Water Act, the Clean Air Act, the toxic waste cleanup fund, the Endangered Species Act, and all the rest of our environmental laws represent a serious commitment by our society to the goal of keeping the Earth fit for human life.

But our progress is being overtaken by events.

The population of the world continues to increase. In 1965, when the first Clean Water Program was passed, there were 194 million Americans and 3½ billion people in the world. Today, there are 243 million Americans and a total of 5 billion people in the world.

The first doubling of world population took an estimated 1,700 years. The next doubling, to 10 billion people, will take just 40 years.

Most population growth has been in less-developed countries. There it has spurred an intense drive to feed, clothe, house and employ the new mil-

lions. Economic development inevitably means an enormous worldwide rise in the burning of fossil fuels to power industry, light cities, and house people.

Burning fossil fuel adds large quantities of carbon dioxide to the atmosphere. At the same time, population pressures reduce the Earth's ability to absorb that carbon dioxide.

Twenty-seven million acres of tropical forest are being cleared each year. Deserts are growing by 14 million acres each year. The belt of vegetation at the tropics is the densest in the world; its millions of plants absorb carbon dioxide as they grow.

Their destruction leaves the gas unabsorbed in the atmosphere, where it stops the heat of the Earth's surface from radiating back into space, just as the glass of a greenhouse traps the Sun's warmth.

The pressures of population and the accompanying demands on the environment are not limited to Third World nations—the United States and the Soviet Union together produce about 45 percent of the world's greenhouse gasses.

Auto emissions are increasing, despite pollution control equipment, simply because there are more cars being driven many more miles. In 1970, when the current Clean Air Act was signed, Americans registered 108 million cars and drove 900 billion miles. In 1987, we registered 177 million cars and drove more than 1.7 trillion miles.

Americans felt the consequences in this manner.

Health alerts told residents of urban areas not to exercise, warned older people and those with asthmatic or pulmonary conditions to stay indoors, and suggested that small children not play outside. They reminded millions of Americans how air pollution directly limits their lives.

A June 22 headline article in the Washington Post described the poor quality of air in Washington. The July 7 Post reported the first ozone health advisory in 5 years.

A June 24 story on the front page of the New York Times, describing the potential disaster of global warming, quoted scientists as warning that we have seen "the signal" that the Earth is getting warmer, faster than ever before.

A week earlier, the New York Observer described the effects of acid rain on New York City's monuments.

A week before that, both the major national newsweeklies, Time and Newsweek, devoted cover stories to global warming and the "Greenhouse Effect."

So-called clean areas were not immune. At Mt. Desert Island in Maine, where millions come to escape from the summer heat of the cities, monitoring stations several times reg-

istered ozone readings well above the health-based standards contained in the law.

Dr. Morton Lippman, professor of environmental medicine at the New York University Medical Center, warned in July:

Until recently we had the impression things were improving, but what we see this summer shows us that we are back where we started from.

And, in fact, that is what happened. When the EPA ozone data for last year were analyzed in May, 13 metropolitan areas which met ozone standards in 1985 and 1986 were found to have slipped back out of compliance in 1987.

Dr. Lippman is right: Despite considerable progress in controlling air pollutants, we must do more.

Paradoxically, there is reason for hope. For we have found that just as neglect of pollution controls means dirtier air, emphasis on controls can mean cleaner air. Americans are suffering from a manmade phenomenon that can be controlled. We have developed the technologies of control. We have the resources to apply those technologies. All we lack is the political will to do so. We must now develop that will.

We cannot, with one piece of legislation, reach all the factors that contribute to dirty air. Nor can we expect any remedy to be cost-free. We must keep these fundamental facts in mind.

Air pollution is not just a regional problem, not just an industry problem, not just something that affects people in the Los Angeles basin. Air pollution is a national problem. It affects all of America, and all Americans.

Experts from every branch of medical science have told us that breathing dirty air is not simply a matter of discomfort. It impairs the ability of the lungs to deliver oxygen to the bloodstream and may permanently damage the lungs.

No one has direct control over the air he breathes. No one can control the direction in which pollutants move in the atmosphere. No one can isolate himself from the quality of the air. It is not a matter of choice, or a conscious assumption of risk.

It is an involuntarily imposed health threat, affecting everyone. The universality of the threat dictates that solutions must be broadly based. A solution that penalizes one part of the country, or one segment of industry, would be unfair and unrealistic.

We have an integrated national economy. None of our regions can thrive in isolation, or in opposition to others.

A policy that imposes huge job losses in West Virginia or Ohio or Kentucky is no more acceptable than a policy that imposes heavy pollution damage on Maine or Vermont or North Carolina.

We confront this problem together. We must work together to solve it.

I am encouraged that so many of my colleagues acknowledge this fact. And we must acknowledge it as a fact: A solution will impose costs on all of us, just as a failure to act imposes damage on all of us.

The issue is no longer how each of us can best avoid our share of these costs. The issue is how to fairly apportion those costs and reduce that damage.

It has been 11 years since Congress last revised the Clean Air Act. The debate then demonstrated that a successful strategy to clean up the air requires compromise. Unfortunately, there has not been sufficient willingness to compromise this year. As a result, we will do nothing.

But Senators should recognize that doing nothing is not a cost-free option. It does not merely delay a solution. It automatically increases the costs of that solution, both in money eventually spent and in damage sustained.

Injury to human health is one of those costs. The American Lung Association estimates that air pollution adds \$40 billion each year to the national health care bill in respiratory damage, higher health care use, and costlier insurance premiums.

The direct costs to industry from damage to cash crops is a cost of doing nothing.

The higher costs of technology installed later, on more sources of pollution, is a cost of doing nothing.

The loss of business in tourist-sensitive regions is a cost of doing nothing.

I repeat: Refusal to act now is a choice that carries high costs. I hope those who recommend inaction will recognize the consequences of that choice.

The battle for clean air is a quarter of a century old. The first Clean Air Act became law in 1963. We knew then what caused air pollution and we knew what to do to cure it. The Senate was told, in 1965, that:

[S]erious air pollution problems arise from the ever increasing use of motor vehicles, [and] our rising demands for the energy derived from burning of sulfur bearing fuels \* \* \*

The same testimony which warned of the problems gave us the answer. It remains the answer today, and it is important to remember it:

None of these problems is technologically insurmountable. Our current technical capability of dealing with them admittedly varies from one problem to another, but even where our knowledge and skills are less refined than we wish, there exist at least partial solutions \* \* \*

That statement was true in 1965. It is true today. Air pollution is a man-made phenomenon. We have it within our power to control it.

What we cannot control is the fact that human beings depend on air to survive.

Those two facts are the central elements of the issue. We have a problem we can control. And we have to control it because human lives are at stake.

That is no idle claim. The mounting human health data is clear. Pollutants that damage our ability to breathe damage our health.

Over 117 million people, half our population, live and breathe the air in areas that exceed the ozone and carbon monoxide standards set by law.

Over 35 million Americans live in areas where the air is not only up to the standards, but where it has become dirtier and more dangerous since 1981.

The Clean Air Act of 1970 was passed to prevent this pollution. The 1977 act intended to build on that beginning. The progress made has not been enough, particularly since recent studies show that ozone and other pollutants may cause more severe harm to human health than previously believed.

New evidence suggests that ozone concentrations do not necessarily dissipate within hours, but may remain relatively stable for extended periods of time.

Researchers have demonstrated adverse health effects at levels of ozone exposure once thought safe.

Illnesses of no traumatic origin are now linked to air pollution.

In some areas, non-smokers may have lungs as damaged as the lungs of heavy smokers because of air pollution.

Some air pollutants damage the lungs and heart slowly and progressively. Toxic air pollutants act more swiftly. Both are potential killers.

A person who smokes heavily incurs some health consequences. A person who smokes heavily and also drinks alcohol incurs further health consequences. A person who smokes and drinks and is overweight incurs still additional risk.

If that person is a woman and becomes pregnant, the combination is even more serious.

Americans are routinely exposed to thousands of pollutants. Their effects in combination, like the combined effects of nicotine, alcohol and excess calories, are more severe than the effects of each individual pollutant.

The difference is that those who abuse alcohol or smoke tobacco or overeat are acting voluntarily.

People who live where air pollution combines with possible water pollution, hazardous wastes, pesticide exposure, and the many other byproducts of our civilization, are involuntarily exposed to increased risk. No matter what personal choices they make, the environment is going to affect their health. There is nothing they can do

about it. But there is something we could do about it.

Public health requires us to recognize that all exposures to pollutants and contaminants—whether through indoor or outdoor air, or water, or soil—have an effect in combination that far exceeds the dangers of any one of them in isolation.

Last year, Dr. Haluk Ozkaynak of Harvard University told the Environmental Protection Subcommittee:

In every epidemiologic investigation that we have performed over the past six years, we have repeatedly found a two to five percent air pollution effect on human mortality and morbidity \* \* \* We find it very difficult to reject these consistent findings \* \* \* it would be prudent to develop environmental and public health policies based on the collective evidence \* \* \* current [pollution] levels in the U.S. are likely to cause premature mortality and human morbidity.

In plain words, the doctor is saying that air pollution leads to 3 to 5 percent excess—that is, needless—deaths or diseases nationwide every year. That means between 7 million and 12 million deaths or illnesses each year, not from smoking or drinking or overeating, but from breathing the air.

Nothing else in American life, neither gun deaths nor traffic accidents, nor any other misfortune, comes close to causing this degree of human injury. And although pollution acts by intensifying conditions that already exist, that does not lessen the degree of injury it causes.

Even for the healthiest among us, the effects of pollution are serious. A former Surgeon General put it well:

The healthy man or woman is not merely free of specific disability and safe from specific hazard. Being healthy is not just being unsick. Good health implies \* \* \* the full and enthusiastic use by the individual of his powers of self-fulfillment.

And, as Senator Muskie reminded us 11 years ago:

\* \* \* it isn't death. It isn't even incapacitating illness which is the only concern. It is the restriction on activity. It is not being able to move freely in a free society. \* \* \* It is not being able to go out and play. It is not being able to go to work or sit on your front porch in the evening. These are the environmental rights which the American people demand.

Air pollution recognizes no political boundary. Aggressive controls in a downwind State can have little effect when the air coming from another State is polluted. State governments alone cannot do the job. The Federal Government must work with the States to achieve improvements in air quality.

Air is a national resource that must be protected. We acknowledged this in 1970. We made then, a conscious, deliberate judgment that national controls were necessary to preserve clean air nationwide.

The health data on air pollutants has dramatically increased since 1970, but the public health threat was clear

even then. That is why the Clean Air Act of 1970 required EPA to establish air quality standards for pollutants of concern. This included photochemical oxidants—ozone precursors—and carbon monoxide.

The act took a two-tier approach: Primary standards to protect public health, and secondary standards to protect the public welfare, including environmental resources.

The year 1976 was the first final deadline for health-based standards. Many parts of the country had not achieved them, so Congress extended the deadlines until 1982, and for areas with severe ozone or carbon monoxide problems, until 1987.

The 1977 law had more stringent requirements, to make certain all necessary measures would be taken. At the time, it was thought that only one or two areas would be unable to meet the 1987 deadline.

But neither the States nor EPA accurately projected attainment of the ozone and carbon monoxide standards. Far more than one or two areas failed to meet the 1977 deadline.

Over half the population of our country now lives in areas which have failed to meet these standards—and these are the primary, health-based standards, not criteria designed for aesthetic or environmental protection.

That is why it is necessary to again legislate on clean air.

The Clean Air Act requires EPA to establish national ambient air quality standards at a level that protects the public health, with an adequate margin of safety.

The EPA standard for ozone is 0.12 parts per million for 1 hour. Areas which exceed this 1-hour standard four or more times in a 3-year period are deemed not to have attained the standard. Most of the major urban areas in America are nonattainment for ozone.

The health injuries caused by ozone are well documented. Ozone causes and aggravates respiratory illness.

Healthy, exercising individuals exposed for 2 hours to the levels of ozone in the current air quality standards—0.12 parts per million—experience measurable health effects. Exposure to higher concentrations means more pronounced adverse effects.

The Occupational Safety and Health Administration [OSHA] standard for ozone is 0.10 parts per million over an 8-hour period: Factory workers exposed to higher levels must wear a personal monitor.

OSHA standards are intended for people working for a limited period of time in an enclosed environment, which they can leave if the ozone concentration goes too high.

This standard does not apply to ambient air, and of course, no one can remove himself from ambient air.

The margin of safety, even for the lower OSHA standard, is not risk-free. Dr. Lippman, a former chairman of the Clean Air Scientific Advisory Committee, recently noted that the 0.10 parts per million standard is:

A level which produced substantial function decrements and lung inflammation in controlled exposure tests of healthy young adults.

Based on these data, American children may be at risk even on days when the law's standards are not exceeded. In fact, by OSHA standards, many American children would have to wear a monitor on many days when they play outside.

People most susceptible to ozone injury are the elderly; those with pre-existing and respiratory problems; children, who have a faster respiratory rate than adults; and the 20 percent of the population who have marked adverse reactions to ozone.

The core purpose of the Clean Air Act is public health protection with an adequate margin of safety. It is hard to see where the margin of safety is in the current standard.

The fact is that a margin of safety for manmade pollution must take account of naturally occurring environmental factors. The former chairman of EPA's Clean Air Advisory Committee, Dr. Bernard Goldstein, and his colleague Dr. Paul Lioy, recently pointed this out:

As compared to other primary air quality pollutants, the ceiling of observed ozone effects and the floor of the natural background leaves little room for the regulator to choose a margin of safety for a one-hour standard. To some extent, an 8-hour standard does provide the opportunity for some flexibility in dealing with the potential for chronic effects which is a major reason for the margin of safety.

So there is not a great deal of latitude within which we can permit ozone to pollute the air without exposing our people to serious health risks.

Human exposure to carbon monoxide, another major pollutant, also produces adverse effects, because carbon monoxide is more readily absorbed into blood than oxygen. This causes pulmonary distress, particularly for the elderly, children, and those with heart problems or other preexisting conditions. Its potential effects during pregnancy are particularly troubling, since the maternal blood supply is directly shared with the developing fetus.

Though our primary focus remains, as it must, on human health, it is important to realize that air pollution has significant environmental effects, in both commercial and natural settings.

In nature, sulfur dioxides and oxides of nitrogen combine to form the acidic precipitation that damages forests and lakes and streams. In commercial settings, crops of all kinds are subject to damage from ozone and acid rain.

Crop yields are reduced and growth rates are slowed.

The American Forestry Association recently announced its support for Federal controls on sources of air pollution, including hydrocarbons and nitrogen oxides. It said:

... the American Forestry Association believes that the risks and costs associated with further delaying additional pollution controls now seem to outweigh the risks and cost associated with action... the control program should target the nation as a whole, as the terrestrial and aquatic forest resource impacts from air pollution constitute a national threat.

Besides the gains to human health, reduced air pollution would mean increased crop yields, reduced materials damage, improved visibility and reduced aquatic damage—significant benefits to agriculture, fisheries, industry and the quality of life of every American.

Quantifying these benefits is more difficult than adding up the costs of pollution control equipment. And therein lies the crux of the political problem.

Some in our society have opposed every major environmental law ever proposed. Rather than spend \$1 to prevent pollution, they have spent millions of dollars to prevent the passage of laws to reduce pollution.

Their principal weapon is the exaggerated claim that if anything is required of them to prevent pollution—anything at all—the cost will be so high that whole industries will have to shut down, whole States will suffer, whole regions will decline.

They have been helped by the fact that while it is often easy to precisely calculate the cost of cleaning up, it is impossible to precisely calculate the value of cleaning up.

We know to the penny the cost of installing a scrubber. But what is the value of a human life? What is the cost of a premature death? How much is it worth to a family to have a child with healthy lungs, rather than scarred and damaged lungs? Is there a single Member of the Senate who can place a dollar value on his child's health, or life?

We cannot answer these questions, because the answers require wisdom beyond that possessed by any human being. Our inability to answer these questions should not exclude these values from our consideration. But that is what has happened. Unfortunately, there has been a one-sided debate, in which costs are specific, benefits general. It is no wonder that so many prefer to ignore the problem, to plead cost, to plead complexity, and finally, to plead the need to adjourn.

I recognize reality. And the reality is that there will be no action on clean air legislation this year. With adjournment now likely this weekend, there is simply not enough time to consider

and act upon legislation of this scope and significance.

I deeply regret that. For 7 years, I have worked to enact clean air legislation. For several months, I have tried to work out compromises that would be acceptable to the many conflicting political and regional interests involved. We made considerable progress.

For that I am grateful to the many Senators, and members of their staffs, who participated in good faith in the effort to solve this problem, especially the majority leader, Senator BYRD, and the assistant minority leader, Senator SIMPSON.

But we did not quite make it. As so often happens in the legislative process, it proved easier to prevent action than to act.

A few who say they support the Clean Air Act joined with the many who oppose it. They remained rigid and unyielding, wholly unwilling to compromise, even when faced with the certainty that their rigidity would result in no action this year. In reality, both want to postpone action to the future, when they hope circumstances will be more favorable to their positions. I disagree, profoundly.

For, in the meantime, the health of more American children will suffer, more lakes will die, more forests will wither.

Some will celebrate inaction this year as a victory. In truth, there are no winners. But there are losers. They are the American people.

We did not inherit this Earth from our parents. Rather, we hold it in trust for our children. In our short time of life, we are but stewards, who may use and enjoy these precious natural resources, but who have no right to abuse them. We have a moral obligation to pass on to future generations the very basics of healthy human life: clean air, pure water, unpoisoned land.

We are not meeting that obligation. But I believe we will. That is why, although I am disappointed I am not disheartened. For I am convinced beyond doubt that in due time clean air legislation will be enacted. It may not be next year, or the year after that. But ultimately it will happen. That is because the health of the American people so requires it that eventually the American people will demand it. Then, hopefully, the Senate will recognize and act on its responsibility. I look forward to that day.

(Mr. FOWLER assumed the chair.)

Mr. WIRTH. Mr. President, I want to join with so many of my colleagues in thanking the distinguished Senator from the State of Maine for his extraordinary commitment to clean air and his efforts to forge a compromise in this enormously difficult situation.

I am sorry, as the Senator from Maine is, that we have not been able to reach agreement this year, but I know that he is planning, as so many of us are planning, to move into this area again in 1989 with renewed vigor, with a different administration and perhaps with some greater energy as well coming up from downtown.

From the statements made by both Vice President BUSH and Governor Dukakis, it is clear that they both have a strong commitment to clean air and to focusing on the acid rain problem. So I do hope that we can address this early in 1989.

But in saying so, I share the disappointment of the Senator from Maine and so many of my colleagues that we have been unable to come up with an agreement and a compromise. As the Senator from Maine has pointed out, there is a great deal of veto power out there. There is veto power surrounding all three major sections of the Clean Air Act—the acid rain section, the nonattainment section, and the toxic air pollutant section.

In the acid rain area, I think the Senator from Maine and those working on the legislation did a very good job and came very close to a compromise that would be acceptable to those in the Middle West, acceptable to those of us in the West and acceptable to those on the east coast. That delicate compromise was very close to coming together.

I commend the Senator from the State of Maine. He did an extraordinary job of bringing those parties together and spending a vast amount of time, in his great patient fashion, listening to everybody and forging a compromise. Unfortunately, that kind of a compromise was not forthcoming and did not appear to be on the horizon in the areas of nonattainment standards or mobile sources, which are so important to States such as Colorado.

As the Senator from Maine pointed out in his excellent statement, we have a very significant ozone problem and a very significant carbon monoxide problem in cities all across the United States, from the famous smog of Los Angeles to the brown cloud of Denver, to cities running all the way up even into the State of Maine. One would not imagine that so many areas have these problems, but, as the Senator pointed out, even on Mt. Desert Island in the State of Maine a problem exists.

That problem is first and foremost caused by the automobile; first and foremost caused by significant automobile pollution, by carbon monoxide and by nitrogen oxide.

As the Senator from Maine pointed out, related to controls on acid rains, we know that the technology is available and the technology is affordable to control emissions from mobile

sources, from automobiles, light trucks, diesels and so on. We know how to do that. We know how to lower the nitrogen oxide standard and the carbon monoxide standard. We know how to test these automobiles so they are able, for the life of that automobile or 100,000 miles, to meet the standards. We know about cold starts. We have the technology.

The question is: Where are we going to find the political will to assure that automobiles, light trucks, and diesels meet the standards necessary to protect the health of the American public? To date, unhappily, the very industry which is at the heart of so much of our economy has been unwilling to sit down and come to the kind of agreement that is absolutely imperative for us in order to devise realistic, strong, and protective amendments to the Clean Air Act.

It is an unfortunate commentary that this industry, the automobile industry—which has been at the heart of so much of our economy and the competitive advantages that we once held around the world—no longer can meet that judgment and standard of public citizenry and public involvement and commitment.

We also find this kind of noncooperation in the position taken by the automobile industry on the rollback of corporate average fuel economy [CAFE] standards.

Yesterday, the Department of Transportation announced that it had caved in to the automobile industry and that, in 1988, instead of increasing the average fuel economy of automobiles, instead of recognizing the fact that we in the United States and everybody around the world has to be much more efficient in the use of fossil fuels, has to put less carbon dioxide, and other pollutants up in the atmosphere, despite the fact that most of us recognize that we are becoming increasingly dependent upon imported oil in this Nation, despite the fact that we have to become more efficient rather than less efficient, despite the fact that it is clear that the automobile and the transportation sector is one of the areas in this society in our economy in which the greatest efficiency gains can be made, despite the fact that all of these elements put together—the need for us to protect the public health, the need to clean up and protect our environment, the need to strengthen our economy and become less dependent on imported oil—point directly to the automobile and the need to increase fuel efficiency in automobiles rather than decrease it, we are going in precisely the opposite direction. The Secretary of Transportation has waived the corporate average fuel economy standard.

One cannot believe that that is anything but the single most shortsighted step that we could possibly take in the

United States. It is shortsighted for the health of the public, for the health of our economy and for the health of our environment, as is very well articulated and understood by so many people in this country.

If we look at the longer term of global warming, it is not only shortsighted, it is appalling. Today in the globe there are approximately 300 million automobiles. Shortly into the 21st century, there are going to be 1 billion automobiles. Those automobiles are adding significantly day in and day out to the pollution of the atmosphere, day in and day out to the atmospheric load of carbon dioxide, day in and day out to the phenomena of global warming.

If we in the United States cannot control our emissions and cannot look ahead, how in the world can we expect the rest of the world to be serious about the issue of global warming and atmospheric change? How in the world can we expect the rest of the world to be serious when our own automobile companies are selling automobiles around the world that have absolutely no pollution controls on them at all?

Mr. President, this is a sad day, we have been forced to drop the clean air bill this year, and that follows yesterday's collapse on fuel economy standards. I suspect that there is rejoicing in some board rooms today, but there is certainly disappointment and a great unhappiness among citizens of the United States all across the country concerned about our health, concerned about our economy, concerned about the future of this globe.

I deeply regret the decision made to drop the clean air bill this year, but I understand it. I deeply regret and chastise the administration for the position that it has taken on dropping fuel economy standards. The shortsighted nature and inability of this particular sector of the economy to see the future of clean air in this country, to see the health implications, to see the economic implications, and the long-term global implications are reflected in these two decisions.

Mr. President, I ask unanimous consent to have printed in the RECORD a statement that I submitted to the National Highway Transportation Safety Administration's hearing on the subject of proposed rollbacks of corporate average fuel economy standards.

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

STATEMENT OF SENATOR TIMOTHY E. WIRTH ON PROPOSED ROLLBACK OF CORPORATE AVERAGE FUEL ECONOMY (CAFE) STANDARDS

LADIES AND GENTLEMEN: I am appearing today before the National Highway Traffic Safety Administration (NHTSA) to oppose the proposed rollback of the Corporate Average Fuel Economy (CAFE) standards for passenger cars. I do so in two capacities: as U.S. Senator from Colorado, and as Chair-

man of the Alliance to Save Energy, a national coalition of business, government, labor, and consumer leaders working to keep energy efficiency high on the national agenda.

NHTSA and some car manufacturers argue that the rollback will have only marginal effects on national energy use. The proposed rollback is significant, however, and—more importantly—is a step in the wrong direction. Furthermore, proponents of the rollback do not account for its importance as a "signal" to the American people: a signal that energy efficiency is no longer important. The signal I want the Administration to receive is "stop"—put the brakes on this ill-conceived initiative.

In Title V of the Energy Policy and Conservation Act (EPCA), Congress established a 27.5 MPG standard to be applied to passenger cars for model year 1985 and successive years. While NHTSA was given discretion to amend the standard, by law any amendment must consider, among other factors, "The need of the Nation to conserve energy." Current gasoline prices notwithstanding, our Nation's need to conserve—to become more energy-efficient—in all sectors of the economy is as great now as it has ever been. By maintaining and strengthening national policies—including CAFE—that promote efficient use of fuels, we can trim our growing dependence on oil imports and begin to address the major environmental problems confronting our nation and the globe.

#### IMPORTS AND THE BALANCE OF TRADE

Following the 1973 oil crisis, the U.S. led the way in reducing oil use. To put this in perspective, if we were today still using oil at the rate we did in 1973, we would need eight to nine million more barrels per day.

But recent import trends are alarming. From 1985 to 1987, average daily oil imports rose 29 percent; over the same period, imports from OPEC rose 64 percent. Obviously, this growing dependence increases our vulnerability to a disruption of supply.

Projections by DOE and the National Petroleum Council point to the heightened likelihood of oil supply disruptions in the 1990s. By 1995, OPEC is expected to be producing at 75 to 85 percent of capacity. Experience tells us that when capacity utilization reaches 80 percent, OPEC can successfully impose embargoes and cartel pricing.

Oil imports are a major factor in the balance-of-trade picture. Last year we paid \$44 billion for imported oil, accounting for 26 percent of our trade deficit. The rollback of CAFE will push these numbers further in the wrong direction.

CAFE is not the sole solution to our oil imports and trade problems, but it is an important part. The improvements in average automobile MPG achieved since CAFE went into effect are today saving us about 1.5 million barrels per day. Even at today's low prices, the savings are worth \$10 billion per year. Considering recent projections that world oil prices will rise 50 percent in real terms by the year 2000, and 133 percent by 2010, I submit that we need every ounce of achievable savings in automobile efficiency. Maintaining the current CAFE standard is the least we can do.

#### ENVIRONMENTAL QUALITY

Even small improvements in vehicle fuel efficiency have noticeable benefits for the environment. Our existing stock of light vehicles averages about 18 miles per gallon. Increasing this by less than 1 MPG would yield oil savings comparable to the expected

production rates of either the Arctic National Wildlife Refuge or the California coast.

The CAFE standards also have implications for air quality. Many of our cities, including Denver and Washington, have failed to attain EPA standards for ozone, the "smog" pollutant largely created by vehicle exhaust. EPA is on the verge of imposing heavy sanctions on some of these nonattainment areas. Clearly, reducing ozone through better fuel economy is part of the solution to this problem. And it is certainly preferable to federal sanctions that would crimp economic development and cause other hardships. Yet just when our cities need this help the most, NHTSA proposes to weaken one of our most valuable tools.

For several years scientists have warned us of the adverse consequences of the release of carbon dioxide and other gases on the global environment. The drought and heat wave of 1988 have firmly planted the "greenhouse effect" in our national consciousness. But I doubt that many people realize that motor vehicles are responsible for more than one third of the greenhouse gases released into the atmosphere in this country by human activities. While there remain many uncertainties about the greenhouse effect, it is certain that improving automobile efficiency is one of the most powerful levers for reducing greenhouse emissions. Again, the CAFE rollback will provide the wrong signal to the public.

#### POLICY OPTIONS

Instead of reducing CAFE, what should we be doing? In the coming months Congress will be addressing this question in the context of S. 2667, the National Energy Policy Act of 1988, which I introduced in July. Policies to be considered in this bill and related amendments include:

Requiring car manufacturers to achieve substantial improvements in their fleet efficiency, starting with a target of 15 percent improvement over their 1985 levels by 1992. Using the same percentage target for all manufacturers will ensure that no firm begin from a competitive disadvantage.

Raising the "gas guzzler" tax, and using the revenues to fund rebates for highly-efficient vehicles. Such a program would be revenue-neutral, yet would provide the car-buying public with the right signals.

Increasing federal funding for research on using alternative fuels in transportation, including mass transit vehicles.

In conclusion, NHTSA's proposal is ill-conceived. The present administration should put the brakes on the CAFE rollback.

[From the Washington Post, Oct. 4, 1988]

#### FUEL STANDARD FOR 1989 CARS SET AT 26.5 MPG

(By Tim Bovee)

The Department of Transportation yesterday set fuel-economy standards for 1989 passenger cars at 26.5 miles per gallon of gasoline, a level the nation's two largest automakers have said they could meet without layoffs and production cuts.

The department's decision kept the fuel economy average required for each new auto from increasing to the 27.5 mpg mandated by Congress in 1975. Since 1986, the automakers have been required to meet a 26 mpg standard.

A higher requirement "would have clearly put our domestic full-line manufacturers at a competitive disadvantage compared to some foreign manufacturers, especially the Asians, who have been building only small

cars and can easily meet the fuel-economy requirements," said Transportation Secretary James Burnley.

The order issued by the National Highway Traffic Safety Administration, an agency within DOT, said 26.5 mpg was the level attainable by General Motors Corp. and Ford Motor Co. in their domestic fleets of passenger cars without "harmful production restrictions and without any significant restrictions on consumer choice." The standard "should help preserve the ability of the two domestic companies to recapture sales and jobs from competitors," it said.

GM and Ford, which had warned that higher fuel-economy standards would force cutbacks of big-car production and cost the industry hundreds of thousands of jobs, were quick to praise the order. Consumer groups were critical.

GM said the decision "was in the best interest of American workers and consumer choice." The company said the 1975 law that established the corporate average fuel economy standards, or CAFE, was "outdated."

Ford said the ruling "recognizes that consumer preferences resulting from low fuel prices have placed a particularly heavy burden on our efforts to comply with the 27.5 mpg standard."

Chrysler Corp., whose car line is concentrated in the smaller, more fuel-efficient models, said only that it would exceed 27.5 mpg in 1989 and said "a meaningful gasoline tax would eliminate the need for a CAFE-like regulatory system."

Clarence Ditlow, director of the Center for Auto Safety, said the DOT decision was "another cave-in by the Reagan administration" and vowed to go to court to try to force the agency to let the standard increase to 27.5 mpg.

Other critics, such as Sen. Timothy Wirth (D-Colo.) and the Energy Conservation Coalition, called for implementation of higher standards to reduce the release of gases into the atmosphere, arguing that automotive emissions contribute to a long-term warming of the atmosphere through the greenhouse effect.

#### CLEAN AIR ACT

Mr. SIMPSON. Mr. President, in the past week there has much discussion, rumor, and ripe hype concerning the possible consideration by Congress of the acid rain issue. Congress has failed to act on acid rain legislation for the past 7 years because we always have experienced legislative gridlock. This gridlock has come about because all of the interest groups involved have been so damn arrogant, selfish, and demanding that the acid rain issue has become extremely polarized. However, this year Senator ROBERT BYRD, Senator GEORGE MITCHELL, Senator BILL PROXMIRE, and I have begun an effort to break this unseemly gridlock.

This gridlock is really about regional economic struggles and not about clean air. Back in 1977 when Congress was considering the Clean Air Act in conference committee some very crafty and wily House Members inserted a provision in the Clean Air Act that was never debated by the Congress that gimmicked the Nation's coal

markets so that high sulfur coal would have an advantage over low sulfur in the marketplace. These Congressmen recognized that both Eastern and Western low sulfur coal was much cleaner and could be burned more economically, and so they told their staffs to find a "creative provision" to ensure that dirty, high-sulfur coal would be given an advantage in the marketplace through the use of legislatively mandated environmental regulations. This "creative" provision is known as the "percentage reduction" requirement, and it's a phony.

The percentage reduction requirement is different than most other environmental requirements because it does not set a given standard and then allow industries to meet that standard in the most cost-effective manner. Instead it mandates that a certain type of coal is used, a certain amount of sulfur must be removed so that even clean low sulfur coal will have to be scrubbed by utilities. The requirement states that if high sulfur coal is used in powerplants, 90 percent of the sulfur must be removed and if low sulfur coal is used, 70 percent of the sulfur must still be removed by scrubbing. This requirement is particularly onerous because there is so much low sulfur coal in this country that could meet clean air standards without any scrubbing at all. In fact, our neighbors to the north in Canada do not have one scrubber on one powerplant because they recognize that the use of low sulfur coal is a cost efficient way of reducing sulfur dioxide emissions. Yet, in this country we make rate payers throughout the Midwest and east pay extremely high utility rates in order to subsidize mining jobs in the Midwest.

We in the West have long memories and we have not forgotten how this gimmickry was added to the Clean Air Act. In fact, I recall that my fine friend, the greatly admired Senator from Maine—Senator Ed Muskie—strongly opposed this provision because he realized it was not an environmental provision at all and that it would only pit different regions of the country against each other. Let me share with you what Senator Muskie said about this provision back in 1977.

The dominant thrust of this amendment is not its relationship to clean air, but its relationship to the economics of the areas it is designed to protect. For that reason, I regret that it is being offered to a clean air bill . . .

Second, we can think of our history and say that the Constitutional Convention was the result of the fact that the 13 original colonies were busily erecting trade barriers against each other. I just see this as the first step, benign as its intentions are, as a first step in the kind of regionalization, grouped solely around regional economic interest. It disturbs me a great deal. It is a propensity we all find in all of our regions and all of our states from time to time. For that reason, I will strongly oppose it.

Ed Muskie said it all.

So that is only one of the reasons that we have such polarity and gridlock, because some Members of Congress have gimmicked the system, and now we have the areas that produce low sulfur coal pitted against areas that produce high sulfur coal. And I would remind my colleagues that this is not just the East versus the West. There are many low sulfur producing coal regions in Kentucky, West Virginia, and the traditional high sulfur coal regions. However, some of the more arrogant union members representing mineworkers don't wish their miners to mine low sulfur coal. They prefer to have them continue to produce the dirty and so expensive to clean high sulfur coal.

The percentage reduction requirement is one reason I get very perturbed when I hear people talking about the so-called Mitchell/Byrd compromise as being "coal-neutral." We don't have a neutral situation to begin with. The playing field is already slanted up in favor of high sulfur coal because of this requirement. We hear people talking about proposals being "coal-neutral" when total coal tonnage from the high sulfur coal regions rose from 1977 to 1987. Why did it rise? Partly because of the percentage reduction requirement.

And then if the playing field is not tilted enough, we have the so-called Clean Coal Technology Program. The Clean Coal Technology Program was created by Congress in 1984 as a vestige of the ill-fated Synthetic Fuels Corporation. We all remember the Synthetic Fuels Corporation and how much money it wasted. Well, the Clean Coal Program is but another subsidy for the high sulfur coal industry. Round two of the clean coal solicitations are going to be announced soon, and guess what—not one Western or low sulfur coal project will be included when that announcement is made. Even though the legislative provisions authorized in the \$650 million Clean Coal Technology Program call for regional and geographical diversity these provisions are being ignored. Lobbyists for the high sulfur coal industry have scored another success at the expense of cost-effective pollution control.

And then we have the so-called Mitchell/Byrd compromise which people are billing as "coal-neutral." To add insult to injury this so-called compromise require mandatory scrubbing in phase 1 of the Acid Rain Control Program which effectively denies the use of clean and efficient low sulfur coal. In addition, as if this is not enough, a subsidy is provided to utilities that install scrubbers. So, Senators are attempting to provide further gimmickry in the coal marketplace and we are going to pay for it by

taxing electric utility users across the country. In addition, the subsidy is carried over into phase 2 so that we can have further use of dirty high sulfur coal and we are going to have a new form of percentage reduction requirements that will provide that 90 percent of all sulfur must be removed if a subsidy is used and 70 percent must be removed if clean coal technology is used. That's so bad.

Now we have a playing field that is almost vertical. And for this singular reason, we may not be passing any clean air legislation this year. We simply cannot continue to pass legislation that has nothing to do with a clean environment but has everything to do with regional economic decisions. If that is what we are going to be doing in clean air legislation, I am prepared to debate this issue until it snows and freezes.

I want to be constructive when it comes to acid rain legislation and I have proven that by actions I have taken. Senator BILL PROXMIRE and I have introduced cost effective and reasonable acid rain legislation that would provide for a significant reduction in SO<sub>2</sub> emissions at the least cost to the consumer and to utilities. Senator GEORGE MITCHELL has worked closely with me and has made every effort to be fair and attentive to our concerns. But when the United Mine Workers jumped in the cage the gorilla threw the rest of us bozos off the swings. They play tough. They are insatiable—and they hate low sulfur coal. I know that if we are going to produce an acid rain bill this year that Senator BYRD, Senator MITCHELL, Senator PROXMIRE, and I will have to compromise on a host of issues. However, when I say compromise I don't mean sell out the low sulfur coal producing regions in the East and the West. I am opposed to subsidies because I believe we should adhere to the polluters pay principle, yet I recognize we may have to have some form of small subsidy if we are to reach a true compromise. I am against mandating scrubbers on powerplants, yet I recognize we may have to have some very limited type of mandated technology, but this does not mean the type of radical gimmickry that is floating around in Congress today.

I wanted to make this statement today to give the Senate a historical perspective on where we are with regard to clean air legislation. It is important to realize why we have clean coal but dirty air. I trust that all the parties involved in the clean air negotiations will keep this historical perspective in mind as we try to grapple with the gut hard issues involved in developing a true compromise. If we don't keep this historical perspective in mind, it may be another 7 years before we reauthorize the Clean Air

Act and that would be most unfortunate.

The American people deserve a cost effective and reasonable acid rain bill. They deserve a bill that will reduce SO<sub>2</sub> emissions, but will not result in extreme increases in utility rates. It simply is not fair for electric consumers in the South, the Southwest, and the East to pay for a ridiculous policy based on local and regional economic considerations instead of true environmental considerations.

It is now apparent we are not going to deal with clean air legislation this year, just as we have not dealt with clean air legislation for the past 7 years. GEORGE MITCHELL and others have made a valiant effort to get the job done this year. GEORGE worked long and hard to craft legislation that would protect human health and the environment and he is to be commended for that effort. Senator BYRD also recognized the need to act on clean air legislation and he attempted to be a constructive force in the clean air negotiations. Other Senators also deserve praise especially two Members of the Senate who will be leaving us this year—Senators STAFFORD and PROXMIER. I would also like to commend the Alliance for Acid Rain Control which is a group of moderate Governors from across the country who are committed to dealing with the acid rain issue. These Governors and the alliance have assisted me greatly in pursuing a reasonable and cost effective acid rain bill.

Now that we recognize that no action will be taken this year, we should ask ourselves "Why?" It simply is the same old story—those aligned with the environmental groups must pass the purity test and those that support miner's unions and other businesses want only to cut the best deal for these groups. Those of us that have clean coal must vigorously protect ourselves from legislative gimmickry and the marketplace.

No true compromises on clean air legislation are ever going to be hammered out until the extremism and the egotistical behavior exhibited by environmental and union leaders is moderated. We simply will not ever deal with the Clean Air Act reauthorization until these interest groups are willing to give equally on the specific issues in question.

We could have passed an ozone non-attainment provision this year, but the environmentalists wanted more. They weren't willing to deal with the most pressing problem—pollution in our large cities—they wanted to expand the agenda beyond what was possible. If blame is to be apportioned for not protecting the health of Americans, then the environmental groups are surely not immune and must indeed share this blame with some of those in the business community.

I read Senator MITCHELL's statement and his remarks about the cost of environmental legislation. Despite his earnest warnings about the health threats posed by air pollution, we simply cannot and should not ignore the cost of various provisions to clean up the air. We cannot talk about the added cost of health care in one breath and ignore the cost of compliance in the next. Costs are relevant factors, even when we are protecting human lives. This is because there are cost-effective strategies to deal with air pollution—strategies that can and will protect the public health without bankrupting America. There are also strategies that will afford the same protection of human health that bear enormous costs. Surely the American people deserve to have their health protected, but they deserve to have that protection in a sane, commonsense, and cost-effective manner. That is why they elect us. They elect us to try to develop common sense solutions to environmental problems not nefarious schemes hatched by jealous staffers to provide a risk-free existence by implementing remedies that would in the long run cost many U.S. citizens their jobs.

We will now begin the long process of reauthorizing the Clean Air Act next year. I would only hope we will have more success than we have had in the past 7 years. Hope does spring eternal. And I trust that the environmental groups and the business community will learn something from our lack of inaction and will come together, not to resist, but to assist in forging true compromises. Only in this manner can we as Senators produce the long-desired result—clean air for all of us.

#### THE EXECUTIVE CALENDAR

Mr. BYRD. Mr. President, I inquire of the distinguished Republican leader as to whether or not the following calendar orders on the Executive Calendar are cleared on his side: 801 on page 4 under Department of Energy; Calendar Orders Nos. 839, 865, 866, 867 and 868 on page 5 under Department of Energy?

Mr. DOLE. I can advise the majority leader each of those nominations have been cleared on this side.

Mr. BYRD. I thank my friend.

#### EXECUTIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the aforementioned nominations under Department of Energy, there being a total of six in number; that they be cleared en bloc; that they be confirmed en bloc; that the motion to reconsider en bloc be laid on the table; that the President be immediately no-

tified of the confirmation of nominees; that the Senate return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

#### DEPARTMENT OF ENERGY

Elizabeth Anne Moler, of Virginia, to be a Member of the Federal Energy Regulatory Commission for a term expiring October 20, 1991.

Martha O. Hesse, of Illinois, to be a Member of the Federal Energy Regulatory Commission for a term expiring October 20, 1991.

Charles G. Stalon, of Illinois, to be a Member of the Federal Energy Regulatory Commission for the remainder of the term expiring October 20, 1989.

Charles A. Trabandt, of Virginia, to be a Member of the Federal Energy Regulatory Commission for a term expiring October 20, 1992.

Jerry Jay Langdon, of Texas, to be a Member of the Federal Energy Regulatory Commission for the remainder of the term expiring October 20, 1988.

Jerry Jay Langdon, of Texas, to be a Member of the Federal Energy Regulatory Commission for a term expiring October 20, 1992.

#### STATEMENT ON NOMINATIONS TO THE FEDERAL ENERGY REGULATORY COMMISSION

Mr. LAUTENBERG. Mr. President, I have had a particular interest in these FERC nominations. As chairman of the Superfund and Environmental Oversight Subcommittee, I have closely examined the relationship between ratemaking and environmental laws.

That examination began in March of last year with the Texas Eastern case. That company dumped PCB contaminants in landpits at 89 sites in some 14 States. Three of these sites scar my State.

In November of last year, the company and EPA announced an agreement in principle on cleaning up these sites. It called for an estimated \$400 million cleanup by the company. At that time, the company stated that it would seek to pass some of the cleanup costs on to ratepayers. I contacted FERC calling for a complete examination of any such request.

A consent agreement is now pending in Federal court. And in March of this year, the company filed for rate increases that included costs associated with the PCB contamination.

This request raises some very troubling questions. A fundamental principle in our environmental laws is that the polluter should pay. But regulated companies, like Texas Eastern, can attempt to get around this by making the consumer pay through federally approved rate increases.

This undermines our environmental laws and is unfair to utility customers.

That is why I decided to place a hold on these nominations. I wanted to get

some understanding of how the nominees view this issue.

I sent them all a series of questions. I have reviewed their responses. They all seem to indicate that they would take a very close look at rate requests involving environmental violations.

I am releasing my hold on the nominations, but in doing so I would make several observations. It is my view that costs resulting from environmental violations are imprudently incurred, for purposes of the Natural Gas Act. In applying the act, FERC should not deem such costs to be just and reasonable, and should not allow them to be passed through to consumers.

I also believe that FERC must exercise its broad legal authority under the Gas Act, even absent a finding by a court or other agency, to deny costs that are imprudent by virtue of their inconsistency with environmental laws. While the nominees' statements are not by any means as clear as I would like, excerpts from those statements are worth noting.

Ms. Moler states:

[I]t is certainly not appropriate to allow recovery of the costs associated with illegal acts \* \* \* It is my understanding that the Commission does \* \* \* use its broad legal authority to evaluate all of the costs included in any entity's rate filings.

Chairman Hesse responded:

I want to assure you that we share a common goal in seeing that ratemaking principles do not undermine federal environmental laws and that the Commission will take all appropriate and necessary measures to reach this goal \* \* \* The Commission should and does use its broad legal authority to evaluate all of the costs which a pipeline includes in its rate filings, including costs associated with actions which may be inconsistent with the requirements of environmental laws \* \* \* Costs associated with pipeline activities that are inconsistent with the requirements of environmental laws may well be found to be imprudent.

Commissioner Stalon observed:

Management of regulated firms \* \* \* must have incentives to honor the environmental laws \* \* \* Denial of cost pass through is about the only way to provide such incentives \* \* \*

Mr. Langdon stated:

[I]f the pollution occurs as a result of a willful violation of existing environmental laws, cleanup costs may well be imprudent and may appropriately be borne solely by the polluting business entity.

Commissioner Traybandt observed:

If a particular cost is associated with activities resulting from a proven violation of an environmental law, we assume them to be per se imprudent \* \* \* I agree that where the Commission has the discretion under the applicable law, FERC does, in fact, have a responsibility to assure that its regulation does not undermine the application of environmental laws.

Mr. President, although I am releasing my hold, let me say this to the FERC nominees. I will be keeping an eye on the Texas Eastern case and FERC. I will be examining any future

rulings by these nominees. I will expect those future actions to be consistent with the recent positions they stated on these issues.

FERC has a duty to safeguard our environmental laws and to protect consumers. And the public expects the Senate to make sure that FERC nominees understand this.

Mr. President, to provide public and permanent access to the nominees' responses, I ask unanimous consent to print my correspondence with them in the RECORD. I also ask unanimous consent to print excerpts from my subcommittee's Texas Eastern report in the RECORD.

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

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT  
AND PUBLIC WORKS,  
Washington, DC, September 22, 1988.

MARTHA O. HESSE,  
Chairman, Federal Energy Regulatory Commission, Washington, DC.

DEAR CHAIRMAN HESSE: As you know, your nomination to the Federal Energy Regulatory Commission (FERC) may soon come before the Senate. I have been examining the question of how FERC ratemaking relates to the operation of our federal environmental laws. I believe that FERC has a duty to assure that ratemaking does not in any way undermine the application of environmental laws. The important principle embodied in those laws is that the polluter, not the consumer, should pay for costs resulting from environmental violations. Given my interest in this subject, I would appreciate your views on the following questions:

1. Should rate recovery be allowed where a proposed rate includes any cleanup costs that result from violations of environmental laws or cleanup payments made pursuant to consent decrees or other settlements? If so, under what circumstances? If not, why not?

2. Assume for purposes of this question that neither a prior regulatory or judicial determination of an environmental violation has been made nor a consent decree issued relating to an environmental violation.

(a) Should FERC use its broad legal authority to evaluate whether costs associated with a rate application result from actions that are inconsistent with the intent and requirements of environmental laws? If so, under what circumstances? If not, why not?

(b) If your answer to 2(a) is yes, and assuming a finding that costs result from actions that are inconsistent with the intent and requirements of environmental laws, should rate recovery for such costs be denied?

Please give full explanations for your answers. I will consider your responses carefully in making a determination about your confirmation vote, and intend to move to defer full consideration of your nomination until I have had an opportunity to review your responses.

I appreciate your assistance.

Sincerely,

FRANK R. LAUTENBERG,  
Chairman, Subcommittee on Superfund and Environmental Oversight.

FEDERAL ENERGY  
REGULATORY COMMISSION,

Washington, DC, September 23, 1988.

HON. FRANK R. LAUTENBERG,  
Chairman, Subcommittee on Superfund and Environmental Oversight, Committee on Environmental and Public Works, Washington, DC.

DEAR CHAIRMAN LAUTENBERG: Thank you for your letter of September 22, 1988, concerning how the Federal Energy Regulatory Commission's ratemaking authority relates to the application of federal environmental laws.

At the outset, I want to assure you that we share a common goal in seeing that ratemaking principles do not undermine the application of federal environmental laws and that the Commission will take all appropriate and necessary measures to reach this goal. In this regard, I am enclosing a copy of an agreement between the Environmental Protection Agency and the Commission's staff which demonstrates the concern that I have about these matters.

I am also pleased to provide the following responses to your specific questions. In brief, you inquired about the recovery of costs in situations where pipelines have violated the environmental laws and where their activities are inconsistent with the requirements of the environmental laws.

Under section 4 of the Natural Gas Act, the standard for whether rate recovery should be allowed for any cost is whether the cost was "prudently incurred." The Commission distinguishes between costs relating to ongoing compliance with environmental regulations, which are normally allowed, and penalties or fines, which are disallowed. The question of prudence also arises when a pipeline seeks to recover the cost of remedying past violations. Where the Commission is aware that a violation of the environmental laws has occurred, it closely scrutinizes all of the costs in the pipeline's next rate case.

Questions of fact may be disputed when a pipeline's costs of compliance or of remedying past noncompliance relate to strict liability standards under environmental laws. In these circumstances, the issue of whether the pipeline should be permitted to recover such costs in its rates is set for hearing, as was done recently when Texas Eastern Transmission Corporation included approximately \$40 million in annual costs related to total PCB clean-up costs of \$400 million in its application for a rate increase. This case is pending currently before a Commission Administrative Law Judge.

The Commission should and does use its broad legal authority to evaluate all of the costs which a pipeline includes in its rate filings, including costs associated with actions which may be inconsistent with the requirements of environmental laws. The overriding consideration is whether the costs were prudently incurred. Costs associated with pipeline activities that are inconsistent with the requirements of environmental laws may well be found to be imprudent.

Also, as in the case with Texas Eastern's PCB clean-up expense, pipeline activities once lawful may later become unlawful, and the environmental statute may impose strict liability. The conclusion as to the prudence of the costs may be related to the timing of the pipeline's corrective measures. In this situation, the finding that particular costs were imprudently incurred must await the results of a hearing on this and other rate issues.

Outside the rate area, the Commission performs an environmental review prior to acting on each application for certificate authority to construct and operate pipeline facilities. Facilities that are inconsistent with the intent and requirements of environmental laws may be denied certificate authorization because they are not in the "public convenience and necessity." Alternatively, the Commission may condition the certificate to mitigate the environmental effects. Once a facility has been certificated, the Commission monitors the pipeline's compliance with the certificate conditions.

The Commission's regulations include complaint procedures by which others can inform it that particular companies may not be in compliance with the intent and requirements of the environmental laws under the Commission's jurisdiction. The Commission thoroughly investigates all such complaints and may use its enforcement powers to achieve compliance. However, there are no civil penalties under the Natural Gas Act.

If I can be of further assistance in this or any other matter, please let me know.

Sincerely,

MARTHA O. HESSE.

FEDERAL REGULATORY COMMISSION,  
Washington, DC, September 14, 1987.

MR. FRANCIS S. BLAKE, Esquire,  
General Counsel, Environmental Protection Agency, Washington, DC.

DEAR MR. BLAKE: We are pleased to respond to the Environmental Protection Agency's (EPA's) April 29, 1987 letter to the Commission regarding the environmental issues raised in the pending application by Texas Eastern Transmission Corporation (Texas Eastern) and PennEast Gas Service Company (PennEast) to construct and/or replace certain natural gas pipelines in Ohio, West Virginia, Pennsylvania, New Jersey and New York, (Docket Nos. CP87-92-000 and 001). We appreciate the comments in that letter, as well as EPA's offer to provide further amplification of those comments. This letter documents the meeting between our staffs held in your office June 10, 1987 regarding the scope of the Commission's NEPA review of this project.

EPA's letter noted that Texas Eastern and the EPA are discussing resolution of EPA's pending enforcement action regarding the clean-up and disposal of polychlorinated biphenyls, or "PCBs" along portions of the existing Texas Eastern pipeline. The letter also pointed out that "a substantial array of major environmental concerns regarding potentially toxic contaminants that could be affected by pipeline construction and replacements remains to be resolved" between Texas Eastern and EPA.

The Commission's staff concurs in EPA's assessment that there appears to be overlap between the matters under negotiation in the Texas Eastern enforcement case and the subject matter the Commission is reviewing pursuant to the Natural Gas Act and the National Environmental Policy Act (NEPA). Therefore, we agree that EPA and FERC's staff should coordinate our actions in fulfilling our respective statutory responsibilities. To achieve this objective, we propose that the Commission's staff proceed as follows:

The Commission's staff will defer to EPA's determinations, consent decrees and other actions related to environmental issues arising out of EPA's enforcement action against Texas Eastern or any other PCB-related actions by Texas Eastern under

EPA's jurisdiction. For example, the Commission staff will defer to EPA's findings, conclusions, agreements, and orders concerning PCB site clean-up, disposal and construction procedures relating to the project. The Commission staff will not conclude our NEPA review in those areas covered by your enforcement action until such time as the related PCB control issues have been settled between EPA and Texas Eastern in a consent decree. The Commission's staff will however, continue to accumulate and analyze relevant facts for our NEPA review in coordination with your on-going enforcement proceeding.

On all other environmental issues, whether specific or generic, as well as the ultimate decision on the need for an environmental impact statement on the project, the Commission's staff will proceed with the NEPA review process. In those areas, EPA will defer to our jurisdiction, expertise, determinations and orders, subject to EPA's responsibility under section 309 of the Clean Air Act to review published NEPA documents.

In addition to this coordination of the NEPA review of Texas Eastern's proposal, the Commission's staff from time-to-time, may need EPA's assistance in interpreting the statutes and regulations over which EPA has direct jurisdiction. This is particularly important where the definitions and thresholds in the regulations will be applied to factual situations under EPA regulations. For this reason, we would expect to seek your advice and counsel regarding the interpretation of regulations administered by you that would be applicable to the Texas Eastern project. Where we require a pipeline such as Texas Eastern to submit a facility abandonment and removal plan to us for review, you would review that plan and determine whether it is in compliance with your applicable regulations. Likewise, if EPA encounters any questions concerning the Natural Gas Act and FERC's regulations as they apply to the Texas Eastern case, we will be happy to provide EPA with an interpretation of our regulations.

Finally, the Commission's staff request that, to the extent consistent with EPA regulatory practices, correspondence received by EPA pertaining to pipeline removal and disposal that may also affect FERC's responsibilities will be shared with the Commission staff. Commission staff will proceed in a similar manner with correspondence it receives that may affect EPA's responsibilities.

We believe that the approach outlined above, as applied to the proposed Texas Eastern-PennEast project, will help produce the following results:

1. EPA and Texas Eastern can proceed promptly with resolution of the PCB enforcement action, compliance and clean-up issues.

2. FERC's staff can proceed promptly with its NEPA review process in connection with the project. EPA's assistance in interpreting its regulations when requested by FERC on an as-needed basis, will accelerate that NEPA review. In addition, such assistance will eliminate duplicative efforts where Texas Eastern seeks answers to the same questions at each agency.

If this plan for managing the overlapping jurisdiction of EPA and FERC in this case meets with your approval, we can begin coordinating our efforts immediately. Please let us know your response as soon as possible, and identify appropriate contact points for future inquiries. We appreciate your co-

operation and assistance and look forward to our continuing, effective relationship.

Sincerely,

CATHERINE C. COOK,  
General Counsel,  
RICHARD P. O'NEILL,  
Director, Office of  
Pipeline and Pro-  
ducer Regulation.

U.S. SENATE,

COMMITTEE ON ENVIRONMENT AND  
PUBLIC WORKS,

Washington, DC, September 22, 1988.

MR. JERRY LANGDON,  
Federal Energy Regulatory Commission,  
Washington, DC.

DEAR MR. LANGDON: As you know, your nomination to the Federal Energy Regulatory Commission (FERC) may soon come before the Senate. I have been examining the question of how FERC ratemaking relates to the operation of our federal environmental laws. I believe that FERC has a duty to assure that ratemaking does not in any way undermine the application of environmental laws. The important principle embodied in those laws is that the polluter, not the consumer, should pay for costs resulting from environmental violations. Given my interest in this subject, I would appreciate your views on the following questions:

1. Should rate recovery be allowed where a proposed rate includes any cleanup costs that result from violations of environmental laws or cleanup payments made pursuant to consent decrees or other settlements? If so, under what circumstances? If not, why not?

2. Assume for purposes of this question that neither a prior regulatory or judicial determination of an environmental violation has been made nor a consent decree issued relating to an environmental violation.

(a) Should FERC use its broad legal authority to evaluate whether costs associated with a rate application result from actions that are inconsistent with the intent and requirements of environmental laws? If so, under what circumstances? If not, why not?

(b) If your answer to 2(a) is yes, and assuming a finding that costs result from actions that are inconsistent with the intent and requirements of environmental laws, should rate recovery for such costs be denied?

Please give full explanations for your answers. I will consider your responses carefully in making a determination about your confirmation vote, and intend to move to defer full consideration of your nomination until I have had an opportunity to review your responses.

I appreciate your assistance.

Sincerely,

FRANK R. LAUTENBERG,  
Chairman, Subcommittee on Superfund  
and Environmental Oversight.

QUESTIONS FROM SENATOR FRANK R.  
LAUTENBERG FOR JERRY J. LANGDON

Question 1. Should rate recovery be allowed where a proposed rate includes any cleanup costs that result from violations of environmental laws or cleanup payments made pursuant to consent decrees or other settlements? If so, under what circumstances? If not, why not?

Answer. I have been advised by FERC's Office of General Counsel that the Commission has had occasion to consider this issue. Moreover, I understand that there is a rate case pending which I, as Commissioner, will

have to address if my nomination is confirmed by the Senate.

I believe that the determining factor relating to the ratemaking aspect of this question lies in the answer to whether the pollution occurred as a result of "prudent business operations." I believe that current law and precedence would allow the recovery of certain legitimately incurred cleanup costs in rates. Conversely, if the pollution occurs as a result of a willful violation of existing environmental laws, cleanup costs may well be imprudent and may appropriately be borne solely by the polluting business entity.

**Question 2.** Assume for purposes of this question that neither a prior regulatory or judicial determination of an environmental violation has been made nor a consent decree issued relating to an environmental violation.

(a) Should FERC use its broad legal authority to evaluate whether costs associated with a rate application result from actions that are inconsistent with the intent and requirements of environmental laws? If so, under what circumstances? If not, why not?

**Answer.** The Commission, in appropriate cases, should use its broad legal authority to evaluate all of the costs which a pipeline includes in its rate filings, including costs associated with actions which may be inconsistent with the requirements of environmental laws.

(b) If your answer to 2(a) is yes, and assuming a finding that costs result from actions that are inconsistent with the intent and requirements of environmental laws, should rate recovery for such costs be denied?

**Answer.** As previously stated in answering Question 1. above, I believe the FERC would need to consider the circumstances under which the costs of cleanup were assessed to make a determination as to the prudence exercised by the party involved.

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT  
AND PUBLIC WORKS,

Washington, DC, September 22, 1988.

Ms. ELIZABETH MOLER,  
Federal Energy Regulatory Commission,  
Washington, DC.

DEAR Ms. MOLER: As you know, your nomination to the Federal Energy Regulatory Commission (FERC) may soon come before the Senate. I have been examining the question of how FERC ratemaking relates to the operation of our federal environmental laws. I believe that FERC has a duty to assure that ratemaking does not in any way undermine the application of environmental laws. The important principle embodied in those laws is that the polluter, not the consumer, should pay for costs resulting from environmental violations. Given my interest in this subject, I would appreciate your views on the following questions:

1. Should rate recovery be allowed where a proposed rate includes any cleanup costs that result from violations of environmental laws or cleanup payments made pursuant to consent decrees or other settlements? If so, under what circumstances? If not, why not?

2. Assume for purposes of this question that neither a prior regulatory or judicial determination of an environmental violation has been made nor a consent decree issued relating to an environmental violation.

(a) Should FERC use its broad legal authority to evaluate whether costs associated with a rate application result from actions that are inconsistent with the intent and re-

quirements of environmental laws? If so, under what circumstances? If not, why not?

(b) If your answer to 2(a) is yes, and assuming a finding that costs result from actions that are inconsistent with the intent and requirements of environmental laws, should rate recovery for such costs be denied?

Please give full explanations for your answers. I will consider your responses carefully in making a determination about your confirmation vote, and intend to move to defer full consideration of your nomination until I have had an opportunity to review your responses.

I appreciate your assistance.

Sincerely,

FRANK R. LAUTENBERG,  
Chairman, Subcommittee on  
Superfund and Environmental  
Oversight.

U.S. SENATE, COMMITTEE ON  
ENERGY AND NATURAL RESOURCES,  
Washington, DC, September 23, 1988.

Hon. FRANK R. LAUTENBERG,  
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: Enclosed are my answers to the questions you asked in your letter of September 22.

I am certainly aware of your longstanding interest in the issues addressed by your questions. I have reviewed the report issued by your Subcommittee on Superfund and Environmental Oversight concerning performance of the Environmental Protection Agency with regard to disposal of polychlorinated biphenyls (PCBs) by the Texas Eastern Gas Pipeline Company, and am familiar with its conclusions.

With best wishes,  
Sincerely,

ELIZABETH ANNE MOLER,  
Senior Counsel.

Answers to Questions From Senator  
Lautenberg From Elizabeth Anne Moler

**Question 1.** Should rate recovery be allowed where a proposed rate includes any cleanup costs that result from violations of environmental laws or cleanup payments made pursuant to consent decrees or other settlements? If so, under what circumstances? If not, why not?

**Answer 1.** I assume that the question of "rate recovery" pertains to entities whose rates are regulated by the Federal Energy Regulatory Commission (FERC). FERC regulates the rates for sales of power in interstate or foreign commerce under the provisions of the Federal Power Act (FPA) and the rates for transportation of natural gas in interstate commerce under the provisions of the Natural Gas Act (NGA). Neither statute deals explicitly with the question you pose.

From a policy point of view, it is my view that it is appropriate to allow recovery in rates charged by regulated entities for the costs of compliance with environmental statutes, and it is certainly not appropriate to allow recovery of the costs associated with illegal acts.

As a legal matter, the question of whether such costs are allowed to be included in rates approved by the Commission requires an inquiry into whether such costs were prudently incurred. The answer to that question requires a thorough inquiry into the facts of each case and frequently involves a trial-type rate proceeding with an opportunity for participation by all interested parties. I cannot give an unequivocal answer to your question of whether any

cleanup costs should be allowed to be included in rates without a case-specific review of the legal and factual circumstances involved.

**Question 2.** Assume for purposes of this question that neither a prior regulatory or judicial determination of an environmental violation has been made nor a consent decree issued relating to an environmental violation.

(a) Should FERC use its broad legal authority to evaluate whether costs associated with a rate application result from actions that are inconsistent with the intent and requirements of environmental laws. If so, under what circumstances? If not, why not?

(b) If your answer to 2(a) is yes, and assuming a finding that costs result from actions that are inconsistent with the intent and requirements of environmental laws, should rate recovery for such costs be denied?

**Answer 2.** It is my understanding that the Commission does, indeed, use its broad legal authority to evaluate all of the costs included in any entity's rate filings. The standard for rate recovery is whether such costs were prudently incurred. If they were, they are allowed. If they were not, they are denied.

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT  
AND PUBLIC WORKS,

Washington, DC, September 22, 1988.

CHARLES STALON,  
Commissioner, Federal Energy Regulatory  
Commission, Washington, DC.

DEAR COMMISSIONER STALON: As you know, your nomination to the Federal Energy Regulatory Commission (FERC) may soon come before the Senate. I have been examining the question of how FERC ratemaking relates to the operation of our federal environmental laws. I believe that FERC has a duty to assure that ratemaking does not in any way undermine the application of environmental laws. The important principle embodied in those laws is that the polluter, not the consumer, should pay for costs resulting from environmental violations. Given my interest in this subject, I would appreciate your views on the following questions:

1. Should rate recovery be allowed where a proposed rate includes any cleanup costs that result from violations of environmental laws or cleanup payments made pursuant to consent decrees or other settlements? If so, under what circumstances? If not, why not?

2. Assume for purposes of this question that neither a prior regulatory or judicial determination of an environmental violation has been made nor a consent decree issued relating to an environmental violation.

(a) Should FERC use its broad legal authority to evaluate whether costs associated with a rate application result from actions that are inconsistent with the intent and requirements of environmental laws? If so, under what circumstances? If not, why not?

(b) If your answer to 2(a) is yes, and assuming a finding that costs result from actions that are inconsistent with the intent and requirements of environmental laws, should rate recovery for such costs be denied?

Please give full explanations for your answers. I will consider your responses carefully in making a determination about your confirmation vote, and intend to move to defer full consideration of your nomination until I have had an opportunity to review your responses.

I appreciate your assistance.

Sincerely,

FRANK R. LAUTENBERG,  
Chairman, Subcommittee on Superfund  
and Environmental Oversight.

FEDERAL ENERGY  
REGULATORY COMMISSION,

Washington, DC, September 23, 1988.

HON. FRANK R. LAUTENBERG,  
Chairman, Subcommittee on Superfund and  
Environmental Oversight, U.S. Senate,  
Washington, DC.

DEAR CHAIRMAN LAUTENBERG: Thank you for your letter of September 21, 1988 requesting my opinion of the relationship between FERC ratemaking and the federal environmental laws.

I have enclosed responses to your questions. I hope these responses will adequately address your concerns. If I may provide you with further information in this regard, please contact me at 357-8388.

Sincerely,

CHARLES G. STALON,  
Commissioner.

*Question 1.* Should rate recovery be allowed where a proposed rate includes any cleanup costs that result from violations of environmental laws or cleanup payments made pursuant to consent decrees or other settlements? If so, under what circumstances? If not, why not?

Answer. Under section 4 of the Natural Gas Act, the standard for whether recovery should be allowed for any cost is whether the cost was "prudently incurred." The Commission distinguishes between costs relating to ongoing compliance with environmental regulations, which are normally allowed, and penalties or fines, which are disallowed. The question of prudence also arises when a pipeline seeks to recover the cost of remedying past violations. Where the Commission is aware that violation of environmental laws has occurred, it closely scrutinizes all of the costs in the pipeline's next rate case.

The Commission performs an environmental review prior to acting on each application for certificate authority to construct and operate pipeline facilities. Facilities that are inconsistent with the intent and requirements of environmental laws may be denied certificate authorization because they are not in the "public convenience and necessity." Alternatively, the Commission may condition the certificate to mitigate the environmental effects. Once a facility has been certificated, the Commission monitors the pipeline's compliance with the certificate conditions.

Generalization about which cleanup costs might be found prudent and which ones imprudent must be tentative ones since fact contexts are likely to be crucially important in the final decision. Two generalizations seem defensible however: (1) Management of regulated firms, and stockholders who "select" that management, must have incentives to honor the environmental laws (and antitrust laws and other laws). Denial of cost pass through is about the only way to provide such incentives when the agency is limited in its ability to levy fines and penalties, as is the FERC. (2) Management of regulated firms must also have incentives to hold down the cost of serving their customers. These incentives may, in the presence of evolving and uncertain environmental laws, create serious dilemmas for managers. When second guessing managers' decision in circumstances with strong conflicting incentives, the regulator should not be con-

strained by a requirement that all cleanup cost for environmental violations be denied pass through. To be so constrained would likely tilt incentives towards high cost operations and significantly harm customers.

2. Assume for purposes of this question that neither a prior regulatory or judicial determination of an environmental violation has been made nor a consent decree issued relating to an environmental violation.

*Question 2(a).* Should FERC use its broad legal authority to evaluate whether costs associated with a rate application result from actions that are inconsistent with the intent and requirements of environmental laws? If so, under what circumstances? If not, why not?

Answer. The FERC lacks the manpower and expertise to police all the laws infringing on regulated firms; it should not pretend to do so. In the past the FERC has cooperated with the Federal and state EPAs (and other agencies such as fish and wildlife agencies) when creating certificate requirements for regulated firms. It has, furthermore, enforcement powers for such certificate terms. As a general rule, however, the FERC has no general program, and does not have the authority to create a general program, to impose fines, penalties or income deductions on regulated firms which the FERC determines have acted inconsistently with Federal environmental laws. It could and does call such "violations" to the attention of responsible agencies. On the other hand, when it comes to the FERC's attention that a responsible agency has found a violation, then, as described in the answer to Question One, the FERC will make a prudence decision and allow or deny pass through of fines and/or cleanup costs.

*Question 2(b).* If your answer to 2(a) is yes, and assuming a finding that costs result from actions that are inconsistent with the intent and requirements of environmental laws, should rate recovery for such costs be denied?

Answer. My answer to question 2(a) was not "yes," but a brief elaboration on the previous answer is useful. First, I do not believe the FERC can make a legally significant "finding" that a firm's action violates or is inconsistent with the environmental laws, except those incorporated in certificates issued by the FERC itself.

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT  
AND PUBLIC WORKS,

Washington, DC, September 22, 1988.

CHARLES TRABANDT,  
Commissioner,  
Federal Energy Regulatory Commission,  
Washington, DC.

DEAR COMMISSIONER TRABANDT: As you know, your nomination to the Federal Energy Regulatory Commission [FERC] may soon come before the Senate. I have been examining the question of how FERC ratemaking relates to the operation of our federal environmental laws. I believe that FERC has a duty to assure that ratemaking does not in any way undermine the application of environmental laws. The important principle embodied in those laws is that the polluter, not the consumer, should pay for costs resulting from environmental violations. Given my interest in this subject, I would appreciate your views on the following questions:

1. Should rate recovery be allowed where a proposed rate includes any cleanup costs that result from violations of environmental laws or cleanup payments made pursuant to

consent decrees or other settlements? If so, under what circumstances? If not, why not?

2. Assume for purposes of this question that neither a prior regulatory or judicial determination of an environmental violation has been made nor a consent decree issued relating to an environmental violation.

(a) Should FERC use its broad legal authority to evaluate whether costs associated with a rate application result from actions that are inconsistent with the intent and requirements of environmental laws? If so, under what circumstances? If not, why not?

(b) If your answer to 2(a) is yes, and assuming a finding that costs result from actions that are inconsistent with the intent and requirements of environmental laws, should rate recovery for such costs be denied?

Please give full explanations for your answers. I will consider your responses carefully in making a determination about your confirmation vote, and intend to move to defer full consideration of your nomination until I have had an opportunity to review your responses.

I appreciate your assistance.

Sincerely,

FRANK R. LAUTENBERG,  
Chairman, Subcommittee on Superfund  
and Environmental Oversight.

FEDERAL ENERGY  
REGULATORY COMMISSION,

Washington, DC, September 23, 1988.

HON. FRANK R. LAUTENBERG,  
Chairman, Subcommittee on Superfund and  
Environmental Oversight, Committee on  
Environment and Public Works, U.S.  
Senate, Washington, D.C.

DEAR CHAIRMAN LAUTENBERG: Thank you for your letter of September 22, 1988, regarding the question of how FERC ratemaking relates to the operation of our federal environmental laws.

I appreciate the opportunity to address your concern that FERC has a duty to assure that ratemaking does not in any way undermine the application of environmental laws. I also respect your view that the important principle embodied in those laws is that the polluter, not the consumer, should pay for costs resulting from environmental violations.

Consequently, I am pleased to provide the enclosed responses to your questions on this important issue. And, I hope my responses provide a full and complete explanation for your consideration in making a determination about my pending nomination. Please call me at 357-8366 if you have any questions or comments.

Best wishes to you and the Subcommittee.

Sincerely,

CHARLES A. TRABANDT,  
Commissioner.

Enclosure.

In the interests of providing some background and a reference frame for addressing your concern and responding to your questions, I would like to preface my answers with several observations. First, I would note that the Commission as an independent regulatory agency has only that express authority delegated by Congress. The Commission's ratemaking authority is contained in the Natural Gas Act, the Federal Power Act and the Natural Gas Policy Act. The Natural Gas Act (NGA) does not contain any authority for penalties and courts have consistently struck down attempts by the Commission to impose any penalty for any reason. It is noteworthy that the courts have rejected prior Commission actions

under the NGA deemed by the courts to be de facto penalties for alleged violations of the Act. Recently in *Coastal Oil and Gas Corporation v. FPC*, 782 F.2d 1249 (5th Cir. 1986), for example, the court reiterated that an alleged violation of the NGA itself could not justify the de facto penalty in a fact situation involving diversion of natural gas from the interstate market to the intrastate market. The Commission-ordered remedy required Coastal to forfeit all of the profits, and denied Coastal repayment of the cost of the gas.

There the court held that "the Natural Gas Act . . . does not give FERC the authority to impose civil penalties." Coastal at 1253. Further, the court found that the commission's remedy that required Coastal to refund all revenues received from the sale of gas diverted from the interstate market to the intrastate market was a penalty because the remedy exceeded the amount Coastal was unjustly enriched and also exceeded the amount of injury to Florida Gas Transmission Company's interstate customers who paid higher prices to obtain gas elsewhere.

Currently, the Commission has before it on rehearing another case raising the same issue in the context of alleged diversion and sale of natural gas in violation of the NGA. *Stowers Oil and Gas Company, et al.*, Opinion No. 307, 44 FERC ¶61,128 (July 22, 1988). A central issue in that case is whether, and to what extent, the Commission, in the face of the *Coastal* court opinion, can apply the concept of unjust enrichment to the alleged violators without levying a de facto penalty. In that particular case, I issued a separate concurring opinion in which I seriously questioned the result there as probably contrary to *Coastal*. Thus, it is very important to observe that even where there is a direct violation of the NGA itself, the Commission cannot impose any de facto penalty as part of a rate proceeding. The only valid inquiry in such a case under existing law is whether the costs were prudently incurred and the rates are just and reasonable, which was the unanimous holding of the Commission in the Texas Eastern Transmission Company (TETCO) case in Docket No. RP88-67-000 discussed below. In traditional ratemaking under the NGA, companies are allowed to recover prudently incurred costs in their rates under section 4. The Commission may modify currently effective rates determined to be unjust and unreasonable prospectively under section 5 so as to render them just and reasonable in the future.

The Natural Gas Policy Act of 1978 (NGPA) establishes maximum lawful prices for first sales of natural gas (generally well-head prices) under Title I of the Act and also provides civil penalties for certain violations of administrative requirements in the Act. Title VI of that Act also authorizes the Commission to disallow recovery of certain purchase gas costs where affiliate purchases are involved and where the purchases involve fraud, abuse or similar grounds.

The Federal Power Act also does not contain any authority for penalties, except for amendments to the Act enacted in the Electric Consumer Protection Act of 1986 (ECPA) in the area of hydroelectric licensing for violations of licensing conditions. In that connection, I emphasized in my dissent in Docket No. RM87-24, Procedure for the Assessment of Civil Penalties under Section 31 of the Federal Power Act (issued August 17, 1988) that the Commission must limit itself and assert authority to penalize hydro

project operations only in those situations Congress authorized in ECPA. Further, a recent decision in *South Carolina Power Service Authority v. FERC*, D.C. Cir. No. 87-1146 (July 5, 1988), struck down a decision by the Commission to require, under certain specific circumstances, liability coverage by the licensee for property damage in the event of a dam failure on the theory that the Commission was effectively supplanting state tort law in the program.

The applicable ratemaking standard for utility filings under the Federal Power Act also is just and reasonable pursuant to section 205 with the emphasis on prudently incurred costs and non-abuse of affiliate relationships. The Commission under 206 may determine a currently effective rate to be unjust and unreasonable and order such modifications prospectively as necessary to render the rate just and reasonable in the future.

Second, the Commission's responsibilities under environmental laws involve several different areas of responsibility. Of course, the National Environmental Policy Act (NEPA) applies the Commission in its decisionmaking process. And, the Commission recently adopted regulations specifically designed to implement NEPA in the Commission's activities. The new regulations, consistent with guidelines of the Council on Environmental Quality and judicial precedent, do not apply to traditional ratemaking proceedings not involving directly some form of physical activity. *Monongahela Power Co.*, 39 FERC ¶61,350, order rehearing, 40 FERC ¶61,256 (1987). The Commission's consideration of applications involving physical activity is subject to the NEPA regulations. Such applications also are subject to any applicable Federal or state substantive environmental laws and the satisfaction of those laws is a requirement of Commission actions resulting from consideration of them in the NEPA process. For example, various actions of the Commission on applications in the natural gas, electric power and hydroelectric project area could require consideration of requirements under the Clean Water Act, the Endangered Species Act, the Historic Preservation Act, to name a few. In many cases the primary requirements and decisions are made by other Federal agencies with direct statutory authority over a specific area. For example, in a long line of cases involving replacement of existing natural gas pipeline sections, the Commission has required pipeline applicants to seek and receive approval of the Environmental Protection Agency (EPA) for their removal and replacement plans for the old pipe, because of the potential for PCB contamination in the removal and replacement process. See for example, *Columbia Gas Transmission Corporation*, Docket No. CP88-129-000 (issued September 16, 1988); *Tennessee Gas Pipeline Company*, Docket No. CP87-85-000 (issued September 16, 1988). More specifically, FERC and EPA reached agreement or procedures for joint review of TETCO's PCB cleanup proposal. Attached is a copy of that agreement for your information.

The Commission does not have any direct authority nor expertise to enforce the environmental laws outside the scope of the NEPA process. Traditionally, the Commission has relied on the expertise and judgments of EPA and other jurisdictional Federal agencies with regard to enforcement of environmental laws and review of alleged violations of them. For example, in the area of natural gas pipelines and PCB contamination, the Commission has deferred to

EPA to investigate alleged violations and establish requirements for remedial action plans to clean up PCB contamination. The Commission's Enforcement staff focuses its efforts on violations of the NGA, FPA and NGPA, implementing regulations and Commission regulatory orders under those Acts.

Third, the Commission already has been confronted with a specific case involving the fact pattern you have described more generally. In the aforementioned TETCO case, the Company filed revised tariff sheets on March 1, 1988, under section 4 of the Natural Gas Act. The increased rates were based on actual base period data for the twelve month period ending December 31, 1987, adjusted for known and measurable charges through September 30, 1988, resulting in an increase in jurisdictional revenues of \$127,052,369. TETCO asserted that the filed rates were necessary to recover increases in various costs and rate of return, including costs associated with the removal and disposition of pipeline liquids containing polychlorinated biphenyls (PCB). More specifically, the filing reflected costs associated with the disposition of pipeline liquids containing PCBs, as well as the costs of equipment modifications to control sources of pipeline liquids which may contain PCBs and assessment and remediation of PCBs at various compressor stations located on TETCO's system (called the Environmental Remediation Program).

The Environmental Remediation Program was a part of a consent decree entered into by TETCO and EPA in a case involving alleged violations of applicable environmental laws as to PCB contamination. TETCO provided the Commission with a schedule which set forth the amounts associated with the PCB cleanup program which have been included in the operation and maintenance accounts. The schedule indicated that \$22,563,000 of the rate filing increase was attributable to the Environmental Remediation Program. EPA also provided the Commission with a report on the consent decree and the Environmental Remediation Program for the PCB contamination.

Forty parties, including most New Jersey customers, intervened in the case and of those, 9 parties including New Jersey Natural Gas, Public Service Electric and Gas Company, and the New York Public Service Commission protested some aspect of the filing. Two of the protestants requested that the Commission summarily reject TETCO's PCB-related costs because they alleged that those costs were incurred as a result of TETCO's strict liability under environmental laws to clean up hazardous substances and were not prudently incurred. The Commission denied the request for partial summary rejection of the PCB-related costs on those grounds. As the protestants agreed, the issue before the Commission for ratemaking purposes under NGA section 4 was whether those PCB-related costs were prudently incurred by TETCO, and that determination required an evidentiary hearing.

The Commission concluded that, if the Administrative Law Judge determines after the hearing that some or all of the PCB-related costs included in TETCO's filing would result in unjust and unreasonable rates, the costs would be disallowed. The Commission also required that TETCO, pursuant to a request from the New York PSC, must file detailed work papers explaining the costs related to the clean-up of PCBs which may have been disposed of in violation of Federal environmental laws. The

Commission accepted the filing subject to refund and various conditions, including the outcome of the hearing, and suspended the rates until September 1, 1988 (the maximum 5 month suspension period under the NGA). The status of the hearing is:

Prehearing Conference—July 11, 1988.

Settlement conference are permitted until (one is scheduled for September 26, 1988)—October 28, 1988.

Staff Direct Testimony—November 18, 1988.

Intervenor Direct Testimony—December 16, 1988.

Staff Cross Testimony—January 18, 1989.

TETCO Rebuttal Testimony—February 24, 1989.

Formal Hearing—March 20, 1989.

Unless there is a settlement of the issues in the case, the ALJ will issue an Initial Decision which will then be subject to review by the Commission.

It is noteworthy that none of the protestants sought rehearing of the Commission's decision to set the PCB-related costs prudence issue for evidentiary hearing and to deny the requests for partial summary rejection of those costs. Thus, it is fair to note that the protestants, including New Jersey Natural Gas and Public Service Electric and Gas, did not seek further summary rejection of those costs, rather than an evidentiary hearing on the prudence of their incurrence.

Fourth, I would note that any additional costs for PCB cleanup incurred by TETCO under the Environmental Remediation Program would be subject to a tariff filing and subsequent review by the Commission under section 4 of the NGA. Under the precedent of the March 1 decision, those additional PCB related costs could be subject to an evidentiary hearing on the prudence issue, if also challenged as imprudent by protesting parties, which I would consider probable. Consequently, it is likely that the Commission in the future will have to consider similar arguments with regard to the future filings. Thus, the sitting Commissioners may be required to consider and decide this issue again in the future.

Fifth, I believe that Chairman Hesse, Commissioner Stalon and I, as sitting Commissioners with a specific pending case, must remain cognizant of the Pillsbury doctrine. Our responses to your questions might bring our impartiality into question and so taint the agency's process as to lead to a reversal of our decision in the court. In the leading case of *Pillsbury v. FTC*, 354 F.2d (5th Cir. 1966), the court found that when Congressional inquiry focuses directly and substantially on the decisional process of Commissioners in a pending adjudication, the due process rights of the parties may be denied. Also, the Commission has an interest in protecting the integrity of its decisional process even where the Congressional scrutiny may not be sufficiently intense that it would lead to reversal.

As noted above, the Commission undoubtedly will have to consider the question of the proper ratemaking treatment of TETCO's costs associated with the Environmental Remediation Program in the Docket No. RP88-67-000 case in the context of an ALJ Initial Decision or any future settlement of that issue. The same issue probably will recur again in subsequent TETCO filings seeking, among others, the recovery of subsequent costs under the Environmental Remediation Program. Consequently, we must be careful under the Pillsbury Doctrine to avoid any appearance of prejudg-

ment in our responses to Congressional inquiries. I make this observation out of fairness to you, as well as other parties with an interest in those cases.

Let me turn now to your specific questions.

1. Should rate recovery be allowed where a proposed rate includes any cleanup costs that result from violations of environmental laws or cleanup payments made pursuant to consent decrees or other settlements? If so, under what circumstances? If not, why not?

Answer: The Commission's authority to disallow recovery of any costs in rate cases is strictly limited under the Natural Gas Act to those which have been imprudently incurred. In the leading case on the Commission's power to disallow utility costs incurred in the course of socially condemned activity, *NAACP v. FPC*, 425 U.S. 660 (1976), the Supreme Court emphasized the limited nature of our authority. Even where a competent authority had made a finding that a utility had engaged in illegal activity (there, race discrimination) the Commission's authority to deny recovery from ratepayers rested on the fact that the court considered those costs unnecessary, duplicative or a sign of inefficient utility operation, in short, imprudent.

The court held we had no general mandate to enforce labor (or environmental) laws.

Stated another way, the regulated party under the NGA has the well established right to recover all prudently incurred costs. Thus, the issue of cost recovery or disallowance must turn on the prudence of the cost incurrence, even when a direct violation of the NGA has been established. If a particular cost is associated with activities resulting from a proven violation of an environmental law, we assume them to be *per se* imprudent. If, however, payments are made pursuant to a consent decree or as voluntary compliance in an enforcement action by the agency with jurisdiction over the specific environmental law, or some other form of settlement pursuant to the applicable environmental law and regulations, the Commission on its own initiative, or in response to protests of intervenors, can investigate the prudence of those costs in making its determination as to the just and reasonable nature of the resulting rates. That was the action of the Commission in the TETCO case decided earlier this year. I would reiterate, however, that the Commission itself does not have the independent authority nor the expertise to decide whether particular actions constitute violations of environmental laws. That authority and responsibility resides in the jurisdictional agencies with the statutory mandate to enforce the environmental laws.

In a very general way, the traditional factors that might be considered in evaluating the prudence of a particular cost may include the utility's conduct at the time in question. The Commission in the past has applied the test of a prudent utility management in cases under the FPA and reviewing courts have sustained that approach. In *Violet v. FERC*, 800 F.2d 280, 282-283 (1st Cir. 1986), the court recited with approval the Commission's formulation of the prudence standard in connection with a utility's abandonment of a nuclear plant. The Commission held it would look at the fact that:

[M]anagers . . . have broad discretion in conducting their business affairs

[T]he appropriate test to be used is whether they are [decisions] which a rea-

sonable utility management . . . would have made, in good faith, and in the relevant point in time.

(Emphasis in original).

The court also pointed to other factors including reasonable industry practice, what industry experts believed, and what the least expensive means of proceeding would be. Finally, the court (800 F.2d at 284) reviewed the record for evidence to support the Commission's conclusion on the prudence issue. Therefore, what is important is that the Commission examine the matter from the point of view of utility executives at the time of the event and make proper factual findings specific to the case at hand.

Also, the Commission recently has stated in the Columbia that cases prudence under the NGA and the so-called fraud and abuse standard under section 601 of the NGPA are related in concept in cases involving purchased gas costs subject to section 601. It is difficult to predict exactly how these various potential prudence factors would be argued and decided in a particular formal adjudication involving costs associated with violations of an environmental law or a consent decree resulting from an enforcement action in response to those violations, such as in the now pending TETCO case. In fact, one of the important aspects of that case to be determined by the ALJ, after argumentation by the parties, will be the exact factors to be considered in making the prudence determination as to the PCB related costs. Of course, the Commission subsequently will have to review the ALJ's Initial Decision and so it is important that nothing said here would constitute prejudgment of the issue. Nevertheless, I do not believe that current precedent indicates that the fact per se that the cost was associated with activity determined to be in compliance with a related consent decree, would ipso facto render that cost incurrence imprudent, any more than the fact per se that an activity was in violation of the NGA itself would do so. The inquiry about prudence, as we held in TETCO, must proceed beyond such a threshold fact per se to the consideration of the additional factors.

2. Assume for purposes of this question that neither a prior regulatory or judicial determination of an environmental violation has been made nor a consent decree issued relating to an environmental violation.

(a) Should FERC use its broad legal authority to evaluate whether costs associated with a rate application result from actions that are inconsistent with the intent and requirements of environmental laws? If so, under what circumstances? If not, why not?

(b) If your answer to 2(a) is yes, and assuming a finding that costs result from actions that are inconsistent with the intent and requirements of environmental laws, should rate recovery for such costs be denied?

Answer: (a) I do not believe that FERC has the legal authority and jurisdiction, nor the necessary expertise, to investigate and evaluate whether costs associated with a rate application result from actions that are inconsistent with the intent and requirements of environmental laws. Historically, FERC has deferred to the jurisdiction, authority and expertise of those agencies with direct statutory responsibility for the enforcement of those laws and I believe that it is a wise course of action. Otherwise, FERC would have to become an original trier of fact and finder of law in a body of law not within the scope of its authority and expertise in rate cases. I would note that courts

under well settled law have held that the Commission should consider the principles of the antitrust laws in making public interest determinations in merger cases and addressing allegations of undue discrimination and affiliate preference. Even in those cases, however, FERC has no authority to enforce the antitrust laws or apply them directly in those merger and discrimination cases. Only the principles are used to guide the Commission's analysis of potential anti-competitive and unduly discriminatory or preferential effects and results in those cases. Even then, in merger cases, for example, the Commission balances those effects against the benefits of the merger. Thus, I believe that the Commission both legally and practically cannot use its authority under existing law to make such an evaluation of consistency with environmental laws.

(b) My answer to (a) is not yes, but I would reiterate that the only legal authority of FERC to disallow recovery of costs is where they have been imprudently incurred, as we held in the TETCO case.

I would like to make a final observation about your obviously serious concern with regard to the ratemaking treatment of costs associated with environmental violations. I agree that where the Commission has the discretion under applicable law, FERC does, in fact, have a responsibility to assure that its regulation does not undermine the application of environmental laws. As I discussed previously, I believe FERC is effectively using its discretion to support environmental laws. For example, we have held that certificate applicants must satisfy state environmental requirements as a condition precedent to the effectiveness of our approvals in recent cases. The dilemma in the specific factual situation of concern to you is that the Commission has limited discretion to disallow cost recovery for regulated companies under the NGA. The parties protesting in the TETCO case expressly acknowledged that fact in their protests and in their decisions on rehearing petitions. The pending formal hearing and adjudication in the TETCO case will address the more narrow question of prudence in the context of the PCB cleanup costs based on a consent decree. I can assure you that the Commission will carefully consider within the more narrow confines of a prudence determination all relevant factors as to whether those cleanup costs were prudently incurred. In all candor, however, I do not believe the Commission has the legal authority to disallow those costs solely because they result from the consent decree, and nothing more, in an effort to maintain the important principle in the environmental laws that the polluter, not the consumer, should pay for such costs. I respectfully submit that such a result would require amendment of existing law applicable to the Commission's ratemaking authority for regulated companies.

Let me close by thanking you again for this opportunity to address these important issues and your serious concern about them.

EXCERPTS FROM IMPLEMENTATION OF THE TOXIC SUBSTANCES CONTROL ACT, THE PCB RULE, AND FEDERAL HAZARDOUS SUBSTANCE LAWS CONCERNING THE PERFORMANCE OF THE ENVIRONMENTAL PROTECTION AGENCY

#### IN THE MATTER OF THE TEXAS GAS PIPELINE COMPANY

(Report from the Subcommittee on Superfund and Environmental Oversight to the Committee on Environment and Public Works)

#### VIII. CONCLUSIONS

As was stated in the Introduction, the Subcommittee based its investigation on materials provided to it by Texas Eastern, EPA, and other identified parties. The Subcommittee attempted to obtain those documents and information necessary to understand the facts and issues presented by this situation. Although the Subcommittee does not represent that it possesses all the possible materials and information potentially relevant to this matter, the Subcommittee has made a good faith effort to obtain sufficient materials, and staff have indicated to EPA and Texas Eastern an ongoing interest in and willingness to review any materials either wanted to provide the Subcommittee. Although its oversight jurisdiction may involve evaluation and conclusions related to compliance with environmental laws, the Subcommittee obviously does not view or represent itself as a forum for adjudicating civil or criminal liability. In conducting the investigation, the Subcommittee was exercising its broad environmental oversight jurisdiction as well as its legislative jurisdiction over Superfund. With this objective and these parameters, and based on the information reviewed by the Subcommittee, in the opinion of the Subcommittee the following conclusions can be drawn:

#### 1. Violations occurred of the marking, storage, and disposal requirements of the PCB rule promulgated under the Toxic Substances Control Act (TSCA).

In his testimony before the Subcommittee, a Texas Eastern official admitted that the company continued its practice of disposing of PCB-contaminated pipeline condensates into unpermitted, unlined earthen pits through 1984. The PCB Rule precluded such action subsequent to May 31, 1978. In 1985, Transwestern Pipeline Company, a TEGPL sister company, received a civil penalty of \$125,000 for illegal disposal of pipeline fluids into scrubber pits in Arizona. In 1985 Texas Eastern Transmission Corporation received a Notice of Noncompliance from EPA for violations of the storage and labelling requirements of the PCB Rule at its Delmont, Pennsylvania compressor station.

#### 2. Violations of the marking, storage, and disposal requirements of the PCB rule under TSCA may have been knowing violations under TSCA.

The Subcommittee is not in possession of documents, nor did it take testimony showing specifically how or by whom decisions were made to discharge PCB-contaminated liquids into unpermitted, unlined earthen pits. Nor does the Subcommittee have evidence specifically of how and by whom such discharges were actually done. But as a recent line of Federal cases indicates,<sup>207</sup> a knowing violation of TSCA, which under the statute creates criminal liability,<sup>208</sup> consists of intentionally causing disposal of substances known to be or to contain PCBs, where such disposal is unlawful under TSCA and the PCB rule. Specific intent to violate the law is not required. In addition, a corporation can be convicted for the criminal acts of its agents, where such agents are

acting within the scope of employment.<sup>209</sup> A recent line of cases<sup>210</sup> suggests that a corporation might also be imputed to have committed a knowing violation through collective knowledge of various employees, who each possess a different element of those required to form a knowing violation. Corporate knowledge, in such cases, has been deemed by some courts to be the totality of what all employees know. Consider, for example, Corporation A, whose employees include Employees X and Y. Employee X knows that a substance contains PCBs. Employee Y does not know what the substance contains, but is directed by X to discharge the materials in a manner which ultimately turns out to be violative of the PCB rule. Y intentionally discharges the substance in this manner. Assuming such employees are acting within the scope of their employment, Corporation A could be deemed to have committed a knowing violation of TSCA by virtue of the totality of knowledge of X and Y.

#### 3. Relevant documents of Texas Eastern Gas Pipeline Company demonstrated an in-depth knowledge of how to comply with the marking, storage, and disposal requirements of the PCB rule promulgated under the Toxic Substances Control Act.

Responding on June 12, 1981 to an EPA information request, and in subsequent correspondence, Texas Eastern Gas Pipeline Company provided the agency with company internal memoranda relating to compliance with the rule. These memoranda demonstrated familiarity with the hazards posed by polychlorinated biphenyls, as well as in-depth knowledge of how, and the existence of practices in place with which to comply with the regulations.

The internal memoranda were quite detailed and specific regarding health and safety matters. These memoranda go so far as to state that if PCBs are spilled on the ground, they and the affected soils, must be scooped up and placed in barrels for disposal. Any rags which may have become contaminated with PCBs would also have to be placed into barrels for disposal. Goggles and other safety gear were required to be worn by workers when handling PCBs. The specifications for disposal barrels and for containment areas are spelled out.

#### 4. Texas Eastern should have been more forthright with the Environmental Protection Agency when it reported having disposed of its PCB-contaminated condensate.

TEGPL reported the disposal of only 6.2 percent of the pipeline fluids which it removed from its system. It omitted details about the remaining 93.8 percent.

#### 5. Violations of Superfund notification duties may have occurred.

Enacted in December 1980, section 103 of the original Superfund provisions (CERCLA) places notification duties on those who release or dispose of hazardous substances. Section 103(a) requires such persons immediately to notify the National Response Center, if a specified threshold amount of hazardous substances are released.<sup>211</sup> If no exemption<sup>212</sup> to the notification requirement of section 103(a) applies, and PCBs or other hazardous substances were released in sufficient amounts, failure to notify the National Response Center would constitute a violation of the law. It is unclear whether sufficient quantities of

hazardous substances were discharged, based on the threshold amounts in effect during the time of release.

Another relevant provision is section 103(c) of Superfund. Within 180 days following the December 1980 enactment of Superfund, those who owned or operated facilities where specified hazardous substances were stored, treated, or disposed were required to notify the Administrator of EPA of the existence of such a facility. Such notice was required to specify the amount and type of hazardous substances to be found there, and any known, suspected, or likely releases of such substances from such facility. The notification requirement under section 103(c) applies only to hazardous substances with the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act. During the applicable time, it appears that PCBs were not part of this notification requirement. But if section 3001 hazardous substances were contained in the pipeline fluids, unless some other exemption applied, section 103(c) would have created a legal requirement to notify EPA as early as 1981, of discharges into pits.

It should also be noted that title III of SARA, which became effective in October 1986 created additional notification duties for releases, unless such releases result in exposure to persons solely within the site or sites on which a facility is located. These additional notification requirements apply to the hazardous substances for which notice was already required under section 103(a) of Superfund and to those substances listed as "extremely hazardous" under section 302(a) of title III. The additional requirements mandate that facility owners or operators notify local emergency planning committees and State emergency response commissions in areas and states likely to be affected by the release.

6. *Texas Eastern did not satisfactorily substantiate that EPA staff, prior to August 29, 1985, was aware of a practice of disposing of pipeline fluids into pits.*

TEGPL officials informed the Subcommittee that they believed that agency staff, prior to August 29, 1985, were aware of the natural gas pipeline industry's traditional practice of disposing of pipeline fluids into scrubber pits at compressor stations. These were serious allegations. The Subcommittee staff sought to determine whether or not EPA and Texas Eastern had discussed the issue of pit disposal of PCB-contaminated condensates, including any written documentation to that effect.

No other witnesses to such a discussion were found. The Subcommittee staff found no documents that adequately substantiate Texas Eastern's assertion. The only reference to scrubber pits in any provided documentation was an obscure reference with regard to the Transwestern Pipeline Company. The notion that this obscure reference should be deemed to be notice to EPA that pits were regularly used by Transwestern, let alone by Texas Eastern to dispose of its contaminated pipeline condensates is not persuasive.

7. *EPA failed in its responsibility to understand adequately the industry it was regulating. The Agency should have discovered the Texas Eastern Gas Pipeline dumping long before it did.*

The company states that the use of earth-disposal pits was a traditional industry practice. Whether it was or not, the compa-

ny reported to EPA that it was phasing in diffusers and collection tanks for condensate removal. An obvious question would have been, "How do you collect and store condensate where there are no diffusers and collection tanks?" The answer to that question would have probably led to the discovery of the pits. It apparently was not asked.

8. *The Office of Compliance Monitoring (OCM) in the Office of Pesticides and Toxic Substances (OTPS) failed to review satisfactorily the data contained in reports submitted by Texas Eastern under the pipeline PCB-Condensate remediation program.*

The Office of Compliance Monitoring regularly received from the company reports required under the remediation program. If those reports were, in fact, reviewed such review was not at all thorough. Regular, consistent, examination of the Texas Eastern reports should have included a mass balance to determine whether the company reported having disposed of as much condensate as it had reported having removed from its system.

Had OCM performed a mass balance upon receiving the earliest of Texas Eastern's reports it would have been alerted at the beginning of the discrepancy between the amount of condensate removed and the amount it disposed of. Presumably, had OCM observed that discrepancy it would have asked the pertinent questions which would have led to the discovery of the pits three years prior to their eventual discovery in August 1985.

Once having learned early on of the existence of the disposal pits, presumably OCM would have taken early action regarding discovery of the nature and extent of the PCB contamination and would have required cleanup at that time.

9. *The ability of the Office of Compliance Monitoring to oversee effectively the pipeline remediation program and to investigate the nature and extent of contamination once the existence of the pits was known was severely hampered by significant reductions in its resources during a crucial period related to the pipeline program.*

The Office of Compliance Monitoring predecessor office, the Office of Pesticides and Toxic Enforcement, had 30 FTEs and \$1,568,600 in extramural (or contract) funds in 1981, the year PCBs in pipeline condensates were discovered. It was also the year of a major pipeline survey which determined that Texas Eastern's pipeline exceeded the limits of the PCB Rule. OCM also began to establish, with Texas Eastern, a PCB-remediation program in 1981. By 1982, the remediation program was in place and a consent order and agreement were signed by EPA and TEGPL.

The pipeline program, it should be noted, was only one of many issues for which OCM and its predecessor office was responsible. During the period 1981-1985, revisions to the PCB Rule were made, placing additional strain on OCM's resources.

The pipeline remediation program, being conducted on a national basis out of headquarters EPA, received no backup assistance from EPA's regional offices.

While OCM's resources were reduced in 1982 from the 30 FTEs of 1981 to 19.9 FTEs and from \$1,568,600 in 1981 extramural funds down to \$927,100 (a reduction of \$641,500), the combination of added responsibilities and drastically reduced resources

began to take a toll. The effect on EPA's enforcement program through those years has, in general, been well documented. OCM was impaired in its ability to perform its day-to-day responsibilities, having lost approximately one-third of its staff and almost 60 percent of its contract funds between 1981 and 1982. The pipeline program only one of OCM's many responsibilities, was most certainly negatively affected as well.

OCM's response was to rely on a company with whom, in the opinion of ODCM staff, a trust relationship had developed in the course of negotiating the remediation program. The company was relied upon to comply with the PCB Rule and its agreed upon sampling and condensate removal program. As agency officials who testified before the Subcommittee stated, regulatory agencies and the Executive Branch, in general, often rely on the cooperation of the regulated community for the collection of data and for other purposes, OCM staff, in the face of severely dwindling resources, placed even more reliance on Texas Eastern than was prudent.

OCM staff, working on numerous other matters, apparently assumed that Texas Eastern's quarterly reports were accurate and in accordance with the agreed upon remediation program without rigorously reviewing them. These staff lulled themselves in a sense of security based upon the positive experience they had had in working with TEGPL on this issue. Within the diminution of resources, OCM relied on TEGPL not to break the trust. At the same time, OCM staff took the path of least resistance and accepted, without adequate review, Texas Eastern's data as being in compliance with the company's previous commitment and with the PCB Rule.

The resource problem was further compounded in 1983 and 1984. FTEs were reduced to 14.1 in 1983 and allowed to rise only to 14.3 in 1984. The FTE and extramural levels began to rise in 1985, but even for 1987 they remained below the 1981 level.

OCM staff's reliance on Texas Eastern is explained in part by OCM's resource situation and the relationship which had developed between the staff and the company. Undoubtedly, OCM staff were concerned that the law be adhered to and that Texas Eastern meet the commitments to which it agreed. The OCM staff must be faulted, however, for being overly reliant on the company and for its failure to adequately review the company's submissions.

10. *Had, EPA utilized technology to overcome its resource constraints, its ability to have performed a mass balance on Texas Eastern's data submissions could have detected, early in the program, the failure of TEGPL to dispose of properly its PCB contaminated condensates.*

EPA receives numerous reports from corporations each day. Historically, companies have complained that the reports which they submit often go unread and are "placed on the shelf." Were the agency to possess equipment capable of scanning reports and flagging violations of parameters, its enforcement effort would be markedly improved. Even though its human resources had severely diminished its ability to review TEGPL's data, appropriate equipment may have led to discovery of the disposal pits.

11. *The EPA team which negotiated the November 9, 1987 agreement in principle with Texas Eastern was unprepared to understand or to address issues which might have had an impact on a ratemaking case brought before the Federal Energy Regulatory Commission (FERC) by Texas Eastern.*

The Environmental Protection Agency, in its dealings with a party to an enforcement case, has an obligation to be mindful of ratemaking and other issues unique to a potentially responsible party (PRP). EPA should seek the advice of and coordinate with other agencies having expertise and an interest in a particular industry. If EPA does not take such steps, it could be at a serious disadvantage in its dealings and negotiations with the PRP. The ratepayer is dependent upon EPA to avoid concessions that could prejudice the interest of consumers. EPA's awareness of this critical issue appears to have been lacking.

12. *The structure of the Environmental Protection Agency's enforcement program is largely responsible for the Agency's failure to move quickly once the existence of disposal pits came to its attention.*

When the Office of Enforcement was reorganized, the technical staff was transferred to their respective programs, both at headquarters EPA and the regional offices. At the time of TEGPL's disclosure of the disposal pits in 1985 the Office of Compliance Monitoring, within the Office of Pesticides and Toxic Substances, was composed of technical staff who had previously served in the former Office of Enforcement; and the attorneys who had served in the previous Office of Enforcement were serving at headquarters in the Office of Enforcement and Compliance Monitoring (OECM) and in the regions in the Office of Regional Counsel.

When, in August 1985, OCM staff first learned of the existence of the disposal pits, they continued to seek information from TEGPL. The OCM personnel became more suspicious in November 1985 when Texas Eastern informed them that it had retained a known environmental consultant to sample a number of pits and to characterize the extent of contamination, if any. Yet, OCM did not seek assistance of OECM attorneys. It also did not apprise OECM of the situation. Rather, OCM continued to wait for TEGPL and its consultant to report on the sample findings.

OCM served under the Assistant Administrator for Pesticides and Toxic Substances. OECM was headed by its own Assistant Administrator. It should be noted that OCM and its counterpart attorneys were physically separated at headquarters, as they reside in separate buildings. The Environmental Protection Agency has long been known as a "turf oriented" institution. Because of those factors, it should come as no surprise that the technical enforcement staff and the enforcement attorneys did not work together from the moment it became known that Texas Eastern was disposing of its PCB-contaminated pipeline wastes into unpermitted disposal pits. The Subcommittee staff in its investigation, was informed by present and past enforcement staff that it is their belief that if OCM and its counterpart enforcement attorneys had worked together under the same assistant administrator, the likelihood is that the attorneys would have been brought into the matter sooner and, pre-

sumably, the issues would have been pursued much sooner.

As it was, the Assistant Administrator for Pesticides and Toxic Substances first informed the acting Assistant Administrator for Enforcement and Compliance Monitoring of the Texas Eastern issue of June 30, 1986—a full 10 months after TEGPL's disclosure of the pits' existence.

That OECM dragged its feet, waiting for the Texas Eastern consultant to provide additional information, is difficult to understand. However, it is believed that, had the OCM technical staff and the OECM enforcement attorneys remained together within the same institution, their activities would have been mutually supportive and the strong probability is that this issue would have been addressed much sooner.

13. *OCM personnel apparently were not aware that Texas Eastern used earthen pits which to dispose of pipeline wastes prior to the company's disclosure of August 29, 1985.*

While it is believed that EPA should have discovered Texas Eastern's allegation that EPA was in fact aware of the company's use of earthen pits before August 29, 1985 is not persuasive. As was indicated in conclusion 6, the claim was not satisfactorily substantiated. The Subcommittee received numerous documents to determine whether or not the EPA was aware, and condoned the use of the disposal pits. None of the documents reviewed by the Subcommittee persuasively demonstrate that OCM staff actually knew that TEGPL used disposal pits prior to installing diffusers and collection tanks.

14. *EPA failed to provide expeditious notice to States, other governmental entities, and affected citizens of possible contamination. While EPA may have violated legal notification duties, regardless of such legal duties, the Agency had an obligation to provide such notice.*

During the hearing, citizens, State, and local officials expressed concern that EPA had failed to make them aware of the possible contamination in anything resembling an expeditious manner. While this failure may not have been unlawful under existing notification requirements and regulations, in matters such as these, EPA should provide expeditious notification, regardless of legal or regulatory duties.

To understand EPA's general legal duties, one must examine section 103 of Superfund and the implementing regulations. As discussed above in conclusion 5, section 103(a) requires expeditious notice to the National Response Center of releases of hazardous substances in quantities equal to or greater than threshold amounts. The National Response Center, in turn, is required expeditiously to provide notice to all appropriate government agencies, including the Governor of any affected state.

When EPA was informed of the release of PCB-contaminated condensates in 1985, a question arose whether it had a legal duty under section 103(a) to notify affected States. It should be noted that section 103(a) technically places the notification duty on the National Response Center. But EPA, as a member of the National Response Team, would appear to have a duty by virtue of regulation,<sup>213</sup> if not simply common sense, at least to assure that the National Response Center is notified of such information. It appears that EPA did not assure that the National Response Center was notified, and it is clear that the

affected States were not notified expeditiously. Nonetheless, it also appears that section 103(a) was not violated, since the provision applies to information about releases of specified sizes and duration. These quantities and duration (a 24-hour period) are specified by regulation.<sup>214</sup> For PCBs, notification requirements would not be triggered unless 10 pounds had been released in a 24-hour period. Given that EPA became aware of large but unspecified volumes of contaminated condensates discharges periodically over many years, section 103(a) would not seem to apply.

Assuming that section 103(a) did not create a duty on EPA, another provision, section 103(c) still might have applied. As discussed above in conclusion 5, section 103(c) creates obligations with respect to past releases by owners or operators of facilities where certain hazardous wastes have been disposed. These hazardous wastes are defined here as having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act. Such facility owners or operators are required to notify EPA directly. The Administrator of EPA is then required to notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility.

Given the way section 103(c) defines hazardous wastes, it would appear that during the applicable time, PCBs were not part of this notification requirement. But it might apply to other substances that may be or were contained in the condensates. While the information provided to EPA in 1985 did not specify other types of hazardous substances covered by section 103(c), it did not rule out their possible presence. Recall that the November 1985 letter from TEGPL to EPA stated, "During our August 29, 1985 meeting in your office, we discussed the historic practice of the gas pipeline industry of using earthen pits for disposal of waste liquids (emphasis added)."<sup>215</sup> Although the letter does not specify that no Solid Waste Disposal Act section 3001 wastes were contained in the pits, it is unclear why EPA would feel comfortable with a conclusion that no such wastes were present. As is suggested by the Agreement in Principle, EPA staff, and the supporting materials to EPA's November 9, 1987 press release, hazardous substances other than PCBs appear to be present at some of the sites.

Although this analysis of section 103(c) duties leaves some questions unanswered, it appears EPA may have violated a legal duty to notify States of information under section 103(c). EPA should have made a determination whether hazardous substances as defined by section 103(c), were present, regardless of this duty. But given these notification responsibilities, EPA had a legal obligation to determine whether 103(c) specifically applied.

A final point here is that EPA's duties to notify the States and public should not be viewed as contingent upon legal obligations alone. Whether or not EPA failed to comply with Superfund requirements, it failed to comply with a common sense notion of the Agency's mission. An Agency charged with protecting the environment should not sit on information for 18 months about possible contamination.

15. *Rigorous cleanup schedules and standards must be applied to the remediation of the contamination along the pipeline. But the Agreement in Principle, although not without some virtues, does not appear to assure this result with respect to standards and does not provide details of schedules.*

The American people and the effected States deserve an exemplary cleanup of the contamination along the pipeline. The cleanup should be expeditious and stringent. It should protect health and the environment to the maximum extent possible under applicable State and Federal laws.

The Agreement in Principle, although not without merit, raises some questions by what it says, and others by what it does not state. Certainly, achieving the highest penalty in the history of EPA is not to be disregarded. Reserving the government's right to use Superfund money for emergency actions is a valuable tool, as is the reservation of emergency authorities under TSCA and RCRA. The Agreement in Principle's additional retention of governmental legal rights under RCRA or analogous State laws of closure, postclosure, and interim status requirements also is significant. This reservation of rights under RCRA tends to build RCRA and analogous State law cleanup standards into the remediation. If Texas Eastern knows at the outset that it will be subject to such RCRA requirements through future suits, it has the incentive to clean up sites in a way that will meet those requirements.

The Agreement in Principle is deficient in some respects. First, although it applies the most stringent Federal PCB standard, and does not excuse Texas Eastern from complying with more stringent applicable State law, it does not require this result. Although not required to do so, the agreement could for example, have employed the new approach taken by section 121(d) of Superfund, the cleanup standards provision. Specifically, the agreement could have put the burden on the company to apply or seek waiver from more stringent State cleanup standards, where such standards are legally Applicable or Relevant and Appropriate Requirements (so-called ARARs). Such standards may ultimately be applied if a State reaches an agreement with the company to do so, or successfully compels this result. But this places the burden on the States, not the company.

The Agreement in Principle arguably is deficient with respect to assuring cleanup of hazardous substances other than PCBs. This is the case even though other such substances, including volatile organic chemicals have been identified at some sites.<sup>216</sup> It is commendable that the Agreement makes an attempt to apply strict Federal standards to PCB cleanup. The assumption of the Agreement appears to be that in cleaning up PCB, Texas Eastern will also achieve cleanup of other hazardous wastes that have been found at the sites. The Agreement in Principle does not appear to foreclose requiring cleanup of such other substances individually, and it does require testing for such substances. But it does not set out a comprehensive plan for remediation of such substances. If the PCBs are ultimately found not to have migrated as far as other possible hazardous substances, cleaning soil with PCBs may not assure adequate cleanup of these other substances.

The Agreement in Principle also does not address the question of off-site cleanup or groundwater cleanup. To its credit, the agreement does require characterization for

PCBs in off-site areas at A-1 sites. It requires, for a representative number of off-site locations at A-1 sites, sampling for specified other substances. And for both A-1 and A-2 sites, it requires groundwater characterization for PCBs and other substances. But the agreement is silent on how, if necessary, actual cleanup should occur. This silence may result from EPA's lack of information about off-site areas and groundwater at this time. But there may be some value in trying to include the previously mentioned Superfund cleanup standards approach in the consent decree. The goal would be to assure that the most stringent State or Federal standard would apply to such areas. In the case of groundwater, section 121(d), if properly interpreted, would assure the application of the most stringent cleanup standard known as the maximum contamination level goal. This standard is most protective of health. Even if such provisions are not included in the Consent Decree, they are the most desirable approaches for ultimate cleanup.

The Agreement is silent on the possible question of ultimately listing any of the affected sites on the Superfund National Priorities List. Although it is generally believed now that NPL listing would not be appropriate for the sites, the Agreement might be more thorough by reserving this right to list sites if merited. It is inferred that silence on this point does not waive this right. But explicit articulation would seem to be a useful safeguard on long-term Superfund remedies, if necessary and appropriate.

The Agreement in Principle does not lay out cleanup schedules. Such schedules, however, would provide a basis for measuring performance and achieving cleanup goals.

16. *States have an important interest in the remediation.*

An important principle of our environmental laws is their respect for more stringent and additional measures required under State law. This principle should not be compromised as EPA attempts to arrive at a national cleanup agreement with Texas Eastern.

It is significant to note that in negotiating an Agreement in Principle with TEGPL, EPA was aware that the PCB cleanup standards in some States, such as New Jersey, were more stringent than the standards that the agency and the company had agreed upon. As noted above, the section 121(d) approach of Superfund was not taken. And EPA did not attempt to provide that any State standard more stringent than the cleanup level agreed to by EPA and TEGPL would apply.<sup>217</sup>

17. *Health questions may be raised by the contamination.*

The contamination along the pipeline occurred for a long period of time and included burning in condensate pits. Burning of PCBs can create toxins. Burning can also create emissions into the air. Throughout the years, on-site workers may have been exposed to pit contents and possible emissions. The proximity of the pits and possible air emissions to residential areas varied. The Mayor of West Amwell indicated concern with what he described as an "unusually high rate of residents with cancer in the area surrounding the Texas Eastern plant."<sup>218</sup> This testimony and that of others suggests an important principle: the right of citizens and workers to know whether they are or have been at risk. According to EPA's December 7, 1987 response to the Chairman, EPA retains the authority

to seek health assessments where site characterization suggests they are appropriate. The Agreement in Principle is silent on this issue, however.

18. *Some or all affected States and the Subcommittee may not have been adequately informed by EPA and Texas Eastern of possible continuing discharges of pollutants.*

The Subcommittee did not learn of possible continuing PCB discharges until the November 9, 1987 announcement of the Agreement in Principle. It is unclear whether, when, and how many States knew of such possible discharges prior to the announcement. It is also unclear what the scope of such continuing discharges is. Although the Subcommittee has sought a full accounting of such continued discharges, the failure by EPA and Texas Eastern to inform the Subcommittee and possibly the States of this matter prior to November 9, 1987 is of some concern, particularly where EPA stated in a recent letter that it knew of the possible discharges since April 1987.

A key theme in this investigation was the failure of EPA and the company originally to notify the States about the contamination in a timely fashion or a manner required under Federal and State law. This concern was clearly aired in the Subcommittee's hearing, and in press accounts of this matter. It would seem that news of possible continuing discharges of PCBs would merit expeditious and clear notice to the States and the very Subcommittee that criticized the pattern of nondisclosure previously and that was conducting a continuing investigation of the matter. This is particularly true where testimony by both EPA and the company did not indicate to the Subcommittee that such possible continuing discharges were occurring.

19. *Texas Eastern, Interstate Gas Pipeline Companies, and similarly regulated entities should not be allowed to pass through in rates direct or indirect costs, if such costs result from violation of environmental laws.*

In an unregulated industry, the costs that result from violations of law are borne by the shareholders or are passed on to consumers, if consumers are willing to pay the violating company a higher price, rather than purchase the product from a competitor. The disincentive to violate environmental laws is clear for such an entity. The unregulated entity either depletes corporate resources or risks losing its market share due to higher prices.

But a different analysis may apply to the regulated entity that violates laws. Such regulated entities receive significant benefits from regulation. Those benefits include guaranteed recovery of their prudently incurred costs and the opportunity to earn a health rate of return on used and useful plant and equipment. Allowing rate recovery of costs incurred as a result of violations of law subverts both the economic regulatory scheme and the law. Rate recovery by a regulated entity, in effect, becomes a subsidy for violation of the law.

Moreover, to the degree that a regulated interstate gas pipeline enjoys monopoly power, market forces cannot respond to rate increases generally, or to increases due to the passthrough of costs of violating laws in particular. A pipeline's customers, such as local distribution companies, large industrial users, and electric utilities, may not be able to change suppliers because the pipeline's rates have been increased. If no other

interstate pipeline serves an area, of if there is insufficient excess capacity on other pipelines serving that area to give customers a choice, those customers are captive to their pipeline supplier's charges.<sup>219</sup>

Additionally, even if those customers may be able to seek interconnection with other pipelines, the added costs of construction of new hookups may not be economical. This may be particularly true for a customer of Texas Eastern, which indicates in its Annual Report, that due to its acquisition of low cost supplies, its prices "were among the lowest in its market area."<sup>220</sup> As a result of such low costs, a pipeline may be able to increase rates modestly to pay for cleanups, without losing customers or market share.

If a company has violated the Nation's environmental laws, then it ought not be allowed to prevail in a rate increase filing, which asserts that the cost of cleanup is just and reasonable in the normal course of business. This principle would apply not only to Texas Eastern and gas pipeline companies, but to similarly situated regulated entities.

It seems clear that FERC could use its discretion to deny rate recovery of costs that result from violations of environmental laws. Costs resulting from past violations of environmental laws should not be deemed to be prudently incurred in the normal course of business. Such a conclusion is supportable by general ratemaking principles. But to assure that our environmental laws are consistently safeguarded, statutory direction may be necessary to assure denial of rate recovery for cases presenting costs resulting from violations of environmental laws.

#### IX. RECOMMENDATIONS

As was previously stated above, the Subcommittee based its investigation on materials provided to it by Texas Eastern, EPA, and other identified parties. The Subcommittee attempted to obtain those documents and information necessary to understand the facts and issues presented by this situation. Although the Subcommittee does not represent that it possesses all the possible materials and information potentially relevant to this matter, the Subcommittee has made a good faith effort to obtain sufficient materials, and staff have indicated to EPA and Texas Eastern an ongoing interest in and willingness to review any materials either wanted to provide the Subcommittee. Although its oversight jurisdiction may involve evaluation, conclusions, and recommendations related to compliance with environmental laws, the Subcommittee does not view or represent itself as a forum for adjudicating civil or criminal liability. In conducting the investigation, the Subcommittee was exercising its broad environmental oversight jurisdiction as well as its legislative jurisdiction over Superfund. With this objective and these parameters, based on the information reviewed by the Subcommittee, and in consideration of the above conclusions, the Subcommittee makes the following recommendations:

1. *The enforcement structure of the Environmental Protection Agency should be reorganized along the lines of the Agency's previous office of enforcement.*

Technical enforcement staff now serving within program offices at headquarters should be transferred to the offices of their counterpart enforcement attorneys in the Office of Enforcement and Compliance Monitoring (OECM). Regional enforcement attorneys should be transferred out of the

Office of Regional Counsel; regional technical enforcement staff should be transferred out of their program offices; and, both these regional attorneys and technical staff should be reconstituted into an office serving as OECM's regional counterpart.

Headquarters OECM should serve as the enforcement policy maker for EPA's enforcement efforts. It should also serve to provide in-depth training to regional enforcement staff who implement the agency's enforcement policies. The objective of such training must be the development of a consistent approach to the implementation of guidance across each of EPA's 10 regions. This does not mean that every similar case across the regions must be decided in exactly the same manner. Rather, the regional enforcement staff must implicitly understand the policy limits of all enforcement guidance, and the leeway it has to make reasoned judgments, given the facts of a particular case. It is recognized that each case may present unique features. Guidance is intended to accommodate such uniqueness. However, a well written policy, consistently applied by a well trained staff will incorporate into enforcement actions the varying specifics of different cases. It is of utmost importance that the procedures utilized to implement guidance and to develop a case be recognized across the agency's regions.

It is also believed that the reunification of technical and legal enforcement staff will end the "turf" battles which have often arisen between the program offices and OECM. Instead, the technical enforcement staff, upon discovering possible violations, will likely communicate more expeditiously with their legal counterparts. It is to be expected that this organizational restructuring will be accompanied by a physical restructuring, as well. Such a restructuring is essential to bring together the technical and legal personnel who are responsible for the same environmental media. This action will reduce or eliminate communication delays.

Had this type of system been in place, the Texas Eastern disposal pits may have been discovered as the remediation program was developed. Further, had this type of system been in place, it most likely would not have taken 10 months after the discovery of the pits to involve the enforcement attorneys. Had the enforcement attorneys been brought in earlier, it is likely that demands on Texas Eastern to expedite its data collection would have been made and/or that the agency would have embarked on data collection long before it actually did.

#### 2. *Enforcement resources should be increased.*

The Subcommittee recommends that the Office of Compliance Monitoring's (OCM) budget be increased. That office's responsibilities have increased many-fold since 1981, yet its personnel and extramural resources decreased. While they began to increase in 1985, the resources still lag behind the 1981 levels.

It is questionable whether the work-load models which the agency uses to establish its manpower needs and its budget are in any way realistic with regard to OCM or OECM, in general. The Subcommittee further recommends that the agency seriously review its enforcement work-load models to determine whether or not they are useful in the budget making process. The agency may want to consider the use of an independent, outside consultant in the review of its enforcement personnel requirements.

3. *The Agency should make increased use of technology to assist its enforcement and compliance efforts.*

EPA should seriously consider requiring that reports submitted to it pursuant to statutory authority or by voluntary agreement be in a form which can be readily scanned by equipment. The equipment should be programmed to scan for violations of environmental parameters, reporting requirements, or other measures. The use of technology can reduce the burden on staff, if not reduce work-load requirements, and can lead to more consistent and effective enforcement.

4. *The final Consent Decree should contain rigorous cleanup schedules, and assure cleanup to the most stringent levels required by the law.*

EPA should negotiate for tough cleanup schedules for completion of the work. Stipulated penalties should apply for failure to meet these schedules. In addition, the Consent Decree should spell out the cleanup standards to be used, and assure that they are the most stringent required by law. It should also provide that where state cleanup standards are more stringent, those standards should apply. It should also assure that possible site listing on the National Priorities List is not foreclosed. It should take a more comprehensive approach to site cleanup that is not only driven by PCB remediation, but by the presence of other hazardous substances at sites. The Consent Decree should also assure the most stringent cleanup approach for off-site areas and groundwater, the latter of which should assure groundwater cleanup to the maximum contamination level goal.

5. *The final Consent Decree should not compromise the ability of States to assure more stringent and additional cleanup standards, schedules, and measures.*

One of EPA's major blunders in the Texas Eastern case was its failure to keep States informed. It is unclear whether this is being repeated as EPA negotiates a settlement with Texas Eastern. But an important component of our Federal environmental laws is their nonpreemptive effect.

In the first instance, the Consent Decree should provide that where States have demonstrated that their cleanup standards are more stringent than those contained in the decree, then Texas Eastern will clean up to those more stringent levels. This will save both the affected States and the company extraordinary transaction costs and move the cleanup along without unnecessary delay. In any event, it is essential that the Consent Decree not impede States' abilities to obtain either settlements, judgments, or administrative orders that are more stringent in their cleanup standards, schedules, and all other measures. It is also essential that EPA keep the states fully informed about the status and content of the negotiations.

6. *The consent decree should require an assessment of the health effects of residents near contaminated sites and on-site workers at contaminated sites.*

The disposal of PCB contaminant occurred for many years. In addition, Texas Eastern has testified and indicated in written responses that burning occurred in some of the pits. Such burning can produce dangerous dioxins.

Although EPA indicates that dioxin levels at all sites are below Federal action levels, this does not account for air emissions and

workers exposure that may have occurred over a number of years at some sites. Moreover, the question of health effects does not turn solely on the issue of dioxins.

Worker and residents' proximity to the pits over the years, is of concern. Some assessment should be done of residents and workers to determine if statistically significant numbers have incurred illnesses associated with PCBs, dioxins, and the other hazardous substances found at these sites.

Although EPA believes it retains the authority to seek health assessments where shown to be appropriate, the Consent Decree would be improved by explicitly requiring such assessments and indicating the criteria for determining when they will be required.

7. *The Consent Decree should assure that any possible continuing discharges of pollutants are fully addressed.*

The Consent Decree should assure that any possible continuing discharges of pollutants by Texas Eastern are fully addressed. Before finalizing the consent decree, EPA should be certain that it is aware of any and all possible continuing discharges, and that the consent decree assures that such possible discharges will be stopped under applicable Federal and State laws.

8. *If EPA becomes aware of possible new discharges or pollution associated with the pipeline, or new site data, it should inform affected States and congressional committees overseeing or investigating such matters.*

EPA's commitment to working with the States, the public, and Congress does not end after a hearing is over. Similarly EPA's commitment should not be circumscribed by waiting to be asked a particular question or being forced by events ultimately to reveal an important fact. This is particularly true where testimony at a hearing by EPA and others gives no clear suggestion of possible continuing discharges. EPA has an ongoing responsibility to States and congressional committees overseeing or investigating an environmental violation to share new information promptly. During his testimony before the Subcommittee, Assistant Administrator Adams provided assurances of sharing new data with "Congress, the States, affected citizens, and the American people." Those were well received assurances, with which the Agency should continue to comply.<sup>221</sup>

9. *EPA should assure that the final Consent Decree includes a provision indicating that the Decree in no way is intended to prejudice FERC's rate determinations related to direct and indirect costs associated with the contamination and remediation.*

In seeking to achieve a cleanup agreement, EPA should not compromise later action by FERC with respect to rates. Although EPA's December 7, 1987 letter to the Chairman<sup>222</sup> indicates that the Agency has no intent to prejudice rate determination through the settlement, an explicit provision in the consent decree indicating that the decree in no way prejudices FERC's related rate determinations would make this point clear.

10. *When negotiating settlements that may involve application of laws in addition to environmental laws, EPA should bring an understanding of such laws to bear in its negotiations.*

EPA's apparent failure to analyze the impacts of a settlement with Texas Eastern on

future rate actions should not be repeated. Consultation with other Federal agencies and review of other applicable laws is an obvious principle of good government. The left hand should know what the right hand is doing. EPA's mission is to enforce our environmental laws, and not to undermine the Nation's other laws or the mission of other branches of government.

11. *To safeguard our environmental laws, FERC should not allow rate recovery of a regulated entity's costs, which result from violations of the environmental laws or which are deemed not to be just and reasonable because they result from actions that are inconsistent with the intent and requirements of such environmental laws.*

FERC should not allow rate recovery of any costs, which result from violations of environmental laws.<sup>223</sup> The Subcommittee does not purport to tell FERC how it should rule in a specific case or what kinds of findings it can and should make. If, however, a regulatory agency or court with authority to determine whether violations of environmental laws had occurred by a regulated entity, has made such a determination, FERC should take that into account in evaluating whether costs are just and reasonable. In addition, even absent such a finding by another agency or court, FERC should use its broad authority to evaluate whether costs result from activities that are inconsistent with the intent and requirements of our environmental laws. Such inconsistency would seem to be evidence of actions not prudently incurred in the normal course of business operations. To assure the consistent application of this approach, Congress should consider whether further statutory direction may be necessary.

The principal articulated here is relevant where a violation of law or an action deemed to be inconsistent with the intent or requirements of our laws has occurred. Compliance with environmental law and actions taken to prevent pollution over and above the requirements of law would be normal and prudent expenditures, and would appropriately be passed on to ratepayers. By assuring that such compliance costs can be recovered, absent a violation of law, the regulated entity is given incentive for environmental protection and compliance. Accordingly, it might be appropriate in evaluating a particular rate request for FERC to segregate costs resulting from violations of or acts deemed inconsistent with environmental laws from costs resulting from legal acts of compliance with such laws, or even costs resulting from acts currently unlawful, but lawful at the time they were committed.

12. *The tracking of PCB wastes from the time of generation until ultimate disposal should be required.*

This incident illustrates the need for a system that better identifies the amounts of PCB wastes being generated, stored, transported, and disposed of. The Resource Conservation and Recovery Act (RCRA) accomplishes this through procedures that identify wastes as they are generated and a uniform manifest system that tracks them as they are transported. EPA is now considering development of regulations under the Toxic Substances Control Act (TSCA) that would create a similar system for PCB wastes. The Agency should expedite this rulemaking process, or TSCA should be amended to require more careful accounting of what firms control particular amounts of PCB wastes.

13. *EPA should give prompt notice to States and affected citizens when being informed of possible environmental contamination.*

EPA should assure that the Superfund notification requirements under section 103 and section 304 of title III are rigorously enforced. If EPA obtains information, as it did in the Texas Eastern case, raising the possibility of section 103 notification duties, the Agency should determine whether those duties have arisen. If EPA believes section 304 notification is also mandated, it should advise parties providing information about releases of these additional duties under the law. In addition, if current regulations are deemed insufficient, EPA should modify the regulations implementing the notification requirements under Superfund or other environmental laws to assure that notification duties on those releasing contamination would apply in future contamination scenarios similar to the Texas Eastern case. Modification for PCBs for example, might include reduction of the threshold quantity for a 24-hour period,<sup>224</sup> as well as establishing an alternative threshold quantity for a longer durational period. Failure by EPA to use its regulatory authority to assure this coverage might merit amendments to the appropriate Federal notification provisions to assure that situations like this are covered under Federal laws. Finally, EPA should learn an important lesson here about Federal-State as well as community relations. Whether or not EPA or the National Response Center had a legal duty to notify States, local governments, and affected citizens, testimony at the hearing indicated an expectation from all such parties that EPA should provide such notification. An obligation, which goes beyond strict legal requirements, exists on the part of the Agency to provide such notification.

#### FOOTNOTES

<sup>207</sup> The major Federal cases suggesting this definition of "knowing" violation include the following: *U.S. v. Pacific Hide and Fur Depot, Inc.*, 768 F.2d 1096 (9th Cir. 1985); *U.S. v. Ward 676 F.2d 94* (4th Cir.), cert. den'd, 495 U.S. 835 (1982). See also *U.S. v. Hayes International Corp.*, 786 F.2d 1499 (11th Cir. 1986), which makes a similar interpretation of the Solid Waste Disposal Act requirements.

<sup>208</sup> Section 16(b) of TSCA establishes criminal penalties for knowing or willful violations of specified provisions of TSCA, including section 6 of TSCA, and rules promulgated under section 6, which would include the PCB rule.

<sup>209</sup> A recent Federal appellate case articulating this principle is *U.S. v. Cincotta*, 689 F.2d 238, 241 (1st Cir. 1982). The previously noted *Hayes International Case*, (supra at note 207) although not explicitly articulating the principle is another example of the point. In that case, a corporation was found to be criminally liable under RCRA for acts of its employee. For a general discussion see also 18B Am Jur. 2d, Corporation sections 2134, 2136. Also potentially relevant in the analysis of corporate liability are the general provisions of the U.S. Code on Crimes. Section 2 of Title 18 of the Code states.

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

<sup>210</sup> See, *U.S. v. Bank of New England*, No. 86-1334 (1st Cir. June 10, 1987) (Slip Opinion); *U.S. v. T.I.M.E.—D.C., Inc.* 381 F. Supp. 730 (W.D.W.Va. 1974).

<sup>211</sup> For PCBs that specified amount since enactment of CERCLA has been 10-pounds in a 24-hour period. See section 102 of CERCLA as well as the relevant regulations under section 311 of the Clean Water Act and sections 102 and 103 of CERCLA: 40 C.F.R. sections 17.3, 302.4, 302.5 (1987).

<sup>212</sup> The Subcommittee notes from EPA's December 7, 1987 letter to the Chairman, Texas Eastern's apparent position about the possible application to pipeline venting of the natural gas liquids exemption of section 101(14) of CERCLA. (See Exhibit K at 2.) This exemption excludes such liquids from the definition of hazardous substances. The Subcommittee notes, however, that Assistant Administrator Adams stated, "The Agency does not agree with the company's position on this issue." Ibid.

<sup>213</sup> See 40 C.F.R. section 300.23(d) (1987). This provision of the National Contingency Plan appears to place a duty on EPA to report releases at least to the National Response Center.

<sup>214</sup> 40 C.F.R. sections 302.4, 302.5 (1987). See also Clean Water Act regulations at 40 C.F.R. section 117 (1987.)

<sup>215</sup> Letter from Cohagan to Seitz, November 19, 1985, at 1. See Appendix at Exhibit Z.

<sup>216</sup> Some limited information on other substances present is included in Table 1 of the materials EPA distributed November 9, 1987 with its press release. See Appendix at Exhibit N. EPA staff have also indicated the possible presence of other hazardous substances, including volatile organic chemicals, although precise quantities are not apparently known for each site.

<sup>217</sup> Telephone conversation with EPA staff, December 14, 1987.

<sup>218</sup> Hearings, at p. 65. See also Appendix at Exhibit II for written testimony of Mayor Fulper and attached map indicating with Xs the homes of cancer victims.

<sup>219</sup> To the extent that some pipelines bear the costs of compliance and others not, the violator enjoys an advantage in the form of its profitability, which could make it more attractive than its industry rivals in securing investors' capital.

<sup>220</sup> Texas Eastern Corporation Annual Report at 8.

<sup>221</sup> See Hearings at 41, paragraph 8.

<sup>222</sup> See Appendix at Exhibit J, page 2.

<sup>223</sup> It is noted that by definition a violation of an environmental law assumes that no statutory or common law exceptions or defenses to liability apply. Section 107(B) of Superfund, for example, states that there is no liability for a release where it can be established that the release was caused solely by an act of God or war, as defined in the statute.

<sup>224</sup> The Subcommittee notes some movement in this direction in a March 16, 1987 proposed EPA regulation on reportable quantities. That proposal would reduce the PCB quantity for a 24-hour period to 1 pound. 52 Fed. Reg. 8140, 8155.

#### STATEMENT ON NOMINATIONS TO THE FEDERAL ENERGY REGULATORY COMMISSION

Mr. McCLURE. Mr. President, pending before the Senate are five nominations which constitute the full membership of the Federal Energy Regulatory Commission. Three of these nominees, Martha O. Hesse, Charles G. Stalon and Charles A. Trabant, are being confirmed for their second term. Two of the nominees, Elizabeth Ann Moler and Jerry J. Langdon, are being confirmed for the first time.

As my colleagues are aware, Ms. Hesse is presently serving as Chairman of the Commission, and will again be appointed Chairman for a term expiring October 20, 1991, upon her confirmation. Under her leadership, the past 10 months at the Commission have been a particularly active period, with numerous and controversial natural gas and electricity issues being considered. In addition, Ms. Hesse has undertaken the tasks of reforming procedures at the Commission as well as administrative policies and staffing. However, much remains to be accomplished in these regards.

Dr. Stalon has served on the Commission since 1984, and is nominated to fill the remainder of the term expir-

ing October 20, 1989. He has appeared before this committee on a number of occasions during his past 4 years, and has always demonstrated an understanding of the many complicated issues surrounding the various regulated and changing industries under FERC's jurisdiction.

Charles Trabant has been nominated to his second term, to expire on October 20, 1992. Chuck is well-known to the Energy and Natural Resources Committee, having served on its professional staff for 8 years. During the past 3 years that he has served as Commissioner, he has demonstrated technical expertise and legal knowledge commensurate with the decisions faced by the Commission. During this period he worked closely with the other members of the Commission toward a reliance on the free market, something I believe will help ensure the energy security and economic well-being of this Nation.

Mr. President, another nominee comes to us directly from the staff of the Energy Committee, Elizabeth Moler. Betsy has served on our professional staff since 1976. During this time she has played a key role in the formulation of our country's energy laws relating to natural gas policy. She has gained national recognition for her expertise in energy policy, natural gas policy, and specifically the National Gas Policy Act of 1978 and our attempt in 1983 to amend that act. Betsy's term will expire October 20, 1991.

Our final nominee, Jerry Langdon, will serve a term expiring October 20, 1992. His professional career has been spent in the oil and gas industry, and he is presently a self-employed petroleum consultant.

Turning briefly to an issue discussed during committee hearings, Mr. President, I'm sure my colleagues share my belief that it is imperative that the Commission make timely and informed decisions on the many issues now pending before it. In order to do so, the Commissioners must be fully informed regarding the cases. All Commissioners must be aware of the factual information, analysis and legal information that has been made available to the Commission during the decisionmaking process. They not only must be up to speed on the details of individual cases, but they must understand the broad policy implications of individual decisions. The Commission's overall policies and objectives must provide the framework for decisions on individual cases. Access to the experience and expertise of individual Commission staff is essential in this regard. A more open flow of information within the Commission and its staff will facilitate a total participation in these important decisions.

The Commission was intended to be a collegial body which engaged in con-

structive dialogue between members so as to proceed in an orderly manner in the formulations of policies and the considerations of individual cases. If this environment is to be sustained, there must be constructive dialogue between Commission members in the scheduling of the agenda, as well as in setting overall policy of the Commission.

Mr. President, I would like to urge my colleagues to join me in supporting the confirmation of these five nominees to the Federal Energy Regulatory Commission.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

#### DISAGREEING TO TITLE AMENDMENT—S. 2393

Mr. BYRD. Mr. President, I ask unanimous consent that it be in order to disagree to the title amendment to S. 2393, a message from the House acted on earlier today.

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

#### ORDER OF PROCEDURE

Mr. BYRD. Mr. President, does the distinguished Republican leader have anything further?

Mr. DOLE. I just make one comment, and that is to compliment the distinguished Senator from Maine, Senator MITCHELL, on what I thought was an excellent statement. Although I was not directly involved in the negotiations, I think it is fair to say he did the very best he could working with Members on each side of the aisle, and certainly this issue will be one of the first, I would guess, to come to us next year.

Both Presidential candidates have indicated it is time to act, and that we have had enough studies on this very important problem.

So I want to congratulate and compliment the Senator from Maine, Senator MITCHELL, and also my colleague on this side, Senator SIMPSON, who was acting in some of those discussions.

Mr. BYRD. Mr. President, I was not on the floor to hear Senator MITCHELL's statement. I have been involved in a meeting in my office with a large number of Senators. I will, of course, read it with great interest and will have some comment perhaps on the statement.

#### RECESS

Mr. BYRD. Mr. President, I ask unanimous consent the Senate stand in recess until the hour of 2 o'clock p.m. today to accommodate the two

party conferences, and that the time during the recess be charged against the 30 hours.

There being no objection, at 12:49 p.m., the Senate recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SANFORD).

The PRESIDING OFFICER. As a Senator from North Carolina, I observe that a quorum is not present. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

#### PARENTAL AND TEMPORARY MEDICAL LEAVE

The Senate continued with the consideration of the bill.

Mr. McCLURE. I ask unanimous consent that I may be permitted to speak out of order without my time being charged under cloture.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Reserving the right to object, I have no objection to my colleague speaking out of order. We have been trying to run the time, so I would prefer, if the Senator does not object, to have the 10 minutes run against the 30 hours under cloture.

Mr. McCLURE. I have no objection, if I might reserve the 10 minutes I otherwise would have under cloture at the end of the 30 hours.

Mr. DODD. The net effect is the same.

Mr. McCLURE. It would count against the 30 hours, but I would reserve 10 minutes for myself at the end of cloture.

Mr. DODD. The Senator has an hour under cloture at any rate.

Mr. McCLURE. Yes.

Mr. DODD. Under the understanding that it counts against the 30 hours under cloture, I have no objection.

The PRESIDING OFFICER. Without objection, but with objection as modified, it is so ordered.

Mr. McCLURE. I would modify my unanimous-consent request to reserve the 10 minutes to myself at the end of cloture that otherwise would have expired but the time to be charged against the 30 hours under cloture.

Mr. DODD. Reserving the right to object, and I do not want to object, we are trying to run the 30 hours. I think my colleague knows that. I am not trying to deprive him of any time to talk under cloture. We have 17 hours remaining, Mr. President. But I would like to maintain the process we have been working under for some 18 hours, or 14 hours at any rate. I reluctantly would have to object unless we count

this time against cloture. I have 3 hours and I will be glad to yield my colleague 10 minutes of my time under cloture, reserving 10 minutes of my time for my colleague.

Mr. McCLURE. Mr. President, as I understand the cloture provisions, at the end of the 30 hours, a person who has not spoken on the bill is entitled to speak for 10 minutes. I do not want my speech now on another subject to have used up that 10 minutes I otherwise would have reserved at the end of the 30 hours. I have no objection to the time being charged against the 30 hours under cloture. I do not want it charged against my 10 minutes at the end of cloture.

Mr. DODD. Parliamentary inquiry. Is it correct that every Senator has 10 minutes to speak at the termination of cloture?

Mr. McCLURE. If he has not spoken.

The PRESIDING OFFICER. The Senator may not reserve 10 minutes, but certainly the Senator could have 10 minutes yielded to him.

Mr. McCLURE. Mr. President, as I understand the rule, if a Senator has not spoken during cloture, he is guaranteed at least 10 minutes.

The PRESIDING OFFICER. That is the correct rule.

Mr. McCLURE. That is the correct rule. What I was trying to do is reserve to myself that time.

The PRESIDING OFFICER. But there has been objection to that.

Mr. McCLURE. All right. I thank the Chair.

Mr. DODD. Will my colleague restate his request? As I understand it, if a Senator has not spoken on cloture during the 30 hours, then there is reserved to that Senator who has not spoken as much as 10 minutes.

Mr. McCLURE. That is right.

Mr. DODD. So his time would run against the 30 hours and obviously the Senator's rights in that period immediately on the termination of 30 hours would be protected for 10 minutes. With that understanding—

Mr. McCLURE. Under the unanimous consent, if granted, that would be correct. And that is my request.

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

Mr. McCLURE. I thank the Chair. I thank the distinguished manager of the bill.

#### ALL OUR EGGS IN ONE BASKET?

Mr. McCLURE. Mr. President, last week, two hearings were held in the House of Representatives to look into the events in the P reactor in the Savannah River Plant in August. The second, a joint hearing before the House and Senate Governmental Affairs Committees, chaired by Senator GLENN and Congressman SYNAR, was

reported in the October 1, 1988 issue of the New York Times. The article was titled, "Accidents at a U.S. Nuclear Plant Were Kept Secret Up to 31 Years." It notes that prior to an unexplained power surge at the P reactor last August, no one at the Department of Energy, which owns the reactors, was aware of over 30 other incidents that had occurred over the more than 30 years of operations of the SRP reactors. Some of these incidents were quite serious. They ranged from melting of a fuel bundle to large leaks in the vessels. I would like to submit this article for the RECORD.

However, Mr. President, I do not wish to belabor these problems. What I want to do is to highlight what I believe are three major issues regarding the Department of Energy and our nuclear materials production capability.

First of all, I want to emphasize a statement made at the joint hearing by the distinguished senior Senator from South Carolina, Mr. THURMOND, "The Savannah River Reactors are our only source of tritium." We must not forget this compelling and frightening truth, to which I add, they will continue to be our only source of tritium for the next 10 years. The need for these reactors to run and run safely for the next decade is vital to our national security. I can not emphasize this too strongly. We are very—terribly—vulnerable. Let this be a lesson to us. Let us never, ever again become dependent on one source for any part of our national defense.

Second, I would like to call attention to the testimony of several expert witnesses who reiterated that the reactor operators do not have adequate understanding of the reactors. Let me remind you that this lack of understanding exists in spite of 30 some years of operation. When Congressman SYNAR noted, "What we have here is an admission that that plant had been out of control for over 30 years," DOE could not disagree. In the most recent incident in the P reactor, there was a reactivity induced transient during startup and a small power pulse. Although the reactor shut itself down, it was restarted and was kept operating for over a week. DOE safety experts testified that the operating crew and the reactor engineer did not understand the events at the time, did not understand the phenomena involved, and yet they decided to continue running the reactor anyway. Furthermore, when interviewed, they indicated they would do so again under the same conditions.

This seems to me to demonstrate a mindset that I find alarming; not only for the currently operating reactors, but for the future reactor that is planned for the SRP. The DOE Energy Research Advisory Board panel recommended a heavy water re-

actor technology as a fast track solution to the urgent need to build new nuclear materials production capacity. The Secretary of Energy relied heavily on the ERAB panel's findings in making his recommendation for a two-reactor strategy. The driving force behind both recommendations was the panel's conviction that the HWR technology was the best known.

The panel noted the SRP reactors had operated over 30 years and accumulated over 130 reactor years of operating experience. The panel said there had been improvements in the system design that would increase the safety and efficiency of the reactor operations, and stated, "the reactor achieved high availability in operation with good operational safety, low personnel exposure, and efficient production." Discounting the fact that the power of these plants had to be derated last year for safety reasons, and one permanently shut down for a design-related failure, the panel praised the HWR, "The inherent features of the low-temperature HWR coupled with adoption of modern safety features available from light water reactor technology should insure achievement of reactor safety plus environmental protection equivalent to that of the best commercial reactors."

Obviously, neither the panel nor DOE were aware of information revealed at the September 30 hearing, that over a 17-year period, there were 9 to 12 forced shutdowns per reactor per year—forced shutdown is anything not planned, such as equipment failures or operational problems. There were also 30 incidents of greatest significance ranging from melting fuel bundles to undetected large leaks in the reactor vessels that I spoke of earlier.

Now I want to make it quite clear that I support the Secretary's recommendation for the two reactors at two sites. I also believe with the proper attention and with thorough reviews, the new HWR reactor can meet today's safety criteria. However, what I fear is the mindset that has prevailed at SRP for 30 years; a mindset that insists there are no problems with these reactors; a mindset that maintains these reactors can be easily and simply replicated. This mindset—that all is well—has sailed the ship onto the shoals. We cannot let this kind of thinking carry us into the future.

DOE has recommended a plan that provides our nuclear materials production capacity with quality and diversity. This plan also provides us with protection from those who are reluctant to acknowledge problems, lack technical inquisitiveness, and would pursue construction of only one reactor of a known technology. Only by building two technologies at two sites can we adequately protect this Nation from possible loss of supply due to sabotage

or earthquakes, a genuine concern. For as Senator GLENN noted, the 1886 earthquake leveled 90 percent of Charleston, SC, and the U.S. Geological Survey believes large earthquakes could still occur in the area—an area that includes the SRP.

Finally, I feel compelled to point out for the record, that the Department of Energy is making a sincere, concerted effort to identify and correct the problems in the defense complex. It was DOE that asked the National Academy of Sciences to investigate safety of the production reactors, it was DOE that established the Assistant Secretary of Environment, Health, and Safety, whose personnel testified about the problems at the hearings last week. It was DOE that appointed a safety oversight advisory panel, chaired by John Ahearne. It is true that DOE has been almost criminally slow, but it is finally acting. It was the present Secretary of Energy who grasped the nettle of providing new materials production capacity and made the proposal that will insure we have the necessary redundancy in the system for the future.

Mr. President, only hindsight is perfect. But we will be blind indeed, if we do not act upon the Secretary's recommendation. The problems experienced at Savannah River over the last 30 years ought to be proof enough of the perils of putting all our eggs in one basket.

Mr. President, I ask unanimous consent that the New York Times article of October 1, 1988, the Energy Daily article, "Cavalier Attitude to Safety at Savannah River Plant," October 3, 1988, and the Wall Street Journal article, "Savannah River Nuclear Plant Workers Had Cavalier Safety Ethic, Panel Told," October 2, 1988, be placed in the RECORD.

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

[From the New York Times, Oct. 1, 1988]

ACCIDENTS AT A U.S. NUCLEAR PLANT WERE KEPT SECRET UP TO 31 YEARS

(By Keith Schneider)

WASHINGTON.—The Savannah River Plant in South Carolina, an enormous Government complex that produces fuel for the nation's nuclear weapons, has experienced numerous reactor accidents that have been kept secret from the public for as long as 31 years, two Congressional committees disclosed today.

The Energy Department responded to the disclosure by saying it had been unaware of the accidents, which occurred at all five of Savannah River's reactors, until inspectors began investigating a still unexplained power surge at one of them last August.

It is unclear whether the department's predecessor agency, the Atomic Energy Commission, knew of the accidents, which included the melting of fuel and one episode that resulted in extensive radioactive contamination.

NO COMMENT BY DU PONT

"It wasn't known by headquarters safety people," said Will Callicott, a spokesman for the department. The operator of the plant, the Delaware-based E.I. du Pont de Nemours & Company, had no comment when asked whether it had notified anyone in the Government of the accidents or the existence of a memorandum, obtained by the Congressional committees, that brought them to light.

Physicists interviewed today called the accidents among the most severe ever documented at an American nuclear plant. The 19-page memorandum, written by a plant supervisor to his superiors at Du Pont, did not say whether there had been any injuries or how many workers might have been exposed to dangerous levels of radiation. But nuclear experts said some of the accidents could have threatened public health or, had they gone uncontrolled, even destroyed the reactors, creating a disaster.

The incident in August and the memo raise anew questions about the willingness of the Energy Department to correct longstanding managerial and structural problems at the aging plant, which, with the shutdown of a production reactor in Hanford, Wash., two years ago, is now the nation's only source of plutonium and tritium, the two key radioactive elements used to manufacture nuclear warheads. Last year a panel of investigators from the National Academy of Sciences criticized the Energy Department for failing to apply or even clearly specify safety requirements at Hanford and Savannah River.

SELF-REGULATING PLANTS

Hanford and Savannah River, near Aiken, S.C., operated for years in secret and were essentially self-regulated. While the Government maintained regional offices at each plant, it left to the operators the responsibility for maintaining safe operations. Last year the Energy Department began an on-site inspection program in an effort to improve operations.

By contrast, the Nuclear Regulatory Commission has long imposed stringent regulations on operations at civilian nuclear reactors.

The memo, and several more recent ones written by Energy Department inspectors, describe a striking complacency at the Savannah River Plant. They were made public today at a joint hearing of the Senate Committee on Governmental Affairs and the House Government Operations Subcommittee on Environment, Energy and Natural Resources. Both committees have been investigating conditions in the Energy Department's nuclear weapons production program.

SYNAR ASSAILS AGENCY

"This hearing is about an institution and attitudes which are driving our nation's nuclear weapons program to the brink of disaster," said Representative Mike Synar, the Oklahoma Democrat who heads the Government Operations subcommittee. "What we have here is an admission that that plant had been out of control for over 30 years."

The Energy Department said it could not disagree. "There's still a lot of upgrading that needs to be done," said Bill Kaspar, the department's manager of operations in Aiken.

The memorandum describing the accidents that came to light today was written on Aug. 14, 1985, by G. C. Ridgely, a techni-

cal supervisor and physicist employed by Du Pont. Mr. Ridgely was one of 11 Du Pont scientists and engineers who, apparently in response to one such accident at Savannah River, looked at the history of the plant and ranked 30 "incidents of greatest significance" that occurred at the five reactors from 1957 to 1985. His memorandum summarizes each incident.

Jerry Hulman, a safety specialist with the Energy Department, said in testimony before the Congressional committees today that the department had the Du Pont team's full reports on some of the accidents but that other reports could not be found. He suggested that these "may have been destroyed" at Savannah River. Du Pont again declined comment.

Among the accidents summarized in the memorandum were these:

A melting of fuel rods in the C Reactor in December 1970. The accident occurred during an attempt by technicians to start the chain reaction inside the reactor. The reactor, however, automatically shut down because the flow of cooling water was too low and the reactor was overheating. But instead of investigating the cause of the shutdown, the operators tried three more times, without success, to start the reactor. The heat generated during the attempts melted the fuel assembly.

Nuclear engineers said in interviews today that the melting of fuel was a serious accident that could lead to meltdowns of the reactor core, a scenario that occurred in the 1979 accident at the Three Mile Island generating station in Pennsylvania.

An accident in November 1970 that released huge amounts of radiation in a room, adjacent to the K Reactor, where cooling water is filtered. Nine hundred workers spent three months in a highly contaminated environment cleaning up the radiation, the memo says. This accident was caused by the melting of a vital reactor component known as a source rod. The rod, made of a mixture of antimony and beryllium, is a source of neutrons to start the nuclear chain reaction. The memo does not say why the rod melted but does indicate that the accident was made more severe by technicians' ignoring a radiation alarm for two hours.

During full power operation of the C Reactor on May 10, 1965, a "very significant leak" developed that spilled 2,100 gallons of cooling water on the reactor vessel floor. The level of cooling water within the reactor fell precipitously, but the reactor automatically shut itself down, said the memo. Cooling water is vital to regulating the temperature of reactor components and preventing meltdown. The memo said personnel were not aware of the leak until they saw it spilling onto the floor of a room adjacent to the reactor. Again, said the memo, an alarm was disregarded for 15 minutes, and "operating personnel failed to take proper corrective action until reactor technology personnel reminded them to do so."

The most severe accident occurred on January 12, 1960, when technicians were attempting to restart the L reactor after it had shut itself down automatically. By pulling safety rods and control rods, technicians were able to achieve a chain reaction that very nearly went out of control, said nuclear experts today. The reactor increased its power ten times faster than was considered safe. The memo does not say how technicians gained control over the reaction, but said "numerous procedure violations were made."

The events that led up to the 1960 accident appear similar to those that occurred last August at the plant when technicians tried to start the P Reactor after it had been out of service for four months. Reactions are regulated by control rods that absorb atomic particles known as neutrons. Pulling the rods from the reactor core allows neutrons from atoms of uranium to bombard other uranium atoms knocking free more neutrons. The reaction multiplies until an atomic chain reaction is achieved.

The procedure for pulling control rods from a reactor core is normally performed under rigorously controlled conditions. Calculations are made to estimate how many rods should be manipulated and how far they should be pulled. Failing to perform the activity carefully can result in a runaway reaction and in the worst case a dangerous core meltdown.

[From the Energy Daily, Oct. 3, 1988]

TRANSMISSION REPRICING NO PANACEA,  
STALON SAYS

(By Aviva Freudmann)

The monopoly power that electric utilities have over the transmission system gives them an incentive to operate it in a way that is inefficient for the nation as a whole, Federal Energy Regulatory Commission member Charles Stalon said in a speech in Washington late last week.

The incentives that produce socially inefficient use of transmission facilities will continue to operate even if regulators find a better way to price transmission services, Stalon told a conference organized by the Electricity Consumers Resource Council. While pricing reform is important, he said, the real answer to the inefficiency problem is for federal regulators to weaken electric utilities' monopoly power over transmission.

"I think it is necessary to deflate certain unrealistic expectations" regarding pricing of transmission services, Stalon emphasized. "Even if we were to price wheeling precisely correctly. . . we still are a long way from achieving the kind of efficiency we want out of the system."

The economics of the industry are such that utilities make most of their profit on the generating side, he said. Similarly, utilities have more to lose from inefficient use of generating facilities than they stand to lose from inefficient use of transmission facilities: "The potential loss in the firm for inefficient utilization of its generating side is horrendous, while the risk of substantial loss for inefficient utilization of the transmission side is peanuts."

The management of an electric utility will most likely recognize that there is not much in the way of economies of scale left on the generating side, and therefore not much natural monopoly left there, Stalon noted. But it will also recognize that "there is a great deal of monopoly power on the transmission side."

A rational management will use its transmission monopoly to get the most out of its generating assets, where the financial stakes are higher, he continued. "And that means that [the utility] is going to use its transmission assets to protect what monopoly power it's got in the selling of power, and preserve its privileged role in other markets as best it can."

Therefore, Stalon continued, "no matter how brilliant we price transmission, if we did it perfectly, if we get next week's Nobel prize in economics (assuming that they are concerned with our problem, which is most unlikely in the field today)—what we would

find is, the rates that we establish are not likely to induce a utility monopolist to engage in much more transmission than under our so-called embedded cost pricing."

Instead of focusing exclusively on pricing, FERC should try a similar approach to the one it used in the natural gas pipeline business, Stalon said. FERC's response to pipelines' monopoly control over gas transmission was to try "to force an untying of the tie between the merchant role and the transportation role."

The commission has not achieved all the policy goals it set out to accomplish in its Order 436 program, but it was still "an adequate approach," Stalon argued. "We tried to do something there that I think we will have to think seriously about and see if we can do on the electricity side."

If FERC succeeds in breaking the connection between the monopoly gas transportation function and the non-monopoly merchant function, then "the pipeline will gain strong incentives to make efficient use of its assets, because the pipeline is no longer responsible for marketing the gas," Stalon explained.

The same general principle applies to the electric industry, although the technical issues are more complex, the FERC commissioner observed. "It seems to be a great deal more difficult on the electricity side to define a commodity called transportation service and to think in terms of creating a market for that transportation service."

There is also the issue of reliability on the electric side, an issue that is difficult to evaluate, he noted: "This term has been used over and over again. The only clear lesson that I can draw out of my reading so far . . . is that people who are using this term against [reform efforts] have learned one of the important lessons in American society from President Warren Harding. President Harding said at one point that he didn't know much about Americanism, but it was a damn good word with which to win an election."

The main problem of the U.S. electricity system is that, "because of its lack of an efficient [inter-regional] trading system, it is designed to optimize components but it lacks an efficient mechanism to optimize the whole," Stalon said.

Each utility has no choice but "to optimize within its own constraints," he added. "In order to do that, it tends to confuse, and confuse badly, cost savings which are real economic cost savings and cost savings that are nothing else than shifting of costs. Our problem is to convert that desire to lower the cost to yourself and your customers into a reduction in real costs to the system as a whole."

This is a problem that can only be addressed at the federal level, he pointed out. Unlike individual utilities, state regulators and state congressional delegations, FERC is in a position to press for inter-regional trading in electricity that "will work to the benefit of all," he argued.

The first efforts that FERC should take in creating an efficient inter-regional trading system should be aimed at breaking down some of utilities' monopoly power over transmission, Stalon said. But regulators will need to propose a package of reforms, including measures to improve pricing practices for transmission services, bulk power sales and requirements service.

Among other measures, FERC may propose incentives to induce utilities to build new transmission capacity, Stalon told the meeting: "We have heard a lot of arguments

that there is no excess capacity to speak of on the transmission system. We ought to build more, then. But we have to have incentives to build it."

Although a package of proposals is needed, FERC works best when it does things sequentially, he added: "The FERC, by its very nature, finds it difficult to do more than one thing at a time. The old 'walking and chewing gum' joke (if it had an institutional counterpart) would fit. The procedural relationships tell us that things that logically ought to be done simultaneously, we have to break up and do sequentially."

"And as a consequence, we all too frequently find ourselves in a position that my grandmother described as 'one jump across a two-jump creek.'"

[From the Energy Daily, Oct. 3, 1988]  
CAVALIER ATTITUDE TO SAFETY AT SAVANNAH  
RIVER PLANT  
(By Dennis Wamsted)

E.I. du Pont de Nemours and Company's operation of the Savannah River nuclear weapons facility as well as the Department of Energy's safety-related oversight of the weapons producing facility were lambasted by a host of witnesses and congressmen at a hearing on Capitol Hill on Friday.

The attitude toward safety among the reactor operators at Savannah River is "cavalier," Robert Keller, a veteran of the nuclear Navy and now a senior nuclear engineer in DOE's office of safety policy and standards, told a joint hearing of the House Government Operations and the Senate Governmental Affairs committees. The facility's reactor operators "do not have adequate understanding of the basic principles that would allow them to make a good decision" in the event something abnormal occurs at the reactor site, added Robert Smith, the onsite resident for DOE's Environment, Safety and Health division.

More extensive criticism was detailed in a memorandum written by Richard Starostecki, DOE's deputy assistant secretary for safety, health and quality assurance, in mid-September regarding an August incident at the site during an attempted restart of the 'P' reactor. The event did not represent "an immediate safety threat," Starostecki wrote. "Notwithstanding, there was a more serious problem. The operating crew and reactor engineer did not understand the events at the time, did not understand the phenomena involved and [still] . . . elected to continue reactor start-up and operations." Further, interviews at the site indicated that operators would handle the situation in the same manner if it recurred. "[This] demonstrated lack of technical inquisitiveness and caution raises the question of adequacy of management controls to assure conservative, safe decisions toward operation," Starostecki wrote.

However, the problems don't simply exist within the control rooms at Savannah River, the DOE official continued. The real issue isn't this one incident: "The more serious issue deals with an institutional problem and attitudes toward safety," Starostecki wrote: "There are currently some senior managers within the department with an attitude toward production reactor safety, which on the face seems to be similar to that which existed in the space program prior to the Challenger accident."

The attitude of many of these officials, he added, is that DOE's production reactors are presumed safe unless demonstrated otherwise. "The presumption appears to be

based upon historical experience and reliance on outdated safety analyses," Starostecki wrote: "Even when problems are identified there is a reluctance to acknowledge them."

This mindset was attacked by Rep. Mike Synar (D-Okl.), chairman of the Government Operations environment, energy and natural resources subcommittee, who chaired the joint hearing. "Today's hearing . . . is about an institution and attitudes which are driving our nation's nuclear weapons program to the brink of disaster," the Oklahoma Democrat noted in his opening statement. DOE's hands-off management style has enabled its contractors to "become insulated and complacent, leading to an erosion of the values of safety and quality."

The operators running the reactor during the attempted August restart were "out of control," Synar continued: "They had no idea whether the condition of the reactor was safe or posed a serious threat to them or the public. What's more, they did not care."

Senator John Glenn was equally critical of DOE's operations at Savannah River. "DOE has fought tooth and nail against my legislation to establish independent, outside oversight of their facilities," he said, adding pointedly that if he were secretary of energy he would push for such outside oversight. "They [the reactor operators] just flat didn't know what was going on in the reactor," Glenn charged.

Adding his voice to the chorus of complaints was Dexter Peach, the General Accounting Office's assistant comptroller general in the resources, community and economic development division. "It appears that the contractors are really in control, rather than DOE," Peach told the joint panel. "We now believe we may have been too optimistic in the past year or so about DOE's progress in addressing environmental, safety and health issues. . . . A complacent attitude [toward safety] still exists within DOE." These problems highlight the need for improved line management accountability for safety-related issues and the need to establish an independent oversight body, Peach continued.

[From the Wall Street Journal, Oct. 2, 1988]  
SAVANNAH RIVER NUCLEAR PLANT WORKERS  
HAD CAVALIER SAFETY ETHIC, PANEL TOLD  
(By Paulette Thomas)

WASHINGTON.—The Energy Department gave Du Pont Co. free rein to run a nuclear weapons plant, where workers were cavalier about safety, training and anomalies in a reactor, a congressional hearing was told.

The comments followed an investigation by the General Accounting Office into a reactor shutdown in August at the Savannah River, S.C., nuclear power plant, where fuel for nuclear weapons is made. Du Pont has operated the plant for the department since 1950.

The company, which is based in Wilmington, Del., denied that safety has been compromised, and said no employees have ever missed work due to injury. "Our commitment to the safe operation of the Savannah River Plant, the safety of our employees and the protection of public health and safety at Savannah is unyielding," a spokesman said. Du Pont announced two years ago it would cease its operations at the facility when its contract with the Energy Department expires next April. Westinghouse Electric Corp. was awarded the \$6.7 billion contract to manage the plant.

GAO officials said they had uncovered a pattern of laxity on safety issues at the plant, saying there were 30 safety-related incidents at the plant between 1957 and 1985. In an incident in August for example, operators continued raising power when they didn't understand what was happening in the reactor. Under regulations that commercial nuclear plants must follow, the reactor would have been closed as a precaution.

The incident proved to be minor, and the public was in no danger, said Dexter Peach, assistant comptroller general at the GAO, the investigative arm of Congress. "But the operators didn't know that for sure," said Mr. Peach. "They forged ahead without understanding what had caused it, and therein lies the safety problem."

Moreover, he added, no one in the Energy Department or Du Pont knew what was going on.

A senior nuclear engineer with the Energy Department, who investigated the incident, told the hearing. "At the time I was there, I would use the term seat-of-the-pants or cavalier" to describe the overall safety ethic at Savannah River. The engineer, Robert W. Keller, said, "It appeared that the reactor was behaving strangely, and the contractor did not seem to be concerned or interested in investigating the problems."

The Savannah River plant, where tritium and plutonium are manufactured, is one of 17 U.S. nuclear plants used for researching and testing weapons. In recent years, the Energy Department has come under increased congressional scrutiny for the way it oversees its contractors. The department has been under pressure to upgrade the safety of its plants since the accident at the Chernobyl plant in the Soviet Union.

Mr. McCLURE. Also, Mr. President, I would like to call attention to a follow up article in the New York Times, October 4, 1988, titled, "Energy Dept. Says It Kept Secret Mishaps at Nuclear Weapons Plant." The article states that DOE has accepted responsibility for keeping secret the accidents I have mentioned here. The 1985 memo by a DuPont scientist that was discussed in the hearing testimony was submitted to the DOE regional office in Aiken, SC. However, it never reached the Secretary of Energy or his deputies. DOE is investigating the matter. Mr. President, I ask unanimous consent that this article also be placed in the RECORD.

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

[From the New York Times, Oct. 4, 1988]  
ENERGY DEPT. SAYS IT KEPT SECRET MISHAPS  
AT NUCLEAR WEAPON PLANT  
(By Keith Schneider)

WASHINGTON, Oct. 4.—The Department of Energy said today that it was responsible, along with its predecessor, the Atomic Energy Commission, for keeping secret from the public a number of serious reactor accidents that occurred over a 28-year period at the Savannah River Plant in South Carolina.

The Energy Department exonerated E. I. du Pont Nemours & Company, the operator of the enormous nuclear plant, from responsibility, saying the company had fulfilled its obligation to notify the Government about

the incidents. The department spokesman, C. Anson Franklin, said Du Pont had notified the regional office in Aiken, S.C., near where the plant is situated, but the information apparently never made its way to the Secretary of Energy or his deputies in Washington.

#### PROBLEMS ARE DEEPLY ROOTED

Moreover, a memorandum written in 1985 by a Du Pont scientist to his superiors summarizing 30 "reactor incidents of greatest significance" at the Federal nuclear weapon plant, which included the melting of fuel and extensive radioactive contamination, was never acted on. The Energy Department said it was seeking to determine why nothing was done about the memorandum.

The Energy Department said the failure to disclose the problems illustrated a deeply rooted institutional practice, dating from the days of the Manhattan Project in 1942, which regarded outside disclosure of any incident at a nuclear weapons production plant as harmful to national security.

Lawmakers and top managers at the Energy Department said today that the agency was torn by conflicting views of what sorts of events at the plant should be made available to the public. The conflict is dividing Secretary of Energy John S. Herrington, an advocate of more stringent safety procedures and public candor, and many of the agency's managers stationed at field offices near the 17 laboratories and production facilities that make up the weapon production complex.

"I have no reason to doubt Du Pont's statements that they provide information on these incidents to the Department of Energy and our predecessor agencies," said Mr. Franklin, Assistant Secretary for Congressional, Intergovernmental, and Public Affairs. "I don't think it's fair or accurate to suggest that they kept these incidents secret from the Energy Department."

Mr. Franklin was responding to disclosures made in a Congressional hearing last Friday that numerous reactor accidents had occurred at the industrial complex in South Carolina from 1957 to 1985 and had not been brought to the attention of the public. The accidents, which included the melting of fuel, extensive radioactive contamination, and significant leaks of reactor core cooling water, were summarized in a memorandum written in August 1985 by a scientist to his superiors at Du Pont.

Du Pont, which built the 192,323-acre plant and has operated it for the Government since 1952, said yesterday that it had described the accidents in technical reports on the plant's operations that it sends each month to the regional field office in Aiken.

"We're the contractor here," said Cliff Webb, a spokesman for Du Pont. "We operate the facility because we have been asked to operate it. We do what they ask us to do. It's not appropriate for Du Pont to tell the Energy Department how to manage its internal documents."

#### GLENN URGES END TO SECRECY

Senator John Glenn, a Democrat of Ohio, said that the Energy Department needs to work harder to the secrecy that has dominated the weapon production plants since the start of the Manhattan Project, the supersecret Government project to develop and build the atomic bomb.

"What happened here is at the heart of the whole problem with this agency and these plants," said Mr. Glenn, who is chairman of the Senate Committee on Governmental Affairs. The committee has been in-

vestigating conditions at Energy Department defense plants for nearly four years. "Since its founding days, it's operated mainly in secret. It's evident now that concerns over safety, the environment, and health did not matter at all during those days. All they wanted was production. But people have a right to know what kinds of conditions they are working in and living near."

The accidents occurred at five reactors that form the core of the operation at the Savannah River Plant, which employs 16,700 people and accounts for 21 percent of the \$7.75 billion the Energy Department intends to spend next year on weapon programs. Among the accidents that occurred at the reactors were a number of unexplained power surges that threatened to go out of control. In one incident on Jan. 12, 1960, the reactor increased in power more than ten times faster than was considered safe.

In another accident in November 1970, a radioactive rod that was a source of neutrons to start the atomic chain reaction in one reactor melted. A processing room adjacent to reactor where cooling water was filtered was thoroughly contaminated with radiation. It took 900 people three months to clean up the contamination.

And in December 1970, a fuel assembly melted in another reactor. Melted fuel is considered among the worst accidents that can occur in a nuclear reactor; it can lead to the meltdown of the reactor core and releases of large amounts of radiation into the environment.

Mr. Anson said it has not been determined why the memorandum that summarized the accidents was not made available to officials in Washington.

"This report was somewhere in the D.O.E. system," said Mr. Franklin. "It did not pop up to senior management. Why. We don't know. We're trying to find out. This is the type of thing that has been happening that we are trying to address. Things are not getting kicked up far enough in the system."

Mr. Franklin said that Mr. Herrington has sought to eliminate much of the secrecy since becoming Energy Secretary in February, 1982. Mr. Herrington, said Mr. Franklin, appointed an Assistant Secretary for Environmental Health and Safety to address concerns about enormous quantities of toxic and radioactive wastes that have accumulated at such laboratories and weapon production plants as Savannah River.

Mr. Herrington also established a new office to inspect safety and health conditions at the defense nuclear plants. An inspector in the office, Jerry Hulman, directed the investigation last August of another reactor incident at the Savannah River that led to the discovery of the memorandum.

Mr. Franklin said the Energy Department has complete control over whether to disclose information about accidents to the public. He said a written policy instituted when the Energy Department was established in 1978 calls for the agency to fully disclose any accident involving the release of radiation into the environment. He said that Mr. Herrington has urged agency officials in Washington and in the field offices to be more forthcoming about other incidents, particularly those as serious as the accidents that occurred at the Savannah River plant.

"It's accepted around here that this entire program was directed out of the secrecy of the Manhattan Project," said Mr. Franklin. "The recognition that there is a responsibil-

ity for more public accountability is coming belatedly to the Department of Energy.

"We've had a major turnaround up here," Mr. Franklin continued. "Our heart is in the right place. But we're having trouble getting the message out to the field. Translating the policies developed by the Secretary into action all the way down the system is taking longer than we would like it. It continues to be our biggest problem."

Representative Mike Synar, Democrat of Oklahoma who is chairman of the House Government Operations Subcommittee on Environment, Energy and Natural Resources, said the Energy Department is damaging its image on Capitol Hill and in states in which it operates weapon plants by not acting faster to be more forthcoming about safety mishaps.

"Our hearing clearly showed for over 30 years these accidents were due to unsafe conditions and bad attitudes about safety on the part of the Government and Du Pont," Mr. Synar said. "Until this is corrected, none of these reactors should be restarted. It takes a serious investigation like this to get the Energy Department to recognize decades old problems, and we've seen this pattern time and time again over the last eight years. They have a serious attitude problem with respect to the management of these plants and with respect to safety."

Mr. SYMMS addressed the Chairman.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, I ask unanimous consent to speak out of order.

The PRESIDING OFFICER. Is there any objection to the request of the Senator to speak out of order with the time to be charged against the 30 hours?

Without objection, it is so ordered.

#### HERRINGTON'S REACTOR PLAN: A 2-FOR-1 BARGAIN

Mr. SYMMS. Mr. President, last August, the Secretary of Energy, John Herrington, made a bold and courageous proposal to Congress that will have a positive and long-reaching effect on the Nation—far into the next century. Mr. Herrington asked Congress to approve a two reactor strategy for the Nation's nuclear material production capability.

I commended Mr. Herrington at the time he made this recommendation. Several of his predecessors ducked the issue of replacing the aging production reactors that supply the Nation with the vital materials to keep our nuclear deterrent strong. I am pleased to read in the September 19 issue of the Defense News, that Frank Gaffney, Jr., former Assistant Secretary of Defense, also applauds the Secretary's recommendation.

My colleague, the senior Senator from Idaho, JIM McCLURE, has brought the Gaffney article to the attention of this Senate. However, I would like to second the comments made by both Gaffney and Senator McCLURE.

It has become quite clear over the past year or so that the Nation's defense complex is extremely fragile, and we are most vulnerable to disruption of our tritium supply. Gaffney makes our vulnerability appallingly clear when he says:

It is hard to overstate the importance of a reliable supply of tritium to the U.S. deterrent posture. This material decays rapidly. Consequently, in order to maintain their design effectiveness, the tritium in nuclear weapons must be replaced approximately every 12 years. Put differently, unless the United States can reliably replace its constantly degrading tritium supplies, every single nuclear weapon in the U.S. stockpile could be rendered unusable within a finite period.

Mr. President, I find that a very compelling argument to support Secretary Herrington's proposal. Because we have no back up to the two 35-year-old reactors presently producing tritium, our national security is at risk right now. The Secretary wants to make sure we are never again faced with such vulnerability—such risk.

For those who long to see the day when we can acquire more arms reduction proposals with our chief adversary, the Soviet Union, the nation that does provide the biggest threat to peace and freedom in the world, if they think we can do that without having a long lasting available supply of tritium, there would be no reason for the Soviet Union to negotiate with us under those kinds of circumstances.

That is why the Secretary is proposing to build two types of production reactors, of different technologies, at two widely separated locations. The first would be a heavy water reactor, similar to the currently operating reactors, at the Savannah river plant in South Carolina. The second would be a technology known as high temperature gas-cooled reactor [HTGR] at the Idaho National Engineering Laboratory. Gaffney finds this the "more exciting aspect of the plan," and so do I. The HTGR is an exciting concept, it is modular, so that increments can be added according to funds and materials needs.

You do not have to build one giant, massive reactor. You can build modular reactors in the size range of about 140 megawatts. It will, in addition to producing tritium for our Nation's supply of deterrent to prevent the threat of nuclear war and preserve our peace and freedom, generate steam for electricity which can be sold to defray most, if not all, of the costs of construction, and "most importantly" as Gaffney notes, the HTGR utilizes passive safety features. It is said to be immune to cooling accidents or the risk of nuclear meltdown.

Thus, Herrington's plan extends beyond today's crucial, but single issue of vulnerability. I agree with Gaffney's conclusions that "the HTGR has the potential to revolutionize the U.S.

civilian nuclear technology to the position of global leadership it once employed."

Mr. President, we often forget but we were the leaders in the world, on the cutting edge of the nuclear industry. It was the old Atoms for Peace Program, started during the Eisenhower years, when America led the way, and if we could restore the initiative with the high-temperature gas cooled reactors we could develop modular nuclear electrical powerplants at a very reasonable cost and with absolute foolproof means of safety against cooling accidents and also against meltdowns. So this gives the United States, as Mr. Gaffney says, "two-fer." We get tritium and we make a serious national commitment to develop and "promote a publicly acceptable nuclear power technology."

Gaffney fears that a coalition could develop between those who oppose our nuclear strength and those who, for budgetary or parochial reasons, resist this two-for-one plan. If that happens, he warns us, "the long-term national interest will be profoundly disserved."

I believe Mr. Gaffney, in this article, has done the Nation and this Congress a real service in calling this possibility to our attention. I hope we have the wisdom to endorse and support Secretary Herrington's plan.

At this point in the RECORD, Mr. President, I ask unanimous consent that an article from Defense News by Frank Gaffney, Jr., be printed in the RECORD.

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

[From the Defense News, Sept. 19, 1988]

HERRINGTON'S REACTOR PLAN: A 2-FOR-1 BARGAIN

[By Frank Gaffney, Jr.]

On Aug. 3, Secretary of Energy John Herrington made a historic statement. He announced a far-sighted, responsible program for addressing the United States' long-term needs for special nuclear materials (SNM) essential to the future viability of the U.S. nuclear deterrent.

In so doing, Herrington grasped a nettle his predecessors had been successfully dodging for years: How, where and with what technology will new SNM production requirements be met? Specifically, he recommended an approach to preserve the United States' ability to produce the crucial and relatively perishable ingredient in modern nuclear weapons, tritium.

It is hard to overstate the importance of a reliable supply of tritium to the U.S. deterrent posture. This material decays rapidly. Consequently, in order to maintain their design effectiveness, the tritium in nuclear weapons must be replaced approximately every 12 years. Put differently, unless the United States can reliably replace its constantly degrading tritium supplies, every single nuclear weapon in the U.S. stockpile could be rendered essentially unusable within a finite period.

For its tritium supply—as for most of its other components—the U.S. nuclear deterrent is critically dependent upon the infra-

structure which designs, produces, maintains and disposes of the weapons that comprise its arsenal. Increasingly, however, that infrastructure has become vulnerable to catastrophic failure. The original redundancy and robustness that characterized the nuclear weapons complex established in the early postwar years has gradually given way to unique, aging facilities, virtually every one of which is essential to the ability of the complex to perform its missions.

Today, only two plants, the "K" and "P" reactors at Savannah River, S.C., currently produce tritium for the U.S. nuclear weapons program. Both are roughly 30 years old—well beyond their design life—and are currently obliged to function at half-power, pending the completion of elaborate safety checks. Incredible as it may seem, given what is at stake, there is no backup for these reactors.

As has often happened with decisions affecting other aspects of the national infrastructure (roads, bridges, etc.) the extremely expensive, politically difficult choices of design and location of a replacement production reactor have been repeatedly deferred. Of late, the mounting demands placed upon the Department of Energy weapons complex's capital investment budget by environmental, safety and health-related expenditures have exacerbated the problem. The Government Accounting Office recently judged that an additional \$110 billion would be required to "clean up" the complex. If anything, pressures to postpone new construction and non-environmental, safety and health-associated modernization will grow in the future.

Unfortunately, even in the absence of such pressures, it takes a frightfully long time to bring new reactors on line. It may be 10 years before the capacity of the Savannah River reactors can be replaced. In the face of budgetary and political constraints, that period might become even more extended—with grave implications for the U.S. nuclear inventory.

Herrington, acting upon the recommendations of a technical review panel, has laid out a bold plan for correcting this dangerous situation. He proposes to build two types of production reactors, featuring fundamentally different technologies, at two widely separated locations. The first, to be constructed at the Savannah River site, will be an updated version of the existing heavy-water design approach. It can draw upon a compatible, existing infrastructure at that facility and should be able to meet 100 percent of envisioned tritium requirements.

The more exciting aspect of the Herrington plans is its call for a second reactor to be developed at the Idaho National Engineering Laboratory, near Idaho Falls. This facility, featuring a very different technology, is known as a High Temperature, Gas-Cooled Reactor (HTGR). The principal attributes of this technology are: The HTGR involves a modular design, offering considerable flexibility optimizing the reactor's configuration. It has the ability to generate steam for electricity as well as having the capacity to meet 50 percent of the projected requirement for tritium. Most importantly, perhaps, the HTGR utilizes passive safety features. It is said to be immune to cooling accidents or the risk of nuclear meltdown.

Two reactors, two designs, two locations—it adds up to greater reliability and robustness in a vital defense resource. But the reason this plan testifies to Herrington's vision and leadership goes well beyond the virtues of his common-sense approach to a

tough national security problem. The HTGR has the potential to revolutionize the U.S. civilian nuclear power industry and restore U.S. nuclear technology to the position of global leadership it once enjoyed.

While there have been some relatively small-scale efforts made in the past to develop high-temperature, gas-cooled reactors, national commitment have been made to this technical approach. As a result, the know-how and infrastructure needed to make inherently safe nuclear power a commercially viable option has never developed in the United States.

If Congress has the wisdom to endorse the Herrington plan, it will take the long-overdue steps needed to safeguard the United States' ability to maintain a credible nuclear stockpile. It will also be getting a nuclear "two-fer:" For the price of building a robust ability to produce the tritium upon which the arsenal depends, the United States can promote a publicly acceptable nuclear power technology. In the aftermath of the Chernobyl catastrophe in the Soviet Union and the Shoreham fiasco in the United States, the option for inherently safe nuclear power makes good political and economic sense.

There is, however, a considerable danger that a marriage of convenience could be forged between those who oppose U.S. nuclear strength—and see the coming crisis in tritium production as a boon to their disarmament efforts—and those who, for budgetary or parochial reasons, will resist the Herrington proposal for a second new reactor. If such a coalition should emerge and succeed in killing off the HTGR—or, for that matter, both reactors—the long-term national interest would be profoundly diserved.

#### IDAHO NATIONAL ENGINEERING LABORATORY

Mr. SYMMS. Mr. President, I would like to call attention to the Senate that in the last days before the Senate recessed, my distinguished colleague from Nevada, Senator REID, bestowed upon the Department of Energy the "Globe Rotter Environmental Hall of Shame Award" to the Idaho National Engineering Laboratory, and a number of statements made by the junior Senator from Nevada simply cannot be left to stand alone in the RECORD.

I discussed with the Senator from Nevada where I thought his comments were in error, inaccurate, and presented a very incorrect picture of what has happened and stirs up the emotionalism of people quite incorrectly. I think that some of those areas should be clarified and corrected in the RECORD so that the statement from our distinguished colleague is not left without rebuttal.

My distinguished colleague painted a picture of horror showing the INEL gleefully, purposefully polluting the State's ground water, callously and carelessly throwing out nuclear trash to be carried away by the wind, and behaving this way in the dark secret of the night.

Nothing could be further from the truth. If DOE had acted in this manner, the Senators from Idaho

would have called foul long ago. The true story of waste management at the INEL is much brighter and, of course, more complex.

The INEL has been in Idaho since 1953. Secretary Herrington recently called it the "Jewel in the crown of the DOE complex". It is also the largest such facility, 900 square miles, almost the size of Rhode Island. That land, by the way, is an environmental park where pigmy rabbits, eagles, hawks, and antelope roam free and protected against hunting and the encroachments of land development.

Since the INEL was established, the lab has made significant contributions to the Nation—and the world. The prototype of the *Nautilus*, the first nuclear submarine, was developed there and over the years, almost two-thirds of the nuclear navy has trained at the INEL. The first nuclear reactor in the world to generate electricity was developed and built at the INEL. It is now a museum, visited by thousands each summer. Nearby on the northwest side of the INEL facility is the town of Arco, ID, which is the first city in the United States to be lighted by atomic energy. The bulk of reactor safety research that supports the Nuclear Regulatory Commission's decisions was conducted there.

The INEL was the first lab in the DOE complex to find a satisfactory, safe method in which to handle and store its high level liquid waste, with calcining technology that reduces the liquid to one-eighth the original volume and dries it to a stable, granular substance. This is stored in stainless steel bins with a life expectancy of 500 years. And that is not called a long-time storage plant. This is an example of the innovative and responsible waste management work the INEL has performed for many years.

As soon as the INEL was established, the National Oceanic and Atmospheric Administration began monitoring the air around the complex; the U.S. Geological Service began monitoring the ground water there. This water is primarily contained in an enormous, very slow moving Snake River aquifer that lies 500 to 600 feet below ground level. The water takes about 200 years to travel from the upper southeast corner of the State to the lower middle part where it comes to the surface in a thousand springs below Twin Falls, ID, along the Snake River where so many of the fine trout that people eat in restaurants are grown in the water that comes out at Thousand Springs that is 55 degrees and ideal for trout production. I have heard people describe this aquifer as larger than Lake Michigan.

Over the years, DOE has established an independent laboratory to monitor all the environmental aspects of the INEL, to make sure that no effects of the lab work are passing the boundary

lines of the site. Every quarter, a report on this monitoring is published, and it has always been reassuring. The INEL was the first DOE lab in the system to develop a memorandum of understanding with the Environmental Protection Agency that will provide for interaction with that Agency. The lab also expects to involve the State and the State's universities in a monitoring program of the INEL.

In my opinion, Mr. President, that is not the style of an agency as quoted in the comments of my colleague from Nevada as a "callous disregard for the environment and the quality of life."

In 1954, INEL agreed to accept waste from the Rocky Flats weapons operation. This waste—namely clothes, paper, plastic, and the residue of water treatment—a resin like material—might have been disposed of in shallow land burial, except that it has traces of a transuranic contamination. It requires special storage. Transuranic means those elements that are man made, like plutonium or americium. Since 1960, this waste has been stored in steel drums lined with heavy polyethylene, on an asphalt pad, covered with an air support dome. The INEL stores this waste as a service to the Government and in the interest of our national security. However, DOE has made a commitment to move the waste to a permanent repository.

That commitment is one that we in Idaho believe DOE and the Federal Government and our neighbors to the south in New Mexico where the WIPP facility is should try to live up to because it has been planned, it has been carefully laid out, and it is an issue that is ridden with politics and emotion. But as far as the technology is concerned and the ability to store these transuranic waste, these clothes and other products that have had some contamination, it is certainly within our technological means to store these products in a safe fashion so there is no risk to water supplies or no risk to the public health and safety of our people.

This is the way INEL handles the TRU waste now. Unfortunately, that was not the case for 16 years, from 1954 to 1970. This waste was stored in boxes and drums, but piled into trenches and covered. Now everyone knows this is not a good method. But when the practice began, we did not have that knowledge. Several floods came and some of the boxes broke, and unfortunately, some of the material in the trenches has migrated below the ground's surface. Through a monitoring program initiated by DOE, and conducted in part by USGS, a trace of plutonium has been found in a sediment layer about 100 feet below the ground. INEL has developed an extensive program to determine the extent of the problem, which includes

spending up to \$50 million by 1990 and asking the National Academy of Sciences to help resolve the problem. DOE is determined to make sure this problem is corrected and is budgeting accordingly.

This is a matter of concern. I want it fixed. We all wish it had not happened. It did, but not with malice aforethought.

The second environmental issue also concerns the Snake River aquifer. In the 1950's, the INEL began a practice, routine in the State, of injecting waste water from its treatment facilities into the aquifer. This was industrial waste water and it met the EPA standards. However, there were traces of tritium in the waste water. Tritium is radioactive. The USGS has monitored the tritium since the lab was built and as I noted, published quarterly reports. None of the tritium has ever left the lab boundaries because of the half life of tritium being 12 years, and it takes 200 years for the aquifer to move through that part of Idaho, some 100 years to get through the site area—I am not sure exactly how many years but approximately many, many times more than the 12-year half life of tritium. It does not move very far.

But early in the 1980's we objected to this. The people in the State objected to it. And they protested the practice of putting the wastewater in the ground although it was minute in quality. As a matter of fact, many of us drank water from those test wells to demonstrate that it was certainly not harmful to people even though it was not going anywhere. It was very minor traces.

So it was very easy to see, to have a public outcry about it. We did have a public outcry and DOE reacted. They built a percolation pond to hold the wastewater, and the injection well has been kept only for emergencies. That is all it is kept for now. But the commitment is that DOE plans to seal that well in 1989.

In addition, they have guaranteed that the wastewater stored in the percolation pond will meet drinking water standards.

Mr. President, I believe the INEL has acted responsibly and carefully. The environmental rules have changed since the INEL was built, and the INEL is changing accordingly. The lab has spent or will spend by 1990 over \$80 million on programs to alleviate any environmental problems caused by waste management practices used many years ago when they were state-of-the-art operations. The practices of the past do not pass today's close scrutiny, and some DOE labs have been slow to realize this. However, the INEL has led the charge to change and keep up with the times.

Since I have been active in the issue, DOE officials, contractors, and the thousands of skilled, dedicated people

working at the INEL have acted responsibly to ensure that the research and other activities at the site—activities which are vital to our national security interests—are not jeopardized by environmental problems affecting the quality of life in Idaho. I commend them. They should not be condemned for the job they have done in this regard.

I, for one, am proud and pleased with the important national security activities undertaken successfully at the INEL for many years. I hope these remarks have helped to set the record straight.

I thank the distinguished manager of the bill for allowing me this time to speak out of order.

Mr. STEVENS addressed the Chair. The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I thought I was going to follow the distinguished Senator from Washington, Mr. ADAMS. I do not want to go ahead of him. If he is not prepared to go at this time, I would seek the floor, and I would seek the floor on the same basis that Senator McCLURE did, that I be permitted to speak out of order, but that I retain the 10 minutes, if I may do so.

Mr. BYRD. Mr. President, how much time does the distinguished Senator from Alaska wish?

Mr. STEVENS. About 10 minutes.

Mr. BYRD. Mr. President, I am not going to object to the distinguished Senator from Alaska doing that. I was not in here when objection was not made to Senator McCLURE proceeding, and I am not going to object to my good friend from Alaska speaking, but after that I will, and here is the reason why:

Under cloture, once 30 hours have run, any Senator who has not spoken may speak for 10 minutes. So the effect of granting the unanimous-consent request here is that although a Senator's—in this case, Mr. STEVENS—speech would be charged against the 30 hours, he would still be able to speak 10 minutes after the 30 hours had run. The effect of that is that we extend the 30 hours by that much. If we have 30 Senators who make that request, then we have extended that 30 hours by 30 times 10, which is 300 minutes, or 5 hours. So, instead of 30 hours, it would be 35 hours.

I will not object in this instance. I want the distinguished Senator from Alaska to be able to speak for 10 minutes, under the same conditions that Mr. McCLURE spoke. I was not on the floor at that time, but I am on the floor now. I am not going to object to Mr. STEVENS, but from here on out I will object, only for the reasons I have stated.

Mr. STEVENS. I thank my good friend.

I see that the distinguished Senator from Washington is in the Chamber. I understood that he was going to seek the floor. I apologize to him, and I yield to him at this time, because I understood that he was here to speak.

Mr. ADAMS. I was here to speak on the bill. I was outside the door of the Chamber.

I understand that the majority leader has acceded—or does the Senator from Alaska wish to speak on the bill?

Mr. BYRD. I have no objection to the Senator from Alaska speaking now for 10 minutes, in accordance with his request.

Mr. STEVENS. I ask unanimous consent that the request I made be granted, and I will be happy to yield to the Senator from Washington.

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

#### PARENTAL AND TEMPORARY MEDICAL LEAVE

The Senate continued with the consideration of S. 2488.

Mr. ADAMS. Mr. President, we are in the process today of debating a cloture motion on a very important subject, not just to the specific technical parts of the two bills that are available, but to the whole social fabric of how our society has changed, as we have had two parents required to work in families, as we have had families being supported by one wage earner, and this is all part of that package.

Mr. President, I express my gratitude to the Members of the U.S. Senate for having previously given waivers which allowed my State, the State of Washington, to put into effect a number of the welfare reforms that involve just these subjects. These are all welfare and family reforms. I hope that by the time I have finished my term in the Senate, we will no longer be referring to welfare families and to working poor families and designations of families who need assistance in order to exist in this very affluent society that we have.

We are required to address bills such as a better child care bill and a Family and Medical Leave Act because we have now a number of families in America, a staggering number of families in America, that do not have the standard protections that most middle-American families have and that all rich American families have. Those are the basic protections of being able to have medical assistance for those in your family who are ill, and particularly for your children.

If you are a working family and do not have someone at home—and that is the case, certainly, in the case of my family, and it is in the case of families throughout the country—we no longer have grandmother in the same town;

we no longer have a ready pool of people, where children can go after school or children can be cared for in the evening. Families have to go where the jobs are.

One of the great travesties of the 1980's is that jobs may have been created, but the jobs that were created were often far distant from the rest of the family roots that might give both medical and child care protection to families; you could not stay with a portion of the family.

That is why Senator Dobb and others have worked so hard on this bill and why I am pleased to be a co-sponsor of it.

The whole point is that we now have 37 million Americans who really have no form of health insurance. They also do not happen to have grandmother at home. They also are in a position where they are not able to have one parent stay home. There may be only one parent in the family. But if there are two, both are working—working at \$5 and \$6 an hour jobs.

We often refer to a number of those people as baby boomers. I think maybe that is a misnomer. What we really have is a generation of people who we of the older generations, as we have raised our families, have forgotten. We have forgotten that our social structure has changed for a great many people, working day to day in hourly jobs or in low-paying monthly jobs. We forgot about the fact that they do not necessarily have union protection anymore. People just did not automatically support it when I was a child—that there would be a union contract with a medical provision for protection and a certain minimum wage that saw to it that you had enough money to care for your child, or that there was an arrangement at the plant so that groups could get together in order to take care of the children of those working in the plant.

Mr. President, this bill that has been worked out is a bill that goes to the fabric of American society. It goes to the people who are now living day to day in my district and in my State who are just now moving into having a family experience. They have been able to get by on two working at \$5 an hour and maybe take a vacation or own a car or be able to do the entertaining things that they felt were worthwhile. And the generation above them which had bought houses and sold all kinds of appliances for dealers and purchased them out of those sales so that we had family units forming are now faced with a group of people that have no money to meet these basics.

So as this young family—and they are now not so young; they are not having the children at 18 or 19, many of them are having them at 20, 25, 30, 35—they have found they do not have a house, they do not have appliances.

What is even more devastating, when one member of that family has a child, then that wage earner is not available. Who takes care of the child? And, as is pointed out so well in the Family and Medical Leave Act, somebody needs to come home and fill that gap.

This is to avoid the cruelties of a society in a time and a place in world history when a society does not have to impose those cruelties. We are simply trying, Mr. President, to do the decent thing for our young people that we in America expect to do for our families.

Yes, we have done it in other ways before, and, yes, we are supporters of the family unit.

But look at my family, for example, which I am sure is very similar to other families. We have a house in one town. I have a son with three children in Florida. I have another son in Hartford, CT. I have a daughter in Boston. I have another daughter in Providence.

Trying to just get somebody to take care of the grandchildren means that that burden is entirely upon my son and his wife in Florida. Grandma goes down when she can, but that is a long and expensive plane trip. Sisters visit. We all try to visit. But this is the extended family and it was not created, Mr. President, by just simply the desires of the members of the family. They have all gone where the jobs are or where they have to try to obtain their schooling. And when I say "try to obtain their schooling," you cannot choose any more exactly where you want to go.

So what we are trying to do, Mr. President, as the Senate of the United States, in the act for better child care, in the Family and Medical Leave Act, is move to help our working families—help those families be able to pay for child care.

Now, I know a lot of statistics have been mentioned, but if you go through the questionnaires, rather than just using my family example, and ask people, way over 80 percent say that affordable child care is essential to them. And it is.

Let me give you an example of my last trip into the State of Washington. I went down into Vancouver, into Clark County, one of the best counties we have for child care. It is a smaller county, so it does not have all of the problems of the metropolitan area. But it has a metropolitan city in it.

What we found—and I went with representatives of the State legislature, the speaker of the house, and the chairman of the committee with jurisdiction, and we went from center to center—we found that the mothers were telling us how grateful they were to be in the centers.

But they did not even have a coordination—and it is one of the best of our counties—to know all the places that

were available. And there was not a manner of checking to see if those available centers were safe centers. And, beyond that, we found that they had started a program to go into the plants and try to say to people, "There are places available," or "Would you like to have a place available?" And we found there was resistance to that.

Why? Because many employers paying \$5 and \$6 an hour did not want to face the problem at all. They would rather that whatever jury-rigged system was working kept working.

So then we went out to see what was happening with the children that were not in the centers, and the centers have a very limited portion of children. You knock on the door, as Representative Bussy said to me, and the child that is sitting there is a 7-year-old and it is 5 o'clock in the afternoon. And the 7-year-old is in charge.

Now, maybe somebody is going to come home pretty soon. We hope so. That happened to be a single family. But the same would apply to two people in a working family, because you have to work those 8 hours or 8 hours plus.

Mr. President, I could go into even greater examples, in the city of Seattle, of just mechanics of running the child care center. You are supposed to pick everybody up at 6 o'clock at night—these are just mechanical, living things. Deposit the children at 8:30, pick them up at 6. But if you are working at a job as a janitor or you are cleaning a building and you go to get on the bus, because you do not have a car, the bus is always late. It does not arrive up at the center. The people at the center cannot just put the child out on the street. So those centers never close at 6:30. But they are never paid, if it is under Medicaid or if it is under any other kind of State program, for the extra time.

A child care crisis exists—and we have the ABC bill before us—not because somebody has dreamed up a problem. It is because we are behind the social movement in the country. And we are trying to solve it by not just having a big warehouse, Mr. President, and saying, "All right, everybody goes into a warehouse at 5 o'clock." The Soviets tried that some number of years ago where everybody would go and they would all be told the same thing, and then they would all march out again. That is not the American system.

But if we are going to have an alternative American system, we have to have a place that when you have a baby and you want to go to work, you know where to call, you know it is safe, you know that you can afford it, and this is not high-class, but it is affordable and it is clean and the food is good and your child is safe, then you are an employee.

This is an employers' bill, as well as an employees' bill, because at some point, as this generation more and more moves in to dominate the work force, more and more you will find people having to be gone for medical leave. And more and more you will find you have to take care of children.

And as a father and a grandfather—and I know the Presiding Officer is also—it does not improve with age. It takes a long time before the 6- or 8-month old gets to a point where you are not worried all afternoon. And families that have the one that is 13 or 14 and takes over are very lucky. So it is a thing that we need and must address. That is the reason for these bills.

They are going to pass in some form in one of these Congresses, Mr. President. We want to make them the best we can. Every society since the world has begun has been judged on two factors.

We often quote, "how do they treat their mothers and fathers and the aged?" But the second factor is far more dominant in what societies have become and what societies are, and that is, "how do we treat our children?"

We take it for granted that it will happen. We are for schools. But the school will not help if the child cannot get there.

We take it for granted that we will treat children in hospitals, but we cannot treat them if they do not get there.

I do not say it is a perfect bill. I think we have worked very hard on it. I think it is as good, I want to say to the Senator from Connecticut, as minds can put together. And all I ask is after we pass this, if somebody has a better way of doing it, to come forward and do it.

I am proud that in our State we are taking first steps within our own State operations. But I can tell you this, they are inadequate. We are fumbling, we do not have enough money, we do not have Federal standards, we do not have a system. We have people moving in and out of our State. We cannot do it alone, we are willing to act as laboratories and to help prove this, but it is a national problem.

Our children are the children of the Nation. They are not the children of the State of Washington or the State of Connecticut or the State of North Carolina. And they will not reside all of their lives in that State.

So I hope we deal with this and I congratulate the Senator for bringing forth these bills. I have talked about them together because they fit together. The welfare of the child cannot be measured by the mechanics of what we do with one part of the problem.

Mr. President, as a cosponsor and a strong supporter of both the Act for Better Child Care and the Family and

Medical Leave Act, I strongly urge my colleagues to join me in working toward the immediate passage of this family legislative package. This is part of caring for the working poor families—for moving welfare families to a job. They need protection for child care and medicine for sick children.

In a recent poll, the American people told us what they think needs to be done to support families struggling to make ends meet.

Eighty-six percent said the need for affordable child care is an important issue to them; 74 percent believe it is difficult for parents to find child care that is both affordable and of good quality; 75 percent want the Federal Government to ensure minimal health and safety protections for children in child care and by 2-to-1 margin, they support ABC.

My constituents in Washington are not confused about their priorities. They know our current child care crisis did not happen overnight. They know that only a comprehensive, thoughtful plan to improve the entire child care system will be successful in solving the dilemma faced by so many families.

We have such a bill before us—the ABC bill. Why should the Senate be confused or try to delay action on this desperately needed measure any further?

The people of Washington will not accept any more excuses or delays. They don't think we are doing enough for children. In fact, when many are criticizing ABC for being too expensive, an editorial from the Vancouver Columbian described ABC as only "an elastic bandage that could slow the raging infection."

Mr. President, I ask that the the editorial be printed in the RECORD. It best describes Washington's demand for action that Congress act instead of just talk about helping children.

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

WHY DON'T WE DO BETTER BY YOUNGER GENERATION?

The immense costs of profound social changes in this era have been charged against the young and yet unborn while older generations skim the benefits.

Nobody planned this mess. It sort of happened while most everyone's vision was clouded by the supposition that Ozzie, Harriet, Ward and June represented reality. Nurturing mom at home with the kids waited for wise and loving pop to come home with abundant bacon.

In defense of our ideology and national security and individual comfort, we've mailed to the future bills that add up to a trillion dollars. We've juggled the economy so that most children, infants to adolescents, are left alone or with strangers while parents are at work.

The mothers of 12 million children younger than 6 work away from home. Fewer than a million fathers are at home to care for the tots while the mothers go to work.

Years of federal, state and local efforts have produced fewer than 3 million licensed day-care slots. Perhaps 4 million older brothers and sisters, grandparents, aunts and uncles are filling in for mom and dad.

The figures are approximate but conservative. At least 4 million little kids are daily left by themselves or shoved into cheap, unlicensed day care. Our collective response is lip service. Lots of sloppy, useless lip service.

The conservative response: Leave it to Beaver. There was never a time when most children lived happily ever after in good houses where one parent stayed home and the other earned the living. The right-wing demand that we go back to some non-existent good old day is nonsense.

The liberal response: Send for the feds; shove in enough bucks and pass enough rules and hire enough bureaucrats to establish Utopia. But effective federal intervention is as much a myth as June and Ward Cleaver. Lyndon Johnson declared war on poverty a quarter century ago. The centerpiece was Head Start, which aimed to keep poverty from wrecking children before they got to kindergarten. The Clark County Head Start program, a model of its kind, is rightfully proud of the help it gives now. Its officials admit they reach only one quarter of the children they should be reaching.

All of the lip-flapping reaches gale force in Congress. Four dozen bills about child care have been introduced this session. As long as the members can sign on as sponsors and issue press releases, they can claim they are doing something about the scandalous treatment of the younger generation.

In fact, they are talking about first aid for a festering wound on the body politic. Most child-care advocates, including those who have joined in proclaiming April 10 through 16 National Week of the Young Child, support a bill by Sen. Chris Dodd, D-Conn. Dodd calls for a \$2.5 billion expenditure in the coming year to improve child care and make it available to at least all poor people and most in the lower middle class. The Dodd bill is at least an elastic bandage that could slow the raging infection. The leading opposition bill by Sen. Orrin Hatch, R-Utah, would allocate \$1.3 billion over four years mostly to encourage businesses to start day-care centers. That's an ouchless plastic strip that would at best hide the worst of the wound.

None of the bills is likely to pass anyway. Congress will allocate billions for prison construction to house the children we wreck. Congress will insure that the Social Security cow remains sacred.

Little kids don't vote. They count on us. Why don't we give them a better break?

Mr. ADAMS. I want to thank the chairman of the committee, Senator KENNEDY, and the chairman of the subcommittee, Senator DODD, for the opportunity to support the bill.

I hope I will have another opportunity during the course of this debate. It is an important time and I hope that we are successful in meeting this desperate problem in America.

I thank you, Mr. President, and I yield the floor.

Mr. DODD. I would like to take just 30 seconds to commend my colleague from Washington. He has done an excellent job in the subcommittee; has been tremendously supportive. He has been tremendously constructive suggestions

of ways to improve these two bills. Some of those suggestions have been incorporated in the text of this legislation and we believe it is a stronger bill because of that contribution.

So I want to commend him not only for his efforts on the legislation during the last year or more that we have been involved in this bill but also for his comments today. I think they are extremely worthwhile and I also appreciate his giving as much support for this legislation as he has.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I will speak out of order pursuant to the previous agreement.

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

#### COMMENDING THE ALASKA FIRE SERVICE

Mr. STEVENS. Mr. President, during the past few months, we watched with great concern the day-by-day news accounts of the forest fires which threatened to consume one of our greatest national treasures—Yellowstone National Park. However, as Yellowstone went up in flames, little was said about the fires which consumed Alaska this summer.

Alaska was plagued by the worst fire season we have had in more than a decade. More acreage was destroyed by fire in Alaska this year than was burned in all the other 49 States combined. Roughly 2.2 million acres of Alaska's National Parks, National Wildlife Refuges, National Recreation Areas, National Conservation Areas, military reservations, and State and Native land went up in flames this year. That compares to 2 million acres for the entire rest of the country.

One fire alone destroyed roughly 1.5 million acres in the Yukon Flats National Wildlife Refuge which threatened the Trans-Alaska pipeline near Livengood. Approximately 638 fires raged throughout the State during the course of the fire season. As late as last week, there were still 21 active fires burning in Alaska involving more than 1.5 million acres of land.

Although fires have long been looked upon by some in Alaska as a land management tool to create new wildlife habitat, this year the "let-burn" policy came under sharp attack when the Yukon Flats fire threatened trapping cabins and habitat in which a diverse array of fur-bearing animals once flourished. Forests which once supported a strong local wildlife economy have now been largely devastated.

The current let-burn policy applies to 60 percent of Alaska's land—an area one-tenth the size of the entire United States. Last week the Senate Energy and Natural Resources Committee held a joint hearing with the Senate Agriculture Committee to discuss the

let-burn policy. I hope during the committees' deliberations in the months ahead, they will consider the unique concerns of Alaska's rural people in the investigation.

Mr. President, although this was the worst fire season in recent memory for both Alaska and the lower 48 States, it would have been much worse without the dedicated efforts of those who manned the fire lines. I would like to express the thanks of the Nation to those who fought so valiantly to save our national parks, wildlife refuges, and other public lands. I am particularly proud of the men and women of the Alaska Fire Service who served with great distinction.

During the height of the fire season, a total of 2,250 people worked to suppress fires in Alaska. The fire season began in earnest for Alaska's firefighters on May 10 when a fire which had started in April on the Fort Wainwright Artillery Range spread rapidly and forced Fairbanks International Airport to close due to smoke. The smokejumpers were hampered by live ordnance still laying on the bombing range, but they were ultimately successful in extinguishing this conflagration.

The most severe period of fire activity began when lightning strikes on June 11 started 10 new fires in the Yukon Flats area. Intense lightning activity continued for nearly a week and resulted in 90 new fires in 6 days. Many of these fires burned well into July and some expanded at a rate of 10,000 acres per day.

By mid-August, fire activity in Alaska began to wind down, but the Alaska Fire Service's work had only just begun. It was mobilized to assist with suppression efforts on large fires in the lower 48 States. As of September 15, the Alaska Fire Service had sent 60 Native crews of 20 firefighters each to the lower 48, along with 375 fire management experts. In addition Alaska has lent a Hercules aircraft loaded with equipment and supplies, six air tankers, one jump ship, and six helicopters to the effort.

Alaska's crack fire management team was responsible for defending Cooke City and Silver Creek, MT. This crew commanded by Dave Liebersbach is made up of Alaska's firefighting elite. By creating firebreaks with small controlled back fires, the team was successful in its effort to protect the towns and extinguish the infamous Storm Creek fire.

Mr. President, last Wednesday the junior Senator from Tennessee, Mr. GORE, introduced Senate Joint Resolution 388 which would designate October 15, 1988 as National Fire Fighters Day. I think the Nation owes our firefighters a debt of gratitude, and I think it is fitting that a day be set aside to honor those who work so hard, not only in the forests, but in

the cities and towns around this great Nation, to protect us from fire.

I ask unanimous consent that I be added as a cosponsor of that resolution. I have discussed it with the distinguished Senator from Tennessee.

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

Mr. STEVENS. Mr. President, all of us are indebted to the men and women who put their lives on the line to protect our Nation's public lands from fire. As I said, I want to be sure we express our appreciation to the men and women of the Alaska Fire Service, and their commander, Tom Owens. Mike Penfold, the State director of the bureau of land management in Alaska, and all those who worked with him and Tom Owens we express our gratitude and thanks for a job well done.

The greatest tribute we in the Congress have made to these dedicated men and women was to approve S. 1911, the Forest Wildlife Emergency Pay Act. That measure, which has been cosponsored by many of us, including myself, allows those who fight fires to be paid overtime for their long hours. I am pleased to report that the bill passed the Senate unanimously late last week.

Firefighters often spend up to 3 weeks at a time on the fire line without a break. It is grossly unfair to make them work for free once they have earned the standard level of pay for the day.

I cannot remember a year in which more public attention has been paid to the plight of the firefighters. They have done a tremendous job for all of us.

Mr. President, in light of the superb job these Alaskans did, I am pleased to report that included in the 1989 appropriations at my request was \$5.5 million to construct a new smokejumper facility for the Alaska Fire Service.

That new facility is located near the runway at Fort Wainwright and will enable the Alaska Fire Service to respond within 6 minutes of receiving a fire call. It will contain a parachute loft, a paracargo facility, and a sewing room where the firefighters will make their own firesuits in the winter and develop new parachute designs.

I might add, Mr. President, that the Alaska Fire Service has been instrumental in developing a new parachute which is more maneuverable, can be used in high wind conditions, and allows a zero ground speed landing. That was utilized to fight fires in the south 48. The design is now being tested by the Defense Department to see if it can be used in our military service.

Our new smokejumper loft will contain space to support over 1,500 firefighters in the event that there is a repeat of this year's catastrophic fire season. It will play a critical role in

maintaining operational readiness to prevent small fires from becoming large ones, both in Alaska and the lower 48.

#### INEQUITABLE TREATMENT OF FEDERAL EXPRESS

Mr. STEVENS. Mr. President, I would like to add my voice to the concern expressed on the difficulties Federal Express has had in initiating express service to Japan.

The agreement we negotiated with the Japanese allowed a Japanese carrier, *Nippon Cargo*, to initiate cargo service in 1985, but delayed the commencement of express service by an American carrier for 3 years. Unfortunately, the exercise of the delayed express package service rights is being frustrated by the provincial policies of the Japanese Government. I feel we must take strong action as Japan unilaterally interferes with commencement of our negotiated express service which was awarded Federal Express.

A similar situation has arisen with regard to the Japanese failure to honor the commitment they make to the United States regarding "Flying Tiger's 6th Freedom Rights" to carry cargo from Tokyo to Anchorage and then to transport it to various locations in Europe. The Japanese have required recordkeeping requirements so onerous as to threaten the economic viability of such a service. In this situation, I am happy to note, that the United States response was to impose reciprocal reporting requirements on Japanese cargo carriers operating in the United States. I commend the State Department and the Department of Transportation on their firm stand on this issue and encourage them to continue this tough but fair position.

Mr. President, the reason I speak now is to urge our United States negotiators to apply a similarly tough stance to the inequitable treatment of Federal Express by the Japanese. Mr. President, we seem to be apologizing when we should be pressing our claim. Federal Express started the express business, and as far as I know, remains the world leader. The Japanese have nothing comparable. When the United States has the chance to introduce a clearly superior service into the Japanese market, I would think that the American Government would insist on its bilaterally negotiated right to do just that.

Federal Express is not one of my State's businesses. It operates through my State, and we are quite concerned about the denial of their rights.

I thank the Chair and I thank my good friend from West Virginia, the distinguished majority leader, for his courtesy in allowing me to reserve the remainder of that 10 minutes. I yield the floor.

#### PARENTAL AND TEMPORARY MEDICAL LEAVE

The Senate continued with the consideration of the bill.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Can I inquire as to how much time remains under cloture?

The PRESIDING OFFICER. Fourteen hours and thirty minutes.

Mr. DODD. Can I further inquire, Mr. President, how much time the Senator from Connecticut has consumed?

The PRESIDING OFFICER. Forty-three minutes.

Mr. DODD. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be taken off the cloture.

The PRESIDING OFFICER. The time will be charged without consent. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BOND. Mr. President, I ask unanimous consent I be permitted to speak on another topic for 10 minutes with the time to be charged against the 30 hours.

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

#### U.S. AGRICULTURE: SETTING THE RECORD STRAIGHT

Mr. BOND. Mr. President, over the past several weeks I have heard an ever increasing number of speeches by my Democratic colleagues in which they seek to either defend Governor Dukakis' liberalism or to tear down Vice President BUSH's accomplishments. Perhaps this concerted effort to turn this forum into a Democrat Platform Committee hearing is based on the fear that the Governor of Massachusetts is not an attractive candidate and thus needs every little bit of help he can find.

So, let me just say that if this is to be the coin of the realm—then I want to toss in my 2 cents worth.

Mr. President, not long ago I listened as one of my distinguished colleagues presented the new Democratic theme in a statement on the agricultural record of this administration. Although the distinguished majority leader, Senator DOLE, recently did an excellent job of evaluating the success of the Food Security Act of 1985, I would like to share my own thoughts on current U.S. agricultural policy and the direction the Dukakis Democratic Platform would take it. As Paul Harvey would say—this is "the rest of the story."

Early in the Senator's statement he indicated that, quote, "(GEORGE BUSH) misstated what we Democrats stand for in the way of farm policy, rural policy." Although he does not say how the Vice President misspoke, he does refer to the Carter grain embargo—which of course occurred, and the supply management approach of controlling farmers lives, which of course is the Harkin-Gephardt-Dukakis plan. Well, given that the Democratic platform devoted just five sentences to agriculture—five sentences, it is not surprising that some of our colleagues don't know what it stands for. However, the most fascinating part of the Senator's defense of the Dukakis approach to agriculture was his challenge to ask farmers what they think.

Mr. President, it is with great pleasure that I bring to the attention of my colleagues a poll published in the October issue of *Farm Journal* magazine which lets us know exactly what farmers think. According to their poll of 400 farmers, 53.5 percent indicated that if the election were held today they would vote for GEORGE BUSH. This is compared to 28.3 percent for the Democratic nominee. Asked to compare the farm economy to 4 years ago, 43 percent said it was improved, 18 percent said about the same, and only 36 percent said it had deteriorated. And of the 36 percent who felt the agricultural economy had deteriorated over the last 4 years, BUSH still beat Dukakis by a 42.1 to 36.6 margin. All this in the midst of the worst drought in 50 years. No wonder my colleague said, "I do not need to hear the answer."

In addition, Dukakis' unwillingness to listen to farmers is further evidenced as the poll reinforced what we have known all along—farmers do not like Harkin-Gephardt-Dukakis supply control. In fact, the Dukakis approach to agriculture, as he described in the debate is a "combination of supply management and reasonable price supports" and it won the endorsement of a staggering 6.5 percent of the farmers. That makes the Dukakis-Harkin-Gephardt plan about as popular as legalizing drugs—as recent polls show that 7 percent of Americans believe cocaine should be legalized.

In contrast, the Vice President's approach, again as described in the debate, is "I oppose supply management and production controls. I want to expand our markets," is exactly what American farmers want—59.3 percent said they want free market programs without Government interference; and when asked what they would advise the next President to choose as a priority, 58.3 percent said "get exports moving," while rural business assistance and soil and water conservation receive 11.5 percent and 11.3 percent respectively.

Nowhere were farmers saying give us more Government, more supply control, more mandates.

But let me return to the real issues. Mr. President, although I was not involved with the development of the Food Security Act of 1985, as a member of the Committee on Agriculture, Nutrition, and Forestry, I have monitored its implementation very closely. Given the complex nature of our agricultural economy, I am somewhat skeptical of overly broad generalizations. However, now that we are halfway through the 1985 farm bill, some preliminary analysis is appropriate. Rather than judge the success of current farm policy by a couple of figures, I will provide a more comprehensive review.

As we are all aware, agriculture is inherently unstable and extremely vulnerable to factors ranging from global economic growth and Third World debt to insect infestation and weather. This instability has served as the impetus for the relatively short period of our farm bills.

Before reviewing current farm policy, it is helpful to understand the economic climate of the late 1970's and early 1980's. There were several events in the 1970's which collectively established unprecedented export opportunities for United States agricultural commodities—the Soviet Union decided to supplement crop production shortfalls with imported grains, China began to open its gates to trade and many developing countries experienced rapid rates of growth. Because the United States had the capacity to enhance production significantly, we did so and many farmers prospered.

During this period, credit was easy to come by and farmers jumped at the opportunity to expand their operations. As the price of land skyrocketed, farmers' net worth, at least on paper, followed. Unfortunately, our last Democratic President's economic policies led to skyrocketing inflation and interest rates. Also, he chose this moment to slap a grain embargo on the Soviets. The European Economic Community increased their production for the export market, and the Canadians and Australians also moved to fill the gap. Land prices began to fall and both farmers and bankers have yet to recover fully from the resulting adjustments.

After reaching a peak of \$43.8 billion in the 1980-81 fiscal year, the year of the embargo and 21 percent interest rates, it is not surprising that U.S. exports began to decline. This decrease in exports was a direct result of the grain embargo's labeling the United States as an unreliable supplier; the strong dollar resulting from Carter's economic policies and countries increasing production to achieve either self-sufficiency or to become net exporters. In addition, in the early 1980's

demand fell as world economic growth declined from rates experienced in the 1970's.

Mr. President, as Congress began deliberation on the 1985 farm bill, American agriculture was reeling from the effects of declining exports, falling crop prices and increasing levels of carryover stocks. This background is necessary as it tells the "rest of the story" regarding the generalizations made by my colleague.

With even basic knowledge of the events which led to the downturn in our agricultural economy, it is apparent the Food Security Act of 1985 was not the culprit. The credit crunch of the early 1980's caused a major transition in American agriculture—one that no one sought and one that Congress has worked hard to reverse. In fact, only last year Congress and the administration worked together to pass the Farm Credit Assistance Act of 1987. This bill was designed to restore the viability of our Nation's agricultural credit institutions and is a significant step in the right direction.

Mr. President, the Food Security Act of 1985 sought to address many of these very problems. In fact, the legislation had only a handful of major objectives: to enhance U.S. competitiveness; to reduce commodity surpluses; to provide income protection and enhance net farm income; and to reduce government outlays.

It is my belief, and one shared by the majority of those involved in agriculture, that the 1985 farm bill has put our agricultural sector on the road to recovery. Although this summer's devastating drought might slow the process—it has not derailed it. Here are some key indicators:

U.S. SHARE OF WORLD MARKETS INCREASING <sup>1</sup>

Crop	1979-80 to 1981- 82 (average)	[In percent]	
		1985-86	1987-88
Wheat.....	45	29	42
Feed Grains.....	65	44	62
Cotton.....	34	10	28
Rice.....	22	19	25
Soybeans.....	83	77	73

<sup>1</sup> "1990 Farm Program Study," American Farm Bureau Federation, August 1988, p. 15.

AGRICULTURAL EXPORTS INCREASING

Contrary to the bleak picture of Dukakis-Harkin, fiscal 1988 exports are projected to increase for the fourth consecutive year. Volume is also expected to increase for the fourth year to 145.5 million metric tons and the farm trade surplus will reach \$12.5 billion, an increase of \$5.2 billion over fiscal year 1987.

However, if Dukakis-Harkin supply management becomes law, expect these numbers to plummet, and our trade deficit to shoot back up.

CARRYOVER STOCKS DECLINING FOR MOST CROPS

Projected 1987-88 ending stocks for wheat, rice, soybeans, and cotton are

below 1985-86 levels and are approaching the average of the 1975-85 crops.

ENDING STOCK/USE RATIOS <sup>1</sup>

Crop	1975-76 to 1984- 85 (average)	[In percent]	
		1985-86	1987-88
Wheat.....	51	97	46
Corn.....	25	62	52
Soybeans.....	14	29	13
Cotton.....	37	113	38
Rice.....	33	62	19

<sup>1</sup> "1990 Farm Program Study," American Farm Bureau Federation, August 1988, p. 17.

CROP PRICES STRENGTHENING

Irrespective of the drought, in May, the prices of all major crops were projected above last year's level.

NET FARM INCOME INCREASING

In 1987, net farm income, deflated in 1982 dollars, was \$39.4 billion. In comparison, 1985 net farm income was \$29.1 billion. In 1988, net farm income could decline \$5 to \$8 billion due to the drought.

GOVERNMENT OUTLAYS CONTINUE TO DECLINE

After reaching a high of \$25.8 billion in fiscal year 1985, farm program outlays have fallen an estimated \$13.1 billion in fiscal year 1988 and \$11.1 billion in fiscal year 1989. In May, prior to adjustments due to the drought, outlays were estimated at \$17.6 billion—still down by more than 31 percent.

FARM DEBT DECLINING

Total farm debt has fallen approximately 18 percent since 1985, from \$175.2 billion to an estimated \$140 billion. Total farm equity is expected to increase for the third consecutive year to approximately \$585 billion.

CONSERVATION RESERVE PROGRAM IS A SUCCESS

Upon confirmation of land enrolled in seventh sign-up period, approximately 29 million highly erodible acres will have been taken out of production.

Mr. President, these facts indicate that the 1985 farm bill is working. Those people involved in its development deserve the right to brag—not only GEORGE BUSH, but the 164 Republicans and 216 Democratic Members of Congress who voted for it.

Mr. President, I must also note that in listening to Governor Dukakis talk about agriculture, he keeps bandying about numbers such as \$15, \$20 or \$25 billion. Sometimes he calls for cutting agriculture to below \$20 billion, but never says if he means total farm programs payments to farmers—which are now at \$11 billion, or the entire CCC, or all of USDA or USDA plus the CRP.

In short, he sounds like a man who knows nothing about agriculture and does not care to learn. In fact, supporting mandatory supply controls seems to make that case even more compelling.

Mr. President, although we will not begin consideration of the 1990 farm bill until next year, I believe the Farm Journal poll sends a clear signal—no supply management. It also indicates continued support for promoting agricultural exports—something not mentioned in the Democratic platforms and certainly inconsistent with mandatory production controls.

Given these facts, it is clear that Vice President BUSH, and Senator QUAYLE are in the mainstream in dealing with the many challenges facing agriculture.

Mr. President, no one likes to farm the mailbox. The Food Security Act of 1985 has begun a transition toward a more market-oriented agriculture. I believe this, as do the majority of farmers. Mandatory production controls would reverse this transition—in other words no steps forward and two steps back. Perhaps Governor Dukakis would like to listen to the farmers and get off his 6.5 percent solution of supply management—unless of course he plans to call for the legalization of cocaine as well.

The fact is that American agriculture is part of a complex global economy whose macro-economic policies are beyond the control of the U.S. Government much less any one particular piece of legislation. Blatantly political generalizations are misleading and only complicate our efforts. I hope this sets the record straight.

Mr. President, I ask unanimous consent to have the Farm Journal poll printed in the RECORD.

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

#### 1988 Presidential Poll

If the Presidential election were held today, <sup>1</sup> who would you vote for?	Percent
George Bush.....	53.5
Michael Dukakis.....	28.3
Undecided.....	14.5
Neither.....	3.8
How would you say the farm economy compares with 4 years ago?	
Greatly improved.....	4.3
Somewhat improved.....	38.3
Neither improved nor deteriorated.....	18.0
Somewhat deteriorated.....	21.3
Greatly deteriorated.....	15.0
Don't know.....	3.3
If you could advise the next President to choose a priority, would it be:	
Get exports moving.....	53.8
Rural business development.....	11.5
Soil and water conservation.....	11.3
Credit relief.....	5.3
Water quality.....	5.0
Keep a reserve.....	2.3
None of the above.....	5.0
Don't know.....	6.0
Which of these statements best reflects your views on farm policy?	
Free-market programs without Government interference.....	59.3
Programs similar to current ones.....	28.8
Supply-management programs that limit acreage and control prices.....	6.5

None of the above.....	1.5
Don't know.....	4.0

<sup>1</sup> Last 10 days of August. Plus or minus 5 percent error rate.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that I be allowed to speak on two issues, the drug bill and the recently concluded Olympics, and that the time be charged to the pending 30-hour cloture time.

The PRESIDING OFFICER. Is there objection to the Senator from Alaska speaking on another subject, with the time to be counted against the 30 hours? The Chair hears none, and it is so ordered.

#### THE OLYMPIC SPIRIT IN SEOUL AND ANCHORAGE

Mr. MURKOWSKI. Mr. President, for the past few weeks, nations of the world have watched with great pride as their athletes competed in the Olympic games. The athletes, themselves, whether they won medals or not, shared the pride of knowing they are among the best in the world.

But perhaps the proudest of all are the people of the Republic of Korea—the hosts of the games of the 24th Olympiad. As President Samaranch observed at the closing ceremony, the games were the best ever held. The Koreans provided the organization, the facilities, the security, and the commitment to make that possible. At the same time, the games provided Koreans the opportunity to showcase their rich, and ancient culture. In both the opening ceremonies, at which I was privileged to be present, and in the closing ceremonies they spared nothing to present the world a great gift of music, art, and dance.

Both on television and in person, one is struck by the fantastic development which has taken place in Korea in the last two decades. The economic rebirth of the country has been matched by the physical reconstruction. In all its nearly 600 years, Seoul has never been described as a city of great beauty. The structures never seemed to be able to compete with the setting. That is no longer true. I remarked to friends as we were driving to the Olympic Stadium along the banks of the Han River that the city had taken on the aspects of some of the most beautiful European cities, with their tree-lined boulevards. It has not lost its oriental charm, however. The new Seoul, indeed the new Korea, while racing rapidly toward the 21st century, has at its core 5,000 years of history and culture.

Korean hospitality has long been a well-kept secret outside of Korea. Those of us who have been privileged to visit Korea, until now, have been reluctant to share the overwhelming friendship with which we have been received. Now the whole world knows.

All of us, the visitors to Seoul, the athletes and the officials, and the

world television audience are grateful, Mr. President, for the welcome we received in Korea. Korean hospitality is a secret no longer.

I went to Seoul, Mr. President, in the dual capacity both as a member of the Presidential delegation and as part of Anchorage, Alaska's bid to host the winter games in 1994.

Anchorage, AK, was one of four cities in the running to host the winter Olympic games. The others were Ostersund, Sweden; Sophia, Bulgaria; and Lillehammer, Norway. Actually, it was the second time that Alaska had made it to the final selection process, having lost the 1992 games to France.

Nobody likes to lose. So I'm sure you can understand that the Anchorage Organizing Committee was disappointed with the final decision—made just prior to the Seoul games—that it was to be Norway—not Alaska—who would host the 1994 winter games.

Their disappointment was offset, however, by a special pride—the kind that only comes when one knows he or she has given the maximum best effort for a worthwhile cause. That sense of pride deserves to be shared by all the Alaskans who supported and contributed their time, money and effort to the dream of bringing the Olympic games to Alaska.

That dream didn't end in Seoul. It is still very much alive today. In fact, just last week, our organizing committee voted unanimously to start the long process all over again—and shoot for the 1998 games. I'm very pleased with their decision. A number of people, and I'm one of them, believe Alaska should be the odds-on favorite for 1998.

And what could be more appropriate? A century ago, in the "days or '98" it was the quest for gold that brought people to Alaska. And like the gold rush of 1898, the people will come to Alaska from around the world to compete for the gold of the 1998 Olympics. We Alaskans look forward to proving that our famous hospitality is worthy of its reputation.

The well organized AOC effort, led by Alaskans Rick Mystrom, Dave Baumester, and Rick Nerland, established itself as a class act from the beginning. It was a real pleasure for me to witness first hand the capability, dedication and knowledge demonstrated by our AOC team. Let me add, also, that Alaska's effort was aided tremendously by Under Secretary Ed Derwinski of the State Department. He helped us lobby the IOC members and was with us in Seoul for the final presentation.

I was so proud of the members of the Alaska delegation—they made the effort to know the members of the International Olympic Committee on a first name basis. There was a commitment to seemingly divide up the

continents of the world among their group and go out and sell Anchorage.

Keep in mind, we were up against some formidable competition. What in reality amounts to a political contest, pitted the city of Anchorage against nations. Our people stood tall against Sweden led by its King, Bulgaria by its President, Norway by its Prime Minister. Theirs were the presentations of whole governments, subsidized by their national treasury. Ours was a local Alaska community, funded by contributions of private citizens. Ours was the most impressive.

Mr. President, I do not make this contrast as a way of making excuses by any means. No excuses are necessary. Alaskans did a fine job. Later, when I had the opportunity as a member of the Presidential delegation, to meet with the President of Korea, President Roh Tae-Woo, he told me that he was a little surprised that Alaska had not been chosen and that Norway had been selected. He indicated that he had endorsed the Alaska bid at the personal request of our President, President Reagan, and Vice President Bush, as well, and that he was somewhat disappointed with the outcome.

He said the reason we were not chosen was because the Olympic games had just been held in Los Angeles and in Calgary—that was his understanding from those voting from Korea—and the consensus was that it was indeed Europe's turn next. President Roh added, however, that the information he had been given was that Alaska would be a hands-down favorite for the 1988 games.

Some countries have tried seven times before they finally were awarded the games. Alaska has made it to the finals twice now, and from my perspective that means we were two-thirds the way there. We have the team in place, the experience and the adrenaline flowing.

We have a good theme: In the spirit of 1998, Alaska for the Olympic gold.

Mr. President, I pay tribute to the men and women from Anchorage, Alaska who traveled to Seoul at their own expense as part of the Anchorage organizing committee delegation. They did a fine job.

Mr. President, I ask unanimous consent that their names be printed in the RECORD.

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

Dick Angell, Dave and Peggy Baumeister, Linda Chase, Vicky Chan, Eric Chan, Sharon Gagnon, Bob Hickel, Bill and Nancy MacKay, Rick and Mary Mystrom, Ron Petro, Rick and Leslie Nerland, Tom Nighswander, Paul Schilling, Tony Smith, Chris and Mary Ann Swalling, Flip Todd, Duane Triplett, Jose Vicente, Pyong Sun Yi, Eleanor Andrews, Carolyn Jones, Christina Stevens, Mark Hennick, Bobbie Enloe, Mike Morrison, Dan and Patti Zantek, George

and Pat Howard, Bobbie Halcro, Cheryl Tatom, Linda Jackson, Bruce Graham, David Haynes, Dave Bean, Mayor Tom and Patricia Fink, Margaret Richmond, Dru Giliam, Betsy Jacobsen-Severtson.

#### OMNIBUS ANTI-SUBSTANCE ABUSE ACT OF 1988

Mr. MURKOWSKI. Mr. President, I rise in support of the Omnibus Anti-substance Abuse Act of 1988. This is a comprehensive, wide ranging attack on America's public enemy No. 1: Drug abuse and drug trafficking and it deserves our support.

I would first like to commend my colleagues Senators BYRD, our leader; D'AMATO; DOLE; NUNN; MOYNIHAN; RUDMAN; and many others for their efforts in the drafting of this legislation, and for the bipartisan spirit of cooperation which is essential in an undertaking of this magnitude.

No one can deny the effect that drugs are having on this country. Although drugs have traditionally been a big city problem, it is now so widespread that, unfortunately, Los Angeles drug gangs, such as the Bloods and the Crips, are now evident in communities in my State of Alaska.

This measure will provide urgently needed resources in the important areas of drug law enforcement, interdiction, prevention, treatment, and rehabilitation.

But most of all, Mr. President, this legislation sends a clear message to drug dealers and drug users that they are accountable for their actions.

It includes language to establish the death penalty for drug dealers who commit murder in the course of a drug-related crime. While the death penalty might be opposed by some, it is strongly supported by the American public, and rightfully so. Those who poison America with illegal drugs and commit murder should be ready to pay the price of death.

In addition, this legislation scores a direct hit on drug users and traffickers in the United States with mandatory sentences for possession of hard drugs, forfeiture of many Federal benefits and sanctions for those who violate drugfree workplace laws. Mr. President, this year I participated in a series of meetings with some of my colleagues on the drug question. We met once a week for several weeks to attempt to lay down the ground rules for reducing America's demand for drugs. During those meetings a consensus developed that an essential element to an effective drug bill would be greater user accountability to reduce demand. I am pleased to see that many of those user accountability provisions are found in this bill.

Mr. President, my support for user accountability provisions is partly because of Alaska's unique situation. A 1975 Alaska supreme court ruling allows possession of a limited amount

of marijuana in the home for personal use. Although I have held hearings on this issue in Alaska and have consistently encouraged the Alaska State legislature to pass legislation which would make possession of marijuana a crime, no action has been taken to recriminalize marijuana in my State. Unfortunately, according to our State office of alcohol and drug abuse, Alaska's use of cocaine and marijuana is two to three times the national average for youths age 12-17. Mr. President, I believe there is a connection between Alaska's liberal marijuana laws and its high incidence of drug use. Similarly, I am very worried about what we are doing to our young children by having a law that tells them its okay to use drugs in a limited sense. It is for this reason that I strongly support the user accountability provisions that are included in this important legislation.

Mr. President, on another meaningful note, it is extremely important that we followup next year with actual funding for all these programs that we are authorizing in this bill. This will not be easy, given the current budget outlook, but if the war on drugs is to be something more than election year hype we must make the hard choices to meet this crisis, and we must do it now.

Mr. President, this legislation truly marks a turning point in our efforts to end the destructive influences of drugs on the American people. I urge immediate action on the Omnibus Anti-substance Abuse Act of 1988.

Mr. President, I thank the Chair.

I yield the floor at this time.

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

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

The Senator from Arkansas.

Mr. PRYOR. Mr. President, I also ask unanimous consent that I may speak, not to exceed 6 minutes, as if in morning business, and also for the purpose of introducing a bill.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. That is to run against the 30 hours?

The PRESIDING OFFICER. I am advised by the Parliamentarian that any time does run against the 30 hours and without objection this time will run against the 30 hours.

The Senator from Arkansas.

(The remarks of Mr. Pryor pertaining to the introduction of legislation are located in today's RECORD under

"Statements on Introduced Bills and Joint Resolutions.")

Mr. DODD. 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.

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

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

#### PARENTAL AND TEMPORARY MEDICAL LEAVE

The Senate continued with the consideration of the bill.

Ms. MIKULSKI. Mr. President, as a cosponsor of the Act for Better Child Care, I am deeply disturbed that we have failed to act, thus far, on this vital piece of legislation for children and families.

As we continue to debate whether or not to vote on ABC during the remaining days of the 100th Congress, I hope I can shed some light on one of the issues addressed by ABC that is of great importance to America's working families. That issue is whether the Federal Government should help ensure that child care programs meet minimum, but essential, guidelines for health and safety.

Unfortunately, I think the protections offered by the ABC bill have been given a "bum rap" by those who simply don't want to see the Government do anything about our Nation's child care crisis.

The sad truth is, that while many States and communities adequately protect the health and safety of children in child care, too many do not. As a result, the well-being of too many children is being jeopardized. Too many children are being harmed.

For years, the Federal Government has acted to remove contaminated foods from store shelves, inspected planes, buildings and workplaces for safety and made sure that nursing homes are fit for our elderly to live in. Why is it then we cannot mandate child care standards? Why is it that we can mandate the safety of toys used in day care centers, but it is unthinkable to regulate the health and safety of the children themselves?

ABC would require simple, straightforward legislation and regulation. Mr. President, I want to be very clear. We are not creating a kiddy-care OSHA here. We are creating a set of standards that are reasonable, feasible, achievable, and desirable.

ABC would require the Federal Government to set minimum and sensible standards for health, quality and safety of publicly funded child care. These standards would be based on the current practices found in the States, and they would be limited to

the following areas only: basic health and safety requirements; qualifications and background of personnel; group size and adult supervision appropriate to the age of the children, and; guarantees for parental involvement.

ABC outlines reasonable compliance procedures. States and providers are given 5 years to comply. If some child care programs don't already meet the standards, ABC encourages the States to help provide the resources needed to bring those programs into compliance.

In short, ABC takes a rational, common sense approach to ensuring the children in child care are safe and well cared for no matter where they live.

In a recent poll, 75 percent of American voters and 83 percent of working mothers said that any national child care policy must assure good child care by setting standards. We have to make sure that child care is both safe and competent. Numerous child development experts similarly support ABC's approach to health and safety protections.

I do believe the expert on child care is a mom and a dad, and moms and dads want to make sure their kids are safe and that the people who are caring for them are competent.

Let us talk about the standards for qualifications and background of personnel. We want to make sure that the people can read and that they are fluent in English. We are not creating a jobs bill for those with masters degrees in play dough, we just want to make sure they can care for their kids safely.

In addition, child care providers themselves want to make sure that ABC protects kids. The National Association for Family Day Care Providers is just one of the groups that wants this bill to be passed.

Mr. President, I would like to bring to the attention of my colleagues a letter to the editor that appeared in the Washington Post this summer. It was written in response to another letter that also appeared in the Post from a mother who had placed her child with an unlicensed provider. When someone turned the child's caregiver in, the caregiver decided to go out of business rather than subject herself to the State's licensing requirements. This letter has been used by some—including Vice-President BUSH—as an argument against the Government establishing protections for children.

Mr. President, I ask unanimous consent that this response be printed in the RECORD.

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

[From the Washington Post, July 31, 1988]

GLADYS SHOULD GET A LICENSE—IT'S BETTER FOR DAY CARE PROVIDERS AND THE KIDS

(By Carolyn Pierce)

Judy Kaplan Warner bemoans the fact that "someone" reported Gladys, her daughter's unlicensed day care provider, and rather than get a license, Gladys decided to close down [Close to Home, July 17].

I am a licensed day care provider in Prince George's County, and I say hurrah for that someone! Warner's sad diatribe of her "plight" infuriated me. I hope her article will not discourage the community from continuing to report unlicensed day care homes.

Yes, Maryland has mandatory licensing for day care homes. This law works to the benefit of everyone—the parents, the providers and most of all the children. Warner's anger is misdirected. Instead of lashing out at the state of Maryland for requiring day care licensing, she should be angry at Gladys for not caring enough to get a license.

Warner says she and the other parents "don't care one bit" that Gladys isn't licensed. While Gladys sounds like a good provider—and I don't doubt Warner's claim that she gives the children loving care—I have a few concerns:

Is Gladys' home safe? Not just the parts you can see, but the parts you can't too? A representative of the state looks inside cabinets and closets for poison and fire hazards. Does Gladys' home have smoke detectors and a fire extinguisher in good working order? Does she have an emergency plan to get all of the children out in case of fire?

Does Gladys have an immunization certificate on file for each child in her care? Are they all up-to-date on their shots? And what about a notarized emergency medical consent, signed by the parents of each child, which would authorize Gladys to consent to emergency medical treatment if the parents were unreachable? Without one, a child would only be treated in a life-or-death situation. In a lesser emergency—for example, a broken arm—a child could spend considerable time in pain in the emergency room while the parent was being tracked down.

How many children is Gladys caring for, and what are their ages? Maryland law allows a maximum of six children in home day care at any time, with no more than two under the age of 2. This number is enough to challenge the most energetic day care provider, believe me.

As for Gladys' refusal to apply for a license because of the "paper work" and "people coming into your home," I don't buy it. The application consists of four simple forms to be filled out and mailed in. A social worker will then visit the home to interview the provider and to inspect the home for safety and healthy and adequate play, eating and napping space for the children. If any deficiencies are found, the provider is given some time in which to correct them. When everything is satisfactory, the license is issued. Unless a complaint is reported, the provider is not likely to see the social worker again until renewal time two years later, when the process is repeated. The licensing process is free.

Seven thousand home day care providers are licensed in the state of Maryland. If they can do it, why can't Gladys?

I hope Gladys will reconsider. The advantages to her in becoming licensed—and the benefits to the children in her care—would far outweigh the minor effort to apply. Li-

censed providers receive free referrals from the county when parents call looking for day care. Licensed providers can participate in the federal Child Care Food Program and be reimbursed for each meal and snack served to the children under the program's nutritional guidelines. Since Gladys is already providing meals and snacks, this would in effect increase her income without any additional cost to the parents, and she could probably serve more nutritious food in the process.

Licensed providers can receive free counseling from their licensing worker about any problem that comes up in their day care business. (Yes, day care is a small business.) And licensed providers get more respect, from parents and the community, for the very important service they perform.

A license is not a guarantee of quality day care, but it assures the state and the parents that the basics are in place. If Gladys isn't willing to take the simple steps to get licensed Warner should make a careful research of licensed homes in her area. I am sure that she will find the quality day care she desires for her daughter—given by a provider who abides by the law.

Ms. MIKULSKI. This letter comes from Carolyn Pierce, a licensed family day-care provider from Prince Georges County in my home State of Maryland. Speaking from her own experiences, Ms. Pierce describes the numerous advantages to ensuring some protections for our children. I urge my colleagues to read the words carefully of someone who is on the front lines of child care.

Mr. President, let me conclude by saying almost a year ago, all of America's eyes were glued on a small town in Texas where a little girl had fallen down a well and was trapped. All of America prayed for her, pleaded that she would be able to be rescued. Firefighters—gallant, brave, courageous—were willing to go down and use any kinds of means possible to be able to rescue that little girl. We all held our breath that her oxygen would hold out long enough for her to get out of there. We were all near tears when we knew her little arm had been broken. And she was rescued.

But why did the little girl fall down the well? She was in a day-care situation that did not have adequate licensing. She fell down that well because the well was not closed and, Mr. President, I present to you and to the Senate this lack of regulation is a black hole that many of our children pass through every day in which their lives are in danger.

What happened to one little girl in Texas is happening all over America. And just as we held our breath and pulled for that little girl, we should be able to pull the ABC bill and at the same time, we want to make sure that child care providers are licensed and are screened. We do not want child abusing people taking care of our kids. We want to make sure we have people adequately trained and sensitive and caring. If we have to go out into the marketplace to meet our family's

needs, we want to make sure that where our children are is the safest place they could be other than in our own arms.

Mr. President, I yield the floor, and I hope I have made some type of sensible case for reasonable regulation.

(Ms. MIKULSKI assumed the chair.)

Mr. GRASSLEY. Madam President, there are several critical and useful things that this Congress could and should be addressing. The calendar has on it important legislation such as the drug bill and tax technical corrections. Yet in the few days just before adjournment, the majority party is pushing a bill to license grandmothers.

Though the ABC bill does not actually specify licensing of grandmothers, that is the effect it would have if enacted.

Before I describe just how the bill would do this, I would like to emphasize the point that the Federal Government has no business enacting policies and programs which would erode the traditional family structure. That family structure has been the backbone on which this country has been built.

If the Federal Government has a child-care policy, it should enhance family structures, rather than denigrate them.

The language in the bill which concerns me would require all "publicly assisted" child care programs to meet federally established standards. The public assistance is the voucher system the bill would provide to low-income people to offset child-care costs. The Federal standards would apply to institutional care and to family care.

The ABC bill broadly defines family care as—

One individual who provides child care services for fewer than 24 hours per day, as the sole care-giver, and in the private residence of such individual.

This includes the next door neighbor, the grandmother, the aunt, the close trusted family friend. All children entrusted to family members, while their parents work, would not be eligible for the benefits provided in the ABC bill.

This bill would discourage parents from making arrangements with neighbors or family members to care for their children during those hours when they must work. In effect, it would discriminate against them.

This would send a message to parents that the Federal Government knows what's best for their children. This would tell parents that even if they have a neighbor or grandmother to care for their children—that the Federal Government has to "check them out."

Parents would have very few choices in this bill. They could send their children to a federally approved institution; or they could make sure that

their neighbors or relatives are federally licensed for child care; or they could relinquish any opportunity for Federal assistance in caring for their children; or they could quit working to support their families, sacrificing their financial independence, and go on welfare so that they could stay home with their children.

Madam President, these are not acceptable choices.

The managers of the bill apparently realized the problems that might result from the bill. Thus, the following sentence was added to the bill, in section 20:

Nothing in this Act should be construed or applied in any manner to infringe upon or usurp the moral and legal rights and responsibilities of parents or legal guardians.

Well now, isn't that generous.

I would like to point out the number of children we are talking about, who would be deprived of Government assistance if their families' friends or relatives are not licensed to care for them.

Madam President, 4.7 million children are cared for in their homes while their mothers are at work. About half of these children are cared for by their fathers. The other half are cared for by grandparents and other relatives.

Another 3.8 million children are cared for in someone else's home, sometimes a relative and sometimes a paid caregiver. Only 2.4 million children are sent to organized day care centers.

Ironically, the license requirement would hit low-income families the hardest. According to an article in the March 9, 1988 Wall Street Journal, only 15 percent of women without a high school diploma, and thus more likely to be paid lower wages, use day care centers for their children.

Of this group of women, 55 percent rely on relatives for child care. These women will not benefit from the ABC bill unless their relatives become federally licensed. Many of the poor families targeted by the proponents of the ABC bill will actually be left out.

According to Ann McLaughlin, U.S. Secretary of Labor, 67 percent of children in unlicensed child care are cared for by relatives and family members.

For obvious reasons, many parents prefer this type of arrangement. These are the types of child care arrangements the Federal Government should encourage and enhance, rather than discourage. There can be no greater support system for children and their parents than the extended family structure.

When relatives do not care for children, the next most common alternative is for children to be cared for in their own home or in someone else's home.

To quote Virginia Thomas of the U.S. Chamber of Commerce, from a brochure discussing the pro's and con's of the ABC bill:

The Democratic Act for Better Child Care Services forces a costly, monolithic, Federal solution on a social concern that has as many faces as an octopus has arms.

The ABC bill, if enacted, would be a prime example of when the chief cause of problems is solutions. Certainly licensing grandmas to take care of their grandchildren, is at least one of the very significant problems that the ABC solution would cause.

Many home based child-care providers purposefully avoid licensure, which is presently State administered, because of the onerous requirements and limited benefits.

Licensing does not in itself ensure safe child care. In fact, licenses may become a disservice if parents are tempted to believe that child care is safe, just because it bears the Federal seal of approval. Because problems are just as prevalent in licensed care as in unlicensed care, parents should be educated on how to identify safe child care alternatives.

My State of Iowa, for example, is one of eight States which do not require family day care providers to be licensed, if they care for six or fewer children. The State does, however, encourage home providers to seek licensure, and about one-sixth of them do.

Should Congress tell the State legislature in Iowa that they know more about child care? Will a Federal panel know more about the child care needs of Iowa than the local law makers who live within 50 miles of their constituents? I raise this question not only for the citizens of Iowa, which I represent, but for any State.

I appreciate the intent of the ABC bill to encourage day care providers to be licensed. Licensure may be a partial answer to some of the quality questions surrounding day care.

Madam President, as Members of Congress, we should support the role of the family in selecting the most appropriate type of child care for children. Most Americans prefer to keep child care in the family.

Therefore, I hope my Senate colleagues will oppose the motion to recommit the parental leave bill to the Labor Committee. The intent of the motion is to add the ABC bill to it, so that the Senate would consider these items as a package.

Though most of us agree that there may be an appropriate role of the Federal Government in child care, the ABC bill is not the answer. There are other problems with the bill which have been adeptly discussed by other Senators. But the provision which I have discussed, licensing grandmothers and other relatives to care for children, is not the route to go.

Madam President, I suggest the absence of a quorum.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. Will the Senator withhold?

Mr. DODD. Madam President, if I may just take just 1 minute or so, if my colleague from Illinois—

The PRESIDING OFFICER. Has the Senator from Iowa yielded the floor?

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER. And withdraw the request for a quorum call?

Mr. GRASSLEY. Yes.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, just before my colleague from Iowa leaves the floor, just so some of these points can end up becoming believed to be accurate, let me just make it clear: There are no licensing requirements at all under this legislation unless the State requires it. The Federal Government does not grant a license. The bill very clearly says the States are the only ones that can license.

Now, if grandma wants Federal dollars to take care of her grandchild, in a situation like that, well, obviously, when we apply Federal dollars we require standards in anything.

The Head Start Program, which all of us support—I do not know of a single Senator who votes against Head Start—Head Start has Federal standards. We have had that program in place for 25 years. And they are called minimum health and safety standards.

So if you have rats, or you do not have running water in your facility, yes, we say if you are going to get Federal dollars you have to have minimum health and safety standards.

What would be totally different would be if we were to say "Here is the money, and you do anything you want with it in terms of child care."

That would be a change.

But I cannot think of a single program where we say to the taxpayers of America "We are going to take your money, we are going to give it to somebody and we are not going to require some minimum standards that have to be met."

I think you would have a minirevolution if we suggested we can use taxpayer money to go to someone who held themselves out as a child care provider and then did not require minimum health and safety standards for the children that were in that center. That would be outrageous. And I think you would have a riot on your hands.

But the notion somehow that the Federal Government is going to run around to all these child care centers to be inspecting, no, they do not. There are no Federal inspectors. It is all done at the State level in Iowa, in Connecticut. Iowans and Connecticut

people are doing this, not someone out of some Federal bureaucracy in Washington.

The only sites that have to be licensed are the ones that the States require to be licensed, what Iowa requires, what Connecticut requires. That is basic. That is common sense.

But, frankly, those who are opposed to this legislation are running around suggesting that grandma or the next-door neighbor is not going to be able to babysit for somebody. That is absolutely categorically untrue. That is an absolute total myth that that is what this legislation requires.

Yes, it requires licensing if the States require it. Yes, it requires minimum health and safety standards, if you are going to get Federal vouchers. That is true.

But I would suspect that people would be concerned if we did not.

We require Federal standards for those toys. Should we say to a child care provider anything different than we say to a toy manufacturer? You are caring for children. You can do what you want, but you cannot make a set of blocks for them unless we require some standards. That is commonsensical.

So I say to my good friend—and he is a dear friend of mine; I care for him dearly and we vote together on a lot of issues, I support a lot of things he does—frankly those points are just not accurate when it comes to what this bill tries to do.

There are people who do not want to be subjected to some standards. I understand that. That is fairly rudimentary. People do not like standards. They do not like anyone to apply them to them.

But if you are going to get Federal money and you are going to have a business wherein some of the people who paid for that business or support that business is going to come from the taxpayers of America and they are going to call themselves child care providers then we are just saying when you do that you have to meet minimum health and safety standards.

If people find that to be revolutionary, then I would be surprised, quite frankly, because that is all it does and, by the way, none of these standards can apply for 5 years.

During that period of time there is a commission set up to review and they include clergy people and educators and the private sector as well as professionals in the child care area, to try and help develop those standards so that they are fair and equitable and make sense. But the notion that grandma or the next-door neighbor or some dear family friend is going to have a Federal inspector crawling around their living room as they are babysitting for the next-door neighbor, is an absolute myth, and there is

nothing in this legislation that requires that.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Madam President, let me just take a few minutes to add a comment or two.

We are talking really about two different bills, and I would like to—just to confuse things further—discuss a third bill or a third general area just a little bit.

First, on the parental leave, I would just make two points. First, we are talking about unpaid parental leave. Some people are getting confused about that. Second, I would point out that the committee report says this: "The subcommittee received testimony from a wide range of employers that provide parental leave and report that it works well."

We are not talking about anything that is that drastic.

Then in the area of day care, I do not disagree with my friend from Connecticut when he says that the bill provides minimum health and safety standards, but it also does and should do one other thing, and that is to encourage enrichment for these young people who are in day care centers.

And that gets, really, to the third thing, because I think the day care center program ultimately has to mesh with a great, huge national need, and that is for intensive preschool education, particularly in disadvantaged areas in this country. We know from tests in Ypsilanti, MI, New York University, and elsewhere that where you have an intensified preschool education program, whether it is the city of Baltimore or the city of Chicago, wherever it is, you have a dramatic change in the dropout rate, teenage pregnancy rate, and the crime rate. We know it. It is not theory. But we are not applying it.

Some 6 or 8 weeks ago, the Superintendent of Schools of Philadelphia testified before the Education Subcommittee here in the Senate and said that where they have this intensified preschool education program, the results have been dramatic. I asked her: "What percentage of the students are you reaching who need help?" She said, "Twenty percent." That is higher than most cities. But what a tragedy for Philadelphia that 80 percent of those young people are falling through the cracks.

The parental leave bill is a step in the right direction. The day care bill is a step in the right direction. But we also have to, one of these days, take a third step, and that is to provide intensified preschool education programs in disadvantaged areas if we are to serve this Nation well.

And let me speak candidly here, also. Many of these areas are minority

areas. We are going to have to do better. Eighteen percent of the work force today, Madam President, is made up of minorities. Twelve years from now, it will be 29 percent.

When you are looking at the kind of educational opportunities that we are offering to too many of these young people, we are hurting our own future. America is one family. When anyone in that family hurts, all of us hurt.

I cannot tell you how, when a boy or girl in Baltimore or Chicago does not have a chance for quality education, that hurts people in southern Illinois where I come from, but I know instinctively that it does, and you know instinctively that it does.

The parental leave legislation is one part of a three-step program we have to enact. The second part is day care. The third part is an intensified preschool education program.

Madam President, I yield the floor.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Madam President, I realize that time is being charged, but I ask unanimous consent that the remarks I am about to give appear at the appropriate place in the RECORD.

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

#### GEN. JAMES A. ABRAHAMSON

Mr. WALLOP. Mr. President, I rise today to commend and salute Lt. Gen. James A. Abrahamson, the current Director of the Strategic Defense Initiative, who will be retiring on February 1, 1989, after 33 years of highly distinguished service to his country. The Air Force is losing a great officer, but the Nation is gaining a talented and capable scientist.

As a strong supporter, and sometime constructive critic, of the President's SDI Program, I have had an opportunity to work closely with General Abe. We have not always agreed on the direction the SDI should go and we have not always agreed on the prioritization of the various programs within it. We have even had serious disagreements on the substance of administration policy. But let me state for the record that in all my dealings with him, General Abe has always maintained the highest level of integrity and professional responsibility, and has given 100 percent of himself for the President's program, even at risk to his own career.

In the context of SDI, he has had to endure not only the extreme partisan opposition to the SDI Program but even personal, venomous attacks on his character and integrity. He endured much closer scrutiny as an Air Force officer than virtually any of his contemporaries, and he has done so with redoubled dedication to his convictions. He has even had his last star

withheld, not because he did not earn it, but because it was caught up in politics—a shameful statement not on the General, but on the Senate.

This sort of dedication is rare in this world; it is rarer still among our uniformed military.

Madam President, most of us heard the name Jim Abrahamson for the first time when he was appointed Director of SDI in April 1984. But we owe him a debt from bringing many great technical achievements to fruition, achievements that have enhanced the Nation's security and fostered the exploitation of space for the good of all mankind.

Born in Williston, ND, on May 19, 1933, General Abrahamson received his bachelor of science in aeronautical engineering from MIT and a master of science in the same field from the Air Force Institute of Technology Program at the University of Oklahoma.

He was commissioned a second lieutenant through the Reserve Office Training Corps in November 1955 and completed pilot training in 1957.

In August 1961, he was assigned as Spacecraft Project Officer on the VELA Nuclear Detection Satellite Program. It was here that General Abe began one of the most distinguished careers in space in Air Force history.

In 1964, General Abrahamson was assigned to the 428th tactical flight squadron and during this period served two tours of duty in Southeast Asia where he flew some 48 combat missions.

In 1968, he attended the Aerospace Research Pilot School and upon graduation was selected as an astronaut with the Air Force's Manned Orbiting Laboratory Program from 1967 to 1969. It is unfortunate that that program was canceled, denying him the opportunity to achieve a personal dream: space flight. It is ironic that through his efforts, so many others after him were to have that opportunity.

Madam President, General Abrahamson's career is a laundry list of programmatic successes. Most notable among them prior to directing SDI are Program Manager of the Maverick Missile Program and Director of the F-16 Combat Fighter Program, one of the most successful programs in Air Force history.

In November 1981, the General was assigned as Associate Administrator of NASA for the space shuttle. In that capacity, he guided the shuttle program safely and successfully through 10 developmental and early operational launches. During his tenure, NASA performed many firsts, including the first satellite retrieval and repair mission which vividly demonstrated the operational capabilities of the space shuttle.

General Abrahamson has too many awards and medals to list, including the Air Force Distinguished Service Medal. But I think he would agree that the greatest achievements of his career have been his capacity for putting complex spacecraft, in orbit, on time, and return them to Earth.

Whether it is the spectacular success of the Shuttle Program, or the less known but equally important Delta 180 and Delta 181 SDI experiments, Abe has always given America, his country, his service, and his job everything he has, and thereby won the right to demand and receive the same from the men and women who work under him. And, boy, did they do that for him.

Madam President, the Air Force will sorely miss the integrity, the skill, and personage of Jim Abrahamson. But I can assure my fellow citizens that his talents will not be lost on the country: He will continue to dedicate himself to the President's vision of a defense against ballistic missiles.

All of us, Madam President, will benefit from that by being safer in our future.

Madam President, I yield the floor.

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS, Madam President, I share in the comments that the Senator from Wyoming has made and I compliment him for bringing this to the attention of all Senators. I have had the privilege of working with General Abrahamson these past 2 years as a member of the Armed Services Committee. I share everything that Senator WALLOP said.

I am reminded of a dinner that I had with Edward Teller in Idaho Falls, ID, a winter ago.

He made the point to this Senator that, if the Senate could just see its way clear to approve the fourth star for General Abrahamson, that it would give SDI as much of a boost as if you added another billion dollars to the program because it would add prestige to it inside of the Pentagon bureaucracy.

I think it is most unfortunate that this excellent, fine military officer and successful gentleman did not have the opportunity to have that fourth star because he was successful in his efforts in the SDI as it is. But I believe, had he had the fourth star and had that additional clout, could have commanded a little more respect from certain areas of the highest levels of the Pentagon, he would have been able to do more and accomplish more than has been done with the same amount of money that we have.

I share the comments of the Senator from Wyoming. We will sorely miss Jim Abrahamson and I wish him well in whatever endeavors that he takes up. I am confident that success will be

his, as it has been his up to this point in his life.

I wish him well. We will miss him in the service of this country; but hope that he will be engaged in an industry or activity that will be able to complement the work that he has done here to continue to help America lead the world in technology and hopefully lead the world in preserving peace and freedom.

I yield the floor.

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

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

The Republican leader.

#### PARENTAL AND TEMPORARY MEDICAL LEAVE

The Senate continued with the consideration of the bill.

Mr. DOLE. Madam President, I take this opportunity just to indicate that there is a possibility that we could dispose of this in the next hour, if people are inclined to do that; vote immediately, in the next few minutes, voice vote or rollcall vote on the motion to recommit. That would bring a substitute, and I assume cloture would be filed on the substitute.

Then maybe immediately by unanimous consent have that cloture vote today; maybe have two cloture votes today.

I have indicated this to the majority leader. No tricks, no games. Just get this behind us and move on to important legislation, the Technical Corrections Act, which is very important to millions of Americans, including every farmer I know; and the drug bill.

These are the important issues. There is not anybody in this Chamber who believes this package is ever going to become law if we stay here to the 15th, the 22d, the 29th, or after the election this year.

Mr. DODD. There is one.

Mr. DOLE. One, one thinks it may become law. He is undecided.

But I am proposing that we vote immediately on the motion to recommit. Or just adopt it by unanimous consent. And then, having two back-to-back cloture votes on the substitute. If they cannot get cloture in two votes, we move on to something else. Do that all today. I have talked to Senator PACKWOOD, the ranking Republican on the Finance Committee. He is prepared to start on the technical corrections bill.

I have talked to Senator RUDMAN. We believe on the drug bill we can have a bipartisan agreement where

each side would have six amendments and the leader on each side would have one amendment, and maybe get time agreements on most of those amendments and do a drug bill in 2 days; plus a lot of other things, of course, that would be done by consent.

It is possible that we could complete action on major legislation by this weekend.

I just indicate what we are prepared to do. It seems to me that it is an offer that cannot be refused unless we just want to stay here.

When this 30 hours is finished, then there will be cloture on the substitute. If cloture is invoked on that, then there is another 30 hours. Then there will be cloture on the bill and another 30 hours. And even if we stay all night around the clock, 15 hours, that would be 75 hours plus you have to wait for cloture to ripen. That takes a day or two. It will be the middle of next week before all that time expired and we still would not be anywhere.

There are a lot of reasons this legislation should not pass and I do not know anybody who is pushing it. I have quite a few friends interested in parental leave and child care. They would like to have it this year but it is not a burning issue. They know both Governor Dukakis and Vice President BUSH are sort of making these issues, at least in the child-care case, a centerpiece of their campaigns. And I think we need more national debate on that.

I do not quarrel with the distinguished Senator from Connecticut or anyone else who has spent a lot of time on this issue.

But the important thing in my view is to get on the major issues. It is time we served notice, as I said yesterday, on the drug dealers and the pushers that they had better get their "out of business" signs painted. We are serious.

We have sent them a message. Now we want to send them a warrant.

If we stay on this bill to the middle of next week and have not touched the drug bill, have not touched technical corrections, I think many farmers in my State plus a lot of other business people and individuals are going to wonder where we are on the diesel tax and heifer tax and all these other issues; why did we not address these issues?

I stood here once before. I said, "Let's roll the dice." We are ready to roll. Roll the dice right now. Let us get this behind us.

Of course, if cloture is invoked, we will probably have a new leader on this side. But otherwise, we will be all right.

Little things like that, you can deal with. But in any event, we are ready. I do not want anybody writing out there that somehow Republicans are keeping us here. We want to help the

American taxpayers and every day we get out here, it is just that much more help. We are not going to spend any of their money if we are not here.

If we are here 1 more week, somebody is going to think of some way to spend more money. I have not had a single taxpayer insist that we stay here until October 15. I had a lot of them wish we had not come in at all this year.

So we are prepared to move forward. I do not see any reason to stay here all night or to 5 o'clock in the morning or 10 o'clock at night, or whatever. If cloture is invoked, then of course we are on the substitute. That would be 30 hours. But we are willing, at least I am, I think willing on behalf of this side of the aisle, to suggest we at least ought to give it our best shot. If the other side prevails, that is one thing. If they do not, then I believe we could move on to other legislation.

I know Senator BAUCUS is deeply interested in moving to the technical corrections bill. I know Senator NUNN feels strongly about the drug bill. And we do, too.

As important as these issues may be, parental leave, child pornography, child care, I would guess in anyone's priority list and based on what we all expected, child care was never on a "must" list, that I recall.

So we are prepared to take our chances on this side, do it yet today, get this behind us, and I would hope that that offer would be accepted.

I suggest the absence of a quorum.

Mr. DODD. Madam President, would my colleague withhold?

Mr. DOLE. Oh, sure.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, first of all, I want to thank the majority leader. He has been cooperative and helpful and, as he pointed out earlier, he has his own child-care bill which can be offered as an alternative. I want to at least, from my point, make it clear the reason we are in this situation.

We have been on this bill now for over a week. It was a week ago yesterday that we began to consider the parental leave bill, a bill that enjoys co-sponsorship of eight or nine members of the Republican Party. In fact, I see my good friend and colleague and a co-sponsor, Senator Packwood, among others.

To suggest somehow we have taken up the time of the Senate, this bill last week could have been dealt with in a day. The only reason there was a suggestion we needed an additional 30 hours is because we were faced with a filibuster. If we did not have a filibuster we could have dealt with the legislation and could have had legitimate, germane, relative alternatives posed. If Members have tax credit ideas on child care and they want to substitute

that or offer it as a substitute, we can debate it; offer it up, let us vote on it.

On parental leave, they want to eliminate the mandated program. Let us offer a pilot program, a voluntary program, a study group, whatever. Let us have the amendments come up, debate them, vote on them and move along. Except for the one amendment that raises the exemption level from 20 to 50 and the child pornography bill of the Senator from South Carolina, Senator THURMOND, we have not had a substantive amendment offered on parental leave in a week.

We ought to be held accountable for holding up the Senate's business because we have not been able to deal—those of us who support parental leave—with that legislation.

I know there are people opposed philosophically to parental leave. I respect that. There is a wonderful way to reflect that opposition, and that is to vote against the bill. But when you get filibustered by silence, filibustered by every other tactic available, and I cannot get to the substance of the legislation—frankly, I think working on the problems of children and families in this country is an important issue. I think the tax bill is an important bill. I think the drug bill is an important bill, but I think parental leave and child care are important, too. I think they ought to be dealt with and, frankly, we could have over this past week.

I am disappointed that has not been the case. I am hopeful that we would not need to invoke cloture; that we could vote to recommit, take the rest of this evening, have the alternatives be offered and vote up and down on the legislation. We do not need to vote on pornography legislation. That has been done.

On the child care provisions, there are a number of tax proposals. We can offer them as substitutes and vote on them. With child care, I think the fundamental question is whether or not it is mandated. Let us have a vote on it. I am prepared to vote on it and see how we come out. I think we will prevail, frankly, on that issue, and I think had those opposed to this legislation felt comfortable with the votes, it would have come to that.

I am pretty confident that 50 or 51 Members of this body would vote for a parental leave bill. I cannot get there. I have to produce 60 votes now to break a filibuster. So I have to get a supermajority to deal with children and families and a simple majority to deal with the tax bill.

I am disappointed at that. I hope my colleagues will be able to vote at cloture, and I hope at that point we can have time to deal with germane and relative amendments. That is what I hope will happen.

Nonetheless, I appreciate the Republican leader's remarks.

I see my colleague from Iowa has been waiting for time to speak on another matter.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I ask unanimous consent to speak on another subject matter.

The PRESIDING OFFICER. Is there objection to the Senator's request?

Without objection, it is so ordered.

#### VICE PRESIDENT BUSH AND THE AMERICAN FARMERS

Mr. HARKIN. Madam President, of all of the claims made by Vice President BUSH as he engages in the closing hours of his campaign for the Presidency, I do not think any are more phony or fraudulent or more wanting of the truth than his claim to somehow have the interests of our American farmers at heart and his claims that the Reagan-Bush administration has really been years of boom and years of good incomes for the farmers of America and that somehow the Reagan years have just been great years for our American farmers.

When you hear BUSH talk about that, that is what you kind of hear. As I said, I do not think anything can be more wanting of the truth than those claims.

So I think it is time, Madam President, to take a little time before the next couple of weeks run out to set the record straight and to look at some of the facts. As President Reagan said, facts are stubborn things. They are indeed, and when you look at the facts of this administration and what has happened in agriculture, you can only come to one conclusion: That if the farmers of America were to go down there to the polls on election day and to vote for another 4 or 8 years of what we have just been through, all I can say is we better be prepared to start turning out the lights, locking up our doors in rural America and our small towns and communities all over the country because what has happened in the last 8 years has been more devastating on rural America and small towns, farm families than any period since the Great Depression.

If I understand GEORGE BUSH correctly, what he says is more of the same. That is what he is saying. He said something like "If it isn't broke, don't fix it." He wants to keep on with the present farm program. Let us take a look at the present farm program in just the areas that Vice President BUSH says his administration has performed in such a stellar manner.

Let us take exports. We hear all this talk about our exports, how our ex-

ports are going and this and that. I will tell my colleagues that nothing again could be more phony than the claim that somehow we are really booming ahead in agricultural exports. This chart depicts the value of our exports for wheat and flour in constant 1982 dollars in the billions. So we get a look at what is happening over the last 7 years.

In 1981, which was basically the last year of the old farm program, the Reagan farm program started into effect after 1981, the value of our wheat and flour exports was about \$8.5 billion. That is in constant 1982 dollars.

Look where it is now in 1987. It is down to about \$2.5 billion. It has been steadily coming down every year since 1981. They claim this is a success? We are getting about one-fourth, maybe just a little slightly more than one-fourth today of our exports of wheat and flour than we did in 1981.

Let us look at the value of our exports in feed grains, important in my State of Iowa, corn being the largest segment of that feed grains export. Again, the value of those are in 1982 constant dollars. Here we go, 1981, we are up here about \$11 billion roughly in the value of our feed grains exports. Look what has happened ever since 1981. We are down here now at about slightly less than \$3 billion in the value of our feed grains exports.

Again, this is what Vice President BUSH says is a success. I will tell my colleagues, a little bit more of that success and we will be off the bottom of that chart. We will have to pay them to take our feed grains. We will have to pay them to take our wheat if we keep going on the way we are going.

Let us look at what has happened productionwise around the world. They say we want to compete with our foreign competitors and get our exports up so that they do not go out and plow up and plant everything while we are putting our set asides in. I will have more to say about that in a second.

Let us look at the wheat production index. If we take the 1980-81 crop year as our base year and assign that a value of 100 as the base year for wheat production, look what has happened to our neighbor to the north on the orange line. This is Canada. The blue line is Canada, Argentina, and Australia all put together, our three major wheat competitors. The red line is the United States. Look at that graph. Since 1980, wheat production in Canada, Argentina, and Australia has gone up by 30 percent. Wheat production in the United States is down about 12 percent. So much for Vice President BUSH's claim that somehow we are back on the production path. We have gone down—12 percent less than what we were in 1980-81 and our

competitors are producing 30 percent more than what they were in 1980-81. That is in wheat.

(Mr. BRADLEY assumed the chair.)

Mr. HARKIN. Look at the wheat export index. This is an index that gives you an idea of how well we are doing against our competitors in the amount of wheat that we do, indeed, export. Who is getting the share of those export markets out there that Vice President BUSH would have us believe we have captured so much of?

Again let us look at 1980-81 as a base year. Assign as our base year 100. Again, the blue line is Canada, Argentina, and Australia. The red line is the United States. This is the amount of total wheat exports. Again, our competitors are 30 percent higher in their wheat exports this year than they were in 1980. Where is the United States? Well, after a long decline, we are right back where we started. This year we are exporting on an index basis just what we did in 1980-81. Our competitors are 30 percent higher. In that intervening 8 years we have done nothing. They have taken over 30 percent of the world market. Yet to hear Vice President BUSH tell it, you would think we are capturing those world markets again. Nothing could be further from the truth.

I tell you, Mr. President, they have taken our export markets and the value of our exports and driven them right down into the basement. A farmer said to me one day, "You know, they talk about all these exports they are getting back. I don't know about that but if we export all of our corn for 50 cents a bushel, what good does that do me? I cannot produce it at that." As you see by the value of our exports, wheat and flour and feed-grains are constantly going down. Just a couple more years with BUSH in office and, as I said, we will be paying them to take the grain and the wheat off our hands. That is what it looks like from that chart.

So they are producing 30 percent more. We are producing 12 percent less. They are up 30 percent in exports. We are basically back where we started.

Again, we hear the phony claim by the other party, by Vice President BUSH, that in 1987 farmers had record net income, net farm income was a record last year, but again facts are pretty stubborn things, Mr. President. The fact is that in 1987 cash receipts in real dollars to corn, wheat, rice, and oil seeds producers were at a 25-year low. And that is even if you throw in their CCC loans on top of it.

So how did they come out with their phony claim that net farm income was at a record high? First of all, they did not adjust it for inflation, and, second, they threw in all of the target price payments that the taxpayers made to the farmers. But in cash receipts, what

the farmer gets from the local elevator for his grains, last year was a 25-year low for the farmers of our country. And so you see from that clearly their farm program, more and more Government payments, borrow on the future, pay it to the farmers, drive the prices down and out the bottom, has resulted in farmers last year getting 50 cents out of every dollar of farm income from a Government paycheck drawn on a deficit account. Now, if that is success, we cannot stand much more of it, Mr. President.

Well, what we have then is a farm program that has cost us billions of dollars. It cost us over \$70 billion-plus in the last 4 years just for target price payments. We have lost about 250,000 farms. We have idled more land than at any time in our history. Farm asset values have gone down. In 1980, the value of our farms was \$996 billion; in 1987, \$714 billion, a quarter of a trillion dollars in asset values lost over 7 years. In 1980, land prices averaged \$737 an acre. In 1987, they averaged \$546 an acre—about a 25 percent loss in our land values in the last several years.

That is really curious. That really brings home what this administration is all about, and the phoniness of their claims. First of all, they claim they are helping the farmers, farmers are doing all these great things. I just pointed out how they say exports are great but the facts show that is not true. They say, "Well, we get the Government off their backs."

I spent a workday last week in an ASCS office out in Iowa and I could not believe the amount of paperwork farmers have to go through these days. I had not done this for several years. The last time I did it was back in the seventies. I cannot believe the paperwork burden they have put on farmers. Then I got to thinking about ASCS. That is the agency farmers come into contact with almost on a weekly basis. Agricultural Stabilization and Conservation Services [ASCS], an office in every county.

I was thinking about how many people work for ASCS, so I looked up some figures. Now, keep in mind this is the administration that wants to make things more streamlined, right? That is what they say. Get this. In 1982, there were 18,938 personnel working for ASCS throughout the United States, 18,938; in July 1988, 27,534 personnel in ASCS throughout the country, a 45-percent increase in 6 years. So what did they do? This is the Republican Farm Program. They kicked out 250,000 farmers and increased the bureaucrats by 45 percent.

Now, that tells you something, Mr. President. Not only that, but in Iowa the ASCS offices close their doors at noon. They are open from 8 to 12 and then they close their doors and lock

them. Guess why. So they can get the paper work done. Farmers cannot go down there in the afternoon. If the farmer is busy in the morning and let us say it rains in the afternoon so he can go in and get some paper work done, he goes in and the doors are locked because they have to take the afternoon off to catch up on the paper work.

I understand that Iowa is not the only State where that is being done. It is being done in other States, too. So you kick off 250,000 farmers and you increase the number of bureaucrats by 45 percent. Boy, I tell you, if that does not set well with you, I have some other things.

Now, they talk about supply management. GEORGE BUSH is opposed to supply management, as if that is some kind of big scare word—boo, it is supposed to scare somebody. Supply management, boo, it is supposed to scare somebody. Come on. We have had supply management in agriculture for 50 years or more in one form or another. The biggest supply management program in history was the 1983 PIC Program under the Reagan administration. It idled more land than at any other time in our history. We have supply management now. We have things like setasides, conservation reserve programs that idle land, take land out of production.

But it is the way they operate. The PIC Program in 1983, the biggest set-aside in our history, under the Reagan-Bush administration cost \$16 billion; 1983 PIC Program, \$16 billion, but 56 percent of that money went to the largest 5 percent of our farmers. That is their idea of a fair farm bill.

Just in case you missed that, I will repeat it. In 1983, the largest land set-aside in our history under the Reagan-Bush administration cost \$16 billion, and 56 percent of that money went to the largest 5 percent of the farmers in our country.

That is their idea of a fair farm program. I tell you they have messed up this farm program worse than even I could imagine they would have done. As my friend Jim Hightower once said, "These people down at the USDA couldn't run roadside watermelon stands if you gave them the watermelons and hired the highway patrol to flag down the cars." I believe it. They have made a mess of agriculture.

Let us be honest about it. Both Republicans and Democrats are in favor of matching supply and demand keeping it within some parameters. But what is the goal of trying to do that? That is really where the difference comes down to.

The goal of the Democrats, our bill, the goal that I have heard Mike Dukakis talk about and our esteemed colleague, Senator BENTSEN, talk about, the first primary goal, the priority goal must be to get a fair price for the

farmer in the marketplace, a fair price for that farmer's investment in land, equipment, for the labor that he puts in, and not a Government paycheck drawn on a deficit account. Our first priority is a good, decent price for our farmers. That is what we have always stood for. We will always stand for that.

We will make sure that the programs work to do that; not to enrich the top 5 percent of the farmers, not to make sure that the big processing companies are able to make record profits as they have in the last few years, not to let our competitors abroad increase their share of the foreign market but to make sure that our farmers have a decent share of that income and that price.

It is clear to me what GEORGE BUSH is talking about. He says he does not want any supply management. Well, I have to ask. What Mr. BUSH really wants is he wants to do away with all set-asides; he wants to do away with the conservation reserve program. We do not want to do away with the conservation program. It has been a highly successful program. We mean to implement it, and keep it going to get some of this fragile land out of production. But Mr. BUSH, if I take him at his word, wants no conservation reserve program. That is supply management. He does not want to have it. So I can only assume that under a Bush administration the conservation reserve program would go by the wayside.

Well, the BUSH, Butz, and Block legacy is told in the figures of 250,000 farmers off their land, 45 percent increase in the number of bureaucrats out in those county offices, lost export markets, huge deficits, \$70-plus billion in payments of the Government to the farmers. A farmer in Iowa told me. He said the only land he is farming profitably right now is that little strip of land from the back door to his mail box to get his Government check every month. Well, it is not healthy for our farmers. It is not healthy for our country. Our goal is to make sure that price is up for the farmer, and to get our demand up. Yes, we are going to get demand up. We are going to do it through new products, through research, and to make sure that we make biodegradable things that do not hurt our environment. We will increase our research in those areas. Mike Dukakis has talked about that many times.

Lastly, I want to make one other point here. We always get the bloody shirt of the 1980 grain embargo by President Carter which all of us, at least all of us who represent farmers, were opposed to, but nonetheless they had it and we had to live with it.

But do you know who the chief architect of the grain embargo was, Mr. President? He is a man by the name of

Zbigniew Brzezinski. He was the architect of the grain embargo. He was their most vocal, ardent supporter of the grain embargo. Guess where Mr. Brzezinski is today; advising Mike Dukakis? No. He is George Bush's top adviser, the architect of the 1980 grain embargo, one who has never indicated in any way that it was a mistake, which it was.

So I think farmers ought to be aware that Bush in the White House means Brzezinski in the wings. What that means is trouble for farmers in terms of our markets overseas.

Mr. President, I think it is clear from the facts of what has happened; that those of us who live in rural America in the small towns and communities, the farmers who grow our food and fiber, must think very carefully and must really look back over the last several years—even those farmers who have weathered the storm, and there are those. There are farmers who have done well. I will admit that. There are farmers today who bought more land, increased the size of their holdings and are doing quite well for a variety of reasons. Some could be hog farmers. Hog prices have been very good. They have made good incomes in my State with the Government programs and payments; for a variety of different reasons.

But to those farmers who are not, I would ask them to consider what their communities are like this year, compared to what they were like several years ago. Can a farmer who is doing well stand the loss of any more of his neighbors down the road? Already we are hearing echos from this administration about cutting out REA, about increasing the price of electricity to our rural customers, about doing away with farm market roads, and rural telephones. A farmer who is doing well out there I think should ponder this. What happens when those neighbors are gone? How far will he have to take his produce, his products, corn, beans, whatever to market? Where will his kids go to school if they are being bused 5 miles today or in some cases 10 miles or more in Iowa? If they shut down those rural schools out there because there are no people, how far does he have to send his kids to school, 20, 30, or 40 miles a day? Where will that farmer get spare parts for the tractor, in the next county or two counties over? What will be the cost of electricity when that farmer and his family are the only ones on that line out there for miles? What will be the cost of electricity and the cost of their phone service? Think of it. The farmer is out to do well; to ponder that and to think about that. I am talking about those farmers who are doing well.

Yes, individually they may be doing well, but look at their family. When I

say their family, I mean their family of farmers around there, the communities, the schools, their churches. Look around and see what has happened to those friends the farmer had in the last few years. Where are they? I guess the question that has to be asked before they go into those polls this November is can we really afford more of the same? No. I give GEORGE BUSH credit for saying it. He said he is going to give them more of the same. But can we really stand more of that? Can we stand more and more bureaucrats, less and less income, more and more Government payments, more loss of our foreign markets and the value of our exports?

We can. Yes, we can stand it. If we want to get rid of farmers. If we want to shut down rural America, yes, we can stand it. That is really the difference—whether or not we want a strong, healthy agriculture in rural America or not.

So, Mr. President, this is not the last time; it is not the first time, and certainly not the last time that I will point out these inconsistencies of the Reagan and Bush administration and the devastating, absolutely devastating effect that it has had on rural America.

Mr. President, I yield the floor.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

#### UNITED NATIONS REFORM CERTIFICATION

Mr. HEINZ. Mr. President, last week President Reagan addressed the U.N. General Assembly and praised the changes he sees in the organization. I share some of the President's sentiments, especially his satisfaction that several conflicts around the globe look to be close to resolution under the auspices of United Nations mediation. But when it comes to internal reform of the U.N. organization, I must differ with the President.

Two years ago I first offered an amendment to put an end to the Soviet bloc abuses of the U.N. personnel system. Three weeks ago the administration certified that there has been enough reform in New York to send the full appropriated American contribution to the U.N. budget.

I believe this decision is wrong. The changes are totally insufficient to justify the certification. This is particularly true of the rationale on secondment of personnel to the U.N. Secretariat.

The administration's certification of United Nations reform in the personnel system is deeply flawed. It says more about the willingness of the administration to be expedient than it does about real change at the United Nations. I do not believe the administration's decision was faithful to the

clear intent of the law. For that reason, in the next Congress I plan to introduce legislation that provides more specific benchmarks by which to unequivocally assess how far the United Nations has come in reforming its personnel system.

The administration's certification is, in part, premature, in part, indefensible. And in general, it undercuts the reform effort and effectively squanders whatever progress we might have hoped for after years of pressure and hard work.

The problem is that the Soviets and their allies maintain virtually all of their nationals who work for the United Nations on temporary contracts. This tramples on the U.N. Charter, by undermining the independence of these civil servants. More important, it damages American interests by increasing the capacity of these Soviet citizens to abuse their positions by engaging in anti-United States activity—including espionage.

Recently, the Soviet asked that 5 of their 180 employees at the United Nations go on permanent contracts. The law that was adopted by the House and the Senate and signed by the President requires progress toward a cap of 50 percent on temporary contract personnel from any country. When the five become permanent employees, the Soviets will have over 97 percent of their nationals still on temporary basis in the United Nations.

If this is real change in terms of cleaning up the U.N. personnel system and reducing the threat to American intelligence interests, it is so small my microscope cannot see it.

What I can see, Mr. President, is that the United States has thrown in the towel on United Nations reform before real, meaningful reform is assured. There has been the beginning of change at the United Nations. I welcome that. But it is just a beginning, and by certifying now the administration has sent a clear signal: The United States is not serious, go back to business as usual.

But I and the other Senators who have helped start the very slow progress toward reform will not go back to business as usual. I will continue to work to improve the U.N. system. If real progress is not documented in the U.N. personnel situation in the months ahead, I will move to strengthen the laws that govern our contributions to the United Nations so that real, lasting changes will be achieved.

If much more progress is not made in the next several months in U.N. personnel practices, I will introduce legislation that will set more concrete guidelines for judging the progress that is made in cleaning up the U.N.'s personnel system. It will set out specific levels of secondment that should be achieved in specified periods of time in

order for United States assessed contributions to be released. I think making United States assessed contributions to the United Nations dependent on specific, reasonable, reforms in the U.N. personnel system will leave no doubt about what the Congress wants, and no doubt about what has been achieved at any point in time.

Mr. President, there is great hope for settlement of various conflicts around the globe, from Southeast Asia to Africa. The United Nations has played a role in mediating these disputes, and may have a role as observer when agreements are implemented. I share the enthusiasm of my colleagues for these developments.

But I also understand that these functions of the United Nations can be separated from the contributions the United States has until now held back as an incentive for real reform at the United Nations. No one can doubt that the Congress stands ready to finance legitimate peacekeeping operations the United Nations may perform to help end long, bloody conflicts. But that does not mean we have to go on subsidizing espionage against the United States and gross abuse of the U.N. system by countries that ignore the U.N. charter.

As President Reagan said, the United Nations is enjoying new status as a broker of peace. Much of this is the result of decisions by member states to let the United Nations play a role. It is time the internal weaknesses of the U.N. system were eliminated so that the organization can make its full potential contribution to achieving the lofty goals on which it was founded.

Mr. HARKIN. 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. 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.

#### PARENTAL AND TEMPORARY MEDICAL LEAVE

The Senate continued with the consideration of the bill.

Mr. BYRD. Mr. President, I was not on the floor when the distinguished Republican leader made a proposal. He had discussed the proposal with me, however, prior to his taking the floor and I did see and listen to some of it. But I had other things going on.

Would the distinguished Republican leader repeat that offer?

The PRESIDING OFFICER. (Mr. HOLLINGS). The Republican leader.

Mr. DOLE. Mr. President, if the majority leader will yield, what I suggested in the interest of expediting, hope-

fully, adjournment, but also disposition of this bill and other bills the majority leader knows are important to him and others—the tax bill, the drug bill—that we would vote immediately, voice vote or whatever, on the second-degree amendment, first-degree amendment, motion to recommit. And, as I understand it, if those were all approved, then the business before the Senate would be the substitute. And then the business before the Senate would be the substitute. And then the question whether or not the majority leader would file cloture on the substitute.

I suggested if that were his desire, that we would be willing to immediately vote on cloture today, and vote on cloture twice today, with unanimous consent not to wait until the cloture petition ripens, but just do it by consent, have a couple of votes on cloture.

And if the majority leader prevails on the first vote, obviously, we are on the substitute then, again, under 30 hours. If he does not prevail the first time, does not prevail the second time, then it would be my hope that we could move on to other business.

That is the substance of it. In other words, dispose of the pending matter by voice vote or whatever, rollcall vote or unanimous consent or whatever, and then if cloture was filed, if the majority leader would indicate he would file cloture, then immediate vote on cloture. If there is desire to have a second cloture vote, immediate vote on that. And then if those who oppose cloture should prevail, hopefully, we can lay this business aside and move on to something else.

Mr. BYRD. Mr. President, I wonder if I might make this suggestion, that we proceed to vote on the motion to recommit with instructions tomorrow at 2 p.m. rather than just now. We would begin the vote on the amendments tomorrow, if we could agree, say at 2 p.m., vote on the second-degree amendment and vote on the first-degree amendment, then vote on the motion to recommit just as would be the order once the 30 hours plus whatever time additionally would be required by Senators who would not have had their additional 10 minutes; if they had not used any time, they could get 10 minutes under the rule. And there may be 30 or 40 of them.

So if we agreed to vote tomorrow on those amendments and then the motion at 2 o'clock, begin the vote, that would be about as soon, in all likelihood—would not miss it much—as we could begin voting if we ran out the 30 hours plus the additional 5 to 6 or 7 which might be involved by virtue of Senators claiming the additional 10 minutes allowed under the rule. If they met the requirements therefor.

I must say to the distinguished Republican leader, I do not think we would gain anything by having two

cloture votes or three cloture votes on the same day. You would have the same number of people here, same number of people absent. And although it would not make any difference how many would be absent that were going to vote against cloture anyhow, it might make some difference in respect to those voting for. I presume they would all vote the same day on the second and third cloture motions.

So, first of all, I see nothing to be gained by having two or three cloture votes on the same day, today.

Second, I would not want to commit myself at this point to immediately offering a cloture motion on the committee substitute, in the event the motion to recommit and report back carries. I want to make that judgment at that time.

If we stay here and we run out the clock, at 5:30 in the morning, if we stay, at 5:30 in the morning, 30 hours would have expired. The Chair would be prepared then to state that the 30 hours have expired, the question is on the second-degree amendment. And I doubt that many Senators would want to be around here at that hour.

However, if they want to claim their 10 minutes, they would have to be here at that hour.

So, why do we not agree to vote tomorrow, beginning at 2 o'clock, on the amendments in their proper sequence and then the vote on the motion and go home this evening?

And in the morning, we could come in, if it would be agreeable with the distinguished Republican leader, and take up some other matter. Agreeing to take up another matter would have no impact on the matter before the Senate because we would all really agree that the votes on the two amendments and the motion to recommit would occur at a given time tomorrow.

So in the morning, we could proceed on some other measures and work until the hour for the vote, and then we go to the vote. We do not stay here the night.

Whatever outcome there would be tonight on those amendments, and it would not be voice votes, it would be rollcall votes, whatever the outcome tonight would not change much between now and tomorrow. If the motion to recommit loses, then upon the rendering of that judgment, we are in a position to make a decision as to what we do at that point. If it carries, we are in a position to make a decision as to what we do at that point.

I would not want today to lock in cloture votes, bang, bang, bang immediately following the sequence of votes on the amendments and the motion.

Would that proposal be acceptable to the leader?

Mr. DOLE. First of all, as I understand it, if we have no further speak-

ers, the question on the amendment is put immediately.

Mr. BYRD. I do not believe so, not until the 30 hours are up or Senators indicate that they do not want to take their 30 hours.

Mr. DOLE. Can I pose that as a parliamentary inquiry?

The PRESIDING OFFICER. Will the distinguished Senator restate his inquiry?

Mr. DOLE. If we have no additional speakers on this side and we want to expedite business of the Senate in getting out of this place, if we had no additional speakers and there were no additional speakers on the other side, would the question then be put on the second-degree amendment?

The PRESIDING OFFICER. The question would be put on the second-degree amendment.

Mr. BYRD. If there were no additional speakers on either side.

Mr. DOLE. We are the ones who are supposed to be holding up the process. If we are not going to speak, then we are not holding up the process.

My view is this bill, sooner or later, is not going to pass and the sooner we make a judgment on that, my point of view is, get on to the tax bill or the drug bill, the quicker we make it out of here. If we run the clock on this stalemate, the majority leader said 5-something in the morning, then we have to vote at 5 in the morning, and then if we started on the substitute, cloture was not filed immediately, and if cloture was filed and cloture is obtained, there is 30 more hours; you get on the bill and there is another cloture, let that ripen, and 30 more hours. That is the end of next week, even if we stayed all night around the clock. At least get through to Monday or Tuesday.

My view and the view of my colleagues on this side, and there are some on the other side I think who share this view, is that we ought to have some disposition of this issue. It is an offer that cannot be refused. We are willing to vote right now, have one cloture vote right now, have another cloture vote tomorrow, if the leader does not want to have two today. In the meantime, we can go off on something else so at least we are making some progress on the tax technical corrections amendments bill which has a number of good features, including the taxpayer's bill of rights, diesel tax, heifer tax—all these things that are important.

I would have to check some of my colleagues before I could agree. We do not get much out of that. All we do is expedite disposition.

If the majority leader has no intention of filing cloture, we could waste another day or two before cloture is filed. The veto on textiles was sus-

tained 272 to 152. So that will not be coming over here.

I would be happy to discuss this with some of my colleagues for a couple of minutes.

As I understand it, we are ready to vote on these three things. I know there is a conflict this evening. We would not want to do that, but maybe we could do it in the morning. If I could have 5 minutes, I will come back.

Mr. BYRD. Surely. May I say to the distinguished Republican leader, as I view his offer and the way he has indicated mine, I do not see that we gain anything out of his offer. We vote now on the motion to recommit with the votes on the amendments occurring first and then vote bang, bang, bang on the cloture motion. There is nothing to be gained by having two cloture votes in the same day, nothing to be gained by having three cloture votes in the same day, and there is the option to be lost that I may want, or that another Senator may want.

We can take a new look at the playing field once we have that vote, or those votes. There will be at least three. If the motion to recommit and the amendments are voted up, I may feel that we should proceed from our side in this manner. If it fails, I may feel that we on this side want to proceed in this manner. So I do not want to agree that there would be an immediate cloture vote following the votes on the amendments and the motion.

So what I am saying is, we go out tonight, we vote tomorrow beginning at 2 o'clock on those amendments and the motion to recommit. In the meantime, in the morning, we could take up some other matter. Once we have those votes tomorrow, then we see where we go from there. If we all go home tonight, the majority leader does not lose anything by having the votes tomorrow beginning at 2 o'clock on the amendments and on the motion. We all get a good night's sleep and nobody locks themselves into an immediate cloture vote. We may lose on the motion to recommit. We might lose today; we might lose tomorrow. We may lose on the motion to invoke cloture. But we can do some other business tomorrow morning so we do not lose anything. We just get the agreement now, we go home now, and we have those votes tomorrow at 2 o'clock. In the morning, we do not need to waste that time. As far as I am concerned, we could take up the bill and begin to work our way on it with the inclusion in the unanimous-consent order that that not interfere with the action on this measure beyond 2 o'clock tomorrow.

That seems to me to be an offer nobody could turn down. I believe the distinguished Republican leader will find that a very attractive offer.

Mr. DOLE. Not as attractive as mine. It is a start. I just say the reason

I suggest we do back-to-back cloture votes, maybe do one a day for a while. We do not have that much time, as I see it, whether we are here until this weekend or the next weekend. If we start on the tax bill and the motion to recommit is adopted, then we are back on this bill, and if we do not dispose of it somehow, we could be on the bill for the rest of the week.

I do not know where that will put us, but I will be happy, I say to the majority leader, to explore that if I can have just a few minutes.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BYRD. Mr. President, we on our side have a little function over on the other side of town. The distinguished Republican leader has indicated that there would be no action during the 3 hours between 7 o'clock and 10 o'clock.

I would like to make the following proposal and then I think some of us are going to have to go to that function and come back. I propose that we vote on the second-degree amendment, the first-degree amendment, and the motion to recommit, voice vote one right after the other, with no motion, no amendment, no debate between the votes. That way, we would get to the point where we will get to tomorrow by staying here all night. We will get to that point probably about 5:30 in the morning as far as the 30 hours are concerned. I do not know how many hours will be claimed by Senators who would like to speak for 10 minutes beyond that time.

So, it seems to me, that this would allow us all to go home. We could take up the tax bill in the morning, if that is agreeable with the distinguished Republican leader, and then go back to the profamily package tomorrow at 2 o'clock. Voice votes tonight, no roll-calls, and then go home and come back tomorrow and take up the tax bill and at 2 o'clock tomorrow we are back on this bill. The 30 hours would have been avoided and we will be, within 10 minutes, if we do that, we would be right where we would be by running up the string of hours sometime tomorrow.

Mr. DOLE. If the majority leader will yield, it seems to me—I have checked—that we do not have any request for any more time on this side. As I understand it, if there are no requests, no speakers, then the Chair puts the question. The first question would be on the second-degree amendment, which we are willing to proceed

to on a voice vote. But if we agree that amendments be in order, then we lose our right, under cloture, after the majority leader would offer two additional amendments, for us to offer any amendments. And that has been the problem from the start. We have never offered any amendments.

We are trying to figure out some way to accommodate the majority leader's request and still protect our rights—anybody's rights, I guess, it would be—with the leader offering an amendment.

I suggest that maybe we could have the majority leader offer two amendments and the Republican leader offer two amendments. We would have a 1-hour time agreement. I am not certain, I do not have any idea what amendment you have and you do not have any idea what amendment I have, except they are all in the file and it would be one of those.

The alternative is on our side. We are ready to just follow the normal procedure right now: Voice vote, record vote on the second-degree amendment; whether it fails or passes, then is open to amendment. If there are no amendments from that side, if I were recognized, I could offer an amendment. If that were defeated, I could offer another amendment.

I guess, otherwise, we would be in a position just waiting here for the majority leader all night for the time to run. We would like to figure out some way to avoid that. I assume, at the same time, we know you have a very important engagement. You protected our rights last evening. Maybe we could take 3 hours off the time between now and 10 o'clock.

Mr. BYRD. Mr. President, the Republican leader wants to vote on the second-degree amendment. That is all. He does not want to vote beyond that tonight.

I am saying, let us vote on all three. We will not make any further speeches, either. Vote on the second-degree amendment without further debate, motion, or amendment; go to the first-degree amendment without further debate, motion, or amendment; and go to the motion to recommit with instructions. Do it all by voice vote. Wipe it all out within 10 minutes and we will all go home.

Now, if we stay and run out the time, then at some point tomorrow we will vote in that order and we will take the second-degree amendment by vote. There will not be any opportunity to offer an amendment to the first-degree amendment because the time would have run. And under the rule, only those amendments that are pending, then pending, only those amendments then pending can be voted upon.

So the distinguished Republican leader would not have any opportunity

to offer any amendment to the first-degree amendment and we would take the same sequence. There could be no amendments in between and no debate in between and no motions in between, except maybe a motion to table or a motion to postpone indefinitely. And we vote one, two, three tomorrow.

We can do it right now, do it by voice, and be right within 15 minutes where we would be tomorrow after running the 30 hours, and go home for the night in the meantime.

Mr. DOLE. I understand that. But it seems like we are reversing roles here. We want to proceed and you want us to slow down. Before, we were slowing down and the majority leader wanted to proceed. Now we are ready right now at 7:07 in the evening rather than 5:45 in the morning.

Mr. BYRD. To vote on one amendment. We are ready to vote on both amendments and the motion to recommit.

Mr. DOLE. But that would cut off our rights, which I do not think the majority leader would do purposely, but could do under the rules anyway.

Mr. BYRD. Yes. The Senator would not have any more rights, if we ran for 30 hours, he would not have any more rights than he would have under that scenario, because under the rules, under rule XXII, if we run the 30 hours, the distinguished Republican leader has no right to offer an amendment until that motion has been agreed to.

Mr. DOLE. Could we agree that I would have the right to offer one amendment? Go ahead and do what the majority leader would like to do right now and I would be entitled to offer one amendment?

Mr. BYRD. Mr. President, I want to go home as well as everybody else does. We all know that the rules in this body at times will disadvantage one side or the other. The Senate voted for cloture yesterday on the motion to recommit. Under the rules, there are 30 hours. At the close of the 30 hours, then we vote. We vote on the second-degree amendment. We then immediately vote on the first-degree amendment. Nobody can offer an amendment to that first-degree amendment. And we immediately vote on the motion to recommit.

Now, that is where we are tomorrow if we run out the 30 hours. I am saying let us vote by voice on the second-degree and the first-degree amendments and the motion to recommit and go home and 15 minutes from now we are right where we are tomorrow when the 30 hours have run.

Mr. DOLE. Would it be the majority leader's intention to file or not to file cloture this evening?

Mr. BYRD. No, we would not.

Mr. DOLE. Not file cloture?

Mr. BYRD. Not tonight.

Mr. DOLE. What we might do is to not do it tonight but come back at 2 o'clock, on this tomorrow at 2 o'clock—maybe 1:30?

Mr. BYRD. I will be in precisely the same position tomorrow as I will be tonight under that scenario, as to the filing of cloture.

Tomorrow, once we finish the vote on the motion to recommit I could file cloture or I could opt not to file cloture at that point. If we do it as I have suggested it will not change that landscape any. I will have the same options tomorrow that I will have tonight, either way we go.

Mr. DOLE. I do not disagree with the majority leader. I do not want to continue this. I know it is already infringing on his time.

I would rather be awake tomorrow. It is not a requirement but it is helpful. But, if we came in at 2 o'clock and did precisely what you want to do this evening, vote one, two, three, would it be your intention to file cloture, then, tomorrow?

Mr. BYRD. Well, as I thought I indicated earlier to the leader, I want to reserve that option until tomorrow.

Mr. DOLE. What we are trying to do is figure out a way when we get to offer an amendment.

Mr. BYRD. The Senator will remember when we were in the minority that he followed the rules and I never questioned them. When he filled the tree, the tree which contained seven amendments, on page 70 of the book on Senate procedure, I never complained. I did not like it, but I said at that time the leader did what he could do under the rules.

I was shut out and sometimes we are in situations, and I may be in the situation again at some point, where I will be disadvantaged by the rules. But the point I am trying to make is that no matter whether we do it now by voice and go home or whether we run out the string of the hours, the situation tomorrow will be the same.

I can either offer cloture or not. I would like to make that decision at the time, perhaps after talking with some of my colleagues. So the Republican leader loses nothing that he does not lose under the rules. He does not gain anything.

Mr. DOLE. I lose sleep.

Mr. BYRD. We all lose sleep. We all lose sleep.

And what the Republican leader would gain would be the sleep, plus taking up the tax bill tomorrow; come in any time the leader would like and spend 3, 4, 5 hours on the tax bill.

Mr. DOLE. Let me just say, let us come in at 2 o'clock and then we could, I guess, decide at that time whether it is to be voice or rollcall. That would still give our Members who have problems tomorrow, I think, time. If it were rollcalls, there would be three rollcalls.

Mr. BYRD. All right. Would the Senator agree then, that would be the proposal I first offered on the floor? That we go out; that beginning at 2 o'clock tomorrow we vote on the amendment in the second degree and without further debate, motion, or amendment we vote on the amendment in the first degree; and without further debate, motion, or amendment we vote on the amendment in the first degree; and without further debate, motion, or amendment we vote on the motion to recommit with instructions? Cloture would have been in effect—would have run its course. We will either have voice votes or rollcall votes, as the distinguished leader has suggested. And meanwhile tomorrow morning we would work on the tax bill. And go home tonight.

Mr. DOLE. If there were an objection to the tax bill—I am advised there could be an objection to the tax bill. I would hope not. I am not asking for any time agreement, I am just saying we ought to bring it up and start it tomorrow, 4 hours. There are 100-and-some amendments. It is going to take some time. We presently have someone who indicates they might object to taking that up.

Mr. BYRD. Well, I will tell you what we might do, then. Let us spend tomorrow morning on the retail price—S. 430. Spend the morning on that or on some other matter. There is a veterans' bill, I believe.

Mr. DOLE. I do not think we could agree on the vertical. Oh, that is right, you have consent to go to vertical price fixing, I guess.

#### MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business not to extend beyond 2 minutes and that Senators may speak therein.

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

#### BICENTENNIAL MINUTE

JUNE 1852: FIRST INCUMBENT SENATOR  
NOMINATED FOR VICE PRESIDENT

Mr. DOLE. Mr. President, 136 years ago, for the first time, an incumbent U.S. Senator was chosen to run for the Vice Presidency. That man was Senator William R. King of Alabama. A former President pro tempore of the Senate, King ran as Vice President in the election of 1852 on the Democratic ticket headed by Franklin Pierce.

On one hand, we might be surprised to find that national elections had been held for over 60 years without a Senator running for Vice President, but we should note that five former Senators had previously run for Vice President—a sixth, former Senator William A. Graham of North Carolina, was King's opponent in 1852. And several other Senators had declined the honor.

Since King's nomination, 2 sitting U.S. Senators have run for Vice President on major and minor party tickets—11 of these, including King, won their elections.

In recent times, it has become almost standard procedure to nominate a Senator for Vice President. For the past 44 years, from 1944 to the present, in every election except one, at least one Vice Presidential candidate was an incumbent or a recently serving former Senator. The sole exception occurred in 1984.

On several occasions, both major party Vice Presidential candidates were Senators. This first happened in 1860, when Senator Hannibal Hamlin ran with Abraham Lincoln on the Republican ticket, while Senator Joseph Lane ran with John C. Breckinridge for the Southern Democratic Party. In 1928 the Republican majority leader of the Senate, Charles Curtis, ran for Vice President against the Democratic minority leader of the Senate, Joe Robinson.

In 1952, Senators Richard Nixon and John Sparkman paired off against each other. In 1976, some of us recall when the Vice Presidential candidates were Senator Walter Mondale and Bob Dole. And once again, in 1988, two senatorial contenders vie for the Vice Presidency.

#### FRANZ JOSEF STRAUSS (1915-88)

Mr. HELMS. Mr. President, West Germany and the world lost a great leader yesterday, a great fighter for freedom, and a great man. Dr. Franz Josef Strauss, who served his country as Defense Minister, Finance Minister, and, most recently, as Minister President of the Federal State of Bavaria, died Monday of a heart attack suffered while on a hunting trip over the weekend. The free world will miss this uncommon warrior, Mr. President, the last European leader of the generation of Adenauer, Churchill, and De Gaulle to grace the stage of world politics.

Mr. President, Franz Josef Strauss believed in freedom, and constantly put his reputation and career on the line as he fought the international left and its attempts to weaken Western Europe after World War II.

In October 1956, Konrad Adenauer named Dr. Strauss Minister of Defense, and Dr. Strauss proceeded to build up German defenses to the point where Germany could bear its share of the defense of NATO. After Kurt-Georg Kiesinger became Federal Chancellor of Germany in 1966, he named Franz Josef Strauss to be Finance Minister. Immediately Strauss brought order to the realm of German finance internally while advocating a major role for Germany's economy internationally.

Dr. Strauss was a mainstay of Germany's Christian Social Union, known

by its initials CSU—the conservative party of Bavaria which he helped found in 1945. He served as Minister President of Bavaria until his death, but he always remained a leader of conservatives throughout the world. It was a world he knew well, Mr. President; he was especially knowledgeable about the situation in southern Africa, and scandalized Europe's left by making cogent, consistent arguments against sanctions on South Africa. He argued eloquently that those sanctions would hurt the very people they were supposed to help—the majority of South African workers.

Mr. President, I always admired Franz Josef Strauss. He was absolutely fearless in his defense of freedom, whatever the issue. The left attacked him relentlessly throughout the post-war years, and no doubt it was the leftist press in Germany which made it impossible for Franz Josef Strauss to become Chancellor of the Federal Republic. Nonetheless, he was a man of principle, who stood virtually alone against the tide of détente which so weakened the West in the 1960's and 1970's.

Mr. President, I would cite just one passage which reflects Mr. Strauss' commitment to realism in the struggle against communism, Mr. President. It comes from an article he wrote for Strategic Review in 1982, entitled "Manifesto of a German Atlanticist":

Détente may still be a convenient catchword that appeals to sincerely wishful people in the West, and as such the term is assiduously exploited by those whose motives are less sincere. But as it is applied to the reality of the last decade, the term denotes at best a set of Western policies of unilateral deference to Moscow at the expense of the interests of the Free World. And to that extent, the West must bear its share of the blame for the accelerating Soviet global offensive. The conflict-managers in the Kremlin are traditionally cautious men, not disposed to opt for high-risk policies. To the degree that Western policies, disunity or inaction have lowered those risks, they have aided and abetted Moscow's expansionism, while at the same time progressively endangering the security of the Alliance.

Mr. President, the world owes a great debt of gratitude to Franz Josef Strauss. I am sure all my colleagues join me in extending the most heartfelt sympathy to his family, and to his friends everywhere.

#### COMPREHENSIVE DRUG BILL— 2852

Mr. KENNEDY. Mr. President, the introduction of the National Narcotics Leadership Act of 1988 signals the start of a new, bipartisan national commitment to the waging of a real war on the scourge of drug abuse. Congress can't solve the drug problem alone, but this bill can make a real contribution to sparing millions of

American families from the blight of drug addiction.

An effective fight against drug abuse must take three approaches: law enforcement, prevention, and treatment. Each of these three approaches is vital; no program can be successful unless it involves them all.

As one of the chairs of the task force subgroup on prevention and treatment, I am especially proud of the provisions that will improve our national effort to educate young people on the dangers of drug abuse and provide treatment for Americans who have become addicted but wish to break their habit.

Every reputable authority who has examined the problem of drug addiction knows that there is no army large enough to keep all drugs from crossing our borders and no nation powerful enough to imprison all pushers and suppliers. We must use all the constitutional enforcement tools at our command to make the criminals who would profit from the degradation of our fellow citizens pay the price of their crimes. But only if young people refuse to start taking drugs and only if those who are already addicted receive treatment will this war be won.

The current Federal effort to fight drugs unfortunately ignores this fundamental reality. Only 25 percent of current Federal antidrug funds are spent on prevention, research and treatment; the vast majority of our resources now go for law enforcement and interdiction. This bill establishes a more appropriate balance. The members of the task force made an explicit decision to put 60 percent of the new money that this will provide into prevention, research, and treatment programs—a total of \$1.5 billion. Forty percent of the new funds will go for enhancing law enforcement activities.

#### PREVENTION

The legislation provides for a dramatically expanded Federal education and prevention effort. It increases the current drug-free schools program by 80 percent, to \$405 million. An additional \$16 million will be added to this program and specifically targeted toward training teachers to run effective programs and recognize and refer for treatment students exhibiting symptoms of drug abuse. The high-risk youth demonstration program is more than doubled, to \$52 million, and funds are provided to VISTA, the DEA, and Border Patrol to carry out drug education and prevention programs. Finally, a new prevention demonstration block grant is established to encourage States to undertake highly targeted, comprehensive prevention programs in areas with the most severe drug problems.

Prevention is our most cost-effective and humane way of attacking the problem of drug abuse. It is much

better to prevent citizens from trying drugs than to try to cure them after they have become addicted. The evidence is clear that prevention programs work. Studies by the University of Michigan show that the key difference between high school seniors using cocaine and that those not using it is whether or not they think the drug is harmful. As the number of students recognizing that the drug is harmful has grown, its use has declined. In Massachusetts, under Governor Dukakis' leadership, we have established an exemplary, targeted drug education program. As a result, cocaine use among high school seniors has dropped twice as fast as the national average. This bill will help all States develop comparable programs, and will help us consolidate and extend the progress we have made nationally.

#### TREATMENT

Treatment, too, is cost-effective. It is an obligation of our society to make treatment available to those who want to rid themselves of the tragedy of drug addiction. Long-term studies by the National Institute on Drug Abuse show that drug use and criminal involvement drop dramatically by the end of year of treatment. Employment is up significantly. Most important, these gains are maintained for at least 12 years after treatment. Another study, by the Justice Department, shows that treatment saves as much as \$4 in crime costs alone for every dollar spent.

Despite the obvious benefits of treatment, there are too few treatment opportunities available for those who want to be cured of their addiction. States across the country report long waiting lists at public treatment clinics. Current resources permit treatment of only 8 to 10 percent annually of the estimated 6.5 million drug abusers who could benefit from treatment.

This legislation is a major step in the direction of providing treatment for all who need it. It establishes an objective of treatment for every addict requesting help. It provides an additional \$960 million to States for treatment programs, enough to double the amount of treatment now available.

In addition to funds provided under the new substance abuse block grant, the bill will provide \$95 million for treatment and education programs for drug abusers with AIDS or at high risk of AIDS. Drug abuse is a primary means of transmission of this deadly virus in the heterosexual population, and this program will address one of the highest priority health needs of our society.

Finally, the bill establishes a series of comprehensive treatment demonstrations to test the effectiveness of a major increase in treatment resources in areas with a high incidence of drug abuse.

#### RESEARCH

The knowledge on which current antidrug abuse efforts are based is far too limited. This legislation makes an essential investment in the research that can help us improve our ability to cope with the epidemic. No matter how much money we spend, the problem is going to be with us for a long time. We need to begin the process now of developing the knowledge that will be most useful in this struggle. This bill will assure that our future efforts are as effective as possible.

The legislation establishes comprehensive data collection programs; it significantly increases funding for the National Institute on Drug Abuse and requires the agency to investigate the effectiveness of alternative treatment methods; and it provides enhanced funding for training of drug abuse researchers.

Taken as a whole, the programs of prevention, treatment, and research contained in this bill make a major new contribution to our struggle against drug addiction. This bill alone cannot win the war, but it will allow us to make important progress on a problem of vital concern to millions of our fellow citizens.

#### LAW ENFORCEMENT

As a cochair of the task force subgroup on law enforcement, we have also developed a bipartisan package to attack the drug menace through law enforcement efforts that will make a genuine difference.

The law enforcement provisions in this bill represent a successful bipartisan effort to toughen existing criminal penalties and add new ones for drug-related crime. There are new and enhanced penalties for career criminals and repeat offenders who committed violent offenses as juveniles, narcotics-related corruption, critical crew members who smuggle narcotics, any drug offenses involving a minor, and drug offenses in prisons.

The law enforcement title of this bill will strengthen immigration laws to facilitate deportation of dangerous aliens. Authority will be enhanced to provide for additional recordkeeping to track money laundering and chemical diversion offenders. For those convicted of drug offenses, the law enforcement provisions will impose enhanced forfeiture sanctions and streamlined court procedures for drug offenders.

The law enforcement title also funds Federal drug enforcement programs with responsibilities ranging from enforcement and investigation to interdiction. The drug czar will possess emergency authority to ensure that high-intensity drug areas will receive appropriate law enforcement funding and resources.

Most importantly, the law enforcement title includes substantial funding for State and local drug enforcement

agencies—where the real war is fought every day in our Nation's streets and neighborhoods, where illegal drugs are too easily available and where drug sellers have little fear of apprehension. Here is where the battle must be waged, with adequate Federal assistance to State and local officials. Despite the fact that State and local law enforcement officers battle on the frontlines of the drug war, their funding is a budget item which the Reagan administration has consistently and unsuccessfully sought to cut or eliminate.

We know that merely talking tough is not enough. The war on crime has been declared again and again—and it has been lost over and over. It is clear that we will never succeed in defeating crime if we try to do it on the cheap. We can support our State and local police without turning any locality into a police state, and without destroying the fundamental civil liberties and constitutional guarantees that make this Nation truly free.

If we are serious about the drug crisis in America, we must add a full-scale assault on retail distribution to the weapons in our Federal arsenal. This legislation recognizes that this goal will require a major commitment of Federal resources to State and local officials who will make law enforcement programs that crack down on retail drug distributors their highest priority. A strong Federal-State partnership offers our best hope of success in the war against illegal drugs.

To be sure, to combat the drug menace we need local law enforcement programs that work. It is becoming increasingly clear that heightened domestic law enforcement efforts at the local police level can be successful when coupled with enhanced drug treatment and education opportunities. One of the most important tools in the war against drugs is Federal assistance to increase the number of these successful local law enforcement programs.

Intense local crackdown programs have proven to be successful in many regions around the country ranging from Lynn, MA, to Los Angeles, Houston, and Manhattan's lower East Side. Recreational drug users lose interest as crackdowns make drugs harder to obtain. In addition, heavy users and addicts seek drug treatment to eliminate their dependency. Add to this the successful drug education programs in schools around this country, and it is apparent that we have made a good start.

But make no mistake, we are in danger of losing the war on drugs. Recent studies indicate that we are getting no return on the dollars we are pouring into interdiction efforts. Despite the glitzy headlines about blitzkrieg attacks on ships at sea and mas-

sive drug seizures at home, for the most part the flow of dangerous drugs continues unabated. We have reached the point in the process where increased interdiction funding will yield only scant improvements in the drug war.

We must be wary of putting too much emphasis on flashy approaches that grab big headlines but do nothing to change the small print that follows those headlines. We need instead to start worrying about the bottom line. The bottom line is this: There are over 6 million drug abusers in the United States and we have to do something about that.

We can devote more money to hardware at the borders, but not to the point where we sacrifice our ability to deal with the staggering quantities of drugs and accompanying violence that will evade our interdiction efforts. The estimated 7 tons of heroin and 90 tons of cocaine ingested annually in the United States is not likely to change without enhanced local law enforcement, education, and treatment.

The law enforcement provisions in this bill are the result of concentrated, bipartisan efforts. These provisions will send a strong message about the importance of our drug enforcement policy and that message will be reinforced with the necessary funding so that law enforcement officials at the Federal, State, and local level can carry on the fight against drug abuse.

While I am pleased that the bill includes many excellent provisions to reduce both the supply and the demand for illegal drugs, I cannot co-sponsor the bill because it would enact a Federal death penalty. In my view, the death penalty is wrong both in principle and in practice, and it is the wrong response to the epidemic of illegal drug use that has afflicted our Nation.

The death penalty is wrong in principle because the Government should not have the awesome and terrible power to end a man's life, no matter how wretched, and no matter how evil the crime he committed. That ultimate power to judge the worthiness of a life belongs, not to men or women, but to God alone. And in seeking to exercise that power, we lay claim to perfect knowledge and wisdom, which no human being can possess.

I also believe that the death penalty is wrong as a matter of constitutional principle, because it violates the eighth amendment's prohibition against cruel and unusual punishment.

The framers of the Constitution had a deep and abiding faith in the ultimate goodness and wisdom of all men and women. The Constitution they drafted embodies unchanging values to guide a changing, growing Nation.

It is true that the Supreme Court has not yet concluded that capital punishment is unconstitutional in all

cases. But I am sure that someday the Court will recognize that the death penalty is cruel and unusual, because the methods of execution are themselves grotesque, because the United States stands alone among Western democracies in authorizing the death penalty for peacetime crimes, and, most importantly, because the death penalty denies the very humanity of the executed person.

The death penalty is also wrong as a matter of practice, because of the absolute certainty that innocent men and women will be executed; the absence of any convincing evidence that the death penalty deters crime; and the overwhelming evidence that the death penalty is imposed in an arbitrary, and racially discriminatory fashion.

Human beings are imperfect, and no system of justice designed by men and women, however wise or resourceful they may be, can eliminate the risk that an innocent person will be convicted of a crime. That is a risk we must accept when the punishment is imprisonment, because a jailed man or woman can always be freed. But that is a risk we cannot tolerate when the punishment is death, because no one can bring a dead man or woman back to life.

I say to my colleagues here today: Let there be no mistake about it. If we enact drug legislation with this death penalty provision, sooner or later an innocent man or woman will be executed as a result of our actions. That is not just a risk; it is a certainty. And I submit to you that all of the headlines—and the votes—that Members of this body may gain as a result of their action on this bill are not worth that terrible price.

The harm caused by the likelihood that innocent men and women will be executed is compounded by the utter absence of any convincing evidence that the death penalty actually deters homicides. I am sure that death penalty supporters will cite the few statistical studies purporting to show some marginal deterrent effect from capital punishment. But for every study claiming deterrence, there are more convincing studies establishing that the death penalty has no deterrent effect whatsoever.

In my view, some of the most convincing evidence that the death sentence does not deter murders is found in the experience of other Western democracies. Not one of those countries has capital punishment for peacetime crimes, and yet every one of those countries has a lower murder rate far less than half that of the United States.

The death penalty is also fundamentally flawed in practice because our long experience with capital punishment demonstrates that it is applied in an arbitrary and discriminatory

manner. The Constitution requires that courts and juries be given discretion, within limits, in deciding whether or not a death sentence is appropriate for a particular crime. The exercise of that discretion carries with it the inevitable result that defendants who commit similar crimes are treated differently. As Justice Douglas stated in 1972, quote:

[T]he discretion of judges and juries in imposing the death penalty enables the penalty to be selectively applied, feeding prejudices against the accused if he is poor and despised, and lacking political clout, or if he is a member of a suspect or unpopular minority, and saving those who by social position may be in a more protected position. End quote [*Furman v. Georgia*, 408 U.S. 238, 255 (1972)].

While many death penalty statutes have been adopted since the Furman decision, none of them have been able to eliminate the arbitrariness that is inherent whenever courts and juries have discretion to decide whether or not to impose capital punishment. All too often that discretion has been exercised in a racially discriminatory fashion. As Prof. Charles Black observed in 1978, quote:

[A]fter all this travail, all this fiddling with 'standard', the same old people are right back on death row out in the states: the black, the poor, \* \* \* That is what the death penalty is about in the United States. End quote. [Letter to Senator James Abourezk, reprinted in Hearings on S. 1382, Senate Judiciary Committee, 95th Cong. 2d Sess (1978).]

I will have more to say later about the issue of race discrimination in capital sentencing. For now, I will say that study after study has demonstrated in States all over this country that race does make a difference in capital sentencing. Those who kill whites are far more likely to receive death sentences than are those who kill blacks; and black defendants receive death sentences far more frequently than do white defendants. But under the Supreme Court's decision last year in *McCleskey versus Kemp*, this kind of compelling statistical evidence is insufficient to set aside a death sentence.

That result is intolerable in a country dedicated to equal justice under law. It is a blight on the good name of this great land, and it is a wrong that cries out to be remedied by the Congress. That pervasive evidence of race discrimination should cause every Member of this body to oppose the death penalty.

Every Member of this body has taken a solemn oath to uphold the Constitution of the United States. And we should not sweep aside the obligations of that oath in a headlong rush to tell our constituents that we are doing something about the drug problem. I urge my colleagues to oppose the death penalty provisions included in this bill.

### NATIONAL SCIENCE FOUNDATION

Mr. HATCH. Mr. President, today we have an opportunity to support the continuation of the outstanding programs of the National Science Foundation. Such programs play an essential role in promoting science and engineering research, an endeavor of critical importance to our Nation's growth, defense, and quality of life. This 5-year authorization will enhance the National Science Foundation's ability to allocate resources among conventional, independent research projects and other new research initiatives.

There are several provisions of this authorization that I believe will be particularly beneficial to the goal of maintaining the position of the United States at the forefront of technological advancement. The research facilities provision, for example, which addresses the problem of obsolete facilities in our colleges and universities, will upgrade the quality of basic research, which is the foundation of scientific progress.

I am especially pleased to support this bill because it will promote science and engineering education. We are all aware of the importance of providing young Americans with the skills to continue the scientific and technological advancement that we have enjoyed for so many years. Perhaps even more important is the enthusiasm and encouragement that we can offer our future scientists, mathematicians, and engineers, and the support we can offer our teachers. The National Science Foundation has, for example, provided funding for Utah State University to develop and sponsor workshops in science and mathematics for public school faculty. Such programs have been proven to be very beneficial.

Everyone knows what an important part scientific and technological discoveries play in our lives and in our future. If not for the knowledge and ingenuity of scientists and engineers, the growth of this great Nation would be compromised. The progress that has been made in industrial technology, health care technology, and aerospace technology—to name just a few key areas—is awe inspiring. The National Science Foundation is helping us to continue this progress. Again, this is an opportunity for all of us in Congress to support scientific and engineering research, and I urge my colleagues to support this bill.

### RESTORATION OF DEMOCRACY IN PAKISTAN

Mr. KENNEDY. Mr. President, there is good news for those working for the restoration of democracy and a return to civilian government in Pakistan.

Two days ago, October 2, the Supreme Court of Pakistan ruled that in-

dividuals running for office in next month's general election—scheduled to occur on November 16—may run as candidates affiliated with political parties. The high court's decision declared unconstitutional a decree issued by the late President, Mohammad Zia ul-Haq, which had required candidates to run as individuals unaffiliated with political parties. Under the court's decision, it will now be possible for individuals to run as designated candidates of the various competing political parties.

This decision opens the door to the possibility of the first genuinely free and fair general elections in Pakistan since the 1977 military coup that ousted Prime Minister Zulfikar Ali Bhutto. These elections were called last May when President Zia dismissed the 3-year-old civilian government of Prime Minister Mohammad Khan Junejo and dissolved Parliament.

The Government of the United States should take every opportunity to express its support for a genuinely free and fair electoral process in Pakistan. More specifically, the American Government should make clear to the people of Pakistan that the American people are with them in their effort to return Pakistan to democracy, and that United States-Pakistani relations would suffer if there were any interruption of the process now underway inside Pakistan. Our Government should send a clear message to the military leadership in Pakistan that the electoral process should be allowed to run its course, that there should be no intervention or interruption by the military, and that the results of the election should be respected by all elements of Pakistani society, including the military.

Such a strong statement of support from the United States would be consistent with the position that our Government has taken in support of the restoration of democracy in many other countries around the globe—in the Philippines, in South Korea, in Guatemala, in El Salvador and, most recently, in Chile. While the United States should take care not to choose sides in the November 16 election—we should not tilt for nor should we in any way favor any candidate or any party—we should take steps to make it clear that the American people are united in our support for democracy and for strengthening the democratic institutions of Pakistan.

Pakistan and the Pakistani people are longstanding and close friends of the American people. That friendship can only be sustained if the American Government is seen by the Pakistani people as being strong and unwavering in its support for Pakistani democracy. For that reason, I would hope that this administration would use whatever influence it has at its disposal—particularly with the members of the Pakistani military—to promote the

cause of democracy inside Pakistan. We should not allow the United States to be perceived as promoting our own national interests at the expense of Pakistani democracy. Such an outcome would severely damage our relationship with Pakistan for many years to come.

The November 16 elections present a historical opportunity for the people of Pakistan, and the success or failure of those elections—whether they really are free and fair and open, whether the process is allowed to run its course, and whether the process is allowed to run its course, and whether the outcome is respected throughout the land—will shape Pakistan's future for many years to come.

Because of our longstanding friendship with Pakistan and because of our own belief in the values and ideals of democracy, it would be appropriate to make plans to do what we have done so frequently in other countries and with other friends where the future of freedom depends upon the success of an electoral process—such as occurred in the Philippines, South Korea and Chile. We should notify the political parties of Pakistan that we are prepared to send election observers to monitor the November 16 elections in Pakistan—as we have monitored other elections in the past—not to influence the outcome but to do what can be done by observing and reporting to make certain that the process itself is genuinely fair.

### 1987 FOUNDERS AWARD TO MILTON L. DREWES, JR.

Mr. WARNER. Mr. President, I rise to pay tribute to a most exemplary northern Virginia organization and the fine gentleman to whom it will soon be presenting its highest award.

The group of whom I speak is the Northern Virginia Community Foundation. Its most prestigious award, the "Founders Award," is presented each year in recognition of outstanding community service and dedication to the improvement of northern Virginia. The recipient of this year's award is Milton L. Drewes Jr., of McLean.

Started in 1978 by a group of northern Virginia residents wanting to improve the quality of life in their area, the Northern Virginia Community Foundation encourages those who exhibit and promote awareness of the importance of each individual's contribution to the community.

The foundation is supported by individual, corporate and foundation gifts. It helps fund northern Virginia community programs in the areas of the arts, education, youth, health and civic improvement.

This year's Founders Award recipient has dedicated his career to helping make northern Virginia what it is

today—a stimulating place to live and work with a strong and vibrant economy.

Mr. Drewer is chairman and chief executive officer of the First American Metro Corp., and chairman and chief executive officer of First American Bank of Virginia. Additionally, he is a past president of both the Virginia Bankers Association and the Virginia State Chamber of Commerce.

In addition to his banking-related responsibilities, he serves on the board of trustees of Randolph-Macon College and the Virginia Foundation of Independent Colleges and is a former member of the board of visitors of the College of William and Mary.

Mr. Drewer is a member of the board of directors of the Metropolitan Washington Airports Task Force and former board member of Virginia Power and Dominion Resources. He also served as a member of the Arlington Hospital board and chairman of the Finance Committee during a period of extensive renovation and expansion.

Milt Drewer is proof that one person can make a difference. Please join me and the Northern Virginia Community Foundation in saluting this very deserving recipient of the 1987 Founders Award.

#### TRICENTENNIAL OF WILLIAM PENN CHARTER SCHOOL

Mr. SPECTER. Mr. President, the William Penn Charter School was the first school founded in the city of Philadelphia and in the Commonwealth of Pennsylvania. It is also the oldest continuous Quaker school in the world. It traces its beginnings back to 1689 when William Penn, founder of the city and the State, created his frame of Government for the new colony and urged that a school be opened in Philadelphia. On July 26, 1689, the minutes of the meeting of the Philadelphia Monthly Meeting documented an agreement with George Keith to take charge of the school.

In 1701, William Penn chartered Philadelphia as a city and granted a new charter for the school. A second charter was granted by Penn in 1708, and in 1711 he issued a third charter under which the school currently operates.

Now, almost 300 years later, the Commonwealth of Pennsylvania and the city of Philadelphia have declared October 24, 1988, as William Penn Charter School Day in the State and city in honor of the tricentennial of the school, which also was the first corporation to be chartered in Pennsylvania.

This first school served as the school system for the infant city of Philadelphia, establishing free education for the rich and poor together. It was Wil-

liam Penn, his Quaker community leaders and their successors who promoted the concept of education as a community enterprise in Philadelphia and who endeavored to assure that the ability to pay was not a prerequisite to basic education.

It is, therefore, fitting that the U.S. Senate take note of the contributions of the William Penn Charter School to the education of youth for the past 300 years, to congratulate it for this extraordinary effort and to wish it well as it begins its fourth century.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### PRESIDENTIAL APPROVALS

A message from the President of the United States announced that he has approved and signed the following bills and joint resolutions:

On September 9, 1988:

S. 2641. An act to authorize the Secretary of Agriculture and other agency heads to enter into agreements with foreign fire organizations for assistance in wildfire protection.

S.J. Res. 374. Joint resolution to provide for a settlement of the labor-management dispute between the Chicago and North Western Transportation Company and the United Transportation Union.

On September 15, 1988:

S.J. Res. 295. Joint resolution to provide for the designation of September 15, 1988, as "National D.A.R.E. Day".

On September 16, 1988:

S.J. Res. 328. Joint resolution to designate the day of September 14, 1988, as "National Medical Research Day".

On September 19, 1988:

S. 2560. An act to amend the Temporary Emergency Food Assistance Act of 1983 to require the Secretary of Agriculture to make available additional types of commodities, to improve child nutrition and food stamp programs, to provide other hunger relief, and for other purposes.

On September 22, 1988:

S. 52. An act to direct the cooperation of certain Federal entities in the implementation of the Continental Scientific Drilling Program.

S. 1360. An act to amend the Indian Financing Act of 1974, and for other purposes.

S. 1889. An act to amend the Geothermal Steam Act of 1970 with respect to require-

ments relating to leases, and for other purposes.

On September 26, 1988:

S.J. Res. 290. Joint resolution to designate the period commencing September 25, 1988, and ending on October 1, 1988, as "National Historically Black Colleges Week".

On September 28, 1988:

S.J. Res. 322. Joint resolution to designate the week of September 23-30, 1988, as "National American Indian Heritage Week".

S.J. Res. 336. Joint resolution designating October 16, 1988, as "World Food Day".

On September 29, 1988:

S.J. Res. 329. Joint resolution to designate October 24 through October 30, 1988, as "Drug Free America Week".

On October 3, 1988:

S. 425. An act for the relief of Sukhjit Kuldip Singh Saund.

S. 2789. An act to require the Secretary of the Treasury to mint and issue one-dollar coins in commemoration of the 100th anniversary of the birth of Dwight David Eisenhower.

S.J. Res. 169. Joint resolution designating October 2, 1988, as a national day of recognition for Mohandas K. Gandhi.

S.J. Res. 333. Joint resolution to designate the week of October 9, 1988, through October 15, 1988, as "National Job Skills Week".

#### MESSAGES FROM THE HOUSE

At 2:34 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the amendment of the House to the bill (S. 496) to amend title 5 of the United States Code, to ensure privacy, integrity, and verification of data disclosed for computer matching, to establish Data Integrity Boards within Federal agencies, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 3235) to amend the Public Health Service Act to revise the program of public assistance for health maintenance organizations; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. DINGELL, Mr. WAXMAN, Mr. WYDEN, Mr. LENT, and Mr. MADIGAN as managers of the conference on the part of the House.

The message further announced that the House disagrees to the amendments of the Senate to the bill (H.R. 515) to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card; it asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. ST GERMAIN, Mr. ANNUNZIO, Mr. GONZALEZ, Ms. PELOSI, Mr. BARNARD, Mr. SCHUMER, Mr. WYLER, Mr. SHUMWAY, Mr. HILER, and Mr. RIDGE as managers of the conference on the part of the House.

The message also announced that the House agrees to the amendment of the Senate to the concurrent resolution (H. Con. Res. 351) to correct errors in the enrollment of the bill S. 328.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 4857) to amend the Job Training Partnership Act to make a technical change.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 387. An act to promote equitable pay practices and to eliminate discrimination within the Federal civil service;

H.R. 2642. An act to facilitate and implement the settlement of Colorado Ute Indian reserved water rights claims in southwest Colorado, and for other purposes; and

H.R. 3133. An act to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes.

At 6:58 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 391. An act for the relief of Hyong Cha Kim Kay.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4352) to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes; it asks for a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the Senate:

From the Committee on Banking, Housing and Urban Affairs, for consideration of titles I-IV, X, and section 1 of the House bill, and titles I (except section 107) and II (except section 262) and sections 1 and 2 of the Senate amendment, and modifications committed to conference: Mr. ST GERMAIN, Mr. GONZALEZ, Mr. FAUNTROY, Ms. OAKAR, Mr. VENTO, Mr. GARCIA, Mr. FRANK, Mr. WYLIE, Mrs. ROUKEMA, Mr. RIDGE, and Mr. BARTLETT.

From the Committee on Education and Labor, for consideration of title VII of the House bill, and subtitles B-F of title III of the Senate amendment, and modifications committed to conference: Mr. HAWKINS, Mr. WILLIAMS, Mr. MARTINEZ, Mr. JEFFORDS, and Mr. GUNDERSON.

From the Committee on Energy and Commerce, for consideration of title VI of the House bill, and subtitle A of title III of the Senate amendment, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. LELAND, Mr. LENT, and Mr. MADIGAN.

From the Committee on Government Operations, for consideration of title V of the House bill, and section 107 to the Senate amendment, and modifications committed

to conference: Mr. BROOKS, Mrs. COLLINS, and Mr. HORTON.

From the Committee on Veterans' Affairs, for consideration of title VIII of the House bill, and title IV of the Senate amendment, and modifications committed to conference: Mr. MONTGOMERY, Mr. PENNY, and Mr. HAMMERSCHMIDT.

From the Committee on Ways and Means, for consideration of title IX of the House bill, and sections 262 and 308 of the Senate amendment, and modifications committed to conference: Mr. ROSTENKOWSKI, Mr. DOWNEY of New York, and Mr. GRADISON.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 610. An act for the relief of Calvin L. Graham;

H.R. 3914. An act to establish a commission to investigate racially motivated violence;

H.R. 4755. An act for the relief of H.H. Barter, doing business as Barter Enterprises;

H.R. 4758. An act to amend the Omnibus Crime Control and Safe Streets Act of 1968 to increase the level of benefits payable with respect to the death of public safety officers and to provide that nondependent parents may be beneficiaries;

H.R. 5173. An act for the relief of Ray F. Seuga; and

H.R. 5347. An act to amend title 11 of the United States Code with respect to claims payable from special revenues by municipalities that are debtors, and for other purposes.

At 7:36 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 1626. An act to keep secure the rights of intellectual property licensors and licensees which come under the protection of title 11 of the United States Code, the bankruptcy code;

S. 2800. An act to amend the Nuclear Waste Policy Act of 1982 with respect to the Office of the Nuclear Waste Negotiator and the Monitored Retrievable Storage Commission; and

S. 2723. An act to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber proceeds, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, without amendment:

S. Con. Res. 137. A concurrent resolution to provide for the use of the Rotunda of the Capitol in honor of John F. Kennedy; and

S. Con. Res. 143. A concurrent resolution correcting the enrollment of H.J. Res. 602.

The message further announced that the House agrees to the amendment of the Senate to each of the following bills:

H.R. 2596. An act to improve Federal management on lands on Admiralty Island, Alaska;

H.R. 4028. An act to authorize the Secretary of Agriculture to exchange certain national forest system lands in the Targhee National Forest;

H.R. 4102. An act to provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, and for other purposes;

H.R. 4267. An act to authorize additional appropriations for the WEB Rural Water Development Project, South Dakota, authorize the use of Pick-Sloan Missouri Basin electric power by the Lower Brule Sioux Indian Tribe, and the rename certain facilities of the Central Valley Project, California; and

H.R. 4354. An act to designate certain National Forest System lands in the State of Oklahoma for inclusion in the National Wilderness Preservation System, create the Winding Stair Mountain National Recreation and Wilderness Area, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate to the amendments of the House to the bill (S. 2057) to provide for the establishment of the Coastal Heritage Trail in the State of New Jersey, and for other purposes.

The message further announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4919) to approve the governing international fishery agreement between the United States and the Union of Soviet Socialist Republics, and for other purposes.

The message also announced that the House having proceeded to reconsider the bill (H.R. 1154) entitled "An Act to remedy injury to the United States textile and apparel industries caused by increased imports", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

*Resolved*, That the said bill do not pass, two-thirds of the House of Representatives not agreeing to pass the same.

The message further announced that the House has passed the bill (S. 508) to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes, with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the bill (S. 795) to provide for the settlement of water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, CA, and for other purposes, with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the bill (S. 1047) to amend Public Law 94-241, the joint resolution approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes, with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the bill (S. 1236) to reauthorize housing relocation under the Navajo-Hopi Relocation Program, and for other purposes, with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the bill (S. 2344) to provide for the reauthorization of appropriations for the Office of Government Ethics, and for other purposes, with amendments, 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 bill (H.R. 900) to protect and enhance the natural, scenic, cultural, and recreational values of certain segments of the New, Gauley, Meadow, and Bluestone Rivers in West Virginia for the benefit of present and future generations, 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 numbered 9 to the bill (H.R. 2772) to authorize the Lyman-Jones, West River, and Oglala Sioux Rural Water Development Projects, 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 bill (H.R. 4345) to amend the United States Grain Standards Act to extend through September 30, 1993, the authority contained in section 155 of the Omnibus Reconciliation Act of 1981 and Public Law 98-469 to charge and collect inspection and weighing fees, and for other purposes, with an amendment, in which it requests the concurrence of the Senate.

#### MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 3914. An act to establish a commission to investigate racially motivated violence; to the Committee on the Judiciary.

H.R. 5173. An act for the relief of Ray F. Seuga; to the Committee on the Judiciary.

#### MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 387. An act to promote equitable pay practices and to eliminate discrimination within the Federal civil service.

H.R. 2642. An act to facilitate and implement the settlement of Colorado Ute Indian reserved water rights claims in southwest Colorado, and for other purposes.

H.R. 3133. An act to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes.

H.R. 5347. An act to amend title 11 of the United States Code with respect to claims payable from special revenues by municipalities that are debtors, and for other purposes.

#### 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-3942. A communication from the Deputy Commander for Contracts, Naval Facilities Engineering Command, Department of the Navy, transmitting, pursuant to law, notice of contract award dates; to the Committee on Armed Services.

EC-3943. A communication from the Assistant Secretary of the Army (Installations and Logistics), transmitting, pursuant to law, notice of a decision to convert to contract performance of a commercial activity or industrial-type function being performed by the Department of Defense employees; to the Committee on Armed Services.

EC-3944. A communication from the General Counsel of the Department of Defense, transmitting, a draft of proposed legislation to authorize the transfer by grant of two naval vessels to the Republic of the Philippines; to the Committee on Armed Services.

EC-3945. A communication from the Secretary of the Navy, transmitting, pursuant to law, a proposal to transfer the obsolete submarine *Croaker* to the city of Buffalo, New York; to the Committee on Armed Services.

EC-3946. A communication from the Lieutenant General of the Defense Security Assistance Agency, transmitting, pursuant to law, a proposed letter of offer to Korea for defense articles estimated to cost \$50 million or more; to the Committee on Armed Services.

EC-3947. A communication from the Chairman of the Securities and Exchange Commission, transmitting, a draft of proposed legislation entitled "Securities Law Enforcement Remedies Act of 1988"; to the Committee on Banking, Housing, and Urban Affairs.

EC-3948. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3949. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3950. A communication from the Secretary of Commerce, transmitting, pursuant to law, a copy of the 1988 Directory of Japanese Technical Resources in the United States; to the Committee on Commerce, Science and Transportation.

EC-3951. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore

lease revenues; to the Committee on Energy and Natural Resources.

EC-3952. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3953. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3954. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the fourth annual report on the Department of Energy's Nuclear Waste Program; to the Committee on Energy and Natural Resources.

EC-3955. A communication from the Assistant Comptroller General, transmitting, pursuant to law, a report on water resources competition for Corps of Engineers Civil Construction Contracts; to the Committee on Environment and Public Works.

EC-3956. A communication from the Inspector General, Department of Defense, transmitting, pursuant to law, a report of the audit of the uses of the Superfund for the fiscal year 1987; to the Committee on Environment and Public Works.

EC-3957. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled the "Certified Registered Nurse Anesthetists"; to the Committee on Finance.

EC-3958. A communication from the Special Counsel of the United States Merit Systems Protection Board, transmitting, pursuant to law, a copy of a report of the Acting Administrator of the General Services Administration; to the Committee on Governmental Affairs.

EC-3959. A communication from the Executive Director of the District of Columbia Retirement Board, transmitting, pursuant to law, personal financial disclosure statements for the previous calendar year; to the Committee on Governmental Affairs.

EC-3960. A communication from the Administrator of the Department of Health and Human Services, transmitting, pursuant to law, a report on a new system of records under the Privacy Act; to the Committee on Governmental Affairs.

EC-3961. A communication from the Director of Administration and Management, Department of Defense, transmitting, pursuant to law, a report on a new system of records under the Privacy Act; to the Committee on Governmental Affairs.

EC-3962. A communication from the Attorney General of the United States, transmitting, pursuant to law, certifying the Federal Judicial Districts for the States of Tennessee and Kentucky; to the Committee on the Judiciary.

EC-3963. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the major activities and accomplishments of the Indian Health Service during the fiscal year 1986; to the Select Committee on Indian Affairs.

EC-3964. A communication from the Acting Assistant Attorney General (Legislative and Intergovernmental Affairs), Department of Justice, transmitting, pursuant to law, a draft of proposed legislation to

amend the Federal Food, Drug, and Cosmetic Act to revise the provisions added thereto by the Prescription Drug Marketing Act of 1987; to the Committee on Labor and Human Resources.

EC-3965. A communication from the Director of the National Science Foundation, transmitting, pursuant to law, a report entitled "Scientific and Engineering Research Facilities at Universities and Colleges: 1988"; to the Committee on Labor and Human Resources.

EC-3966. A communication from the Executive Secretary of Defense, transmitting, pursuant to law, the report on the Department of Defense Procurement from Small and Other Business Firms for October 1987 through July 1988; to the Committee on Small Business.

#### 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-623. A joint resolution adopted by the legislature of the State of California; to the Committee on Banking, Housing and Urban Affairs.

##### "ASSEMBLY JOINT RESOLUTION No. 71

"Whereas, The Federal Emergency Management Agency (FEMA) has proposed regulations that would mandate compliance with flood-plain site elevation requirements in existing mobilehome parks; and

"Whereas, These regulations would require that when manufactured homes are moved and resited, are substantially improved or repaired or are replaced by another manufactured home on the same site, that the floor level be established above the base flood elevation by use of pilings or other methods and that the utility pedestal, utility connections and equipment, porches and stairways, water and waste disposal facilities, and other accessories on the space likewise be elevated for the attachment and access to the home; and

"Whereas, The proposed regulations, which remove an existing "grandfather clause," would be mandatory upon local governments; and

"Whereas, Under the proposed regulations local governments would be required to do flood plain studies and mapping, to adopt conforming local ordinances, construction standards, fee schedules, and numerous criteria for installation of manufactured homes; and

"Whereas, The State of California has 58 counties and 447 charter and general law cities that have established and currently maintain various zoning, planning, health and safety, and similar local government requirements for mobilehome parks and for the siting of manufactured homes over the span of at least the past 25 years; and

"Whereas, The State of California currently has sites for 435,000 individually owned manufactured homes, valued at approximately fourteen billion dollars (\$14,000,000,000), located in over 5,800 housing sites that provide for over 750,000 citizens of the state; and

"Whereas, The proposed FEMA regulations could affect 25 to 35 percent of all mobilehome parks in the state located in over 300 jurisdictions; and

"Whereas, The Proposed regulations would result in a long-term devastating effect on property values for each affected property category, the reduction of manu-

factured housing opportunities, the increase of rental charges because of the loss of revenues, the further implementation of rent control measures, additional legislative activity, the likely increase of litigation, and ultimately the permanent closure and elimination of numerous mobilehome parks in the state, without any offsetting and constructive benefit; now, therefore, be it

*"Resolved by the Assembly and Senate of the State of California jointly,* That the Legislature of the State of California respectfully memorialize the Federal Emergency Management Agency to continue the exemption from site elevation requirements for existing mobilehome parks unless and until the Federal Emergency Management Agency has determined by actual study and published documentation that termination of the exemption is necessary to protect property values or protect against loss of life or injury; and be it further

*"Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Federal Emergency Management Agency."

POM-624. A joint resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation:

##### "ASSEMBLY JOINT RESOLUTION No. 89

"Whereas, In the 10 years since the federal government deregulated commercial aviation, the number of passengers traveling on commercial flights has doubled; and

"Whereas, Commercial aviation has played and will continue to play a major role in the economic growth of the nation and the State of California; and

"Whereas, General aviation serves as an important transportation mode for business and agriculture in the State of California; and

"Whereas, The aviation industry provides thousands of employment opportunities and other economic benefits to the people of California; and

"Whereas, California serves as America's gateway to the Pacific Rim, and aviation is California's major link to international markets; and

"Whereas, Expansion and modernization of our nation's airports and air traffic control system is crucial to the continued economic vitality of California and the entire country; and

"Whereas, The California Legislature has demonstrated its commitment to ensuring a quality air travel system for California through the formation of the California Commission on Aviation and Airports, which has dedicated time, resources, and energies toward furthering public awareness and support of aviation related issues; and

"Whereas, The Legislature, in concert with the California Commission on Aviation and Airports, believes that public information on national aviation issues is both essential and complementary to our own efforts; now, therefore, be it

*"Resolved by the Assembly and the Senate of the State of California, jointly,* That the Legislature of the State of California recognizes and applauds the formation of the Partnership for Improved Air Travel, the purpose of which is to focus public attention on the need to establish a long range planning process to ensure efficient air travel, to create a national airport plan, and

to make better use of current technology to expand the air transportation system; and be it further

*"Resolved,* That the Legislature of the State of California respectfully memorializes the President, the Congress of the United States, and the Federal Aviation Administration to move as quickly as possible to develop and implement such legislative and administrative actions as are needed to significantly expand and improve the capacity and efficiency of the nation's air transportation system; and be it further

*"Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President, to each Senator and Representative from California in the Congress of the United States, the Department of Transportation, the chief executive officers of each House of the State Legislature of the 50 states, the National Governors Association, the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, the United States Chamber of Commerce, the United States Department of Transportation, and the Federal Aviation Administration."

POM-625. A joint resolution adopted by the Legislature of the State of California; to the Committee on Environment and Public Works:

##### "ASSEMBLY JOINT RESOLUTION No. 34

"Whereas, The federal transportation trust fund, which consists primarily of users fees from fuel and excise taxes, is dedicated to the support and construction of the nation's transportation system; and

"Whereas, Not all funds paid into the transportation trust fund have been allocated; and

"Whereas, The accumulated balance in the transportation trust fund is approximately \$9.5 billion; and

"Whereas, The federal interstate construction program will be completed in 1992; and

"Whereas, Maintaining a large balance in the transportation trust fund is a critical element of the federal budget deficit reduction compromise through the 1988-89 fiscal year; and

"Whereas, Failure to allocate all available transportation trust funds has caused California to defer important transportation projects; and

"Whereas, California must have flexible and adequate funding resources to maintain, rehabilitate, improve, and expand the state's transportation system; and

"Whereas, It is imperative that California have a modern and efficient transportation system to support continued economic growth; now, therefore, be it

*"Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress and President of the United States to return to the states, in addition to the usual allocation of federal transportation funds, the accumulated balance in the federal transportation trust fund over the three-year fiscal year period of 1989-90 through 1991-92 in proportion to each state's contribution to the federal transportation trust fund; and be it further

*Resolved,* That these funds be available for use on the highest priority transportation projects, as determined by each state; and be it further

"Resolved, That in order that this process to distribute these dedicated funds for their specified purpose not adversely affect efforts to reduce the federal budget deficit after the 1988-89 fiscal year, the federal transportation trust fund be removed from the unified budget after October 1, 1989; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-626. A joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources:

**"ASSEMBLY JOINT RESOLUTION NO. 73**

"Whereas, Numerous medical and public health studies have verified the efficacy of a regionalized trauma care system; and

"Whereas, Each year California's trauma centers provide prompt, definitive treatment to thousands of persons who have sustained critical injuries as a result of vehicular accidents, gunshot or knife wounds, falls, and natural disasters; and

"Whereas, The likelihood of a critically injured victim's survival and recovery is increased by 30 percent if the patient is treated at a trauma center, as opposed to a hospital emergency room; and

"Whereas, Approximately one-third of all trauma patient deaths that do occur could only be avoided by preventing the patient's initial injury; and

"Whereas, Injuries have a significant impact on the California economy both in terms of loss of employee productivity due to injury-related absences and medical and rehabilitative costs to both the private and public sector; and

"Whereas, Nationwide, health costs due to injuries are up to one hundred billion dollars (\$100,000,000,000) annually; and

"Whereas, Injury prevention and control programs have repeatedly been effective in reducing the incidence of injuries and their associated costs; and

"Whereas, A national focus for these efforts has been established at the Division of Injury Epidemiology and Control of the United States Centers for Disease Control; and

"Whereas, Effective injury prevention and control strategies cannot be developed or implemented without a coordinated statewide mechanism of reporting, analyzing and sharing data and information; and

"Whereas, Seven hospitals in Los Angeles County have already been forced to withdraw from California's statewide regionalized trauma care system because of financial losses incurred in serving trauma patients, and an eighth hospital, in San Diego County, has announced tentative plans to close its trauma unit effective July 1, 1988; and

"Whereas, The demise of California's regionalized trauma care system will endanger the lives of California citizens as well as increase the health care and rehabilitation costs to both the private and public sectors; and

"Whereas, Some areas of the state are currently facing a rash of requests from hospitals to downgrade their emergency rooms to "standby" status; and

"Whereas, There has been introduced in Congress a measure, S. 10, by Senator Alan Cranston of California, which would enact

the Emergency Medical Services and Trauma Care Improvement Act of 1987; and

"Whereas, There has been introduced in Congress a measure, H.R. 3133, by Congressman Jim Bates and Congressman Henry Waxman which would enact the Trauma Care and Emergency Medical Services Planning and Development Act of 1988; and

"Whereas, Both acts would establish a national clearinghouse on emergency medical services and provide federal block grants to states with a comprehensive emergency medical services and trauma care plan, including the collection, compilation, and dissemination of information to state and local agencies and private entities providing emergency medical services and trauma care; and

"Whereas, Members of the Congress and Senate have urged that the injury control activities of the Centers for Disease Control be supported by a 20 million dollar allocation from within the appropriation for the United States Department of Health and Human Services, and a 20 million dollar allocation from the United States Department of Transportation appropriation, in the fiscal year 1989-90 federal budget; and

"Whereas, This appropriation for injury prevention programs would equal .03 percent of the estimated annual costs for the treatment of injuries; Now, therefore, be it

*"Resolved, by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress of the United States to expeditiously enact legislation to establish a national clearinghouse on emergency medical services and provide federal block grants to states with a comprehensive emergency medical services and trauma care plan; and be it further*

*"Resolved, That the Legislature of the State of California respectfully memorializes the Congress of the United States to expeditiously enact legislation to provide funds for continued and expanded injury prevention activities of the Division of Injury, Epidemiology and Control Centers for Disease Control; and be it further*

*"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."*

**REPORTS OF COMMITTEES**

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2614. A bill to amend the National Science and Technology Policy, Organization, and Priorities Act of 1976 in order to provide for improved coordination of national scientific research efforts and to provide for a national plan to improve scientific understanding of the Earth system and the effect of changes in that system on climate and human well-being (Rept. No. 100-587).

**EXECUTIVE REPORTS OF COMMITTEES**

The following executive reports of committees were submitted:

By Mr. PELL, from the Committee on Foreign Relations:

Treaty Doc. 99-15. Treaty Between the United States and the Republic of Senegal Concerning the Reciprocal Encouragement and Protection of Investment (Exec. Rept. No. 100-32)

Treaty Doc. 99-17. Treaty Between the United States and the Republic of Zaire Concerning the Reciprocal Encouragement and Protection of Investment (Exec. Rept. No. 100-32).

Treaty Doc. 99-18. Treaty Between the United States and the Kingdom of Morocco Concerning the Encouragement and Reciprocal Protection of Investments (Exec. Rept. No. 100-32).

Treaty Doc. 99-19. Treaty Between the United States and the Republic of Turkey Concerning the Reciprocal Encouragement and Protection of Investments (Exec. Rept. No. 100-22).

Treaty Doc. 99-22. Treaty Between the United States and the Republic of Cameroon Concerning the Reciprocal Encouragement and Protection of Investment (Exec. Rept. No. 100-32).

Treaty Doc. 99-23. Treaty Between the United States and the People's Republic of Bangladesh Concerning the Reciprocal Encouragement and Protection of Investment (Exec. Rept. No. 100-32).

Treaty Doc. 99-24. Treaty Between the United States and the Arab Republic of Egypt Concerning the Reciprocal Encouragement and Protection of Investment (Exec. Rept. No. 100-32).

Treaty Doc. 99-25. Treaty Between the United States and Grenada Concerning the Reciprocal Encouragement and Protection of Investment (Exec. Rept. No. 100-32).

**TEXTS OF RESOLUTIONS OF ADVICE AND CONSENT TO RATIFICATION AS REPORTED BY THE COMMITTEE ON FOREIGN RELATIONS**

*Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to ratification of the Treaty between the United States of America and the Republic of Senegal Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol, signed at Washington, December 6, 1983 (Treaty Doc. 99-15), provided that the Senate's advice and consent to ratification of the Investment Treaty with Senegal is subject to the following understanding:*

*Under Article X of the Treaty, either Party may take all measures necessary to deal with any unusual and extraordinary threat to its national security.*

*Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to ratification of the Treaty between the United States of America and the Republic of Zaire Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol, signed at Washington, August 3, 1984 (Treaty Doc. 99-17), provided that the Senate's advice and consent to ratification of the Investment Treaty with Zaire is subject to the following understanding:*

*Under Article X of the Treaty, either Party may take all measures necessary to deal with any unusual and extraordinary threat to its national security.*

*Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to ratification of the Treaty between the United States of America and the Kingdom of Morocco Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol, signed at Washington, July 22, 1985 (Treaty*

Doc. 99-18), provided that the Senate's advice and consent to ratification of the Investment Treaty with Morocco is subject to the following understanding:

Under Article IX of the Treaty, either Party may take all measures necessary to deal with any unusual and extraordinary threat to its national security.

*Resolved, (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to ratification of the Treaty between the United States of America and Republic of Turkey concerning the Reciprocal Encouragement and Protection of Investment, with Protocol, signed at Washington, December 3, 1985 (Treaty Doc. 99-19), provided that the Senate's advice and consent to ratification of the Investment Treaty with Turkey is subject to the following understanding:

Under Article X of the Treaty, either Party may take all measures necessary to deal with any unusual and extraordinary threat to its national security.

*Resolved, (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to ratification of the Treaty between the United States of America and the Republic of Cameroon Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol, signed at Washington on February 26, 1985 (Treaty Doc. 99-22), provided that the Senate's advice and consent to ratification of the Investment Treaty with Cameroon is subject to the following understanding:

Under Article X of the Treaty, either Party may take all measures necessary to deal with any unusual and extraordinary threat to its national security.

*Resolved, (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to ratification of the Treaty between the United States of America and the People's Republic of Bangladesh Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol, signed at Washington on March 12, 1986 (Treaty Doc. 99-23), provided that the Senate's advice and consent to ratification of the Investment Treaty with Bangladesh is subject to the following understanding:

Under Article X of the Treaty, either Party may take all measures necessary to deal with any unusual and extraordinary threat to its national security.

*Resolved, (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to ratification of the Treaty between the United States of America and the Arab Republic of Egypt Concerning the Reciprocal Encouragement and Protection of Investments, signed at Washington September 29, 1982; with a Realized Exchange of Letters signed March 11, 1985; and a Supplementary Protocol signed March 11, 1986 (Treaty Doc. 99-24), provided that the Senate's advice and consent to ratification of the Investment Treaty with Egypt is subject to the following understanding:

Under Article X of the Treaty, either Party may take all measures necessary to deal with any unusual and extraordinary threat to its national security.

*Resolved, (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to ratification of

the Treaty between the United States of America and Grenada Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol, signed at Washington on May 2, 1986 (Treaty Doc. 99-25), provided that the Senate's advice and consent to ratification of the Investment Treaty with Grenada is subject to the following understanding:

Under Article X of the Treaty, either Party may take all measures necessary to deal with any unusual and extraordinary threat to its national security.

#### 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. METZENBAUM (for himself, Mr. HEINZ, Mr. MELCHER, and Mr. DeCONCINI):

S. 2856. A bill to amend the Age Discrimination in Employment Act of 1967 to provide a rule with respect to the waiver of rights under that act without supervision, and for other purposes; placed on the calendar.

By Mr. D'AMATO (for himself and Mr. MOYNIHAN):

S. 2857. A bill to award a congressional gold medal to the family of Arnold Raphel in honor of the late Arnold Raphel, the former United States Ambassador to Pakistan; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. FOWLER:

S. 2858. A bill entitled the "Rural Development Amendments of 1988"; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DOMENICI (for himself and Mr. BREAUX):

S. 2859. A bill to clarify the rules concerning the unconventional fuels credit with respect to gas produced from a tight formation; to the Committee on Finance.

By Mr. HELMS (for himself, Mr. PELL, Mr. BOSCHWITZ, and Mr. KENNEDY):

S. 2860. A bill concerning disaster assistance for Bangladesh; to the Committee on Foreign Relations.

By Mr. PRYOR:

S. 2861. To prohibit the Federal Asset Disposition Association from making certain payments; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MOYNIHAN:

S. 2862. A bill to extend the temporary duty suspension on certain television picture tubes for an additional year; to the Committee on Finance.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DIXON (for himself, Mr. DOLE, and Mr. FOWLER):

S. Con. Res. 151. Concurrent resolution concerning the policy of the United States regarding the use of chemical weapons; to the Committee on Foreign Relations.

By Mr. LUGAR (for himself, Mr. PELL, Mr. CRANSTON, and Mr. MURKOWSKI):

S. Con. Res. 152. Concurrent resolution commending the Republic of Korea in host-

ing the Games of the XXIV Olympiad, and for other purposes; to the Committee on Foreign Relations.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. METZENBAUM (for himself, Mr. HEINZ, Mr. MELCHER, and Mr. DeCONCINI):

S. 2856. A bill to amend the Age Discrimination in Employment Act of 1967 to provide a rule with respect to the waiver of rights under that act without supervision, and for other purposes; placed on the calendar.

#### AGE DISCRIMINATION IN EMPLOYMENT WAIVER PROTECTION ACT

Mr. METZENBAUM. Mr. President, I am pleased to offer S. 2856, the Age Discrimination in Employment Waiver Protection Act of 1988, along with Senators HEINZ, MELCHER, and DeCONCINI. This bill addresses the technical but very important issue of the extent to which individual employees may waive their rights under the Age Discrimination in Employment Act [ADEA] without the supervision of a court or of the Equal Employment Opportunity Commission [EEOC]. In doing so, the Waiver Protection Act will provide a safeguard for millions of older Americans who otherwise might unwittingly abandon their right to equal employment opportunity under the law.

Some historical background is in order here. When Congress passed the ADEA in 1967, it specifically incorporated the enforcement procedures from the Fair Labor Standards Act [FLSA]. Although Congress in its 1967 statute protecting older workers borrowed many substantive provisions from title VII of the 1964 Civil Rights Act, it expressly declined to adopt the enforcement procedures used in title VII. In 1978, the Supreme Court recognized the importance of Congress' decision in the case of Lorillard versus Pons, when it held that the enforcement procedures of the ADEA follow the FLSA and not title VII. As the Supreme Court recognized, "th[is] selectivity that Congress exhibited in incorporating provisions and in modifying certain practices strongly suggests that but for these changes Congress expressly made, it intended to incorporate fully the remedies and procedures of the FLSA." This, of course, includes section 16(c) of the FLSA, which requires Federal supervision of the waiver of any rights.

There is ample policy justification for the differential approach to waivers adopted by Congress. Under title VII, which prohibits employment-related discrimination on the basis of race, sex, religion, and national origin, the prospect of a waiver almost never arises until after there is an actual controversy between an employer and a protected group member. Typically,

one or more individuals who have experienced an adverse employment action file a charge or advise the employer that they believe they are the victims of discrimination. At that point, a lump sum settlement in exchange for waiver of rights is likely to involve informed participation by both sides. By contrast, ADEA claims often arise from a group termination, layoff, or early retirement where the employer offers unilaterally to make a lump sum payment. The affected employees have not filed a charge and are not involved in any dispute with their employer. Indeed, at the time the offer is made, the employees—who are unaware of who else is being terminated and who is going to replace the terminatees—may be totally unaware of any potential ADEA claim. Because these employees have no reason to be on guard to protect their rights, an unsupervised waiver threatens to undermine their basic statutory protections.

At a hearing earlier this year on the waiver issue before the Senate Subcommittee on Labor, former and current Solicitors of Labor attested to the continuing validity of the ADEA/FLSA approach. Carin Ann Clauss was directly involved in the administration and enforcement of the ADEA as an Associate Solicitor at the Department of Labor from 1968-76, and as Solicitor of Labor from 1977-81. Ms. Clauss testified that throughout her tenure at the Department of Labor, the Department did not permit individuals to waive their rights under the ADEA—or for that matter the FLSA—unless the waiver was supervised by the Department pursuant to section 16(c) or by a Federal court pursuant to section 16(b). And George Salem, the Solicitor of Labor since 1987, made clear in a letter to the subcommittee that the Department of Labor does not recognize as valid any waiver of FLSA rights that is not supervised either by the Department itself or—in the case of a private action filed under section 16(b)—by a Federal court. I ask unanimous consent that the exchange of letters between myself and Mr. Salem be placed in the RECORD at this point.

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

U.S. SENATE,  
COMMITTEE ON LABOR AND  
HUMAN RESOURCES,  
Washington, DC, May 10, 1988.

FRED W. ALVAREZ,  
Assistant Secretary, Employment Standards  
Administration.

GEORGE R. SALEM,  
Solicitor of Labor, Department of Labor,  
Washington, DC.

DEAR MR. ALVAREZ AND MR. SALEM: Congress recently has expressed interest in the issue of private waivers of rights under the Age Discrimination in Employment Act (ADEA). As you know, the ADEA in its enforcement provisions incorporates the remedies and procedures set forth in section 16 of the Fair Labor Standards Act (FLSA). In

that regard, the Senate Subcommittee on Labor is interested in learning as much as possible about the manner in which the Department of Labor has addressed the issue of waivers under the FLSA since the effective date of the Act.

In particular, I would appreciate your providing answers, and supporting explanations, to the following questions, all with regard to the FLSA:

1. Under what circumstances does the Secretary supervise waivers pursuant to section 16(c) of the FLSA? Does the Secretary ever take steps to supervise waivers in the absence of a pending dispute or claim?

2. What steps and procedures does the Secretary follow in supervising waivers under section 16(c)? (Please include relevant forms or other documents.)

3. In *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350 (11th Cir. 1982), a federal court of appeals held that FLSA claims may be compromised in only two ways: through Department of Labor supervision under section 16(c), or through a stipulated judgment approved by a district court in private actions brought pursuant to section 16(b). Does the Department of Labor accept *Lynn's Foods* as an accurate and complete statement of the law with respect to the negotiation or compromise of claims under the FLSA?

4. Assume that an employee who signed a general release or waiver (not supervised by the Secretary) in connection with receiving back wages or other damages then files an FLSA complaint. If the employer asserts that the general waiver bars this claim, what position would the Department take with respect to the validity of the waiver?

5. Under what circumstances would the Secretary find that waivers are invalid? What steps would the Secretary take in such situations?

In addition, I would appreciate your providing any other information that you believe would be helpful.

Due to our time constraints in this matter, I am requesting a response by May 19, 1988.

Thank you so much for your consideration and cooperation.

Very sincerely yours,  
HOWARD M. METZENBAUM,  
Chairman, Subcommittee on Labor.

U.S. DEPARTMENT OF LABOR, ASSISTANT  
SECRETARY FOR EMPLOYMENT  
STANDARDS,

Washington, DC, May 20, 1988.

HON. HOWARD M. METZENBAUM,  
Chairman, Subcommittee on Labor, Com-  
mittee on Labor and Human Resources,  
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of May 10, addressed to the undersigned, concerning employee waiver of rights under the Age Discrimination in Employment Act (ADEA) and the Fair Labor Standards Act (FLSA).

Your questions and our response to each are set forth below in the order presented in your letter:

1. Under what circumstances does the Secretary supervise waivers pursuant to section 16(c) of the FLSA? Does the Secretary ever take steps to supervise waivers in the absence of pending dispute or claim?

Section 16(b) of the FLSA provides that individuals may file private suits in Federal or State courts to recover any back wages due and an equal amount as liquidated damages, plus attorney's fees and court costs. However, the Act also provides that such individuals waive their rights to bring private

actions by accepting back wage payments under the supervision of the Department, and that these rights are terminated when the Department files a lawsuit under section 16(c) on behalf of the individuals or files a complaint seeking restraint of withholding of back wages due employees.

In compliance actions closed administratively, individuals who accept back wages under the Department's supervision are asked to sign a receipt form, WH-58 (copy enclosed), which includes a waiver of the private right of action. As a matter of policy, the Department does not approve any substitute receipt forms which employees may prefer to use.

Except for the circumstances described above, we are aware of no other situation in which the Department has supervised any such waiver under the FLSA.

2. What steps and procedures does the Secretary follow in supervising waivers under section 16(c)? (Please include relevant forms or other documents.)

We understand your question to relate to the Secretary's authority under section 16(c) to supervise the waiver of an employee's rights under section 16(b).

In most cases closed administratively, the employer prepares the WH-58 discussed above and presents it directly to the employee with a check for the net amount of the back wage payment. Both the employer and the employee retain copies of the signed form and a third copy is forwarded to the Wage and Hour Division (the Division) for inclusion in the investigation file.

Where there is doubt about whether the employer will make a bona fide offer of the back wages to the employees or whether a full and prompt payment will be made, the employer is asked to submit the employees' checks to the Division. The Division's Area Office then prepares the receipts and distributes the back wages to the employees.

3. In *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350 (11th Cir. 1982), a federal court of appeals held that FLSA claims may be compromised in only two ways: through Department of Labor supervision under section 16(c), or through a stipulated judgment approved by district court in private actions brought pursuant to section 16(b). Does the Department of Labor accept *Lynn's Food* as an accurate and complete statement of the law with respect to the negotiation or compromise of claims under the FLSA?

The court in *Lynn's Food Stores, Inc.* adopted the Department's view of the law with respect to waivers under the FLSA, as set forth in its brief filed with the Court (copy enclosed).

4. Assume that an employee who signed a general release or waiver (not supervised by the Secretary) in connection with receiving back wages or other damages then files an FLSA complaint. If the employer asserts that the general waiver bars this claim, what position would the Department take with respect to the validity of the waiver?

As indicated above in response to question 1., the Department does not recognize waivers other than the WH-58 or, in the case of a private action under FLSA section 16(b), waivers which may be prepared under the supervision of a court.

5. Under what circumstances would the Secretary find that waivers are invalid? What steps would the Secretary take in such situations?

As discussed above, the Department does not recognize such waivers. Where employees assert that their employees have waived

their rights, the Department's policy is to advise them of this position and continue with formal investigation procedures, including the request for any back wage payments due.

We hope that the foregoing information satisfactorily responds to your inquiry. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

FRED W. ALVAREZ,  
GEORGE R. SALEM,

*Solicitor of Labor.*

Mr. METZENBAUM. Mr. President, but Congress must revisit this issue because of recent regulatory action taken by the EEOC. The Commission has been responsible for administering and enforcing the ADEA since 1978, when Congress transferred authority from the Department of Labor. In July 1987, the EEOC issued a rule permitting employees to waive their rights under the ADEA in the absence of agency supervision. The EEOC cited procedures used under title VII, and announced that unsupervised waivers would be valid provided that they were knowing and voluntary, and met certain general guidelines. During the EEOC rulemaking process, which lasted from 1985 to 1987, several lower courts held that unsupervised waivers of ADEA rights were valid under limited circumstances. These lower courts referred to the EEOC rule as a source of guidance.

Following issuance of EEOC's final rule, Congress immediately expressed grave concern that the rule was without legal foundation and contrary to public policy. In October 1987, the Senate unanimously adopted an amendment to the fiscal year 1988 EEOC appropriations bill, suspending the rule for a year. The amendment was offered by Senator MELCHER and myself, and supported on the Senate floor by Senators HOLLINGS and RUDMAN. The House agreed to accept the amendment, and implementation of the rule was precluded.

Following House and Senate hearings on the waiver issue early in 1988, the Senate Appropriations Committee acted in June of this year to extend the suspension of the rule for another year as part of the EEOC's fiscal year 1989 appropriations bill. This time, the action was initiated by Senators HOLLINGS and RUDMAN, the chairman and ranking minority member of the Appropriations Subcommittee responsible for the EEOC. The continued suspension then received strong bipartisan support, with letters signed by Senators QUAYLE, GRASSLEY, WICKER, MELCHER, METZENBAUM, DECONCINI, SASSER, LEAHY, MIKULSKI, REID, CHILES, and LAUTENBERG. I ask unanimous consent that the letters I am referring to be placed in the RECORD at this point. The Senate passed the continued suspension without dissent, and the House has agreed to it in conference.

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

U.S. SENATE,

COMMITTEE ON APPROPRIATIONS,  
Washington, DC, June 7, 1988.

HON. ERNEST F. HOLLINGS  
*Chairman, Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, Committee on Appropriations, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: We are writing to ask you to support an amendment to the FY 1989 Commerce, Justice, State, the Judiciary and Related Agencies appropriations bill for the Equal Employment Opportunity Commission (EEOC). This amendment would continue for another year Congress' suspension of the EEOC's rule permitting older workers to waive their rights under the Age Discrimination in Employment Act (ADEA) without appropriate supervision.

The FY 88 suspension followed the EEOC's promulgation of a final rule on August 27, 1987, permitting unsupervised waivers and releases of claims by older workers where such waivers are "knowing and voluntary." This rule was opposed by senior citizens' organizations and numerous Members of Congress, who argued that the provisions of the Fair Labor Standard Act expressly incorporated into the ADEA by Congress invalidate such waivers except when supervised by the federal agency charged with enforcing the law—in this case, the EEOC—or a court.

We have followed with great interest the recent hearings in both the Senate and the House on this issue. These hearings have highlighted both the substantial opposition to the rule and the doubtful validity of the EEOC interpretation of Congress's intent when it incorporated the FLSA enforcement procedures into the ADEA. We also believe serious questions have been raised about the degree to which the EEOC rule adversely affects the important rights of older workers to be free from age-based employment discrimination. Indeed, the rule will primarily benefit employers by making it easier for them to offer voluntary and involuntary enhanced severance programs in an illegal and discriminatory manner by shielding them from liability under the ADEA. We strongly believe that the EEOC should instead be encouraging employers to offer such programs in a non-discriminatory fashion.

We are concerned that, notwithstanding congressional dissatisfaction with the waiver rule expressed in the FY 1988 suspension, the EEOC has made no effort to modify, clarify or withdraw the rule, or to otherwise work towards a solution to this problem. Therefore, in light of the fact that the FY 1988 suspension was not enacted by Congress until December 21, 1988, continuation of this suspension through FY 1989 is vital to provide the Congress with sufficient opportunity to work out a solution with the EEOC or to devise appropriate legislation.

Sincerely,

Jim Sasser, Patrick Leahy, Chuck Grassley, Barbara A. Mikulski, Dennis DeConcini, Lowell P. Weicker, Jr., Harry Reid, Lawton Chiles, Frank R. Lautenberg.

U.S. SENATE,

COMMITTEE ON LABOR AND HUMAN RESOURCES,

Washington, DC, June 13, 1988.

HON. JOHN STENNIS, Chairman, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We are writing to express support for an amendment to the FY 1989 appropriation for the Equal Employment Opportunity Commission (EEOC) that was adopted last week at a markup by the Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies. The amendment will continue for another year Congress' suspension of the EEOC rule permitting older workers to waive their rights under the Age Discrimination in Employment Act (ADEA) without appropriate supervision.

The amendment that suspended the rule was originally enacted as part of the EEOC's FY 1988 appropriation. Serious questions have been raised regarding both the legal and policy implications of the rule. In particular, there is tension between recent lower court decisions permitting unsupervised waivers under the ADEA and established Supreme Court precedent incorporating into the ADEA the enforcement procedures of the Fair Labor Standards Act. The FLSA precludes unsupervised waivers, and the Department of Labor consistently has refused to recognize as valid waivers that are not supervised by the Secretary or a court. In addition, senior citizens' groups and others have expressed concern that the EEOC rule would permit unsupervised waivers for employees who have not failed a charge, who are not involved in any dispute with their employer, and who have no reason to be on guard to protect their rights.

As you know, the FY 1988 suspension was not enacted until December 21, 1987. Last month, the Labor Subcommittee conducted a hearing on the issue of waivers under the ADEA. We currently are exploring options for a bipartisan legislative approach that would specify the conditions under which unsupervised waivers would, and would not, be permitted. We believe it is vital to continue the suspension of the rule while we attempt to develop a permanent legislative solution.

Sincerely,

HOWARD M. METZENBAUM,  
DAN QUAYLE,  
JOHN MELCHER.

Mr. METZENBAUM. Mr. President, although Congress has acted to prohibit the EEOC rule from taking effect until at least October 1, 1989, there is general agreement that a long-term legislative solution is necessary. Accordingly, we have drawn up a legislative approach that consists of three basic elements or principles:

First, the bill provides that unsupervised waivers are valid under the ADEA only when obtained in certain precisely defined circumstances. Where an individual raises a bona fide claim—either by filing an ADEA charge with the EEOC or by submitting a written allegation of age discrimination to the employer—then and only then may settlement of that claim include a valid waiver of ADEA rights notwithstanding the absence of supervision by a court or Federal agency. This change in current ADEA law is intended to recognize the analo-

gous circumstance of an individual dispute under title VII. Once the two sides are truly in an adversarial posture, we assume that the individuals alleging discriminatory conduct are capable of making informed judgments about their rights.

At the same time, given Congress' continuing concern to protect older workers, we have specified certain minimum conditions that must be met in order for an unsupervised waiver of ADEA rights to be valid. These conditions include that: First, any waiver of rights must be in writing and must specifically refer to rights or claims arising under the ADEA; second, the waiver agreement may not waive rights or claims that might arise after the date the agreement is entered into; third, the rights or claims waived must be in exchange for consideration other than benefits to which the individual already was entitled; fourth, the individual must be given a reasonable period of time in which to consider the agreement; and fifth, the individual must be advised in writing to consult with an attorney prior to entering into a waiver agreement. Finally, of course, we have specified that the waiver must be knowing and voluntary.

Second. The bill also provides that as a general rule, unsupervised waivers are not valid when an employer has offered an early retirement incentive or other employment termination program that features an offer of enhanced benefits to a group or class of employees. This is precisely the kind of circumstance that sharply distinguishes ADEA claims from those arising under title VII. Employees who are offered such enhanced benefits typically have not filed a charge, are not involved in any dispute with their employer, and have no reason to be on guard to protect their rights. These employees deserve the full protection of the ADEA, and we are reaffirming here the judgment made by an earlier Congress that a waiver of their rights is inappropriate without the supervision of the Federal agency charged with protecting those rights, namely, the EEOC. We have provided a limited exception to this rule where the offeree is represented by counsel and is receiving consideration that is additional to the enhanced benefit.

What we intend to do here is separate the issue of waivers from the issue of whether a particular enhanced benefit program violates the ADEA. At the Labor Subcommittee hearing last May, we were advised that many companies regularly offer their employees exit incentive programs that are not conditioned upon execution of a waiver. Indeed one top corporate official stated to subcommittee staff that waivers could undermine the atmosphere of good will that is essential to such a voluntary program,

explaining that a waiver request could discourage participation by arousing needless suspicions among employees. But apart from arguments of sound business practice, we believe it is inappropriate as a matter of law to use waivers of rights to avoid the underlying issue of whether a given early retirement or other exit incentive program discriminates on the basis of age. Because this underlying issue is important, and employers are entitled to guidance, we have ordered the EEOC to address the problem.

Third. The bill directs the EEOC to issue a rule or interpretative regulation by January 1, 1990, discussing the validity of early retirement incentive and other enhanced benefit programs under the ADEA. The Commission issued an advance notice of proposed rulemaking on just this issue in July 1988. Our 16-month schedule grants sufficient time to ensure thoughtful, deliberate action by the Commission. Because waiver policy is the wrong way to approach this problem, the bill also declares that the Commission's waiver rule issued in 1987 is without force and effect.

Mr. President, the Waiver Protection Act is a sensible approach to a difficult technical issue. It maintains existing protection for waiver of ADEA rights. It creates a limited exception in recognition of circumstances where ADEA claimants are truly analogous to claimants under other employment discrimination laws. And it orders the Commission to act promptly on the issue of enhanced benefit programs.

I urge my colleagues to support this bill.

Mr. HEINZ. Mr. President, as the dramatic demographic changes of the coming decades begin to have their impact on the American work force, it is important that we maintain our commitment to one of this Nation's most-valued resources—the older worker. We've recently made great strides in this area by both eliminating mandatory retirement and ensuring older workers the right to accrue pension benefits after age 65. These new laws provide important reaffirmations of the policy objectives launched with enactment of the Age Discrimination in Employment Act [ADEA] some 20 years ago.

I have become concerned, however, that America's commitment to older workers has been undermined by the increasing instances in which older workers are asked to waive the protections provided to them by the ADEA. When Congress enacted the ADEA some 20 years ago, we patterned its enforcement provisions directly on those contained in the Fair Labor Standards Act [FLSA]. Under those FLSA provisions, employees may not waive their rights without the supervision of the Department of Labor. Regulations finalized by the Equal Employment Op-

portunity Commission in July 1987 would have allowed unsupervised waivers that were "knowing and voluntary." The concerns I have about these regulations are exemplified in the case of one of my constituents, Mr. Ronald Hallas, who testified before the Aging Committee last year. When Mr. Hallas' employer was cutting back its work force with an early retirement program, he was faced with a "Hobson's choice": he could either sign a waiver and receive retirement benefits, or face permanent layoff without pension or health benefits. Strictly speaking, this waiver was "knowing and voluntary"—it was written in plain English, and Mr. Hallas was given time to make his decision—however it was not without an element of coercion.

A Federal district court used reasoning very similar to that of EEOC's to find that the waiver was "knowing and voluntary," and therefore a valid bar to enforcement of Mr. Hallas' rights under ADEA. Only after several additional years of litigation did a U.S. Court of Appeals overturn that decision. When Congress acted in October 1987—and again last month in the fiscal year 1989 Commerce/Justice appropriations bill—to suspend implementation of EEOC's regulations, we clearly chose to address this issue by developing clarifying legislation.

Unfortunately, while this moratorium is in effect, employers and their older employees have been left in limbo. Their uncertainties arise not only from not knowing how to interpret what force and effect waivers should be given, but also from a more important underlying confusion as to what types of early retirement programs are in compliance with the ADEA. The current situation forces both older workers and their employers to look to the courts for guidance on both these issues—a time-consuming and expensive proposition.

Therefore I am pleased to join with Senator METZENBAUM, and some of our other colleagues in introducing legislation designed to clear up confusion in both these areas. The "Age Discrimination in Employment Waiver Protection Act of 1988" will clarify the validity of ADEA waivers in a number of situations. In instances where older workers have a bona-fide claim pending with their employer, the individual may waive his or her ADEA rights as long as certain statutory safeguards are followed. For cases arising out of early retirement incentive programs, any waivers signed by individuals who are not represented by any attorney would have to be supervised by the EEOC or the courts.

Additionally, EEOC will be required to give the proper regulatory guidance to employers so that they can design early retirement incentive programs that are not discriminatory against

older workers. In my judgment, this new legislation will adequately protect the rights of older workers while at the same time provide their employers with both the guidance they need to design equitable early retirement incentive programs as well as the flexibility to negotiate with employees without undue Government interference.

I urge my colleagues to support us in this effort by giving this legislation full consideration as expeditiously as possible.

Mr. MELCHER. Mr. President, the legislation we are introducing today would prohibit any unsupervised waivers of the rights provided to older workers under the age Discrimination in Employment Act [ADEA] except in limited situations where certain safeguards are met. In addition, the bill would require the Equal Employment Opportunity Commission [EEOC] to clarify standards relating to early retirement incentive programs and other employment termination programs.

Under the ADEA, age, alone, is not an acceptable basis for terminating an older worker. Nevertheless, during this period of rapid economic change, where corporate restructurings are commonplace, the ones who have given the most—the older worker—are too often at the greatest risk of getting the least. Against this background, unsupervised waivers of older workers' rights under the ADEA, except under a very narrow set of carefully considered circumstances, represent a potential and dangerous blow to the very protections older workers most need at this time.

Although I and many others believe that the ADEA clearly invalidates any waiver of an older worker's rights unless supervised by the EEOC or a court, a number of recent court decisions have clouded this issue. In the absence of constructive efforts by the EEOC to clarify this situation, we have brought forward this measure to reaffirm congressional intent with respect to unsupervised waivers and to recognize a limited exception for waivers in the context of the settlement of an age-discrimination claim.

#### BACKGROUND

In my view, a careful reading of the ADEA reveals that the Congress intended that certain enforcement provisions of the Fair Labor Standards Act be applied with respect to unsupervised waivers. Specifically, those provisions, incorporated into the ADEA, require that any waiver of a worker's rights be supervised by the enforcing agency—in this case, the EEOC—to be considered valid. The obvious purpose of this requirement is to protect the rights of older workers.

#### EEOC UNSUPERVISED WAIVER RULE

In July 1987, drawing on certain court cases addressing the unsupervised waiver provisions of the ADEA,

the EEOC issued in final form a rule allowing for unsupervised waivers. Unfortunately, that rule was seriously flawed and would have undermined the very rights the EEOC is charged with protecting.

At a hearing of the Special Committee on Aging I held soon after the new rule was published, the American Association of Retired Persons, the National Senior Citizens Law Center, and others spoke out against the EEOC rule. A most vivid and personal testimony on this issue came from a former steel worker. At the age of 18, he had begun as a laborer in his former company and gradually worked his way up to a management position. In 1982, he and many of the company's older workers were laid off—even while younger workers were being trained to replace them. Before leaving, he was handed a piece of paper that waived his protections against age-discrimination under the ADEA. His choice: signing and leaving with most of his pension or taking a 2-year layoff and losing all health care benefits. Of course, this was really no choice at all, and he signed. He had worked 35 years for that company.

We don't know how many other older Americans could tell a similar story. It's clear, however, that mergers, takeovers, and other corporate restructurings are undermining job security. At the same time, early retirement incentive programs are becoming a common strategy for down-sizing a work force. During this period of rapid economic change, we must be especially watchful that the rights of older workers under the ADEA are not passed over.

Under the EEOC rule, only those waivers that were signed by older workers on a "knowing and voluntary" basis would be valid. At first glance, this standard could appear to represent a sufficient safeguard against the sort of Hobson's choice that this former steel worker faced. However, since older workers are typically in a profoundly unequal bargaining position with respect to their employer and many are not fully aware of their rights under the ADEA, these standards are meaningless. Worse, under that rule, the burden of proof—namely, showing that the waiver was not signed willingly and voluntarily—would have fallen to the older worker.

#### SUSPENSION OF THE EEOC RULE

To prevent the EEOC rule from going into effect, on October 15, 1987, I offered an amendment, with the sponsorship of Senator METZENBAUM, to an appropriations bill to nullify the rule during the 1988 fiscal year. I was very pleased that the Senate unanimously adopted this amendment, which was incorporated into the fiscal year 1988 continuing resolution and enacted in Public Law 100-202 on December 22, 1987. I am also grateful to

Senator HOLLINGS, the chairman of the Commerce, Justice, State Subcommittee, and the ranking minority member of that committee, Senator RUDMAN, for their cooperation in Senate passage of this amendment.

Continuing the effort to address concerns over the EEOC rule, Senator METZENBAUM held a hearing on this issue on May 24, 1988. I was pleased to have had the opportunity to express my opposition before the Labor Subcommittee and to hear the views of others on this matter. Unfortunately, it was clear from the testimony of Mr. Richard Komer, EEOC's legal counsel, that the EEOC continued to defend the rule.

Under current law, the suspension on the EEOC unsupervised waiver rule expires on September 30. To provide sufficient time to develop a bipartisan policy in this area, early last summer we sought an extension of the suspension on the EEOC rule beyond fiscal year 1988. Thanks to the help of Senator DECONCINI, who mobilized bipartisan support of a number of other members of the Appropriations Committee, and the continued cooperation of Senator HOLLINGS and Senator RUDMAN in this effort, legislation to extend the suspension was included in H.R. 4782, the fiscal year 1989 Commerce, Justice, State appropriation bill, which the Senate passed on July 27, 1988. I am pleased that the House conferees on this measure accepted the extension, and I am hopeful that this legislation will soon be signed into law.

#### THE BILL

This legislation represents a bipartisan solution to the concerns arising from unsupervised waivers of older worker's rights under ADEA. With a limited exception, this bill would reaffirm long-standing congressional intent that unsupervised waivers are invalid.

First, to ensure that older worker's are not coerced into signing away their rights, with the exception described below, this bill would prohibit waivers of ADEA rights unless supervised by the EEOC or a court. This provision would prevent efforts to secure a waiver from an older worker in exchange for benefits wrongly withheld or as part of an discriminatory early-retirement package.

Second, in recognition that supervision by the EEOC or a court is not always needed, this legislation would establish an exception to the above prohibition against unsupervised waivers provided specified standards were met. The exception would apply to circumstances involving the settlement of a bona fide age-discrimination claim where the claimant would likely have assistance from the EEOC or be advised to seek an attorney.

Under this provision, the settlement of an age discrimination claim must be in writing, may not waive rights prospectively and cannot waive rights in exchange for benefits to which the claimant was already entitled. In addition, the older worker must be given a reasonable period of time to consider the terms of the settlement and be advised in writing to consult with an attorney.

Finally, this bill would require the EEOC to issue regulations governing early-retirement incentives or other similar termination programs. Employers are increasingly looking to such programs as a way to downscale their work force. Standards are needed to guide employers in the development of these programs and to ensure compliance with the ADEA.

#### CONCLUSION

Mr. President, this measure is needed to settle the uncertainty that has arisen regarding the legal basis of unsupervised waivers. Our bill would reaffirm the long-standing congressional prohibition against such waivers except in certain limited situations where supervision is not needed. This measure is supported by the American Association of Retired Persons and the National Senior Citizens Law Center. I urge my colleagues to support this legislation.

Mr. KENNEDY. Mr. President, the Age Discrimination in Employment Waiver Protection Act of 1988 is an essential piece of legislation for preserving the rights of America's older workers.

Often employers have reason to reduce their work forces through voluntary incentive plans. In most cases, an agreement can be reached that benefits both the employer and the older worker who can take advantage of an attractive early retirement package. In a few unfortunate cases, however, employers have forced unsuspecting employees to sign away their civil rights in exchange for early retirement benefits. The trusting employee may have no reason to think that he has been a victim of age discrimination, and yet, the implementation of the reduction in force may well have violated Federal discrimination law.

This spring, the Senate Labor and Human Resources Subcommittee on Labor heard the tragic story of Nelson Marans, who, after almost 30 years of outstanding service to W.R. Grace & Co., was fired for refusing to sign away his rights in exchange for an enhanced early retirement package. Donald J. Graham, at age 55, accepted Pet, Inc.'s offer of enhanced benefits when his job was eliminated; he signed away his rights after his attorney reminded him of the harsh reality that a lawsuit could take years and might cost more than the benefits he would receive. William Terrell did not consult an attorney when Xerox terminat-

ed him and other older workers during an involuntary reduction in force; he did not know his rights when he signed a paper waiving all his claims against the company. Mr. Terrell, at age 56, spent 8 months looking for a job at a lower wage in a different field. He later suffered a heart attack that may have resulted from stress relating to his employment situation.

It is in precisely these kinds of cases that the Equal Employment Opportunity Commission should step in to safeguard the rights of the employee. When the Age Discrimination in Employment Act was signed into law, Congress incorporated certain enforcement provisions of the Fair Labor Standards Act, including the requirement that a waiver of an employee's rights be supervised. Yet the EEOC has taken the opposite position—under a rule issued last summer, the EEOC gave notice that it will turn its back on the rights of older employees by recognizing as valid waivers that are not supervised by the Federal Government or a court. In so doing, it issued an open invitation to employers to use manipulative tactics to persuade employees to waive their rights without advise of attorney.

Congress has stepped in twice to void the EEOC's rule and to protect the rights of older employees. This has been a bipartisan effort, as is this legislation, which will clearly define the limited instances in which employee waivers will be permitted in ADEA cases.

I urge the Senate to adopt this legislation.

By Mr. D'AMATO (for himself and Mr. MOYNIHAN):

S. 2857. A bill to award a Congressional Gold Medal to the family of Arnold Raphel in honor of the late Arnold Raphel, the former United States Ambassador to Pakistan; to the Committee on Banking, Housing, and Urban Affairs.

#### CONGRESSIONAL GOLD MEDAL IN HONOR OF ARNOLD RAPHEL

● Mr. D'AMATO. Mr. President, I rise to offer legislation with my distinguished colleague, Senator MOYNIHAN, to posthumously award Ambassador Arnold L. Raphel the Congressional Gold Medal for his selfless and admirable service in our diplomatic corps. Ambassador Raphel was killed in the tragic and mysterious airplane explosion on August 17, 1988, which also claimed the life of Brig. Gen. Herbert Wassom, President Zia ul-Haq of Pakistan, and many others.

Ambassador Raphel enjoyed a distinguished career in his 22 years of diplomatic service. He received accolades for his work as a diplomatic troubleshooter. Ambassador Raphel was special assistant to Secretaries of State Cyrus R. Vance and Edmund S.

Muskie during the Carter administration. In 1979, he was a member of a special State Department delegation designed to obtain the release of 52 American hostages held at the U.S. Embassy in Tehran from 1979 to early 1981. He continued his illustrious career as cochairman of a 25-member interagency group designed to grapple with the problem of hijacked TWA airliner 847 in June of 1985.

One of his most important responsibilities, however, was his last. Arnold Raphel was appointed Ambassador to Pakistan in 1987. Before this appointment, Raphel was Deputy Assistant Secretary of State and Deputy Head of the Bureau of Near Eastern and South Asian Affairs. Ambassador Raphel worked diligently to cultivate friendly relationships with Pakistan, an important and strategic ally in the volatile Middle East. His understanding of Pakistan was developed through his experiences as a political officer in the United States Embassy in Pakistan from 1975-78. During his tenure as Ambassador, the United States, Pakistan, and the Soviet Union negotiated a withdrawal of Soviet troops from Afghanistan, and United States-Pakistan relations were at an all-time high.

Although Arnold Raphel and I had philosophical policy disagreements regarding Afghanistan, I take special pride that Ambassador Raphel was a native of New York. He was born in Troy, NY, on March 16, 1943, and is survived by his daughter Stephanie and his wife Nancy Ely Raphel. He began his life-long goal of foreign service at the age of 10 when another great upstate New Yorker, John Foster Dulles, answered a letter from Raphel. Dulles told Raphel that to get into the Foreign Service, he needed to study hard and go to a college that emphasized foreign studies. He did just that by first attending Hamilton College, then the Maxwell School at my alma mater, Syracuse University. After graduating in 1966, he immediately joined the Foreign Service.

I know that those who grew up with Ambassador Raphel, worked with him, or just knew of him would agree with me that Ambassador Raphel unselfishly dedicated his life to the service of his country; and he served his country with unparalleled distinction.

Mr. President, similar legislation has also been introduced in the House by Congressman McCOLLUM. I ask my colleagues to join with me on this legislation to properly honor Ambassador Raphel's Foreign Service career. I believe that by posthumously awarding the Congressional Gold Medal to Ambassador Raphel we will appropriately commemorate an accomplished life cut short only by a tragic and untimely death. ●

By Mr. FOWLER:

S. 2858. A bill entitled the Rural Development Amendments of 1988; to the Committee on Agriculture, Nutrition, and Forestry.

THE AGRICULTURAL DIVERSIFICATION AND RURAL DEVELOPMENT ACT

● Mr. FOWLER. Mr. President. I am pleased today to introduce the Agricultural Diversification and Rural Development Act of 1988.

Mr. President, there is a great opportunity to build on proven successes to strengthen rural America in a way which also benefits urban residents. New and innovative approaches are needed which draw from and build on the strengths of farmers and other rural residents. The solutions must go beyond merely sustaining rural America to improve the quality of life and create new opportunities to build the economic dynamism of rural communities.

Family farms can and must play a vital role in the future of rural America. Diversification of our agricultural production into new, profitable commodities, development of new markets, and expansion of regionally-based food and fiber processing capacity constitute the greatest promise for strengthening small- and medium-sized farms and the rural communities of which they are the backbone.

These policy proposals will cultivate both farm and nonfarm opportunities and improve our resource base and living environment. Above all, they will build on the strengths and values of the communities they are designed to assist. By applying these efficient, innovative strategies we will be able to regenerate rural America and create a thriving future for all rural and urban Americans.

Drawing on the leadership of the chairman of the Committee on Agriculture, Nutrition, and Forestry, the distinguished Senator from Vermont, Mr. LEAHY, I am proposing legislation that would compliment S. 1729, the Rural Economy Act, of which I am a cosponsor.

The Agricultural Diversification and Rural Development Act of 1988 is a series of complementary amendments to S. 1729 that would define agricultural diversification, specify it as an eligible activity for business development loans and grants and local development capacity building, direct \$50 million of State incentive grants to agricultural diversification, and create a new title establishing a fund for loans and grants to intermediary financial institutions. Beyond this first step, I hope to work in the development of a broader omnibus bill to promote agricultural diversification through the redirection of a range of Federal programs, including research, extension, and crop insurance.

Mr. President, rural areas across the country are undergoing a painful tran-

sition. In particular, the continuing devastation of our productive agricultural base and the loss of our efficient family farmers and ranchers undermines the economic health of our rural communities and regional economies. In response, State Departments of Agriculture, farm groups, community organizations, business associations, and others are joining a growing movement at the State and local level to implement innovative, grass-roots solutions to promote real economic development through agricultural diversification. As a part of this movement, Mr. President, we believe that agriculture can and must be a part of any solution to the problems facing rural America.

Pioneering producers and entrepreneurs are returning agriculture to profitability and revitalizing their communities through a series of new initiatives in agricultural diversification. Quite simply, this diversification includes development of new direct sales markets for agricultural products, expansion of food and fiber processing capabilities on a local level, and production of new commodities and livestock for which there is a demonstrated demand.

This approach builds upon the skills and initiatives of people at a local level and relies upon creation of home-grown enterprises. Such an approach is vital for meeting goals that we all share:

First, support of family farmers, small businesses, and rural entrepreneurs.

Second, creation of jobs that suit the needs and skills of people in rural communities.

Third, economic growth that promotes the wise use of natural resources and strengthens the sustainability of the agricultural base.

Fourth, development of a consumer and market-oriented agriculture.

Agricultural diversification is a comprehensive strategy to promote economic growth in rural areas by building upon the agricultural and natural resource base of local communities.

There are three main components:

First, Direct marketing—farmers' markets, roadside stands, pick-your-own farms. After World War II direct marketing fell by the wayside as the Nation developed a fully integrated food distribution and supermarket system.

Today, direct marketing is making a comeback: Consumers want more fresh fruit and vegetables. Equally important, direct marketing provides an opportunity for farmers to capture a large share of market margins. Direct marketing is more than just farmers markets, cooperative wholesaling and testing new international markets.

Texas, California, Nebraska, and Massachusetts have all given us examples of successful direct marketing. It

works, the farmers and consumers like it.

Second, Producer/rural entrepreneurs food and fiber processing facilities. There is tremendous potential for the creation of new businesses and expansion of existing businesses which process and market agricultural products. For example, in Illinois, State funding has resulted in the operation of a facility to produce a total mixed ration of livestock feed which uses Illinois grown alfalfa, corn, distillers grain, and gluten which is a byproduct from ethanol production also taking place in the State.

PRODUCTION OF ALTERNATIVE CROPS AND COMMODITIES

There exists consumer demand for a larger number of agricultural products which have not commonly been produced in great quantities. These commodities have the potential to create new employment opportunities in production as well as in marketing and processing. Examples include:

Kentucky Agriculture officials researching hay marketing programs. Kentucky horsebreeders rely on hay from other States.

In Nebraska, State assistance helped pave the way for the creation of a vegetable crop which produces tomatoes, cucumbers, broccoli, asparagus, and watermelons.

In Indiana, the legislature has approved legislation allowing State loans to farmers for diversification.

My legislation will promote agricultural diversification and rural development by:

Authorizing the core of capacity building grants for agricultural diversification.

Authorizing the use of State Incentive funds for agricultural diversification.

Amending the rural development loan fund for diversification.

Establishing an Agricultural Diversification Loan Fund which will be administered by States and State departments of agriculture. They will be authorized to make low cost loans to finance new marketing ventures, food and fiber producing plants and other activities which will assist family size farmers and rural entrepreneurs to diversify the local economy.

Guaranteed Loans for Alternative Crops. The Secretary of Agriculture will be authorized to set-aside \$100 million from underutilized farmer ownership guaranteed loans to produce alternative crops. ●

By Mr. DOMENICI (for himself and Mr. BREAUX):

S. 2859. A bill to clarify the rules concerning the unconventional fuels credit with respect to gas produced from a tight formation; referred to the Committee on Finance.

## TIGHT SANDS TAX CREDIT RESTORATION ACT

Mr. DOMENICI. Mr. President, I rise today to introduce a bill that would reinstate the Tight Sands Tax Credit. This is a credit that encourages natural gas producers to drill for hard-to-get natural gas found in geological formations that are known as tight sands.

We need to reinstate the credit because, very simply, what the bold print giveth, the fine print taketh away.

Every Member of this body knows that the Tax Code is a very complex law. While one code provision may establish a tax incentive, another code provision may inadvertently take that incentive away.

In the area of natural gas, it becomes more complicated because qualifying for the Tight Sands Credit requires a taxpayer not only meet provisions of the Tax Code, but also to comply with certain Natural Gas Policy Act requirements as well as to comply with FERC orders and court interpretations on those orders.

Until recently, qualifying for the Tight Sands Credit was, if you will pardon me, a tight-rope act. But it worked. It was a sound incentive.

For the Tight Sands Credit to be available, the Tax Code and the Natural Gas Policy Act had to be consistently interpreted. Unfortunately, recent events have effectively eliminated the credit. Congress did not change the law. Rather, an order by FERC and subsequent Supreme Court decision produced a conflict.

The bill I am introducing today would straighten out the unintended consequences.

Section 29 of the Internal Revenue Code allows a tax credit for unconventional fuels, such as "Tight Sands, Coal Seam Gas, Devonian Shale," provided the price of crude oil drops below a certain level and provided the gas price was regulated. That price level was reached in 1984, and a tax credit of 52 cents per million cubic feet of gas was provided.

The Federal Energy Regulatory Commission, in its dual-category regulation rule, provided that Tight Sands, or section 107, gas is automatically deregulated when it has dual classification with another NGPA classification. Prior to this ruling the producers were entitled to choose the category they wished to qualify a particular gas.

If a producer chose a regulated category, it was entitled to the Tight Sands Credit. If it chose deregulated, the Tax Code did not provide a credit.

In the case of Martin Exploration Management Co. versus FERC, the U.S. Court of Appeals for the 10th Circuit decided that FERC had misinterpreted the statute, that producers were clearly presented with this choice of categories, and FERC could not deny this choice. At this point in the

proceedings the Tight Sands Credit was still intact.

However, the Supreme Court disagreed and reversed this order last May on a basis other than Tight Sands Credit. The opinion dealt with the appropriate interpretation of the Natural Gas Policy Act.

The Court in essence said: "If the gas could be regulated or deregulated, treat it as deregulated." The opinion's policy was that we should maximize deregulation. The Court did not deal with the Tax Code. The credit was not an issue before the Supreme Court. It was not even a factor. But, as a result of this ruling, the credit has been unavailable since January 1, 1985.

Mr. President, the FERC's purported deregulation has been particularly harmful to the gas producers in New Mexico, and to those in other gas producing states that depend upon this credit.

As you will recall, the original purpose of the unconventional fuels credit was to serve as an incentive to drill and as a partial compensation to producers that drilled expensive Tight Sands wells, in the event of a price drop. The worst case scenario has happened: The price drop has occurred and the tax credit was abolished by the FERC order.

Mr. President, I played an active role in passing the Natural Gas Policy Act, and I am very familiar with the legislative history of section 107.

The intent of Congress in this case was clear. The unconventional fuels credit provides that any wells drilled up to January 1, 1990, would be eligible for the credit during low crude oil price periods and that it would be allowed until January 1, 2001, or until the prices rose to the former levels.

The oil and gas industry have been facing tremendous difficulties for the past 4 years.

We thought the oil industry had hit bottom in 1986, but it continued to decline in 1987. The number of wells drilled in the State of New Mexico dropped 24 percent from 1986 to 1987. During that same time, oil production declined 4.5 percent and natural gas prices fell 12 percent.

I have heard from many producers in my State who have explained to me the difficulties they are facing as a result of the low natural gas prices. The reinstatement of the Tight Sands Credit would help avoid premature abandonment of many New Mexico natural gas wells.

There are 4,850 wells throughout New Mexico that produce 200 million cubic feet per month. These operators have had tremendous difficulty because of a commitment made in the legislation for special pricing on 107 gas, and they have had to adjust to the substantially lower prices they have been realizing in recent years. I am told the most influential factor in

deciding to continue production at that field has been the Tight Sands Credit.

Several producers in my State say they will be unable to produce without this incentive, one they had relied upon. Certainly, they will not be able to drill the remaining wells.

This is not just a problem in New Mexico. This affects Tight Sands producers in Texas, West Virginia, Oklahoma, and Kansas, as well. I urge my colleagues to act quickly to correct this grave error.

The bill I am introducing is very simple, it merely reinstates the Tight Sands Credit, notwithstanding the FERC order and the Supreme Court case.

I have said on many occasions on the Senate floor that the United States needs to reevaluate its energy policy to take into account low price scenarios that can be expected for the next 5 to 10 years. Congress needs to enact additional incentives for exploration and development. Congress needs to intervene when the Supreme Court inadvertently abolishes an incentive.

Canada has already put into place a package of tax incentives to combat low price scenarios. Reinstating the Tight Sands Credit doesn't go far enough. It doesn't look to the future, but it does set the present record straight.

The industry desperately needs the credit. Well completions went from 1,243 in 1986 to 938 in 1987, the lowest number in 16 years. Oil production fell from 75.7 million to 72.3 million barrels per year, and the average field price of natural gas dropped from \$1.92 to \$1.69 per thousand cubic feet.

Depressed oil prices are harming much of the Southwest. New Mexico ranks fourth among the States in natural gas production and seventh in crude oil.

Mr. President, about \$1 out of every \$3 going into New Mexico's general fund comes from oil and gas related taxes, royalties, and permanent fund earnings. It is fair to say the petroleum industry is the State's No. 1 taxpayer.

Every county in my State benefits from assessments on the oil and gas industry. Four of the 33 counties in New Mexico account for 95 percent of all oil and gas produced in the State.

The State revenues derived directly or indirectly from oil and gas sources totaled \$750.7 million in 1987. That was only a 1-percent improvement over the 1986 figure of \$743.5 million, but provided an extra \$7.2 million for the general fund. These revenues include production taxes, State and Federal royalties, lease sales, rentals, and earnings from two State permanent funds financed primarily by assessments on oil and gas production.

In the 1986-87 school year, education's share of the oil and gas revenues in New Mexico amounted to about \$404 million. These revenues are crucial to the public schools, colleges and other educational institutions and agencies.

I have included these statistics to highlight the important contribution the oil and gas industry makes. In reinstating the Tight Sands Credit, we are acting in the national interest because it would contribute to America's energy independence. We are also acting in the various States' interest, because the oil and gas industry supports many vital State programs.

I hope my colleagues will support reinstating the Tight Sands Credit.

Mr. President, I introduce this bill because we may yet have a tax bill this year. The Senator from New Mexico is not certain that he would introduce this bill on the floor as an amendment to the Technical Corrections Act, but I do want those who are managing the only significant tax bill this year to know about this problem, in the event the so-called clean up bill comes up this week.

Initially I thought about offering this as an amendment, but if every Senator offers his amendments, we will not have a technical correction tax bill this year. Instead, I decided to introduce this bill.

I assume I will be joined by many Senators when they find out about this inadvertent repeal of the Tight Sands Tax Credit. Before we start talking about new incentives for the oil and gas industry in this country we ought to make sure that the ones we intended, as I said in my opening remarks, which were given in the bold print, were not taken away by the fine print. If they were we must put them back. I think the Tight Sands Tax Credit is one we ought to put back. I send the bill to the desk and ask that the bill be appropriately referred.

By Mr. PRYOR:

S. 2861. A bill to prohibit the Federal Asset Disposition Association from making certain payments; to the Committee on Banking, Housing, and Urban Affairs.

PROHIBITING CERTAIN PAYMENTS BY THE  
FEDERAL ASSET DISPOSITION ASSOCIATION

Mr. PRYOR. Mr. President, on September 24 I read an article in the Washington Post that made by blood boil. Because of recent congressional efforts to abolish the agency, the Federal Asset Disposition Association has apparently adopted a "golden parachute" plan for its employees that would give each person 4 months pay and other benefits as a severance payment. FADA's press release, dated June 22, 1988, does not put a dollar figure on the severance plan, but the Washington Post article estimated the

cost at \$8 million in Federal Home Loan Bank Board funds.

At a time when total savings and loan red ink has been estimated at over \$70 billion and the FHLBB does not have sufficient funds to its job, the people at FADA have sent a clear message to Congress and the American people about their dedication to saving the failing thrift industry. They have elected to place their own financial security above the financial security of millions of savings and loan depositors across this country.

The General Accounting Office recently reported to me that FADA was improperly established by the FHLBB, that it is an agency of the Federal Government, and that its employees are subject to Federal pay limitations and other restrictions. FADA has not accepted this conclusion and still regards itself as an independent federally chartered entity.

If FADA would admit that its employees are Federal employees, they would be entitled to severance pay based on their time of service. Instead, FADA has chosen to continue to show its arrogance and incompetence to Congress and the American people by adopting a severance plan that will be paid by the drastically underfunded FHLBB. Given the possibility of a taxpayer bailout of the FHLBB next year, the American taxpayer may ultimately pay for FADA's golden parachute plan.

Today I am introducing a bill that very simply orders the FHLBB to issue a regulation prohibiting FADA from making payments under its severance plan. If FADA will admit that its employees are Federal employees, they will receive normal Government severance pay at the time of their departure. But I cannot stand by and allow FADA to rob a fund that is intended to be for the protection of our Nation's savings and loan depositors, and not to be handing out golden parachutes at the time of retirement or severance of the employees.

Mr. President, I send a bill to the desk. It is only eight lines and I hope that the Senate will favorably consider it.

Mr. President, finally I ask unanimous consent that a Washington Post article by Kathleen Day, dated September 24, 1988 be printed in the RECORD.

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

FADA OFFERS WORKERS AN \$8 MILLION  
GOLDEN PARACHUTE  
(By Kathleen Day)

A subsidiary of the Federal Home Loan Bank Board is the target of a hostile takeover by Congress, so it has adopted a technique private companies use when under attack: the golden parachute.

The 300-plus employees of the Federal Asset Disposition Association, or FADA, a subsidiary of the bank board, will get more

than \$8 million in severance pay if Congress makes good on threats to dissolve the agency. The money would have to be paid from the Federal Savings and Loan Insurance Corp., or FSLIC, the bank board fund that insures deposits at S&Ls up to \$100,000.

Unfortunately, the fund is itself insolvent because of massive savings and loan failures. It likely will have to turn to taxpayers for a multibillion dollar bailout.

The bank board gave FADA authority to pay top officials more than the federal pay cap, saying such salaries were needed to attract high-ranking experts.

But the General Accounting Office has just completed a study for Rep. James Florio (D-N.J.) and Sen. William Proxmire (D-Wis.) that said the way that FADA was established is a violation of federal law.

The bank board is the federal agency that regulates the savings and loan industry.

FADA officials defended the severance arrangement, which they said will give each employee four months pay if the organization is disbanded.

The officials said the offer was the only way it could retain good workers amid threats that Congress will take their jobs away.

In a letter to Bank Board Chairman M. Danny Wall, Florio asked for a full explanation of the severance arrangement.

"If in fact the directors of FADA have contrived to put together this 'golden parachute,' . . . I would be outraged at the audacity of this embattled agency in providing one final perk to its employees in the midst of concerns raised about multibillion losses by the savings and loan industry," Florio said in the letter.

#### ADDITIONAL COSPONSORS

S. 1851

At the request of Mr. METZENBAUM, the name of the Senator from Washington [Mr. EVANS] was added as a cosponsor of S. 1851, a bill to implement the International Convention on the Prevention and Punishment of Genocide.

S. 2584

At the request of Mr. LAUTENBERG, the name of the Senator from Hawaii [Mr. MATSUNAGA] was added as a cosponsor of S. 2584, a bill to eliminate drug-related crime in public housing projects.

S. 2698

At the request of Mr. DODD, the names of the Senator from Massachusetts [Mr. KERRY], the Senator from Mississippi [Mr. COCHRAN], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Vermont [Mr. LEAHY] were added as cosponsors of S. 2698, a bill to provide Federal assistance to the National Board of Professional Teaching Standards.

S. 2750

At the request of Mr. DOMENICI, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 2750, a bill to authorize a study on wetlands to commemorate the nationally significant contributions of Georgia O'Keefe.

## S. 2767

At the request of Mr. BINGAMAN, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 2767, a bill to authorize a study of the history and culture of Warm Springs, NM, in order to preserve its historic and cultural legacy for future generations.

## S. 2796

At the request of Mr. NUNN, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 2796, a bill to authorize funding for the Martin Luther King, Jr., Federal Holiday Commission.

## S. 2830

At the request of Mr. MELCHER, the names of the Senator from Minnesota [Mr. BOSCHWITZ], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 2830, a bill to establish a commission to review and make recommendations for the improvement of the Federal Crop Insurance Program.

## S. 2852

At the request of Mr. DOLE, the names of the Senator from Missouri [Mr. BOND], and the Senator from Utah [Mr. GARN] were added as cosponsors of S. 2852, a bill to provide for an omnibus Federal, State, and local effort against substance abuse, to provide for a Cabinet-level position to centralize and streamline Federal activities with respect to both drug supply (interdiction and law enforcement) and drug demand (prevention, education, and treatment), to expand Federal support to ensure a long-term commitment of resources and personnel for substance abuse education, treatment, and rehabilitation efforts, to strengthen and improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments, and for other purposes.

At the request of Mr. BYRD, the names of the Senator from Wyoming [Mr. WALLOP], and the Senator from Kentucky [Mr. FORD] were added as cosponsors of S. 2852, supra.

## SENATE JOINT RESOLUTION 301

At the request of Mr. WIRTH, the name of the Senator from New Hampshire [Mr. RUDMAN] was added as a cosponsor of Senate Joint Resolution 301, a joint resolution designating January 20, 1989, as "National Skiing Day."

## SENATE JOINT RESOLUTION 340

At the request of Mr. PACKWOOD, the names of the Senator from New York [Mr. MOYNIHAN], the Senator from Missouri [Mr. DANFORTH], the Senator from California [Mr. WILSON], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of Senate Joint Resolution 340, designating November 27 through December 3, 1988, as "National Sir Winston Churchill Recognition Week."

## SENATE JOINT RESOLUTION 345

At the request of Mr. NICKLES, his name was added as a cosponsor of Senate Joint Resolution 345, a joint resolution to designate October 8, 1988, as "National Day of Outreach to the Rural Disabled."

## SENATE JOINT RESOLUTION 354

At the request of Mr. HELMS, the names of the Senator from Illinois [Mr. DIXON], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Tennessee [Mr. GORE], the Senator from Indiana [Mr. LUGAR], the Senator from Florida [Mr. CHILES], the Senator from Mississippi [Mr. COCHRAN], the Senator from Alaska [Mr. STEVENS], the Senator from Kansas [Mr. DOLE], the Senator from Nebraska [Mr. KARNES], the Senator from Idaho [Mr. McCLURE], the Senator from Louisiana [Mr. BREAUX], the Senator from Idaho [Mr. SYMMS], the Senator from New Mexico [Mr. DOMENICI], the Senator from Nebraska [Mr. EXON], the Senator from North Carolina [Mr. SANFORD], and the Senator from Delaware [Mr. ROTH] were added as cosponsors of Senate Joint Resolution 354, a joint resolution to designate November 6 through 12, 1988, as "National Farm Broadcasters Week."

## SENATE JOINT RESOLUTION 360

At the request of Mr. BOND, the names of the Senator from Arkansas [Mr. BUMPERS], the Senator from North Dakota [Mr. BURDICK], the Senator from Louisiana [Mr. BREAUX], the Senator from Mississippi [Mr. COCHRAN], the Senator from North Dakota [Mr. CONRAD], the Senator from Arizona [Mr. DECONCINI], the Senator from Ohio [Mr. GLENN], the Senator from Alabama [Mr. HEFLIN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Massachusetts [Mr. KERRY], the Senator from Idaho [Mr. McCLURE], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Idaho [Mr. SYMMS], the Senator from Mississippi [Mr. STENNIS], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Joint Resolution 360, a joint resolution to designate February 12, 1989, as "World Marriage Day."

## SENATE JOINT RESOLUTION 363

At the request of Mr. SARBANES, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of Senate Joint Resolution 363, a joint resolution designating November 28 through December 2, 1988, as "Vocational-Technical Education Week."

## SENATE JOINT RESOLUTION 372

At the request of Mr. HATCH, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Joint Resolution 372, a joint resolution to designate the week beginning November 21, 1988, through

November 27, 1988, as "National Adoption Week."

## SENATE JOINT RESOLUTION 373

At the request of Mr. BYRD, the names of the Senator from Maine [Mr. MITCHELL], the Senator from Colorado [Mr. WIRTH], the Senator from California [Mr. CRANSTON], the Senator from Arkansas [Mr. BUMPERS], the Senator from Idaho [Mr. SYMMS], the Senator from New Mexico [Mr. BINGAMAN], and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of Senate Joint Resolution 373, a joint resolution to designate the week beginning November 13, 1988, as "National Craniofacial Deformity Awareness Week."

## SENATE JOINT RESOLUTION 381

At the request of Mr. BOND, the names of the Senator from New Mexico [Mr. DOMENICI], the Senator from Wisconsin [Mr. KASTEN], the Senator from New Jersey [Mr. BRADLEY], and the Senator from Idaho [Mr. SYMMS] were added as cosponsors of Senate Joint Resolution 381, a joint resolution to designate October 30, 1988 as "Fire Safety at Home Day—Change Your Clock, Change Your Battery."

## SENATE JOINT RESOLUTION 386

At the request of Mr. CONRAD, the names of the Senator from Mississippi [Mr. COCHRAN], and the Senator from California [Mr. WILSON] were added as cosponsors of Senate Joint Resolution 386, a joint resolution to designate the week of June 18 through June 24, 1989 as "National Grasslands Week."

## SENATE JOINT RESOLUTION 388

At the request of Mr. STEVENS, his name was added as a cosponsor of Senate Joint Resolution 388, a joint resolution designating October 15, 1988, as "National Fire Fighters Day."

#### SENATE CONCURRENT RESOLUTION 151—CONCERNING THE POLICY OF THE UNITED STATES REGARDING THE USE OF CHEMICAL WEAPONS

Mr. DIXON (for himself, Mr. DOLE, and Mr. FOWLER) submitted the following concurrent resolution; which was referred to Foreign Relations:

## S. CON. RES. 151

Whereas the use of chemical weapons in war was banned by the signatory countries of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, commonly known as the "Geneva Protocol of 1925";

Whereas because of the Geneva Protocol of 1925, and Common Article 3 of the Geneva Conventions of 1949, the use of chemical weapons in war has been recognized as a violation of international law and as having a destabilizing impact on international relations;

Whereas the use of chemical weapons can cause the indiscriminate killing of civilians and other non-combatants, is in the nature

of a terrorist act, and should thus be considered as a violation of human rights;

Whereas recent events have emphasized the necessity of reaffirming international legal prohibitions on the use of chemical weapons; and

Whereas to discourage future use of chemical weapons, the United States, and other countries, have an obligation to take appropriate steps to strengthen international law and enforce international legal prohibitions on the use of chemical weapons: Now, therefore, be it

*Resolved by the Senator (the House of Representatives concurring),*

**SECTION 1. POLICY CONCERNING THE USE OF CHEMICAL WEAPONS.**

The Congress declares that the use of chemical weapons by a country is a violation of international law and is therefore an offense against the law of nations.

**SEC. 2. DIPLOMATIC INITIATIVES AGAINST CHEMICAL WEAPONS USE.**

The Congress—

(1) supports the President in his efforts—

(A) to establish an international conference of the countries which are parties to the Geneva Protocol of 1925, and other interested countries, to develop methods to end the use of chemical weapons; and

(B) to engage the Soviet Union in a bilateral initiative to eliminate the possibility of any future use of chemical weapons; and

(2) encourages the President to continue to utilize both multilateral and unilateral methods to enforce a ban on the use of chemical weapons.

**SEC. 3. UNITED STATES RESPONSE IN THE UNITED NATIONS TO CHEMICAL WEAPONS USE.**

The Congress urges the President to direct the United States Ambassador to the United Nations to present a resolution to the Security Council of the United Nations which—

(1) condemns the use of chemical weapons;

(2) acknowledges the particularly damaging effect of chemical weapons on non-combatants; and

(3) affirms that use of chemical weapons is a violation of human rights.

**SEC. 4. CHEMICAL WEAPONS USE AS AN ACT OF TERRORISM.**

It is the sense of the Congress that the use of chemical weapons in violation of international law should be considered a terrorist act, and that for the purpose of United States law, the Secretary of State should consider such use by any country as a factor for determining classification of such country as a terrorist country pursuant to such laws and subject to the sanctions such laws allow or require.

**SEC. 5. DEFINITION.**

As used in this resolution, "chemical weapons" does not include within its meaning non-lethal control agents such as tear gas.

**HALTING THE USE OF CHEMICAL WEAPONS**

Mr. DIXON. Mr. President, I rise on behalf of myself and the distinguished minority leader to introduce a resolution concerning the policy of the United States regarding the use of chemical weapons.

In recent weeks, the world community has been shocked by the revelation of the use of illegal poison gas by the Government of Iraq against their Kurdish population. The horrifying photographs and first-hand stories

have reminded all of us of the terror of the chemical weapons.

The Senate responded to this atrocity by swiftly passing a strong, but measured, set of sanctions against Iraq. I applaud Senator PELL and all of my colleagues who led this effort. Any use of chemical weapons erodes the moral and legal strictures that have held these weapons in check since World War I. Therefore every use by any country, must be sharply condemned.

However, I believe that the United States must do more than simply react to each individual abuse, after it occurs. If we are serious about restraining countries from using chemical weapons, we must assert an active policy of deterrence.

In order to establish a tough, consistent U.S. policy for deterring the use of illegal poison gas, I am introducing this resolution. To begin, it points out that the use of chemical weapons has been recognized as a violation of international law, and a violation of human rights. Moreover, the indiscriminate killing of civilians and other noncombatants caused by these weapons is, without question, a terrorist act.

Therefore, my resolution urges the Secretary of State to consider the use of chemical weapons as a factor for determining classification of such country as a terrorist country, and subject to the sanctions required and allowed by law.

I believe that the use of chemical weapons is a terrorist act and should be treated with no less severity. The punitive steps that could be taken against an offending country would include: a ban on U.S. arms exports and sales, a prohibition on U.S. assistance, an embargo on the importation of goods and services to the United States, and U.S. opposition of all assistance in the International Monetary Fund.

In addition, the resolution also directs the President to pursue multilateral sanctions through the United Nations.

Mr. President, the time to act is now. The atrocities committed by Iraq have focused international attention on this problem. The worldwide outrage in the wake of this tragedy provides an opportunity to send a clear message to every country in the world that the use of chemical weapons will not be tolerated. Any country contemplating their use should be put on notice that there will be a very high price to be paid. In order to be effective, this message needs to be received before the weapons are used, not after. We should not sit back and simply wait for the next atrocity.

Mr. President, I am deeply concerned by the proliferation of chemical weapons. These weapons are a cheap and readily obtainable alterna-

tive for weak nations to redress the military imbalance against stronger foes. They are fast becoming the poor man's answer to nuclear weapons. In 1969, four countries were known to have chemical weapons, the United States, the Soviet Union, France and Iraq. Today, 15 additional countries are reported to have acquired them including: Libya, Syria, Iran, Cuba, North Korea, Vietnam, China, and Burma. This list continues to grow.

As these weapons of indiscriminate terror reach more and more hands, the chance of the world witnessing another horrifying episode, as we have seen in Iraq, becomes a near certainty.

Mr. President, if we are to prevent another tragedy, it is time to act. We should not miss this opportunity. The threat is too great to simply put off action. Yesterday, my colleague from Illinois, Mr. DAVIS, introduced an identical resolution in the house of representatives. I hope that all of my colleagues will work with me to see that this resolution is passed before we adjourn.

I yield the floor if my colleague from Georgia cares to proceed.

Mr. FOWLER. I would like to commend the Senator from Illinois on his leadership on this extraordinarily important issue, and I request his permission to join him in original cosponsorship.

Mr. DIXON. I would be very much honored to have original cosponsorship with the distinguished Senator from Georgia and ask unanimous consent that he be shown as a cosponsor of this resolution.

The PRESIDING OFFICER. Without objection, the resolution will also be received and appropriately referred.

Mr. DIXON. I yield the floor to my colleague from Connecticut.

Mr. DODD. Mr. President, let me also commend my distinguished friend and colleague and fellow classmate for this resolution. It is an excellent piece of legislation.

**SENATE CONCURRENT RESOLUTION 152—COMMENDING THE REPUBLIC OF KOREA IN HOSTING THE GAMES OF THE XXIV OLYMPIAD**

Mr. LUGAR (for himself, Mr. PELL, Mr. CRANSTON, and Mr. MURKOWSKI) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

**S. CON. RES. 152**

Whereas the Republic of Korea has successfully hosted the XXIV Olympiad from September 17 to October 2, 1988;

Whereas nearly 10,000 athletes from 160 countries have participated in thirty-seven competitive events in these Olympic Games;

Whereas national and international political divisions were kept to a minimum with the participation of all but seven countries

invited to participate in these Olympic Games;

Whereas the planning, organization, and implementation of the XXIV Olympiad took place under conditions of uncertainty, threats of terrorism, and fear of violent disruption; and

Whereas athletes from fifty-one countries, more than ever before, won medals, and athletes from thirty-one nations, more than ever before, won gold medals in these Olympic Games: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring), That the Congress hereby—*

(1) salutes the Republic of Korea for successfully hosting the XXIV Olympiad, for advancing the Olympic movement, for furthering the cause of athletic competition among individuals, and for promoting harmony among nations;

(2) congratulates the Republic of Korea and its people for their efficient and effective management of these Olympic Games;

(3) commends the Republic of Korea for this most recent national achievement, an achievement which complements its dynamic economy and continued progress in democracy to bring it worldwide attention and acclaim;

(4) states with pride, on the occasion of these Olympic Games, the admiration of the American people for the Republic of Korea and the people of Korea for their fulfillment of the Olympic mandate; and

(5) expresses the deep appreciation of the American people for the warmth, generosity, and hospitality extended by the people of Korea in welcoming United States athletes, coaches, United States Olympic Committee officials and other Americans to South Korea to participate in the XXIV Olympiad.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President with the request that he further transmit such copy to the Government of the Republic of Korea.

#### AMENDMENTS SUBMITTED

#### HEALTH PROFESSIONS REAUTHORIZATION ACT

#### SIMON AMENDMENT NO. 3401

(Ordered to lie on the table.)

Mr. SIMON submitted an amendment intended to be proposed by him to the bill (S. 2229) to amend the Public Health Service Act to reauthorize programs concerning health research and teaching facilities, and training of professional health personnel under title VII of such act, and for other purposes; as follows:

At the end of the bill, add the following:

SEC. . STUDY BY GENERAL ACCOUNTING OFFICE OF STATE PRACTICES IN ENDORSEMENT LICENSING OF FOREIGN PHYSICIANS.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study for the purpose of determining the practices and policies of the States in licensing by endorsement physicians who are graduates of schools of medicine located in countries other than the United States. In carrying out the study, the Comptroller General shall—

(1) With respect to such licensing of such physicians—

(A) make a comparison with the practices and policies of the States in licensing by endorsement physicians who are graduates of American schools of medicine; and

(B) determine the merits of any additional requirements imposed on physicians who are graduates of medical schools of other countries, including a determination of the relative proficiency of such physicians and a determination of the relevancy of any requirement of producing additional information or records;

(2) determine whether the graduates of schools of medicine located in other countries are being discriminated against with respect to licensing by endorsement in the United States; and

(3) if such discrimination is occurring, determine the geographic areas in which the discrimination is occurring and the circumstances under which the discrimination is occurring.

(b) CONSULTATION WITH APPROPRIATELY QUALIFIED INDIVIDUALS.—In carrying out the study required in subsection (a), the Comptroller General of the United States shall consult with individuals with appropriate expertise.

(c) TIME FOR COMPLETION.—Not later than 9 months after the date of the enactment of this Act, the Comptroller General of the United States shall complete the study required in subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made as a result of the study.

#### PROTECTION AND ADVOCACY FOR MENTALLY ILL INDIVIDUALS ACT AMENDMENTS

#### HARKIN AMENDMENT NO. 3402

Mr. BYRD (for Mr. HARKIN) proposed an amendment to the amendment of the House to the bill (S. 2393) to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize such act, and for other purposes; as follows:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988".

#### SECTION 2. REFERENCES.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision,

the reference shall be considered to be made to a section or other provision of the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.).

#### SECTION 3. SCOPE OF COVERAGE.

Section 102 (42 U.S.C. 10802) is amended—

(1) in paragraph (1), by inserting "or death" after "caused, injury";

(2) in paragraph (3)—

(A) by inserting "(i)" after the subparagraph designation in subparagraph (B);

(B) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof the following: ", even if the whereabouts of such inpatient or resident are unknown;" and

(C) by adding at the end thereof the following new clauses:

"(ii) who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility; or";

"(iii) who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense."; and

(3) in paragraph (4)—

(A) by inserting "or death" after "injury" each place such word occurs; and

(B) by inserting before the period at the end thereof the following: ", including the failure to maintain adequate numbers of appropriately trained staff".

#### SEC. 4. ESTABLISHMENT OF A GOVERNING AUTHORITY.

Section 105 (42 U.S.C. 10805) is amended—

(1) in subsection (a)(6), by striking out "a board" and inserting in lieu thereof "an advisory council"; and

(2) by adding at the end thereof the following new subsection:

"(c)(1)(A) Each system established in a State, through allotments received under section 103, to protect and advocate the rights of mentally ill individuals shall have a governing authority.

(B) In States in which the governing authority is organized as a private non-profit entity with a multi-member governing board, or a public system with a multi-member governing board, such governing board shall be selected according to the policies and procedures of the system. The governing board shall be composed of—

"(i) members (to be selected no later than October 1, 1990) who broadly represent or are knowledgeable about the needs of the clients served by the system; and

"(ii) in the case of a governing authority organized as a private non-profit entity, members who broadly represent or are knowledgeable about the needs of the clients served by the system including the chairperson of the advisory council of such system.

"(2) The governing authority established under paragraph (1) shall—

"(A) be responsible for the planning, design, implementation, and functioning of the system; and

"(B) consistent with subparagraph (A), jointly develop the annual priorities of the system with the advisory council."

#### SEC. 5. ADVISORY COUNCIL REPORT.

Section 105(a)(7) (42 U.S.C. 10805(a)(7)) is amended by striking out the period and inserting in lieu thereof the following: ", including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;"

#### SEC. 6. ACCESS TO RECORDS.

(a) SYSTEM REQUIREMENT.—Section 105(a)(4)(B) (42 U.S.C. 10805(a)(4)(B)) is amended by striking out "any individual" and inserting in lieu thereof "any individual (including an individual who has died or whose whereabouts are unknown)".

(b) DEFINITION OF RECORDS.—Section 106(b) (42 U.S.C. 10806(b)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) As used in this section, the term 'records' includes reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of

abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

"(B) An eligible system shall have access to the type of records described in subparagraph (A) in accordance with the provisions of subsection (a) and paragraphs (1) and (2) of subsection (b)."

#### SEC. 7. MISCELLANEOUS PROVISIONS.

(a) SUBCONTRACTING.—Section 104(a)(2) (42 U.S.C. 10804(a)(2)) is amended by striking out "which, on the date of enactment of this Act" and inserting in lieu thereof "including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which".

(b) TECHNICAL ASSISTANCE LIMITATIONS.—

(1) STATE ASSISTANCE.—Section 104(b)(2) (42 U.S.C. 10804(b)(2)) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent".

(2) ASSISTANCE BY THE SECRETARY.—Section 10 (42 U.S.C. 18025) is amended to read as follows:

#### "TECHNICAL ASSISTANCE

"SEC. 115. The Secretary shall use not more than 2 percent of the amounts appropriated under section 117 to provide technical assistance to eligible systems with respect to activities carried out under this title, consistent with requests by such systems for such assistance."

(c) ADDITIONAL SYSTEM REQUIREMENTS.—Section 105(a) (42 U.S.C. 10805(a)) (as amended by section 5), is further amended by adding at the end thereof the following new paragraphs:

"(8) on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system; and

"(9) establish a grievance procedure for clients or prospective clients of the system to assure that mentally ill individuals have full access to the services of the system."

(d) APPLICATIONS.—Section 111 (42 U.S.C. 10821) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end thereof the following new subsection:

"(b) Applications submitted under this section shall remain in effect for a 3-year period, and the assurances required under this section shall be for the same 3-year period."

(e) ALLOTMENT FORMULA.—Section 112(a) (42 U.S.C. 18022(a)) is amended—

(1) in paragraph (2) to read as follows:

"(2) Notwithstanding paragraph (1) and subject to the availability of appropriations under section 117—

"(A) if the total amount appropriated in a fiscal year is at least \$13,000,000—

"(i) the amount of the allotment of the eligible system of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall be the greater of—

"(I) \$140,000; or

"(II) \$125,000 in addition to the amount determined under paragraph (3); and

"(ii) the amount of the allotment of the eligible system of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall be the greater of—

"(I) \$75,000; or

"(II) \$67,000 in addition to the amount determined under paragraph (3); and

"(B) if the total amount appropriated in a fiscal year is less than \$13,000,000, the amount of the allotment of the eligible system—

"(i) of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall not be less than \$125,000 in addition to the amount determined under paragraph (3); and

"(ii) of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall not be less than \$67,000 in addition to the amount determined under paragraph (3)."; and

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

"(3) In any case in which the total amount appropriated under section 117 for a fiscal year exceeds the total amount appropriated under such section, as in effect on the day before the date of enactment of this paragraph, for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary shall increase each of the allotments under clauses (i)(II) and (ii)(II) of subparagraph (A) and clauses (i) and (ii) of subparagraph (B) of paragraph (2) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

"(A) the total amount appropriated under section 117 for the fiscal year for which the increase in minimum allotment is made, minus;

"(B) the total amount appropriated under section 117 for the immediately preceding fiscal year, bears to the total amount appropriated under section 117 for such preceding fiscal year."

(f) AUTHORIZATION OF APPROPRIATIONS.—Section 117 (42 U.S.C. 10827) is amended to read as follows:

#### "AUTHORIZATION OF APPROPRIATIONS

"SEC. 117. For allotments under this title, there are authorized to be appropriated \$14,300,000 for fiscal year 1989, and such sums as may be necessary for fiscal year 1990 and fiscal year 1991."

#### SEC. 8. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act, other than the amendment made by section 7(f), shall become effective on the date of the enactment of this Act.

(b) AUTHORIZATION OF APPROPRIATIONS.—The amendment made by section 7(f) shall become effective on October 1, 1988.

### LIBRARY SERVICES AND CONSTRUCTION ACT AUTHORIZATION ACT

#### PELL (AND OTHERS) AMENDMENT NO. 3403

Mr. BYRD (for Mr. PELL, for himself, Mr. STAFFORD, Mr. BRADLEY, and Mr. MATSUNAGA) proposed an amendment to the bill (H.R. 4416) to extend the authorization of appropriations for titles V and VI of the Library Services and Construction Act through fiscal year 1989; as follows:

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

### TITLE I—LIBRARY SERVICES AND CONSTRUCTION REAUTHORIZATION

#### SEC. 101. PROGRAM REAUTHORIZED.

Section 4(a) of the Library Services and Construction Act (20 U.S.C. 351b(a)) is amended by striking out "1988" each place it appears in paragraphs (4) and (5) and inserting "1989".

### TITLE II—NATIONAL GEOGRAPHY STUDIES

#### SEC. 201. SHORT TITLE.

This title may be cited as the "National Geography Studies Centers Act".

#### SEC. 202. PROGRAM AUTHORIZED.

Part F of title IV of the Elementary and Secondary Education Act of 1965 is amended—

(1) by redesignating section 4607 as section 4608;

(2) by striking out "section 4606" in section 4608(a) (as redesignated by paragraph (1)) and inserting in lieu thereof "sections 4606 and 4607"; and

(3) by adding after section 4606 the following new section:

#### "SEC. 4607. NATIONAL GEOGRAPHY STUDIES CENTERS.

"(a) PROGRAM AUTHORIZED.—(1) The Secretary is authorized to enter into a contract with the Education Foundation of the National Geographic Society in order to pay the Federal share of the cost of the establishment and operation of National Geography Studies Centers. Each Center shall be for the study of geography in elementary and secondary schools.

"(2) For the purpose of this section—

"(A) the term 'contractor' means the Education Foundation of the National Geographic Society; and

"(B) the term 'Centers' mean the National Geography Studies Centers assisted under this section.

"(b) REQUIREMENTS OF CONTRACT.—The contract described in subsection (a)(1) shall provide that—

"(1) funds made available to the contractor pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and operating the Centers in accordance with this section; and

"(2) the contractor will carry out the provisions of this section.

"(c) ESTABLISHMENT OF CENTERS.—In carrying out the provisions of this section, the contractor may enter into contracts with or make grants to local educational agencies, State educational agencies, State higher educational agencies, institutions of higher education, or consortia thereof, to establish and operate the Centers.

"(d) FUNCTIONS OF THE CENTERS.—(1) Each Center assisted under this section shall—

"(A) support programs for the study of geography for elementary and secondary school students, that may include laboratory schools and summer institutes;

"(B) support programs which provide elementary and secondary school teacher training and inservice training in geography and may make provision for teacher stipends for the period of participation in the program; and

"(C) establish procedures, through an advisory panel, for selecting elementary and secondary school students and teachers for the programs supported through the centers.

The selection procedures under subparagraph (C), to the extent practicable, shall take into account geographic distribution and the needs for greater access to, and participation in, geography studies by students and teachers from historically underrepresented groups including females, minorities, and individuals with handicaps.

"(2) Each Center may—

"(A) support the development and dissemination of innovative curriculum in geography;

"(B) develop geography curriculum to be used in other subject areas such as environmental studies, science, international culture and politics, history, and foreign language studies; and

"(C) provide technical and resource assistance in geography to elementary and secondary schools in the region served by the Center.

"(c) FEDERAL SHARE.—The Federal share for each fiscal year shall be 75 percent."

#### SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

Section 4608 of the Elementary and Secondary Education Act of 1965 (as redesignated by section 202) is amended by adding at the end thereof the following new subsection:

"(d) There are authorized to be appropriated \$5,000,000 for the fiscal year 1989, and each succeeding fiscal year ending prior to October 1, 1993, to carry out section 4607."

#### TITLE III—UNITED STATES INSTITUTE OF PEACE

##### SEC. 301. REAUTHORIZATION.

Section 1710(a) of the Department of Defense Authorization Act, 1985 (22 U.S.C. 4609(a)) is amended to read as follows:

"Sec. 1710. (a)(1) For the purpose of carrying out this title (except for paragraph (9) of section 1705(b)), there are authorized to be appropriated \$10,000,000 for fiscal year 1989; \$10,000,000 for fiscal year 1990; \$10,000,000 for fiscal year 1991; \$15,000,000 for fiscal year 1992; and \$15,000,000 for fiscal year 1993.

"(2) Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(b) Section 1707(f)(2) of the United States Institute of Peace Act (22 U.S.C. 4606(f)(2)) is amended by striking out the first sentence thereof.

#### OMNIBUS ANTI-SUBSTANCE ABUSE ACT

##### DECONCINI AMENDMENT NO. 3405

(Ordered to lie on the table.)

Mr. DECONCINI submitted an amendment intended to be proposed by him to the bill (S. 2852) to provide for an omnibus Federal, State, and local effort against substance abuse, to provide for a cabinet-level position to centralize and streamline Federal activities with respect to both drug supply-interdiction and law enforcement—and drug demand—prevention, education, and treatment—to expand Federal support to ensure a long-term commitment of resources and personnel for substance abuse education, treatment, and rehabilitation efforts, to strengthen improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug

shipments, and for other purposes; as follows:

##### SEC. 1056. SELECT COMMITTEE.

(a)(1) There is established in the Senate of the United States a select committee to be known as the "Senate Select Committee on Narcotics Abuse and Control" (hereinafter in this subtitle referred to as the "Senate select committee"). The Senate select committee shall be composed of 13 Members of the Senate.

(2) Members of the Senate select committee shall be appointed by the majority and minority leaders of the Senate. One member of the Senate select committee shall be designated by the majority leader to serve as chairman of the Senate select committee.

(3) At least one member of the Senate select committee shall be chosen from each of the following committees of the Senate: The Committee on Armed Services, the Committee on Government Affairs, the Committee on Foreign Relations, the Committee on Commerce, Science, and Transportation, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Finance, and the Committee on Labor and Human Resources.

(4) Any vacancy occurring in the membership of the Senate select committee shall be filled in the same manner as the original appointment.

(b) The chairman of the Senate select committee may establish such subcommittees of the select committee as he considers appropriate. Any such subcommittee shall be composed of not less than four members of the select committee.

##### SEC. 1057. LEGISLATIVE JURISDICTION.

The Senate select committee shall not have legislative jurisdiction. The select committee shall have authority—

(1) to conduct a continuing comprehensive study and review of the problems of narcotics abuse and control, including, but not limited to, international trafficking, enforcement, prevention, narcotics-related violations of the Internal Revenue Code of 1986, international treaties, organized crime, use of the military in drug interdiction, drug abuse in the Armed Forces of the United States, treatment and rehabilitation, civilian drug interdiction programs, and the approach of the criminal justice system with respect to narcotics law violations and crimes related to drug abuse; and

(2) to review any recommendations made by the President or by any department or agency of the executive branch of the Federal Government, relating to programs or policies affecting narcotics abuse or control.

##### SEC. 1058. AUTHORITY OF SELECT COMMITTEE.

(a) For purposes of this subtitle, the Senate select committee, or any subcommittee thereof authorized by the select committee, may sit and act at such times and places as it considers appropriate whether the Senate is sitting, has recessed, or has adjourned.

(b) For purposes of this subtitle, the Senate select committee, or any subcommittee thereof authorized by the select committee to hold hearings, may hold such hearings, and may require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, documents, and other exhibits and materials, as it considers necessary. Subpoenas may be issued under the signature of the chairman of the Senate select committee or any member of the select committee designated by him, and may be served by

any person designated by such chairman or member.

(c) A majority of the members of the Senate select committee shall constitute a quorum for the transaction of business, except that the select committee may designate a lesser number as a quorum for the purpose of taking testimony. The chairman of the Senate select committee, or any member of the select committee designated by him, may administer oaths or affirmations to any witness.

(d) The Senate select committee and any subcommittee thereof and its staff may conduct field investigations or inspections. Members and staff of the select committee may engage in such travel as may be necessary to conduct investigations relating to the purpose of this subtitle.

##### SEC. 1059. STAFF.

The Senate select committee may employ and fix the compensation of such clerks, experts, consultants, technicians, attorneys, investigators, and clerical and stenographic assistants as it considers necessary to carry out the purposes of this subtitle. The select committee may reimburse the members of its staff for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the select committee, other than expenses in connection with meetings of the select committee or any subcommittee thereof held in the District of Columbia.

##### SEC. 1060. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated \$400,000 in fiscal year 1989, \$500,000 in fiscal year 1990, and \$600,000 in fiscal year 1991 for salaries and expenses of the Senate select committee established by this subtitle.

##### SEC. 1061. REPORT.

(a) The Senate select committee shall report to the Senate with respect to the results of any investigation conducted by the select committee, or any subcommittee thereof, under section 1058(d).

(b) The Senate select committee shall submit an annual report to the Senate which shall include a summary of the activities of the select committee during the calendar year to which such report applies.

(c) Any report of the Senate select committee under this section which is submitted during a period in which the Senate is not in session shall be filed with the Secretary of the Senate.

#### ISSUANCE OF PATENTS AND LIMITED REVERTER PROVISIONS ON SOLID WASTE DISPOSAL SITES

##### FORD AMENDMENT NO. 3404

(Ordered to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to the bill (H.R. 4362) to amend section 3 of the act of June 14, 1926, as amended (43 U.S.C. 869-2), to authorize the issuance of patents with a limited reverter provision of lands devoted to solid waste disposal, and for other purposes; as follows:

By inserting at the end of the bill the following new section:

"Sec. . The Secretary shall not make any conveyance of land or renunciation of

reversionary interests under this Act until he has published in the Federal Register regulations implementing this Act and until sixty days (not counting days on which the House of Representatives or the Senate has adjourned for more than three days) after these regulations have been submitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives."

**OMNIBUS ANTI-SUBSTANCE ABUSE ACT**

**GORE AMENDMENT NO. 3406**

(Ordered to lie on the table.)

Mr. GORE submitted an amendment intended to be proposed by him to the bill S. 2852, supra; as follows:

At the end of the bill, add the following:

**TITLE VIII—COMMUNICATIONS**

SEC. 801. SHORT TITLE.—This title may be cited as the "Satellite Television Fair Marketing Act".

SEC. 802. FAIR MARKETING OF CERTAIN SATELLITE COMMUNICATIONS.—

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

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

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

"(c)(1) No person shall encrypt or continue to encrypt satellite delivered programs included in the National Program Service of the Public Broadcasting Service and intended for public viewing by retransmission by television broadcast stations; except that as long as at least one unencrypted satellite transmission of any program subject to this subsection is provided, this subsection shall not prohibit additional encrypted satellite transmissions of the same program.

"(2) No person shall encrypt or continue to encrypt satellite-delivered Armed Forces Radio and Television Service Programming, unless such encryption is required under multinational trade agreements.

"(3) Any person who encrypts any satellite delivered programming for private viewing shall—

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

"(B) when making such programming available through any other person, establish reasonable financial and character criteria under which distributors may qualify to distribute such programming to home satellite antenna users and not discriminate in price, terms, or conditions among different distributors offering similar distribution services to the consumer; and

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

"(4) Standards approved by the Commission pursuant to paragraph (3)(C) of this subsection shall be designed as far as possible to provide the public interest benefits of a universal encryption system which permits decryption at the television receiver of a cable television subscriber and a home satellite antenna user.

"(5) The provisions of paragraph (3)(C) of this subsection shall not take effect until the Commission has completed a rulemak-

ing on the standards required under this subsection.

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

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

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

"(7) As used in this subsection, the term—

"(A) 'satellite delivered programming' means video programming transmitted by a domestic communications satellite intended for reception by cable television system subscribers; and

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

SEC. 803. FEDERAL TRADE COMMISSION INVESTIGATION INTO PROGRAM MARKETING PRACTICES.—

(a) The Federal Trade Commission shall conduct and complete an investigation within 120 days following the effective date of this section into the pricing and distribution terms and practices of persons selling satellite television programming to home satellite antenna owners to determine whether the market for such programming is developing competitively.

(b) Should the Federal Trade Commission determine, after such investigation, that this market is not developing competitively, it is empowered to establish any remedies which it deems necessary to produce adequate competition for such programming.

SEC. 804. AVAILABILITY OF NETWORK PROGRAMMING TO RURAL AREAS.—The Federal Communications Commission shall initiate a rulemaking to facilitate, to the maximum possible extent, the provision of network broadcasting signals to persons living outside the available broadcast area of local licensees. In undertaking such rulemaking, the Commission shall take into consideration the following:

(1) the extent to which individuals in rural areas are unable to receive broadcast television transmissions;

(2) the extent to which existing Federal rules have prevented the ability of local broadcast entities from providing signals to such persons living outside areas designated as Grade B contours by the Commission;

(3) the potential for serving these persons, and others who cannot receive such transmissions, using home antennas to receive satellite delivered network programming which might be otherwise encrypted to prevent private reception; and

(4) methods by which network programmers may protect certain portions of satellite-transmitted signals not intended for public viewing, while providing unencrypted signals to those persons living outside Grade B contours as defined by the Commission.

SEC. 805. EFFECTIVE DATE.—The foregoing provisions of this title shall take effect upon the expiration of the 30-day period following the date of its enactment.

**PARENTAL AND TEMPORARY MEDICAL LEAVE ACT**

**EVANS (AND OTHERS) AMENDMENT NO. 3407**

(Ordered to lie on the table.)

Mr. EVANS (for himself, Mr. CRANSTON, and Mr. DURENBERGER) submitted an amendment intended to be proposed by them to the bill (S. 2488) to grant employees parental and temporary medical leave under certain circumstances, and for other purposes; as follows:

At the appropriate place, insert the following new section:

"SEC. . (a) SHORT TITLE.—This section may be cited as the 'Federal Employee Compensation Equity Study Commission Act of 1988'.

"(b) DEFINITIONS.—For purposes of this section—

"(1) the term 'position' means employee positions that are subject to classification under chapter 51 of title 5, United States Code, or the job-grading system under subchapter IV of chapter 53 of such title;

"(2) the term 'Commission' means the Commission on Compensation established by subsection (c);

"(3) the term 'Director' means the Director of the Office of Personnel Management;

"(4) the term 'employee' means an individual to whom chapter 51 or subchapter IV of chapter 534 of such title applies;

"(5) the term 'labor organization' shall have the meaning given such term by section 7103(a)(4) of such title;

"(6) the term 'economic analysis' means a method of analyzing differentials in pay between and among positions within occupations in order to determine if, and the extent to which, those differentials are attributable to factors such as seniority, merit, productivity, education, work experience, geographic factors, supply and demand factors, or any other factor exclusive of sex, race, or ethnicity; and

"(7) the term 'objective job evaluation analysis' means a quantitative method of rating positions within occupations based upon factors such as the skill, effort, responsibilities, qualification requirements, and working conditions involved so that comparisons may be made with respect to the positions and occupations involved.

"(c) ESTABLISHMENT.—There is established a commission to be known as the Commission on Compensation Equity.

"(d) STUDY.—(1) To determine whether distinction between rates of basic pay for Federal jobs in executive agencies of the United States Government reflect substantial differences in the duties, difficulty, responsibility, and qualification requirements of the work performed, in accordance with sections 5101 and 5341 of title 5, United States Code, and are not based on considerations of sex, race, or national origin, the Commission shall provide, by contract with the consultant selected pursuant to subsection (i), for—

"(A) the conduct of a study of classification, grading, and pay-setting processes within and between the position-classification system under chapter 51 of such title and the job-grading system under subchapter IV of chapter 53 of such title, using standard objective job-evaluation and economic analysis techniques, to determine

whether the development or implementation of these processes results in the payment of rates of basic pay for positions in which either sex is numerically predominant or any race or ethnic group is disproportionately represented that are not in proportion to the duties, difficulty, responsibility, and qualification requirements of the work performed, and

"(B) the preparation and submission of a report containing the findings of such study, including a list of any such positions and the extent of the differences in the rates of pay in such cases.

"(2) For the purposes of this subsection, the term 'executive agency' shall have the meaning given such term by section 105 of title 5, United States Code.

"(e) REPORT.—(1) Not later than eighteen months after the effective date of this section, the Commission shall transmit to the Senate Committee on Governmental Affairs and the House Committee on Post Office and Civil Service the report required by subsection (d) and shall provide a copy of this report of the Director.

"(2) The report shall include—

"(A) the Commission's findings resulting from the study; and

"(B) the Commission's recommendations, consistent with the proviso of section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) (as added by section 3 of the Equal Pay Act of 1963), for such administrative or legislative actions, or both, as it considers appropriate (including any recommendations for modification of the provisions of subsection (h)).

"(3) Not later than ninety days after the Commission submits its report to the appropriate Committees of the Congress pursuant to paragraph (1), the Director shall submit to such Committees and the Commission a report which shall include a detailed response to each of the findings and recommendations of the Commission.

"(4) Not later than sixty days after the Director submits the report to the appropriate committees of the Congress pursuant to paragraph (3), the Commission shall submit to such Committees any additional comments that the Commission deems appropriate in response to the Director's report.

"(5) The consultant's study and any findings, conclusions, recommendations, or comments by the consultant or the Commission under this section with respect to such study shall be considered to be of an advisory nature only.

"(f) APPOINTMENT OF COMMISSION.—(1)(A) The Commission shall be composed of nine members as follows:

"(i) Two appointed by the President of the United States.

"(ii) One appointed by the majority leader of the Senate.

"(iii) One appointed by the minority leader of the Senate.

"(iv) One appointed by the Speaker of the House of Representatives.

"(v) One appointed by the minority leader of the House of Representatives.

"(vi) Three appointed by the Director to represent Federal employee labor organizations, one designated (and certified to the Director) by each of the three respective labor organizations representing, as exclusive representatives, the largest number of individuals occupying positions that are subject to chapter 51 or subchapter IV of chapter 53, of title 5, United States Code.

"(B) Members of the Commission may not be Members of Congress and shall, to the maximum extent practicable, be chosen

from among persons who have extensive knowledge and technical expertise in the major areas of the Commission's consideration and study.

"(2) All appointments under paragraph (1) shall be made not later than sixty days after the effective date of this section.

"(g) ADMINISTRATIVE PROVISIONS.—(1)(A) The President shall designate a Chairman of the Commission from among the Commission members. The Commission shall elect a Vice Chairman from among its members. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman.

"(B) The Commission shall adopt such rules and regulations as it considers necessary to establish its procedures and to govern the manner of its operations, its organization, and its personnel.

"(C) Five members of the Commission shall constitute a quorum.

"(D) Any vacancy in the Commission shall not affect its powers except to satisfy the quorum requirements in subparagraph (C). Such vacancy shall be filled in the manner in which the original appointment was made.

"(2) Each member of the Commission who is not an officer or employee of the United States Government shall be paid compensation at a rate equal to the daily equivalent of the rate of basic pay in effect for level IV of the Executive Schedule for each day the member is engaged in the performance of the duties of the Commission.

"(3)(A) The Commission may appoint, terminate, and subject to subparagraph (B), fix the compensation of such personnel as it considers advisable to employ to assist in the performance of its duties, without regard to the civil service laws, the provisions of title 5, United States Code, or any other law relating to the number, classification, or compensation of employees. The Commission also may procure temporary and intermittent services in carrying out its responsibilities. The Chairman shall appoint an executive director of the Commission with the approval of a majority of the Commission members.

"(B) An employee of the Commission may not receive compensation at a rate exceeding the rate of pay payable for grade GS-18 under section 5332 of title 5, United States Code.

"(C) Service of an individual as a member of the Commission or as an employee of the Commission shall not be considered service in an appointive or elective position in the United States Government for the purposes of section 8344 and 8468 of title 5, United States Code.

"(4) All members and employees of the Commission and all individuals performing temporary or intermittent services for the Commission shall, while performing the duties of the Commission, be paid per diem, travel and transportation expenses in the same manner as provided for under subchapter I of chapter 57 of title 5, United States Code.

"(5)(A) The Commission or any member authorized by the Commission may, for the purposes of carrying out this section, hold such hearings and sit and act at such times and places, take such testimony, have such printing and binding done, enter into such contracts and other arrangements, with or without consideration or bond, and take such other actions as the Commission considers advisable, to the extent that amounts provided pursuant to subsection (k) are available. Any member of the Commission

may administer oaths or affirmations to witnesses appearing before the Commission or before such member.

"(B) The Commission is authorized to obtain directly from any officer, department, agency, establishment, or instrumentality of the United States Government such information, suggestions, estimates, and statistics as the Commission considers necessary to carry out this section. Each such officer, department, agency, establishment or instrumentality shall furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon request made on behalf of the Commission.

"(C) The Commission may use the United States mails and receive administrative support from the Administrator of General Services in the same manner and under the same conditions as departments and agencies of the United States Government.

"(D) No officer or agency of the United States Government shall require the Commission to submit any report, recommendation, or other matter to any such officer or agency for approval, comment, or review before submitting such report, recommendation, or other matter to Congress or Committees of Congress.

"(6) 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 its duties.

"(7) The Commission shall meet from time to time, as its members consider appropriate.

"(h) TERMINATION.—Ninety days after the date the Commission submits its comment pursuant to subsection (e)(4), the Commission shall cease to exist.

"(i) CONSULTANT.—The Commission shall—

"(A) develop the specifications for the study required under subsection (d) in the form of a request for proposals; and

"(B) solicit from the Comptroller General of the United States, the Congressional Office of Technological Assessment, and the National Academy of Sciences a list of consultants who on the basis of the specifications developed under subparagraph (A) and the objectivity, extensive knowledge and technical expertise of such consultants in the matters to be studied pursuant to this section, are appropriate to conduct the study.

"(2) The Comptroller General of the United States and the Congressional Office of Technological Assessment shall provide the lists to the Commission within sixty days after the date of such solicitation pursuant to paragraph (1).

"(3) From among the consultants on the lists provided pursuant to paragraph (1), the Commission shall select one consultant to conduct such study.

"(j) CONSTRUCTION.—Nothing in this Act may be construed to limit or expand any of the rights or remedies provided under the Civil Rights Act of 1964, section 6(d) of the Fair Labor Standards Act of 1938, or any other provision of law relating to discrimination on the basis of race, color, religion, sex, national origin, handicap or age.

"(k) FUNDING.—(1) Of the sums appropriated to the Office of Personnel Management for general operating expenses for fiscal year 1989 and 1990, an amount not to exceed \$3,000,000 shall be made available to pay the expenses of the Commission and shall remain available for such purpose until September 30, 1991.

"(2) The Commission, by majority vote, shall determine the necessary expenses of the Commission and notify the Director of the Office of Personnel Management.

"(1) EFFECTIVE DATE.—This section shall take effect on October 1, 1988."

### OMNIBUS ANTI-SUBSTANCE ABUSE ACT

#### EVANS (AND OTHERS) AMENDMENT NO. 3408

(Ordered to lie on the table.)

Mr. EVANS (for himself, Mr. CRANSTON, and Mr. DURENBERGER) submitted an amendment intended to be proposed by them to the bill, S. 2852, supra; as follows:

At the appropriate place, insert the following new section:

"Sec. (a) SHORT TITLE.—This section may be cited as the 'Federal Employee Compensation Equity Study Commission Act of 1988'.

"(b) DEFINITIONS.—For purposes of this section—

"(1) the term 'position' means employee positions that are subject to classification under chapter 51 of title 5, United States Code, or the job-grading system under subchapter IV of chapter 53 of such title;

"(2) the term 'Commission' means the Commission on Compensation established by subsection (c);

"(3) the term 'Director' means the Director of the Office of Personnel Management;

"(4) the term 'employee' means an individual to whom chapter 51 or subchapter IV of chapter 534 of such title applies;

"(5) the term 'labor organization' shall have the meaning given such term by section 7103(a)(4) of such title;

"(6) the term 'economic analysis' means a method of analyzing differentials in pay between and among positions within occupations in order to determine if, and the extent to which, those differentials are attributable to factors such as seniority, merit, productivity, education, work experience, geographic factors, supply and demand factors, or any other factor exclusive of sex, race, or ethnicity, and

"(7) the term 'objective job evaluation analysis' means a quantitative method of rating positions within occupations based upon factors such as the skill, effort, responsibilities, qualification requirements, and working conditions involved so that comparisons may be made with respect to the positions and occupations involved.

"(c) ESTABLISHMENT.—There is established a commission to be known as the Commission on Compensation Equity.

"(d) STUDY.—(1) To determine whether distinction between rates of basic pay for Federal jobs in executive agencies of the United States Government reflect substantial differences in the duties, difficulty, responsibility, and qualification requirements of the work performed, in accordance with sections 5101 and 5341 of title 5, United States Code, and are not based on considerations of sex, race, or national origin, the Commission shall provide, by contract with the consultant selected pursuant to subsection (i), for—

"(A) the conduct of a study of classification, grading, and pay-setting processes within and between the position-classification system under chapter 51 of such title and the job-grading system under subchap-

ter IV of chapter 53 of such title, using standard objective job-evaluation and economic analysis techniques, to determine whether the development or implementation of these processes results in the payment of rates of basic pay for positions in which either sex is numerically predominant or any race or ethnic group is disproportionately represented that are not in proportion to the duties, difficulty, responsibility, and qualification requirements of the work performed, and

"(B) the preparation and submission of a report containing the findings of such study, including a list of any such positions and the extent of the differences in the rates of pay in such cases.

"(2) For the purposes of this subsection, the term "executive agency" shall have the meaning given such term by section 105 of title 5, United States Code.

"(e) REPORT.—(1) Not later than eighteen months after the effective date of this section, the Commission shall transmit to the Senate Committee on Governmental Affairs and the House Committee on Post Office and Civil Services the report required by subsection (d) and shall provide a copy of this report of the Director.

"(2) The report shall include—

"(A) the Commission's findings resulting from the study; and

"(B) the Commission's recommendations, consistent with the proviso of section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) (as added by section 3 of the Equal Pay Act of 1963), for such administrative or legislative actions, or both, as it considers appropriate (including any recommendations for modification of the provisions of subsection (h)).

"(3) Not later than ninety days after the Commission submits its report to the appropriate Committees of the Congress pursuant to paragraph (1), the Director shall submit to such Committees and the Commission a report which shall include a detailed response to each of the findings and recommendations of the Commission.

"(4) Not later than sixty days after the Director submits the report to the appropriate committees of the Congress pursuant to paragraph (3), the Commission shall submit to such Committees any additional comments that the Commission deems appropriate in response to the Director's report.

"(5) The consultant's study and any findings, conclusions, recommendations, or comments by the consultant or the Commission under this section with respect to such study shall be considered to be of an advisory nature only.

"(f) APPOINTMENT OF COMMISSION.—(1)(A) The Commission shall be composed of nine members as follows:

"(i) Two appointed by the President of the United States.

"(ii) One appointed by the majority leader of the Senate.

"(iii) One appointed by the minority leader of the Senate.

"(iv) One appointed by the Speaker of the House of Representatives.

"(v) One appointed by the minority leader of the House of Representatives.

"(vi) Three appointed by the Director to represent Federal employee labor organizations, one designated (and certified to the Director) by each of the three respective labor organizations representing, as exclusive representatives, the largest number of individuals occupying positions that are subject to chapter 51 or subchapter IV of chapter 53, of title 5, United States Code.

"(B) Members of the Commission may not be members of Congress and shall, to the maximum extent practicable, be chosen from among persons who have extensive knowledge and technical expertise in the major areas of the Commission's consideration and study.

"(2) All appointments under paragraph (1) shall be made not later than sixty days after the effective date of this section.

"(g) ADMINISTRATIVE PROVISIONS.—(1)(A) The President shall designate a Chairman of the Commission from among the Commission members. The Commission shall elect a Vice Chairman from among its members. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman.

"(B) The Commission shall adopt such rules and regulations as it considers necessary to establish its procedures and to govern the manner of its operations, its organization, and its personnel.

"(C) Five members of the Commission shall constitute a quorum.

"(D) Any vacancy in the Commission shall not affect its powers except to satisfy the quorum requirements in subparagraph (C). Such vacancy shall be filled in the manner in which the original appointment was made.

"(2) Each member of the Commission who is not an officer or employee of the United States Government shall be paid compensation at a rate equal to the daily equivalent of the rate of basic pay in effect for level IV of the Executive Schedule for each day the member is engaged in the performance of the duties of the Commission.

"(3)(A) The Commission may appoint, terminate, and subject to subparagraph (B), fix the compensation of such personnel as it considers advisable to employ to assist in the performance of its duties, without regard to the civil service laws, the provisions of title 5, United States Code, or any other law relating to the number, classification, or compensation of employees. The Commission also may procure temporary and intermittent services in carrying out its responsibilities. The Chairman shall appoint an executive director of the Commission with the approval of a majority of the Commission members.

"(B) An employee of the Commission may not receive compensation at a rate exceeding the rate of pay payable for grade GS-18 under section 5332 of title 5, United States Code.

"(C) Service of an individual as a member of the Commission or as an employee of the Commission shall not be considered service in an appointive or elective position in the United States Government for the purposes of section 8344 and 8468 of title 5, United States Code.

"(4) All members and employees of the Commission and all individuals performing temporary or intermittent services for the Commission shall, while performing the duties of the Commission, be paid per diem, travel and transportation expenses in the same manner as provided for under subchapter I of chapter 57 of title 5, United States Code.

"(5)(A) The Commission or any member authorized by the Commission may, for the purposes of carrying out this section, hold such hearings and sit and act at such times and places, take such testimony, have such printing and binding done, enter into such contracts and other arrangements, with or without consideration or bond, and take such other actions as the Commission con-

siders advisable, to the extent that amounts provided pursuant to subsection (k) are available. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such member.

"(B) The Commission is authorized to obtain directly from any officer, department, agency, establishment, or instrumentality of the United States Government such information, suggestions, estimates, and statistics as the Commission considers necessary to carry out this section. Each such officer, department, agency, establishment or instrumentality shall furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon request made on behalf of the Commission.

"(C) The Commission may use the United States mails and receive administrative support from the Administrator of General Services in the same manner and under the same conditions as departments and agencies of the United States Government.

"(D) No officer or agency of the United States Government shall require the Commission to submit any report, recommendation, or other matter to any such officer or agency for approval, comment, or review before submitting such report, recommendation, or other matter to Congress or Committees of Congress.

"(6) 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 its duties.

"(7) The Commission shall meet from time to time, as its members consider appropriate.

"(h) **TERMINATION.**—Ninety days after the date the Commission submits its comment pursuant to subsection (e)(4), the Commission shall cease to exist.

"(i) **CONSULTANT.**—The Commission shall—

"(A) develop the specifications for the study required under subsection (d) in the form of a request for proposals; and

"(B) solicit from the Comptroller General of the United States, the Congressional Office of Technological Assessment, and the National Academy of Sciences a list of consultants who on the basis of the specifications developed under subparagraph (A) and the objectivity, extensive knowledge and technical expertise of such consultants in the matters to be studied pursuant to this section, are appropriate to conduct the study.

"(2) The Comptroller General of the United States and the Congressional Office of Technological Assessment shall provide the lists to the Commission within sixty days after the date of such solicitation pursuant to paragraph (1).

"(3) From among the consultants on the lists provided pursuant to paragraph (1), the Commission shall select one consultant to conduct such study.

"(j) **CONSTRUCTION.**—Nothing in this Act may be construed to limit or expand any of the rights or remedies provided under the Civil Rights Act of 1964, section 6(d) of the Fair Labor Standards Act of 1938, or any other provision of law relating to discrimination on the basis of race, color, religion, sex, national origin, handicap or age.

"(k) **FUNDING.**—(1) Of the sums appropriated to the Office of Personnel Management for general operating expenses for fiscal year 1989 and 1990, an amount not to exceed \$3,000,000 shall be made available to pay the expenses of the Commission and

shall remain available for such purpose until September 30, 1991.

"(2) The Commission, by majority vote, shall determine the necessary expenses of the Commission and notify the Director of the Office of Personnel Management.

"(1) **EFFECTIVE DATE.**—This section shall take effect on October 1, 1988."

#### CRANSTON AMENDMENT NO. 3409

(Ordered to lie on the table.)

Mr. CRANSTON submitted an amendment intended to be proposed by him to the bill S. 2852, supra; as follows:

At the appropriate place, insert the following new section:

#### SEC. . DISTRICT OF COLUMBIA APPROPRIATIONS.

Section 117 of the Act entitled "An Act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1989, and for other purposes" (Public Law 100-462) is amended to read as follows:

"Sec. 117. The provisions of section 117 of the District of Columbia Appropriations Act, 1988 (Public Law 100-202; 101 Stat. 1329-99) shall apply with regard to Federal funds provided in this Act."

#### AUTHORITY FOR COMMITTEES TO MEET

##### SUBCOMMITTEE ON ENERGY REGULATION AND CONSERVATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Energy Regulation and Conservation of the Senate Energy and Natural Resources Committee be authorized to meet during the session of the Senate on October 4, 1988, to receive testimony on S. 2179, a bill to amend the Petroleum Marketing Practices Act.

The PRESIDING OFFICER. Without objection, it is ordered.

##### SUBCOMMITTEE ON STRATEGIC FORCES AND NUCLEAR DETERRENCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces and Nuclear Deterrence of the Committee on Armed Services be authorized to meet on Tuesday, October 4, 1988, in closed and open session to receive further testimony regarding the B-1B defensive avionics system.

The PRESIDING OFFICER. Without objection, it is ordered.

##### SUBCOMMITTEE ON NUTRITION AND INVESTIGATIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Nutrition and Investigations of the Committee on Agriculture, Nutrition, and Forestry, be authorized to meet during the session of the Senate on Tuesday, October 4, 1988, to hold a hearing on the Soil Conservation Service's implementation of the soil conservation provisions of the Food Security Act of 1985.

The PRESIDING OFFICER. Without objection, it is ordered.

##### COMMITTEE ON ARMED SERVICES

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, October 4, 1988, in open session to consider the nomination of Clyde O. Glaister to be Comptroller of the Department of Defense.

The PRESIDING OFFICER. Without objection, it is ordered.

##### COMMITTEE ON FOREIGN RELATIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, October 4, 1988, for the purpose of holding a hearing on ABM Treaty review.

The PRESIDING OFFICER. Without objection, it is ordered.

##### COMMITTEE ON THE JUDICIARY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on October 4, 1988, to hold a hearing on judicial nominations.

Senators JOHN HEINZ, ARLEN SPECTER, JAMES R. SASSER, and ALBERT GORE, JR.

Nominee. Hon. Richard L. Nygaard, North East, PA, to be U.S. circuit judge for the third circuit,

Witnesses. Nan Aron, Alliance for Justice.

Hon. Buzz Andrezeski, Pennsylvania State Senator, Erie, PA.

Nominees. Hon. D. Brooks Smith, Altoona, PA, to be U.S. district judge for the western district of Pennsylvania.

Jay C. Waldman, Philadelphia, PA, to be U.S. district judge for the eastern district of Pennsylvania.

Hon. Robert L. Jordan, Woodlawn, TN, to be U.S. district judge for the eastern district of Tennessee.

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

#### ADDITIONAL STATEMENTS

##### THE PATRICIA NEAL REHABILITATION CENTER

● Mr. GORE. Mr. President, for 10 years the Patricia Neal Rehabilitation Center has been helping individuals obtain the desire and commitment to overcome disabling conditions including strokes, crippling arthritis, and head and spinal cord injuries. The patients of the center come primarily from southern Appalachia to take their vital first step toward recovery. I am proud that this outstanding institution operates as a subsidiary of the Fort Sanders Regional Medical Center in Knoxville, TN.

The center is staffed and equipped to meet unique individual needs. Rehabilitation is a team effort between the patients, their families, and a team of professionals, such as physicians, rehabilitation nurses, speech and language pathologists, rehabilitation social workers, physical therapists, psychologists, occupational therapists, and recreation therapists.

Typically, the patient begins an individualized therapy program with daily support from his or her multidisciplinary team. Achievable goals are emphasized, and unchangeable disabilities are accepted. The patient's achievements begin to peak as the program progresses until the patient is ultimately ready for graduation, after which the center continues its help for many of its patients.

On September 13, the Patricia Neal Rehabilitation Center celebrated its 10th year with a birthday celebration and annual awards banquet in Knoxville. This was a very special, festive event; and Patricia Neal, herself an almost legendary example of recovery, was on hand to make some remarks and present the awards. Miss Neal, a native of Knoxville and an Oscar-winning actress, suffered three major strokes in 1965. She underwent rigorous rehabilitation and ultimately returned to acting. Today, she is a champion of the handicapped and a vocal supporter of rehabilitation.

The recipients of these awards exemplify the value of the center and its work. The members of the staff nominate patients whom they feel did an excellent job working with whatever disability befell them. One award is given in each of these categories: community service, head injury, stroke, spinal injury, and "other." Of course, these five are representative of many, many patients of the center who have dealt with great difficulties.

Mr. President, I know my colleagues join me in offering congratulations and thanks to all of those who are associated with the Patricia Neal Rehabilitation Center, including administrative director Dr. Gregory Thomsen; medical director Dr. Jeffrey S. Hecht; and Alan C. Guy and V. Otis Wilson, president and vice president respectively of the Fort Sanders Regional Medical Center. They and every member of the staff are doing a remarkable job.

At this time, Mr. President, I ask that a description of the "Patricia Neal Awards for Rehabilitation Excellence and Accomplishment" and a brief biography of this year's recipients be included in the RECORD at this point.

The material follows:

**PATRICIA NEAL AWARDS FOR REHABILITATION  
EXCELLENCE AND ACCOMPLISHMENT**

Each year the Patricia Neal Rehabilitation Center recognizes four individuals who have completed rehabilitation programs at

the center and achieved significant accomplishments after their return to daily life. A fifth award is presented to an individual or group in the community who has helped promote public awareness of the needs and ability of people with disabilities.

**1988 AWARD RECIPIENTS**

Clarine H. Clevenger, a stroke patient, completed three months of treatment at the center in February 1988. She is independent with self-care and walks 2 miles a day in a mall. Clarine and her husband enjoy attending UT football games and are looking forward to the 1988 season. She loves people, and other favorite activities include picnics, church activities, crossword puzzles, theatre productions, and dining out. Strength and support from her husband were motivations in Clarine's recovery. The Clevengers live in Chattanooga.

Timothy A. Craven, recipient of the Community Service Award, received rehabilitation following a spinal cord injury in June 1973. Between working on a Master's degree in electrical engineering at UT and operating a computer systems company, Tim gives time and effort to help individuals realize that a disability can be a challenge, not a handicap. He is community liaison to the Fort Sanders Accessibility Committee and volunteers as peer counsel for patients at the Pat Neal Center. An active supporter of wheelchair sports and active in several civic organizations, Tim was a spokesman for spinal cord injury awareness during this year's "Feet First, First Time" program for area schools.

In 1983, fifteen-year-old Paul Douglas Goddard III sustained a spinal injury following a diving accident. He celebrated his 16th birthday while a patient at the center, where he worked to improve his functional skills and struggled with acceptance. After discharge, Doug initially requested homebound teachers, but with encouragement from his family returned to Jefferson County High School. Active in school organizations, he was president of the Student Council and vice president of his Senior Class. He is a junior at Vanderbilt University, where he is a history major and plans to enter law school. He is a member of Sigma Nu fraternity, Young Life, and a Vuceptor, helping with freshmen orientation. He works at Vanderbilt Bookstore.

Kim McCormick was admitted to the center in February 1984 with the diagnosis of a closed head injury as the result of a motor vehicle accident in October 1983. She was involved in a vigorous two-months inpatient rehabilitation program and since her discharge has overcome many obstacles in her life in dealing with adjustment problems. She continues to strive for the optimal level of independence. She lives in Oak Ridge and is currently working at Martin-Marietta. She lives independently in an adapted apartment and has her driver's license. She drives herself to work and to physical therapy as an outpatient with the Fort Sanders STAR program.

Eleven-year-old Amy Gray Piper was admitted to the center in November 1987 with Guillian Barré symptoms. She required moderate assistance in bed mobility and maximum assistance in transfers and a tilt table to stand. Discharged after 7 weeks, Amy has diligently attended physical therapy three times a week as an outpatient and is now independent in simple transfers, ambulates with a straight cane and is learning to ride her bicycle again. Throughout her rehabilitation, Amy was quick to smile and has faced challenges with the determination

to triumph. She returned to school this fall prepared with her own solutions and alternatives to possible problems.●

**NATIONAL ANGEL PLANE WEEK**

● Mr. D'AMATO. Mr. President, every year scores of lives are saved by "Angels of Mercy." These "Angels," actually members of the Angel Planes, are a group of pilots who donate their time and equipment to carry patients needing emergency medical attention or essential medical supplies. I rise to pay tribute to these special people and to lend my support for the joint resolution designating September 25 through October 2, 1988 as "National Angel Plane Week."

These volunteers provide a very much-needed and appreciated service. Angel Planes have flown almost 900 missions throughout the United States. Over 50,000 units of blood, all parts of the body, surgical equipment and teams, even serum for snakebite have been flown to patients needing them. These planes and pilots play a major role especially in rural areas where hospitals are fewer and farther apart.

The Angel Planes were incorporated on April 30, 1985, in Las Vegas, NV, and boast over 20 squadrons throughout the United States, including one in my home State of New York. Angel Plane founder and national director Ann Mishoulam dreams of squadrons all over the country so that "no one can go without medical treatment due to inability to pay for plane fare."

Mr. President, I salute these special volunteers for their efforts. I urge my colleagues to join the Senator from Nevada and myself in supporting the resolution to dedicate the week of September 25 to October 2, 1988, to "National Angel Plane Week."●

**NATIONAL OUTDOOR POWER  
EQUIPMENT SAFETY MONTH**

● Mr. D'AMATO. Mr. President, I rise to lend my support to the Senate Joint Resolution 296, which proclaims April 1989 as "National Outdoor Power Equipment Month." I commend my colleague, the distinguished Senator from Alabama, in taking the initiative in addressing this problem.

Every spring, millions of Americans begin their yardwork. Unfortunately, many accidents occur especially with power equipment such as lawnmowers, tractors, and blowers. When power equipment is used, special care must be taken to avoid dangerous accidents. Public awareness must be increased to remind people of the danger and responsibility that comes with operating these tools. Senate Joint Resolution 296 would designate next April as a special time to focus and direct attention to safety matters. I support this

resolution and urge my colleagues to do the same.●

#### THE SIKHS

● Ms. MIKULSKI. Mr. President, over the past 4 years the world has watched tragic developments in the relations between the Sikhs of India and the Indian Government.

The 1984 occupation of the Amritsar Temple led to an overreaction by Indian troops in which holy objects were destroyed and hundreds of innocent people were killed.

The government has been holding 326 Sikhs in jail since June 1984 under special security laws which deny the basic right of people to demonstrate peacefully.

Torture of Sikh prisoners has been widely reported.

After the assassination of Indira Gandhi by her Sikh bodyguard, thousands of Sikhs were massacred, with the collusion of the ruling party.

Last spring the central government took control of the Punjab, increased paramilitary forces there and restricted citizens' rights.

It is now planning to divert water from the Punjab to other parts of the country.

Blame for this state of affairs is by no means solely the government's. Militant Sikhs have been the cause of much of the trouble.

The attack on the Amritsar Temple was the result of its occupation by the militants.

Moderate Sikhs who advocate reconciliation with the government are murdered by the militants, as are Sikhs from unpopular sects.

There have been encouraging signs, however, that the central government and moderate Sikhs are working toward an end to the violence and persecution. The government has released some of the detainees held since 1984, army troops showed restraint at a second Amritsar incident, the government has admitted to some of its abuses, and efforts have been made to reach an accord with Sikh moderates.

Still, the campaign against the Sikhs continues. According to an Amnesty International report of August 10, 1988, Sikhs have been killed after faked encounters with government troops, police torture continues, and here are still approximately 200 Sikhs detained from 1984.

India has long-established institutions to protect human rights, and I encourage the government to invoke those safeguards on behalf of the Sikhs. I also believe the government should redouble its efforts to return home rule, full religious freedom and human rights to the Punjab. Sikh leaders also have a responsibility to restrain violent acts on their side.

Government officials and Sikhs leaders should work together to end the vi-

olence which has destroyed innocent Sikh families and threatened the lives of all Sikhs. As we have seen in the past, sectarian disputes can lead to a long and bloody struggle.●

#### THE CELEBRATION OF THE WEBER STATE COLLEGE CENTENNIAL

● Mr. HATCH. Mr. President, this year marks the 100th anniversary of Weber State College in Ogden, UT. This fine learning institution celebrates a century of quality education and vocational training.

Weber State has weathered changes in its name, location, and curriculum over the years, but the school's original intent to provide quality education to Utah students has persevered.

Weber State College was founded on January 7, 1889, under the auspices of the Church of Jesus Christ of Latter-day Saints. Known as Weber Stake Academy at the time, the first class of 98 students met in the old Second LDS Ward meeting house on the corner of Grant and 26th Streets in Ogden, UT.

The early years of the school were years fraught with challenge and adversity—both of which the early founders met with unusual dedication and sacrifice.

For years, "Weberites" have recounted incidents when many of the school's founders went so far as to mortgage their own homes to ensure that classes could be held and students taught.

It was in 1908 that the name of the school was changed to Weber Academy. Four years later preparatory classes were dropped and only high school classes offered. Then in 1916 the academy broke into the college ranks when the board of education added 2 years of college work to the regular 4-year high school curriculum.

Over the years the college survived two more name changes; in 1918 to Weber Normal College and again in 1923 to Weber College, a name which was to be held for 40 years.

A significant chapter in Weber State history came in 1933 when the LDS Church transferred the college, by gift, to the state of Utah to become a State-supported institution.

By then the college had moved to a campus site on Jefferson Avenue between 24th and 25th Streets. But this proved to be inadequate for the post-war boom in students, and in 1947 the State legislature appropriated money to purchase a new campus site, on the condition that the community would raise an equal amount.

The community rallied, and 175 acres of land were purchased on the foothills east of Harrison Boulevard. Then in 1954, the move was made to the new campus site, with some classes continuing at the old downtown location.

In 1959, following a long struggle for 4-year status, the legislature overwhelmingly passed a bill allowing Weber to offer baccalaureate degrees. The first senior class was graduated in 1964—the 75th anniversary of the school's founding. It was just the year before—1963—that the name was officially changed to Weber State College.

Located at the base of the majestic Wasatch Mountains and near the shores of the Great Salt Lake, Weber State College serves approximately 10,000 students each year and graduates more than 1,500 each spring. A far cry from 98 students gathered in a church meeting house, Weber State's campus today spans 372 acres and has 66 buildings.

Today, WSC meets the needs of students from every field of study—the arts and humanities, social and natural sciences, business, education, and technology. The college offers baccalaureate degrees in 52 major fields of study and a masters of education and accounting.

Mr. President, Weber State College will celebrate its centennial this year with some very exciting and enriching activities for their students, faculty, staff, and community. Some of the highlights will include performances of the Boston Pops Orchestra, the Moscow Classical Ballet, and the Mormon Tabernacle Choir. In addition, noted composer Crawford Gates has been commissioned to compose a centennial symphony in honor of the college.

Congratulations to Weber State College for its 100 years of fine education.●

#### ATLANTIC STRIPED BASS CONSERVATION ACT

● Mr. WARNER. Mr. President, I rise today to address the provision in S. 2384 concerning the North Carolina striped bass study.

As I have indicated to my colleagues on the Environment and Public Works Committee, I support a straight-forward biological study to determine the decline of the striped bass stocks in the Albemarle Sound—Roanoke River Basin.

However, it is my strong opinion, joined by Governor Baliles, that the requirements of the study in the House bill would adversely impact ongoing litigation between the U.S. Army Corps of Engineers and the State of North Carolina concerning the proposed Lake Gaston pipeline project.

This project will provide a vitally needed water supply source for Virginia Beach and the Tidewater Virginia area.

It is simply a matter of equity that Congress must not apply retroactively any changes on Federal agencies issu-

ing permits for federally approved projects. I believe the House provision could have had the effect of impacting upon a project that has received the necessary section 404 permit.

The Corps of Engineers issued a section 404 permit in accordance with existing law and Federal regulations in 1985. This permit is presently being challenged in the Federal district court in Raleigh, NC. The conditions of the study in the House bill would amend these regulations and establish a new set of conditions for water use in the Roanoke River Basin.

I have worked closely over the past week to modify the language in the House bill which would satisfy the concerns that the Governor Baliles and I share. I am pleased to report that the Senate provision addressing the contents of the study will examine the causes of the decline of the striped bass stocks in North Carolina without impacting upon ongoing litigation between the Norfolk District of the Corps of Engineers and the State of North Carolina.

The study requires the U.S. Fish and Wildlife Service, in conjunction with the National Oceanic and Atmospheric Administration, and affected North Carolina and Virginia agencies to study the significance of fishing, water flows and other factors in the decline of the striped bass stocks in the Albemarle Sound-Roanoke River Basin. This study requires that all possible causes for the problems of the striped bass stocks will be studied including future withdrawals and discharges of the Roanoke River.

I believe this is a fair approach to this study that will not interfere with ongoing litigation in Federal district court over a project that has already received the necessary section 404 permit.

Mr. President, I strongly support Federal and State efforts to replenish the striped bass stocks along the East Coast. I believe this study will contribute to these efforts.

I ask that the letter from the Governor of Virginia concerning S. 2384 be printed in the RECORD at this point.

The letter follows:

COMMONWEALTH OF VIRGINIA,  
Richmond, September 20, 1988.

HON. JOHN W. WARNER,  
U.S. Senate, Russell Senate Office Building,  
Richmond, VA.

DEAR SENATOR WARNER: I have recently been advised that Congressman Walter B. Jones of North Carolina had an amendment attached to H.R. 4124 which has the potential of delaying the Lake Gaston pipeline project.

As I am sure you know, the Lake Gaston project was proposed by Virginia Beach and several other southeastern Virginia localities as the best alternative to meeting their water supply needs for the future. This was done after years of considerable study of every possible option available to the local governments.

After Gaston was selected, the City of Virginia Beach followed all relevant environmental requirements in order to ensure that the pipeline would not have the potential to cause significant environmental degradation. The City's work in this regard resulted in endorsements from the U. S. Army Corps of Engineers and the Virginia State Water Control Board, as well as support from my Administration and that of my predecessor.

Litigation, now pending in the federal district court in Raleigh appears to be nearing conclusion. The only environmental issue which the court appears to be considering at this time is the effect of the Gaston proposal on the striped bass fishery in North Carolina. It is my understanding that it will have no effect. The Jones amendment embodied in H.R. 4124 would prohibit proposals such as this if it could be demonstrated that it "may contribute" to the decline of striped bass populations. A requirement such as this would seemingly prohibit virtually any future water supply projects, since the burden would be on the project proponent to prove that no ill effects would occur.

I understand that you are now considering incorporating language into the Senate counterpart of the Jones bill (S. 2384) in this regard. Since all studies have clearly shown that no detrimental effects can be expected from the Gaston pipeline, I support your efforts. It is important to the future well-being of Tidewater that the Gaston pipeline be built without further delay.

If there is anything that I, or any member of my staff, can do to assist you on this matter, please let me know.

With kindest regards, I am

Sincerely,

GERALD L. BALILES,  
Governor. ●

#### ADMIRAL INMAN ON TECHNOLOGY AND ECONOMIC COMPETITIVENESS

● Mr. BINGAMAN. Mr. President, retired Adm. Bobby R. Inman is one of the leading voices today championing continued U.S. technological leadership. As Admiral Inman has pointed out on numerous occasions, only with technological leadership can we compete in the global economy and maintain our national security. A member of the executive committee of the Council on Competitiveness, Admiral Inman served as project adviser to the recent council study on technology commercialization, "Picking Up the Pace: The Commercial Challenge to American Innovation." And, recently, he outlined his views on the technological challenge facing America in the Washington Post. I ask unanimous consent that his article, "Why We're Slipping—And What's To Be Done," be printed in the RECORD. It is an important article, outlining recommendations for future congressional action. I hope all of my colleagues will read it.

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

[From the Washington Post, Oct. 3, 1988]

#### WHY WE'RE SLIPPING—AND WHAT'S TO BE DONE

(By B.R. Inman)

The obsession with large government budget deficits has diverted public attention from a landmark development in the world economy: the erosion of U.S. technological leadership. Since World War II, most Americans have taken U.S. leadership in technology for granted. There are ominous signs that we can no longer afford to do so.

The questions the next administration must answer are: How did we lose our lead, and what policy measures are required to get the nation back on course?

Much of the debate over our declining competitiveness centers on the succession of trade deficits that began in 1971. Manufactured products, which account for three-fourths of U.S. trade, have been particularly hard hit by foreign competition.

At first, we derived some consolation from the notion that the United States could tolerate trade deficits in U.S. "smokestack" industries because the economic future lay with "sunrise" high-technology industries. That illusion was shattered in 1986, when the nation posted its first deficit in high-tech trade. Last year, despite a decline in the value of the dollar, we registered only a modest surplus in this vital sector.

A number of other warning signals point to the fact that America's leadership in high technology—an area we always regarded as our economic trump card—is jeopardized.

Foreign investors accounted for almost half of U.S. patents in 1987, compared with one-third in 1975.

In international science and math achievement tests, U.S. primary and secondary school students score well below the average of their peers in other industrialized countries.

To make matters worse, a chronic shortage of competent math and science teachers and engineering faculty is hampering our ability to prepare a new generation of Americans to replace the Sputnik-era scientists and engineers who will be retiring in waves in the 1990s.

The United States can still draw on significant strengths in science and technology. These include a superb foundation of scientific expertise, a university system that is the envy of the world, great entrepreneurial drive, a flexible form of government and the extraordinary mobility of capital, ideas and people.

The problem lies chiefly in our inability to convert these assets into commercial successes. In one industry after another, foreign companies have captured market share—or in some cases, entire industries—because they have done a superior job of developing and commercializing new technologies, many of them American in origin. For example, U.S. companies' share of the world market for dynamic random access memory products—a key component in computers—plunged from 96 percent in 1975 to 18 percent in 1987.

How have foreign competitors succeeded where American companies have failed? While there is no simple answer to that question, it's clear that the way foreign firms approach innovation has been a major contributor to their success. In most cases, they have not created major scientific breakthroughs. Instead, they acquired existing technology, adapted it to market needs and worked as a team to make the continu-

ing, incremental improvements that add up to superior performance. Their success in accelerating the conversion of technology into high-quality products was made possible by the availability of capital at attractive international rates and concentration on the manufacturing process.

The United States has to develop new federal technology policies to facilitate private-sector efforts to move ideas from the laboratory to the marketplace. If we are to succeed, changes in our existing machinery for making and implementing technology policy are urgently required.

First, the position of national science adviser should be elevated to that of assistant to the president for science and technology, with status comparable to that of the assistant to the president for national security affairs. Under the current arrangement, the national science adviser does not have access to the president or a voice in the formulation of macroeconomic policies that have a direct impact on our competitiveness.

The assistant for science and technology's first order of business should be to develop a four-year strategy for science and technology in consultation with Congress, relevant executive branch departments and agencies, and the private sector. This would enable the president to set priorities and specify how individual science and technology programs fit into the administration's overall strategy.

Second, we need to explore better ways of working with Congress to set R&D funding priorities. Funding of science and technology programs today is widely dispersed and frequently sporadic. Though the federal government spends over \$60 billion on research and development annually, there is no overall science and technology budget. That makes it difficult to ensure that spending on science and technology contributes to U.S. competitiveness.

Third, research and development should be funded under a two-year budget resolution, with the resulting allocations to other congressional committees also binding for two years. Congress' approach to technology-related issues tends to be fragmented and short-term because of the current one-year federal R&D budget cycle and the competing demands facing appropriations committees. Two-year funding would give researchers greater continuity and the ability to plan further ahead—important considerations in developing technology.

These steps will help to eliminate the inconsistent approaches that have plagued federal technology policy in the past and pave the way for expanding the focus of national research and development efforts.

The United States no longer has a monopoly on technology. We can no longer assume that our leadership in science automatically will trickle down to industry in the form of commercial triumphs. A major challenge facing the candidate who emerges victorious from the November elections will be creating the right climate and establishing the proper policies for meeting the commercial challenge to American innovation.●

#### NEW ENGLAND HOBBY SUPPLY, INC.

● Mr. DODD. Mr. President, 100 years ago, a building was constructed in the town of Manchester, CT, to house an electric equipment plant. A few years later, J.T. Robertson began producing his Bon Ami products in the building,

and for many years thereafter, the world-famous Bon Ami Soap produced in that factory was shipped around the country and around the world.

About 30 years ago, however, the Bon Ami Co. was purchased, and operations were moved out of the building. For more than two decades the Victorian brick building with its twin clock towers stood vacant, decaying. It became an eyesore in Manchester's north end.

But in 1980, a private citizen, Bob Bell, purchased the Bon Ami factory and refurbished it, and the next year began using the building as headquarters for New England Hobby Supply, Inc. One hundred years after it first opened, the Bon Ami Building is now the home for production and sale of dollhouse paint, model train lamps, and other hobby equipment. Again, there are working citizens employed in the building. Again the Bon Ami factory is contributing to the vitality of the Manchester economy.

It is fitting that on the 100th anniversary of the construction of the Bon Ami Soap factory, we recognize the achievements of Bob and Adele Bell in renovating the building. The factory serves as a symbol of the recovery of the entire Northeast. Residents of Manchester, of Connecticut, and of the Nation should be proud of the restoration of the factory which once produced the soap which "hasn't scratched yet."●

#### IN PRAISE OF ARKANSAS OLYMPIANS

● Mr. PRYOR. Mr. President, among the many fine athletes who represented our country at the Olympic games in Seoul are two from my State whom I wish to bring to the attention of my colleagues.

Sharon Jewell of Little Rock, AR, recently captured a bronze medal in the demonstration sport of taekwondo. This graduate of Little Rock Central High School attended Howard University in Washington, DC, on a full academic and athletic scholarship. Sharon is a most gifted scholar-athlete who plans to pursue a career in international and sports law.

In addition to her prowess in taekwondo, Sharon is an accomplished ballet dancer. In fact, her start in taekwondo began with a bet with friends that if they would try ballet, she would take a course in taekwondo. Obviously Sharon came out on the better end of that bet.

Sharon has achieved many honors throughout high school and college. A member of the Arkansas High School Track Hall of Fame, Sharon attended Girls' State and was a member of the Little Rock NAACP Youth Council. She was also on the Student-Faculty Assembly of the Little Rock School Board. A 3-year letterman in track and

gymnastics at Howard University, Sharon has also participated in the summer track program of the Amateur Athletic Union.

Not one to shrink from a challenge, Sharon Jewell was the first female on the boys' cross country track team in junior high school.

I want to applaud this young woman's dedication and spirit. She is a role model for Arkansas youth who proves that academics and athletics can go hand in hand.

Arkansas' other Olympic athlete is now a veteran of the Olympic games. We've learned to expect to see him there. Poll vaulter Earl Bell's first Olympics was in 1976 and he was a bronze medalist in 1984. A resident of Jonesboro, AR, and a graduate of Arkansas State University, Earl was the first American ever to clear 19 feet outdoors. His athletic career is long and distinguished as for over 13 years he has consistently ranked among the best in the world.

After placing second in our Olympic trials in 1976, Earl came in sixth in the games. During 1975 and 1976, he received first place in the NCAA Outdoor Championships. After ranking third in the 1984 Olympic trials, he earned a bronze medal for us at the games. This year he again proved he is one of the best in the world by finishing fourth.

Sharon and Earl allowed Arkansans to feel they had their own special place in the Olympics. We could cheer for them as they excelled and share their excitement in coming together with athletes from all over the world for the Seoul games. We are proud of our Olympians, the way in which they represented us, and the example which they set. We wish them well in the future.●

#### FAMILY RESOURCE COALITION FORMS PARENT ACTION

● Mr. DURENBERGER. Mr. President, on October 6-9, the Family Resource Coalition [FRC], a national organization developed to promote the interests of American families, will be sponsoring its second national conference. The conference, to be held in Chicago, provides a timely forum for the discussion of crucial family issues facing our society.

Economic and social changes in modern America have created new needs and concerns for American families. Today's families face tough issues relating to public education, drugs, child care, and health care. The FRC helps families fully understand and effectively address these complex issues.

To this end, the Family Resource Coalition will announce at its conference the creation of parent action, a national membership organization designed to voice the interests and con-

cerns of families across the Nation. Parent action seeks to inform and mobilize parents through education and outreach programs, as well as through public policy initiatives. Through such programs, parent action teaches parents to enhance their parenting skills and to better use their personal strengths to improve the quality of life for their children and themselves.

I encourage my colleagues to support the work of this important organization. In a time when cynics are predicting the demise of the American family, I applaud the FRC in its efforts to further the concerns of families across our Nation. Through its national conference, its continuing public outreach efforts, and its creation of parent action, the FRC is strengthening one of our Nation's oldest and most vital institutions—the family. ●

#### MIKHAIL GORBACHEV

● Mr. SYMMS. Mr. President, I rise to bring attention to the reasons that, in my opinion, Mikhail Gorbachev recently overhauled the Soviet Government. The problems for the Soviet leader started recently when he took a tour of the Soviet countryside to get a feeling for the current reforms underway in the Soviet Union.

Gorbachev's country tour came at a time when the Soviet Union had every right to feel it was the undaunted world leader. The Olympics were just underway and created an outstanding platform to show off the state supported Soviet athletic machine in gold, silver and bronze. Furthermore, the Soviet news media has been reporting for months on how the United States had been brought to the nuclear arms bargaining table by Gorbachev's charm and glasnost.

All of the recent political victories were to continue with the Soviet athletic machine dominating the 1988 Summer Olympics in Seoul, Korea. Mr. Gorbachev must have thought this a perfect time to go out in the Russian countryside and reflect on his recent political victories.

Mr. Gorbachev thought his 5-day tour in the country would result in a nice warm visit with the Russian people. What Mikhail Gorbachev found was a late summer chill that would make a Siberian winter seem like a sauna.

The Soviet leader was met with resentment unmatched in his previous 3 years in power. Rather than cheering supporters, Gorbachev got jeering mobs. The Russian people had suffered enough from housing and food shortages.

Mr. Gorbachev found that it becomes very difficult to celebrate the victories of Soviet weightlifters fed with filet mignon, when your family is struggling for day-to-day existence.

It seems the Soviet leader was finding out that politics is not all smoke and mirrors. The Russian people wanted to know "what have you done for us lately. No more talk, we want results." Like George Steinbrenner in a late season skid with the Yankees, the Russian people wanted results, or they wanted heads to roll.

Gorbachev reacted immediately, calling an emergency meeting that brought Foreign Minister Shevardnadze back to Moscow from his meetings with top officials of the Reagan administration—this move also served to get the attention of the American press. Gorbachev was seeking to cut the diseases from his ailing government.

Gorbachev cut with the skill of a surgeon. Andrei Gromyko was retired from the presidency, and KGB Chief Viktor Chebrikov was replaced as head of the Soviet secret police.

Now, the waiting period begins. The clones of the Brezhnev school of government are gone. The Soviet system better get moving because Mikhail Gorbachev has no one else to blame. His head may be next if the food lines don't go away.

Unless Mikhail Gorbachev can figure out how to give away hamburgers for Olympic medals like a recent McDonald's promotion gimmick, he may be flipping burgers in Siberia.

Mr. President, I ask that the September 26, 1988 article from U.S. News and World Report be printed in the RECORD.

The article follows:

#### GORBACHEV REVS UP PEOPLE POWER

It was the moment that every politician dreads: Working a crowd, TV cameras rolling, when suddenly the heckling begins. But this time the streets were in Siberia, the hecklers were usually placid Soviet citizens and the politician was Mikhail Gorbachev, who has discovered how to use prime-time television to reap political gain from public wrath.

At every stop during a five-day tour, Gorbachev faced an outpouring of resentment. "Go into our stores, Mikhail Sergeevich, You'll see there's nothing in them," shouted one man. "The housing situation is terrible," complained a woman nearby, who urged other bystanders to "go on, tell him what it's like."

Plenty of people did, especially in Krasnoyarsk. The industrial city is a shabby graving panorama of the inadequate housing, constant shortages, inefficient factories, stifling pollution and bureaucratic ineptitude that Gorbachev's reforms are intended to cure. Its citizens grumbled openly that the only changes they see after two years of perestroika are longer lines and higher prices.

But instead of the beatings or arrests that would have followed such outburst during the regimes of Gorbachev's predecessors, complaints of hecklers in Krasnoyarsk and elsewhere were featured on national television for three consecutive days last week. The purpose, said analysts in Moscow, is to use the media to send messages vital both to the Soviet chief's success in promoting perestroika and to his ability to face down chal-

lenges from Kremlin conservatives. Gorbachev seeks to build up his image as a populist leader struggling to resolve people's problems despite foot dragging by bureaucrats who are more interested in self-aggrandizement than in improving local living conditions. He also seeks to emphasize that change will take time—and will have to come from the people themselves.

On the streets, Gorbachev was the consummate politician, freely agreeing with some complainers, patiently debating others and repeatedly urging listeners not to look to Moscow for all the answers. But for unreconstructed bureaucrats who tried to claim that things are going well, Gorbachev had a tougher response that also should be a crowd pleaser. "Tell that to the people in the streets," he admonished one official. "They'll laugh at you." ●

#### LT. COL. WILLIAM R. HIGGINS

● Mr. McCONNELL. Mr. President, we all were pleased last week to learn that the 1988 Nobel Peace Prize will be awarded to the U.N.'s peacekeeping forces. I commend and congratulate this deserving group of 10,000 young men and women from around the world who have made great sacrifices for the cause of peace.

However, the Norwegian Nobel Committee's announcement was bitter-sweet news to me. While the U.N.'s peacekeeping forces were celebrating the news, one their leaders was spending his 226th day as a hostage.

As you know, Mr. President, Lt. Col. William Higgins was abducted in February as the head of the U.N. Truce Supervisory Organization in southern Lebanon. I have met with his wife, Marine Maj. Robin Higgins, and have the greatest respect and admiration for her strength and courage as she hopes for an end to her husband's ordeal. I am hopeful that the selection of the peacekeeping forces an Nobel laureates will focus international attention on Colonel Higgins and increase pressure to secure his release. This award surely must convince his abductors that he was on a mission of peace.

Mr. President, I would like to insert into the RECORD two articles that appeared in Friday's Washington Post. The first article details the mission and selection of the forces as recipients of the coveted prize. The second reminds that not all of the prize winners are able to share in the glory. I am sure that all of my colleagues in this body join me in praying for the safe return of Colonel Higgins.

The articles follow:

#### UNITED NATIONS FORCES WIN NOBEL PEACE PRIZE—AWARD SIGNIFIES RESTORATION OF ORGANIZATION'S PRESTIGE AROUND WORLD

(By Karen DeYoung)

Oslo, September 29.—The United Nations Peace-keeping Forces have been awarded the 1988 Nobel Peace Prize for their contribution to reducing international tensions and in recognition of the "central part in world affairs" the United Nations has come

to play, the Norwegian Nobel Committee announced here today.

Chairman Egil Aarvik said the committee hoped that the award, which comes with a gold medal and \$388,000, would "give more prestige to these forces, and through them to the United Nations."

In New York, U.N. Secretary General Javier Perez de Cuellar called the decision "one of the most brilliant" the committee had made in the 87-year history of the award. He said he would travel to Oslo to receive the prize when it is presented on Dec. 10.

"The award is a tribute to the idealism of all who have served this organization and in particular to the valor and sacrifice of those who have contributed and continue to contribute to our peace-keeping operations," Perez de Cuellar said as soldiers celebrated at U.N. peace-keeping outposts in the Middle East and elsewhere.

Widespread speculation that the award would go to President Reagan and Soviet leader Mikhail Gorbachev, for the signing last December of the Intermediate-range Nuclear Forces (INF) Treaty, was dampened over the weekend, when the usually well-informed Norwegian media said the committee feared such a decision could influence the upcoming U.S. presidential election.

Aarvik told reporters today that Reagan and Gorbachev had been considered "very seriously." Asked if the U.S. political situation had been taken into account, he said, "We take everything into consideration. Also that."

In Washington, Reagan called the award to the estimated 10,000 U.N. peace-keepers "an admirable decision," saying, "I didn't deserve it as much" as they did.

A total of 19 organizations and 68 individuals, including Pope John Paul II, Indian Prime Minister Rajiv Gandhi, South African black nationalist leader Nelson Mandela and Sri Lankan President Junius Jayewardene, were nominated. Nominations can be submitted by members of any of the world's parliaments, university scholars and former peace prize winners. The U.N. forces were nominated by Nobel Committee member Odval Nordli.

Aarvik said that the prize constituted "sort of a congratulation" to Perez de Cuellar for his key role in negotiating the cease-fire in the Persian Gulf war, and to his undersecretary, Diego Cordovez, who spent seven years in negotiations leading to the beginning of the Soviet Union's troop withdrawal from Afghanistan this year.

The peace prize decision tops a run of U.N. successes this year, and the restoration of significant prestige after a decade of what some of the world's powers, including the United States, considered political irrelevance.

In his speech Monday to the General Assembly, Reagan, long a U.N. critic, warmly praised the organization and Perez de Cuellar. Several weeks ago, the president announced that \$188 million in dues arrears owed the United Nations by the United States would be paid, and ordered the State Department to come up with a plan to settle more than \$500 million in back debts.

The Soviet Union, too, long in arrears on its U.N. commitments, has begun, under Gorbachev, to pay its debt in apparent recognition of the usefulness of the United Nations in helping to resolve conflicts.

Much of the newfound standing of the organization comes from this year's successful negotiations over the Persian Gulf, where 350 U.N. troops were sent as cease-fire moni-

tors last month, and Afghanistan, where 50 U.N. personnel were positioned to observe and verify Soviet troop withdrawals.

In recent months, Perez de Cuellar also has presented a plan for ending the Western Sahara war between Morocco and the Polisario Front with 2,000 peace-keeping troops. The organization is gearing up for a 7,000-troop presence in Namibia to enforce a truce and supervise elections following a proposed South African withdrawal, and has said it is ready to participate in the withdrawal of Vietnamese troops from Cambodia, now in the preliminary stages of discussion.

All of these functions, Perez de Cuellar has said, could increase the cost of U.N. peace-keeping functions from a current \$250 million a year to as much as \$2 billion annually.

The fact that most of the negotiating successes for which the organization is being congratulated came about after the Feb. 1 peace prize nominating deadline is not unprecedented. In awarding last year's prize to Costa Rican President Oscar Arias, the committee made clear it hoped to add impetus to his still-inconclusive Central American peace plan.

The Persian Gulf and Afghanistan missions marked the first U.N. deployments since the United Nations Interim Force in Lebanon (UNIFIL) was set up following the 1978 Israeli invasion there. The currently 5,800-member force has remained there ever since.

Troops drawn from 58 countries have participated in 14 separate U.N. missions over the past four decades, either as peace-keepers between combatants, or as cease-fire or armistice observers. Generally allowed only sidearms to be used in self-defense, U.N. forces have suffered thousands of casualties over the years, including a total of 733 dead.

There are seven current U.N. peace-keeping missions, including UNIFIL, which is the largest; the Persian Gulf; Afghanistan; the Golan Heights; Cyprus, and vestigial deployments of the two oldest U.N. forces—the 1948 Arab-Israeli buffer force in Jerusalem, and a small force positioned on the India-Pakistan border in 1949.

The peace prize is one of five awards set up under the 1895 will of Sweden's Alfred Nobel, the inventor of dynamite. Today's peace award was the fifth to a U.N.-associated body since the first award was made in 1901.

The other Nobel prizes, which will be announced over the next few weeks in Stockholm, were physics, chemistry, medicine and literature. An award for achievement in economic science was established later.

Nobel, in his will, said the peace prize was to go to the person who did "the best work for fraternity between nations, for the abolition or reductions of standing armies, and for the holding and promotion of peace congresses."

#### ONE PEACE-KEEPER NOT FREE TO CELEBRATE

(By Richard Homan)

While most of the 10,000 U.N. peace-keeping troops were celebrating their Nobel Peace Prize yesterday, one of the forces' highest-ranking American members, Marine Lt. Col. William R. Higgins, was in his 226th day of captivity in the Middle East.

Higgins, of Woodbridge, Va., was kidnaped last Feb. 17 near Tyre, in southern Lebanon, where he was serving as head of a 76-member unit of the U.N. Truce Supervision Organization.

U.N. officials and Higgins' family used the occasion of the prize announcement yesterday to renew demands that his captors free him.

Higgins' sister, Mary Fisher, told United Press International in Louisville, Ky., "I hope this proves to them that they are holding a man who was on a peace mission. We have been praying hard since my brother was abducted. We hope this Nobel prize will bring an answer to our prayers."

Higgins' captors—the Organization of the Oppressed on Earth—accused him of using his U.N. post as a cover for U.S. espionage, a charge that U.S. and U.N. officials have strongly denied.

Higgins, 43, was seized by gunmen who ambushed his U.N. vehicle after he left a meeting with a senior official of the Shiite Moslem Amal group, Amal officials said.

The U.N. group in which Higgins served since June 1987 was formed in 1948 to supervise armistice agreements between Israel and Arab countries. Earlier, Higgins served here and lived in Woodbridge with his wife, Marine Maj. Robin Higgins, who is assigned to the Pentagon. ●

#### NEONATAL INTENSIVE CARE UNIT

● Mr. CHILES. Mr. President, recently, I had the privilege of participating in the dedication ceremonies for the new neonatal intensive care unit at Children's Hospital National Medical Center in Washington, DC. This expanded nursery unit is the culmination of many years of planning and tremendous hard work on the part of the National Medical Center's administration and staff, and is one more indicator that Children's Hospital National Medical Center remains the Nation's foremost champion of children and a leading innovator in child health care.

Since Children's Hospital National Medical Center opened its doors in 1870—in a rented house in northwest Washington, DC, with only 12 beds—it has always made the health of infants and young children its singular priority. Although Children's Hospital National Medical Center was initially established to treat children of the Metropolitan Washington, DC, area, it is now significantly national and international in scope, treating very sick children referred from hospitals around the Nation and from many foreign countries.

As Chairman of the National Commission to Prevent Infant Mortality, I heartily commend Children's Hospital for its leadership in providing excellent early comprehensive maternity and pediatric care to this Nation's dearest hopes—to this Nation's future leaders. The very lack of this type of health care has resulted in 40,000 infant deaths each year, and we now know that by the close of this century 520,000 infants will die before their first birthday if the infant mortality rate continues unchecked.

We, as a developed nation, have not yet answered the riddle of why so many of our infants die. That is why the National Commission to Prevent Infant Mortality rallies behind the type of innovative neonatal care and state-of-the-art medical technology which Children's Hospital National Medical Center is developing. Children's Hospital has broken new ground in its Extra Corporeal Membrane Oxygenation [ECMO] Treatment Program. Since the program's inception in 1984, this unique therapy has saved the lives of 150 infants suffering from acute respiratory distress.

Mr. President, Children's Hospital National Medical Center has been working desperately hard to reverse a situation which is a growing national tragedy. Through its far-reaching efforts to promote advanced research and treatment programs, it has become a model in the care of low-birthweight infants, those with congenital abnormalities, and other critical problems. On this occasion, I ask my colleagues to join me in congratulating the administrators and staff of the hospital for demonstrating that healthy children are our Nation's No. 1 priority. Let us extend to Children's Hospital National Medical Center our strong encouragement and support. ●

#### TRIBUTE TO THE ADAMS FAMILY

● Mr. CHILES. Mr. President, I would like to pay tribute today to the Adams family of Cortez, FL. The reason I am calling attention to this one native Florida family is because all six of the brothers—William H., Leon H., Willis H., Cleveland T., Henry C., and Clyde D.—served overseas in the U.S. Armed Forces at the same time during World War II.

William Hugh Adams, the eldest son of the family and who is now deceased, enlisted in the Navy in January of 1942 and served for almost 4 years as a boatswain's mate in the Atlantic, Europe, and Africa areas.

Leon Harrison Adams, the second son, also now deceased, enlisted in the Navy in June of 1942 and served as a motor machinist's mate in the Atlantic, Africa, and Europe areas.

Willis Howard Adams, whom I know as "Snooks," was the third son. He, too, chose the U.S. Navy. He enlisted in December 1941, before his two older brothers, and served aboard ships in the Atlantic and Pacific Oceans. A total of seven battle stars were awarded to the various ships on which Snooks served. After the war, Snooks returned to Cortez to work in his family's fishing business. In 1954 Snooks started working for the Manatee County Sheriff's Office. Several years later he was appointed Chief of Police of Holmes Beach, FL. Snooks remained as the Holmes Beach Chief of

Police until he retired in 1978. When it came to carrying out his law enforcement duties, I am sure Snooks had occasion to call upon some of that military training he received while serving in the Navy.

The fourth son, Cleveland Thomas Adams, was the first of the Adams brothers to join the Navy. He enlisted in August 1940. Cleveland was at Pearl Harbor during the Japanese bombing of the Islands. Cleveland remained in the Navy for over 20 years and retired in 1960 as a gunner's mate first class. During the time he spent in the Navy, Cleveland was awarded the United Nations Service Medal, Korean Service Medal with two Stars, the Purple Heart for wounds he received in action while serving aboard the U.S.S. *Mobile* on December 4, 1943, the Good Conduct Medal, Asiatic Pacific Area Medal, American Areas Medal, and the National Defense Service Medal.

Henry Clayton Adams chose a different path from his four older brothers and enlisted in the U.S. Army in July 1942. Henry was sent to France, Algeria, Morocco, and Sicily.

The sixth brother, Clyde Dillard Adams, joined the Army Air Force in 1942 and flew 15 combat missions over France as an air crew member. I understand on his 15th mission his plane was shot down. He was captured and served for 9 months in a prisoner of war camp in Germany. In 1950, during the Korean conflict, Clyde re-enlisted in the Air Force and was sent to Korea where he put 15 more combat missions under his belt.

I am told six brothers serving in the U.S. Armed Forces during World War II is not quite a family record. But, it seems to me the willingness of all six brothers of this one Florida family to voluntarily answer the call to arms when their country needed them to fight to defend our basic freedoms certainly exemplifies the true patriotic spirit on which our Nation was founded. ●

#### SOUTH DAKOTA OLYMPIANS

● Mr. PRESSLER. Mr. President, I would like to take this opportunity to recognize the accomplishments of five South Dakotans who represented the United States in the 1988 Seoul Olympics.

Cindy Suggs Greiner, originally of Wilmot, finished eighth in the heptathlon. That is a performance to be proud of in a competition testing the all-around athletic skill of the participants in seven different events.

South Dakota's four other Olympians are all wrestlers. Not only does the State produce good wrestlers, it does so by the pair. Dennis and Duane Koslowski, twin brothers from Doland, represented the United States in Greco-Roman wrestling. Dennis won a bronze medal in the 220-pound weight

class, and Duane finished eighth in his class.

Jim and Bill Scherr, twins from Moberidge, competed in freestyle wrestling. Bill also won a bronze medal for the United States, in the freestyle 220-pound weight class. Jim finished fifth at 196 pounds.

These five outstanding young people exemplify the true competitive spirit of the Olympics. We are understandably proud of their achievements and those of their fellow athletes, which set an example for future Olympians to follow.

Mr. President, I ask that an article from *Sports Illustrated* be printed in the *RECORD* as a tribute to the achievements of Jim and Bill Scherr.

The article follows:

SCHERR AND SCHERR ALIKE

(By Craig Neff)

As the annual rodeo parade in Moberidge, S.Dak., turns right onto Main Street this baking hot Fourth of July morning, hometown heroes Bill and Jim Scherr are sitting with some former high school teammates and coaches on a float bearing the banner 32 YEARS OF MOBRIDGE WRESTLING. The float, a sparsely decorated flatbed trailer, is being pulled by a 15-ton semi that belongs to Frank Scherr, the twins' father. "They wanted to stick me and Jim in a car by ourselves, but we said 'Nope.'" says Bill.

Most of Moberidge (pop. 4,174) has come out to greet the town's humble, hard-working, first-ever Olympians. The 27-year-old Scherrs will go to Seoul as one-fifth of the U.S. freestyle wrestling team, Bill in the 220-pound class and Jim at 198. Both are brainy, cautious wrestlers with excellent chances of winning medals, though Bill, who has lost two close matches to top-rated Leri Khabelov of the Soviet Union, has a slightly better shot at a gold. Jim finished second at last year's world championships in Clermont-Ferrand, France, and Bill, a former 198-pound world champ who moved up in weight two years ago to open a spot on the national team for his brother, placed third.

Along Main Street, the Scherrs are already champions. They won state titles at Moberidge High, handled virtually all the field events for the track team, got good grades, starred in football and proved their mettle as team ropers and bull riders in rodeo. "I quit bull riding after I started having nightmares of bulls chasing after me," recalls Bill.

Watching the parade, their father, Frank, says, "You know how they got their wrestling strength? Stacking and hauling bales of hay every summer from the time they were 10 years old." During summers, Bill and Jim would work from dawn to dusk, six days a week, loading as many as 1,500 bales a day onto their dad's three Scherr Trucking Co. rigs. How much were they paid? "They got a car [a 1970 Pontiac Catalina] to share when they were 16," says Frank quietly but firmly. "And they got to go to wrestling camp every year."

The Scherr boys never stopped working. While in high school, Jim toiled nights loading beer trucks, while Bill punched in as a low-key country-music deejay on the local radio station. "My girlfriends used to listen to Bill before they went to bed," says Teresa, his high school sweetheart-turned-

wife. "They said he helped put them to sleep." Even after they left Mobridge for the University of Nebraska, where both won NCAA titles as seniors in 1984, Bill and Jim came home often to visit their parents and six siblings and to work with the town's young wrestlers, four of whom eventually followed them to Nebraska on wrestling scholarships.

The parade moves past the Municipal Auditorium, which may be renamed the Scherr Arena after the Olympics. The whole region has mobilized behind the twins, even though they no longer live in Mobridge. Jim is an MBA candidate and graduate assistant coach at Northwestern in Chicago, while Bill, Teresa and their 2½-year-old daughter, Alexandra, live in Bloomington, Ind., where Bill is working toward an MBA at Indiana and is assistant to Hoosier coach Jim Humphrey, who's also the Olympic freestyle coach.

After the parade there will be a fundraiser at which caps, shirts, buttons and raffle tickets will be sold to help defray the twins' living expenses. South Dakota governor George Mickelson will stop by, pose for photos with the twins and proclaim this July 4 Jim and Bill Scherr Day in the state. To further help the twins, friends in Mobridge have placed donation boxes at stores and restaurants as far away as Bismarck, N.Dak., 100 miles to the north.

All the support is especially meaningful to the Scherrs now, because in recent months the family has been under a great deal of stress. In March the twins' 25-year-old sister, Liz, suffered a recurrence of melanoma, a form of skin cancer. She had battled the disease a year earlier and seemed to have beaten it. This time she could not. She died on June 7, one week before the U.S. Olympic Wrestling Trials in Pensacola Fla., leaving behind a husband and a 15-month-old daughter.

"It was physically and emotionally exhausting for us," says Bill. "Liz was always very encouraging about our wrestling. She wanted to make the Olympics." Adds Jim, "It was hard to concentrate on training those last few months."

Liz had given her brothers a virtual order not to let her illness affect their preparations for Seoul. When they headed to Pensacola, they could not help but think of her. "Deep down," says Bill, "I wanted to succeed at the trials because I didn't want to leave a black mark on her memory—the idea that somehow her illness had kept us off the team."

As Jim wrestled the deciding bout in a best-of-three final series against Melvin Douglas of Oklahoma, Bill, who had earned a spot on the team less than an hour earlier with an easy victory over Kirk Trost of Michigan, was kneeling near his brother's corner screaming instructions and demonstrating moves. "I couldn't imagine going to the Olympics without Jim," he would say afterward. Jim hung tough on defense to earn a 2-1 victory.

Bill, though 15 minutes younger, has always tended to push his more laid-back brother in the sport. However, the Scherrs do share a common style: good single-leg and high-crotch takedowns, intelligent body position, solid defense. Both study opponents and take notes on them. Bill has had to eat four meals a day and lift weights constantly to maintain enough heft to compete in the 220-pound class. Jim may also need a little more muscle in Seoul; his main rival, Soviet world champion Makharebek Khadartsev, has never lost at a major interna-

tional competition. Jim would have faced him in the finals of last year's worlds but suffered a badly sprained right knee in the semis. He dropped a narrow 2-0 decision to Khadartsev at a U.S.-U.S.S.R. dual meet in New York City in March.

Just for the record, Bill can be identified by the scar near his knee—the right one—the result of a football injury. He is also more likely to have a fishing pole in his hand, although Jim, too, likes to put a line in the water when back in Mobridge. In fact, if Bill looks a bit weary as they ride the float past the Sears catalog store on the Fourth, it may be from having been out on the lake fishing until 3:30 a.m. the night before.

"You've made us a proud little town, boys," says the parade announcer over the P.A. "Good luck in Seoul, Korea." The twins wave as the spectators smile and applaud. Jim and Bill will be back for next year's Mobridge parade, probably bearing medals.

#### SUMMIT ON THE MAT

The Scherrs aren't the only reason the American wrestling community is excited about Seoul. "This could be the greatest team we've ever had," says U.S. Olympic freestyle coach Jim Humphrey, who saw his squad win nine medals at last fall's world championship in France.

In eight of the 10 weight classes the competition could well boil down to U.S.-U.S.S.R. matchups. The Soviets may have the three best wrestlers in the world in Sergei Beloglazov (125.5-pound class), Arsen Fadzaev (149.5 pounds) and Makharebek Khadartsev (198 pounds). Beloglazov, 32, won the gold and has triumphed at all six world championships since then. Fadzaev, 26, and Khadartsev, 22, have been nearly unbeatable in major international competition.

The Americans have two reigning world champions: 27-year-old Mark Schultz from Palo Alto, Calif., the 180.5-pound winner at the '84 Olympics, and 21-year-old John Smith of Oklahoma State, at 136.5 pounds. Two other formidable Americans are Kenny Monday (163 pounds), 26, of Oklahoma State, and Nate Carr, 27, who could give Fadzaev a tough challenge at 149.5 pounds.

The '88 team's hopes for the unofficial team title could hinge on the super-heavyweight matchup between 1984 Olympic champ Bruce Baumgartner and Soviet Aslan Khadartsev, Makharebek's older brother, who won the world title last year. Baumgartner has superior ability but must avoid launching sloppy takedown attempts. If he succeeds, the team race may be too close to call. ●

#### JACKIE JOYNER-KERSEE

● Mr. SIMON. Mr. President, the Olympics in Seoul are over. Juan Antonio Samaranch, president of the International Olympic Committee, called the 1988 Games "the best and most universal Olympic Games in history." In my State we have a special reason to celebrate. Jackie Joyner-Kersee, a native of East St. Louis, IL, won gold medals in the long jump and heptathlon. I ask unanimous consent to reprint in the RECORD a column I have written honoring Jackie and her magnificent performance.

The column follows:

#### A GOLD MEDAL FOR CITIZENSHIP

(By U.S. Senator PAUL SIMON)

Jackie Joyner-Kersee, winner of two gold medals at the Olympics in Seoul, is being called the world's greatest female athlete by newspapers everywhere, but I think she is doing something even more important than winning gold medals in Seoul.

Jackie Joyner-Kersee deserves a gold medal for citizenship. Let me tell you why.

When she entered the stadium in Seoul for the closing ceremonies on the shoulders of her husband, Bob Kersee, she carried a sign: "I love East St. Louis, Illinois."

Today, East St. Louis is a city of devastation, of crime, of unpaid city employees, of intense poverty—but also a city with marvelous people. It is a city that many, black and white, have fled and forgotten.

Jackie Joyner-Kersee wants to return to reopen the Mary E. Brown Community Center where she ran her first track meet at age 9 and where she long-jumped 16 feet 9 inches at age 12. (Her gold medal winning jump in Seoul was 24 feet 3½ inches.) She has signed a sponsorship contract with Seven-Up to help fund a foundation to reopen the center for young athletes in East St. Louis.

Jackie, now 26, grew up in poverty. Press accounts say she sometimes ate bread and mayonnaise for dinner and the family used to collect plastic tubs of water in the Kitchen because their pipes froze frequently.

She remembers her mother telling her "don't get pregnant at a young age, and make sure you finish school." Jackie graduated from UCLA with scholastic honors and in the top 10 percent of her class. Her mother died of meningitis in 1981 at age 38. Jackie says she feels her mother is with her in spirit.

Says Jackie, "I have this burning desire to get out there and do my best. It's as if I'm keeping it all in a little bottle, and it's all going to come out when I do the best I'm capable of doing."

East St. Louis has so much potential, and the people there have so much potential.

The former U.S. ambassador to the United Nations, Donald McHenry, grew up in East St. Louis and still is interested in that city.

Katherine Dunham, the ballet and dance pioneer who received the Albert Schweitzer Music Award grew up in East St. Louis and still maintains a home there. She has also done much to stimulate young people to take an interest in culture and in their African-American heritage.

Jackie Joyner-Kersee is a great athlete. But she is an ever greater person for remembering her roots and for striving to see that more of the talented young people in that depressed city have a chance.

America is one family. When anyone in that family hurts, ultimately all of us hurt.

People in East St. Louis are hurting and Jackie Joyner-Kersee wants to help heal the wounds.

She needs to be joined by public policy that does the same. ●

#### ILLINOIS PRAIRIE PATH

● Mr. SIMON. Mr. President, Illinois is called the "Prairie State," a reminder of the days when the natural prairie grasses and flowers blew in the breezes. Most of that prairie is gone, replaced by the acres of corn, soy-

beans, wheat, oats, and other crops grown on our productive farmland.

But some natural prairie is preserved. One place is in DuPage and Kane Counties, where a 55-mile-long pitchfork-shaped path stretches from Maywood to Wheaton, then splits into four spurs which reach the Fox River in the towns of Elgin, Geneva, Batavia, and Aurora.

Thousands of volunteers have invested hundreds of thousands of hours and dollars to make this abandoned railroad right-of-way a foot and bicycle path. At least 300,000 bicyclists, walkers, runners and equestrians use the path each year.

The Illinois Department of Conservation has featured the Illinois Prairie Path volunteers in its August 1, 1988, issue of Outdoor Highlights. In July, F. Paul and Jean C. Mooring of Glen Ellyn represented those volunteers at the White House and received the "Take Pride in America Award" from President Reagan. That award will be on display at the Illinois Prairie Path annual meeting on Sunday, November 6 at the DuPage County Historical Museum in Wheaton.

Let me take this opportunity to congratulate the Moorings and all the volunteers for the award and their collective efforts in preserving the prairie and making this wonderful foot and bike path a reality.●

#### A CALL TO THE SOVIET UNION TO GRANT SOVIET JEWS THEIR RIGHT TO EMIGRATE

● Mr. DIXON. Mr. President, today, October 4, 1988 marks the end of Sukkoth, the Jewish harvest holiday which follows the high holidays. Throughout the world Jews will celebrate, but, in the Soviet Union, this day will have a special significance as Soviet Jews join together in Moscow and Leningrad to celebrate their religious traditions in a country which does not recognize their right to religious freedom.

In light of this holiday, it is an opportune time to speak out on behalf of the thousands of Soviet refuseniks who—in contravention of the principles spelled out in the Helsinki accords—have been denied their right to emigrate from the Soviet Union. Each refusenik case represents an odyssey of patience, endurance and an underlying knowledge that religious freedom is not an unreasonable request.

On this occasion, I would like to tell you about a particular refusenik family, Ilya and Olga Shostankovsky. The Shostankovsky's have been working with my friend and colleague, Congressman HENRY HYDE, to expedite their emigration from the Soviet Union.

Among the thousands of refusenik cases, Ilya and Olga are somewhat less known, but their situation is equally

tragic. Like hundreds of other Soviet Jews, they have been denied exit visas for over 15 years. Soviet officials maintain that Ilya is a "security risk." Ilya, however, has never had access to state secrets or classified information.

In 1973, prior to his marriage, Ilya applied with his parents and his brother Grigory to emigrate to Israel. His parents were granted immediate permission to emigrate. Ilya was to have followed within the year; but Soviet officials refused his visa, marking the beginning of Ilya's nightmare of applications, false hopes, refusals, and the individual persecution which haunts each refusenik.

An engineer by profession, Ilya was never allowed to enter the program of his interest—nuclear physics. The young junior engineer watched his career end before it had even begun.

In 1967 Ilya was dismissed from his job as a night watchman having been told that he was in danger of being declared a parasite.

In 1978 Ilya's brother Grigory was finally allowed to join his parents in Israel. Ilya, now married, was again denied.

By 1981, Ilya's goal of sharing a life with his parents in Israel was destroyed by the news that his parents had both passed away. Ilya had not seen his parents since 1973. The Soviet system had once again destroyed any hope of family reunification.

In 1982, the Shostakovsky's phone was summarily disconnected. It was reconnected in 1983—with a warning that it would be cut off again if it were used for international calls.

Mr. President, for over 15 years Ilya and his wife Olga have suffered persistent abuse. Their professional careers have been destroyed, and the constant psychological, as well as physical abuse, by the KGB has taken its toll.

Ilya and Olga Shostakovsky have, in good faith, done everything possible to ensure their emigration. Yet, in February of 1988, as the world anxiously awaited the rewards of perestroika, the Shostakovsky's received their most recent denial. Mr. President, there has been no perestroika for Ilya and Olga Shostakovsky. Moreover, this story is painfully familiar. During my 8 years as a United States Senator, I have spoken about many families torn and divided for no understandable reason by Soviet officials. Ilya and Olga have suffered needlessly. For what purpose; the motive is beyond this Senator's comprehension.

During the 100th Congress, we have witnessed great strides in United States-Soviet relations. But, this progress will never be complete until the Soviet Union is prepared to live up to its international human rights commitment. Now is time for the Soviet Union to finally honor the Helsinki ac-

cords and to grant Ilya and Olga Shostakovsky their right to emigrate.●

#### THE REVIVAL OF UNION STATION

● Mr. DOMENICI. Mr. President, I know that all of my colleagues share my sense of delight over the reopening of Union Station, located just a few blocks from here.

The resurrection of Union Station has been a long struggle, one in which a lot of money went down a very big hole until, with great foresight, efforts were begun to revive that spectacular building as a train station and as a focus for the Capitol Hill area.

I shall not dwell on the mistakes of the past. We all know of the failures that led to the closing of that great building a few years ago after it has been turned into something called the National Visitors Center.

The revival of Union Station cost a lot of money, of course, but I am delighted that this development has been paid for, to a large extent, with private funds. As a result of that public-private partnership, we now have a great building open again, attracting throngs of visitors and travelers.

I wish to pay tribute to the individuals who made it possible. My colleagues may not remember, but the credit for the revival of Union Station really belongs to two of our colleagues. The effort was led by Senator STAFFORD, when he was chairman of the Committee on Environment and Public Works. Senator STAFFORD worked long and hard for passage of the law that made the revival of Union Station possible. He was joined in that effort by our friend from New York [Mr. MOYNIHAN].

Once the law was passed, the administration's effort was directed by then-Secretary of Transportation Dole. Secretary Dole worked closely with Senators STAFFORD and MOYNIHAN to make certain that the renovation of Union Station was accomplished with the highest architectural goals at the lowest possible cost of the taxpayer.

She fought for the money. She kept Union Station on the front burner, against the judgment of a lot of individuals who didn't care.

The result is a triumph, and all Americans should be proud of what Secretary Dole and our colleagues accomplished.

Before closing, there is one other person who deserves special recognition. He is Keith Kelly, head of the Government's Union Station Redevelopment Corporation. Mr. Kelly has overseen this project for half a decade, and I believe everyone who visits that great building owes him a word of congratulations for this magnificent achievement.

Those of us who value America's architectural heritage, those of us who want Federal dollars spent wisely, and those of us who will be lucky enough to use this wonderful building have only one thing to say: "Thank you."●

#### CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, is morning business closed?

The PRESIDING OFFICER. If there is no further morning business, morning business is closed.

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

#### ORDERS FOR WEDNESDAY

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 10 o'clock tomorrow morning; that following the two leaders, or their designees, under the standing order, there be a period for morning business not to extend beyond the hour of 10:30 a.m. with Senators being permitted to speak for not to exceed 5 minutes each during morning business; that at 10:30 a.m., the Senate proceed to the consideration of Calendar Order No. 681, S. 1301, a bill to implement the Berne Convention for the protection of literary and artistic works; that at the hour of 2 o'clock p.m. tomorrow, the Senate proceed to vote on the second-degree amendment and then the motion to recommit, which have been entered and on which cloture has been invoked; that between the votes on the second-degree amendment and the first-degree amendment, and again the vote on the first-degree amendment and the motion to recommit there be no debate, no amendment in order and that no motion of any kind be in order other than a motion to table; that upon the disposition of the motion to recommit that the cloture, the 30 hours under rule XXII would have run its course, and that the committee substitute, if the motion to recommit and the amendments thereto have been agreed to, then be before the Senate for further action.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, I have no objection except to indicate there may be a period of time after disposal of the Berne Convention if we cannot finally reach an agreement on the veterans COLA. There might be an hour for debate prior to those votes. I do not want to lock that in now. It would be helpful to have at least 30 minutes on this side.

Mr. BYRD. There would be some time. That time could be utilized in going to another matter or it could be used for debate on the motion to re-

commit with instructions and report back with two amendments.

I would be very happy to have that time divided equally between the two leaders or between Mr. DOLE and Mr. COCHRAN.

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

Mr. BYRD. Mr. President, I thank the leader and I thank all Senators.

Mr. DOLE. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. DOLE. I wonder if we have an opportunity tomorrow could we have our people working on both sides. They might be able to get an agreement on the drug bill tomorrow if we can have some free time. That is another matter of priority. I again ask Senator RUDMAN on this side, and I know he has been with Senator NUNN today, to see if they can work out some arrangement limiting the number of amendments on each side.

I am not certain we can get that done. Hopefully, that might be something we can consider tomorrow morning.

Mr. BYRD. I think it is a good suggestion, and we will put our people to work on it on this side, and we will see where we are on the matter tomorrow.

Mr. President, let me make sure we all understand what the program is for tomorrow.

The Senate at the hour of 2 o'clock tomorrow would begin voting on the matters involved in the measure that has been clotured, that measure being the motion to recommit with instructions to report back forthwith two amendments. The vote would occur on the second-degree amendment beginning at 2 o'clock, or if someone wishes to put in a quorum call that would be allowed. The vote would occur on the amendment in the second degree. Upon the disposition of that amendment, whatever the disposition, without further debate, motion, except a tabling motion, which is allowed under this request as I framed it, or amendment, the vote would then immediately occur upon the first-degree amendment.

Upon the disposition of that amendment, without further debate, motion, or amendment, other than a motion to table, which I have allowed under the request, the Senate would vote immediately then upon the motion to recommit with instructions to report back. If that motion carries and what we have is a substitute, the committee substitute, of course, will then be before the Senate for action and that substitute would contain the fourth committee amendment which has not yet been disposed of as reported originally from the committee, and it would also contain the instructions with the amendments contained in the motion to recommit. Those amend-

ments are in two degrees. That would all be a part of the text. That would be open to debate and further amendment.

If the motion to recommit is tabled or voted down, then what the Senate would have before it would be the bill with the pending fourth committee amendment as was the status quo at the time the motion to recommit with instructions was entered.

Now, Mr. President, I would like to ask the Chair if what I have stated as the program for tomorrow is correct. If there are any omissions or corrections that need to be made, we should have those done tonight.

The PRESIDING OFFICER. The statement of the majority leader is correct.

Mr. BYRD. I thank the Chair. I thank the distinguished Republican leader and all Senators.

Mr. DOLE. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. DOLE. I would just like to again let the RECORD reflect that this side is prepared to dispose of this matter tonight, have a cloture vote, have two cloture votes, have three cloture votes in order to expedite what we considered to be at our policy luncheon very important business, the drug bill and technical corrections. Each of those is going to take some time. It seems to me we are obviously going to be here until next week and maybe the following week, with 100-some amendments on technical corrections.

As I understand it, the majority leader kept open the option of filing cloture tomorrow, so if cloture is filed that would ripen on Friday. And in the meantime we will be on the substitute.

Mr. BYRD. We could be or we could go to the tax bill and be working on it if that were agreeable on all sides.

Mr. DOLE. I think we have problems on each side right now with the tax bill, but I hope by tomorrow we might resolve those, but that will take some time. I am certain a Senator on this side who has a present objection will be willing to cooperate.

#### PROGRAM

Mr. BYRD. Mr. President, on tomorrow, the Senate will come in at 10 o'clock following a recess. After the two leaders or their designees have been recognized under the standing order, there will be a period for morning business which will not extend beyond 10:30, and according to the agreement will in reality go to 10:30 with Senators permitted to speak during that period for not to exceed 5 minutes each.

At 10:30 a.m. tomorrow, the Senate will proceed to the consideration of S. 1301, a bill to implement the Berne Convention for the Protection of Lit-

erary and Artistic Works. There is a time agreement on that bill, and it would appear from the time agreement that if all the time is taken, the time would require something like 1 hour and 15 minutes. There could be one or more rollcall votes. But in any event, upon the disposition of that bill—the bill has to go back to the other body before the Senate can proceed to vote on the convention, so at that point, on the disposition of the bill, the time between that point and 2 o'clock p.m. tomorrow would be equally divided between the two leaders or their designees, Mr. Dodd and Mr. COCHRAN. We can use that time for debate on the upcoming votes beginning at 2 o'clock or some other matter could very well be, by unanimous consent agreed upon by both sides, brought up and debated and hopefully disposed of.

RECESS UNTIL 10 A.M. TOMORROW

Mr. BYRD. If the distinguished Republican leader has nothing further, seeing no other Senator who seeks recognition, I move, in accordance with

the order previously entered, that the Senate stand in recess until the hour of 10 o'clock tomorrow morning.

The motion was agreed to, and the Senate, at 7:37 p.m., recessed until Wednesday, October 5, 1988, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate October 4, 1988:

UNITED NATIONS

HERBERT STUART OKUN, OF NEW YORK, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 43RD SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

DEPARTMENT OF LABOR

FRANCIS J. DUGGAN, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF LABOR, VICE WILLIAM JOHN MARONI.

U.S. INSTITUTE OF PEACE

W. SCOTT THOMPSON, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE U.S. INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1993 (REAPPOINTMENT).

NATIONAL LABOR RELATIONS BOARD

THE FOLLOWING-NAMED PERSONS TO BE MEMBERS OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERMS INDICATED, TO WHICH POSITIONS THEY WERE APPOINTED DURING THE LAST RECESS OF THE SENATE:

FOR THE TERM OF 5 YEARS EXPIRING DECEMBER 16, 1992:

JOHN E. HIGGINS, JR., OF MARYLAND, VICE DONALD L. DOTSON, TERM EXPIRED.

FOR THE TERM OF 5 YEARS EXPIRING AUGUST 27, 1993:

WILFORD W. JOHANSEN, OF CALIFORNIA (REAPPOINTMENT).

CONFIRMATIONS

Executive nominations confirmed by the Senate October 4, 1988:

DEPARTMENT OF ENERGY

MARTHA O. HESSE, OF ILLINOIS, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR A TERM EXPIRING OCTOBER 20, 1991.

ELIZABETH ANNE MOLER, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR A TERM EXPIRING OCTOBER 20, 1991.

CHARLES G. STALON, OF ILLINOIS, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING OCTOBER 20, 1989.

CHARLES A. TRABANDT, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR A TERM EXPIRING OCTOBER 20, 1992.

JERRY JAY LANGDON, OF TEXAS, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING OCTOBER 20, 1988.

JERRY JAY LANGDON, OF TEXAS, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR A TERM EXPIRING OCTOBER 20, 1992.

DEPARTMENT OF JUSTICE

FRANCIS ANTHONY KEATING II, OF OKLAHOMA, TO BE ASSOCIATE ATTORNEY GENERAL.

HAROLD G. CHRISTENSEN, OF UTAH, TO BE DEPUTY ATTORNEY GENERAL.

EDWARD S. G. DENNIS, JR., OF PENNSYLVANIA, TO BE AN ASSISTANT ATTORNEY GENERAL.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.