SENATE—*Thursday, October 29, 1987*

(Legislative day of Friday, October 16, 1987)

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by the Honorable TIMOTHY E. WIRTH, a Senator from the State of Colorado.

PRAYER

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

Let us pray:

*God of Abraham, Isaac, and Israel, give us ears to hear and minds to heed the warning of Your servant, Moses. "Take care lest you forget the Lord your God and fail to keep His commandments * * *. When you have eaten your fill, and have built fine houses to live in, and your herds and flocks have multiplied, and your silver and gold have increased, and everything you own has prospered, beware lest your heart grow haughty and you forget the Lord your God * * * and you say to yourselves, 'My own power and the might of my own hand have won this wealth' * * *. If you do forget the Lord your God and follow other gods to serve them or bow down to them, I warn you this day that you shall certainly perish."*—The Torah, Deuteronomy 8:11-14, 17, 19.

Lord of life, Your word warns of the peril of prosperity—not because wealth is wrong—but because money so easily becomes an idol and replaces God in our lives. Gracious Father, in Your mercy and grace, are You trying to get our attention through the activities of Wall Street? The Apostle Paul reminds us that the "love of money is the root of all evil."—I Timothy 6:10. Forgive us, Lord, for our pride and materialism and turn us back to Your truth, we pray in His name who said, "No man can serve two masters: for either he will hate the one and love the other; or else he will hold to the one and despise the other. Ye cannot serve God and mammon.—Matthew 6:24. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 29, 1987.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TIMOTHY E. WIRTH, a Senator from the State of Colorado, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized for not to exceed 5 minutes.

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

RESERVATION OF LEADER TIME

Mr. BYRD. Mr. President, I ask unanimous consent that the time of both the Republican leader and myself be reserved.

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

RECOGNITION OF SENATOR PROXMIRE

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

REAGAN ADMINISTRATION TURNS ITS BACK ON NUKE WEAPONS TESTING BAN

Mr. PROXMIRE. Mr. President, what is the most important arms control agreement our country could negotiate with the Soviet Union? The answer is an agreement to stop all nuclear weapons testing. Here is the one agreement that could stop the technological nuclear arms race.

Mr. President on October 13 William Broad reported for the New York Times that the Reagan administration—

> Remains deeply committed to the explosive testing of nuclear weapons despite its recent agreement with the Soviet Union to negotiate an eventual total ban on nuclear blasts.

Just last month—in September—the superpowers agreed to step-by-step negotiations to improve procedures to verify compliance and set limits on testing. In the words of the joint statement at that time:

> The ultimate objective is the complete cessation of nuclear testing as part of an effective disarmament process.

This was good news for arms control, Mr. President, it appeared to mean that the administration was coming back to the pledge made in the 1963 Limited Test Ban Treaty to negotiate with the Soviet Union a comprehensive end to nuclear weapons testing.

But now the administration is coming back to the "testing will continue forever" policy. The New York Times reports that Bernard Halloran, a spokesman for the Arms Control and Disarmament Agency has said:

> The official Government position is that a complete test ban will occur only when there is no longer any need to rely on nuclear weapons for deterrence.

Mr. President, this means the technological nuclear arms race will go on and on. And it means suicide. Sure, the United States may well be able to maintain a technological lead over the Soviet Union for years to come. But again and again and again we have discovered that every time we develop a newer, swifter, more devastating nuclear weapon, the Soviet Union comes along in a few months or a few years with the same weapon. We developed the hydrogen bomb. Within a couple of years the Soviets researched, developed, and deployed their hydrogen bomb. Then we developed the multiple, independently targeted reentry vehicle missile—the MIRV. Here was a tremendous, highly complex, and devastating new weapon. A single missile could carry 8 or 10 separately targeted warheads. We were convinced it would be generations before the Soviets could develop their MIRV. How wrong we were. Within a very few years they had their own MIRV's. Similarly in cruise missiles, and the submarines and bombers to deliver them, we were first, but barely. The Soviets have repeatedly shown they can erase any time advantage we have in technology in a few years or even in months. Now both superpowers are moving into the nuclear x-ray laser era. A few years and a few dozen tests on both sides and both superpowers will be able to destroy an enemy target 10,000 miles away in a fraction of a second. Just press the button and presto, there goes the White House and the Pentagon instantaneously. Or press the button and there goes the Politburo and Red Square. Decapitation—the total destruction of enemy command—could happen so fast it could conceiv-

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

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ably make retaliation impossible or fruitless.

So, Mr. President, why not go back to that opportunity of last month? Why not press for a prompt end to this mad scientist urge to see if it would really be possible to destroy civilization? The simplest and most consistently pressed reason for continued nuclear weapons testing has been to make sure that our nuclear arsenal retains its reliability. But there are two answers to this. Some experts contend that a weapon can be designed with a reliability that makes testing unnecessary. The second reason reliability testing should not stand in the way of a weapons test ban agreement is that it would be a simple matter to exempt reliability testing from a test ban and permit the adversary to make on-hand inspection of such tests to verify that the test was confined strictly to reliability. Why not? After all, does reliability testing advance the arms race? No way.

Mr. President, the New York Times article provides a helpful table setting forth the number of nuclear weapons tests for each category of weapons each year. The table shows that about three quarters of the tests are for new warheads for oncoming delivery systems or for star wars antimissile devices. Only one or two tests per year are conducted for testing the ability of deterrent systems to survive attack, one or two for research on how nuclear weapons work, and one or two for assessing the reliability of nuclear weapons in our stockpile.

Mr. President, I ask unanimous consent that the article to which I have referred by William Broad in the October 18, 1987, New York Times, together with the table on the Nuclear Testing Agenda be printed 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. 18, 1987]

U.S. IS COMMITTED TO NUCLEAR TESTS

(By William J. Broad)

The United States remains deeply committed to the explosive testing of nuclear weapons despite its recent agreement with the Soviet Union to negotiate an eventual total ban on nuclear blasts, Government scientists and officials say.

Other scientists, as well as arms control experts favoring a test ban, say the policy calls into question the Reagan Administration's sincerity in the negotiations, which are scheduled to start before Dec. 1.

Federal officials disagree, saying a test ban is a worthy goal that might be achieved in the 21st century.

SUPERIORITY AND STABILITY

But they also insist that testing will be needed as far into the future as they can now see, to gauge the reliability of aging nuclear weapons, to fashion new warheads and to create exotic new arms for President Reagan's plan for a defense against attacking missiles. At least three types of such "Star Wars" devices have advanced to the point of explosive testing at the Government's nuclear test site in Nevada.

Underscoring the strong desire of many officials to continue testing, a senior official of the Energy Department, which designs and produces the nation's nuclear warheads, said in Congressional testimony recently that the development and testing of advanced antimissile weapons offered the West a chance to gain superiority over the Soviet Union in an important new phase of military technology.

Critics, on the other hand, declare that nuclear reliability can be assured without testing and that the search for superiority is futile at best and dangerous in its potential to undermine nuclear stability.

COMPLEX ROAD TO PERFECTION

Experts on both sides agree that a test ban would halt nuclear advances. They say the perfection of a new weapon requires a complex process of design, testing and redesign. The number of tests needed can range from three or four to a hundred or more, depending on the complexity of the device. So far this year, the United States has announced a dozen nuclear tests at its underground site in Nevada.

"The official Government position is that a complete test ban will occur only when there is no longer a need to rely on nuclear weapons for deterrence," said Bernard Halloran, a spokesman for the Arms Control and Disarmament Agency.

Nevertheless, the United States and the Soviet Union last month agreed to step-by-step negotiations to improve procedures to verify compliance with a treaty and set limits on nuclear testing. "The ultimate objective," said a joint statement, is "the complete cessation of nuclear testing as part of an effective disarmament process." Although played down by the Administration, the move was hailed in the Soviet Union.

"The Administration is entering this negotiation clearly opposed to the stated goal," said Spurgeon M. Keeny, Jr., a former Government arms control official who is now president of the Arms Control Association, a private organization that seeks to promote nuclear weapons accords. "They don't want a test ban. The arms control community seized on this as a great triumph. But it's not. It was transparent from the very beginning."

Proving the reliability of the nation's existing nuclear stockpile is considered a key reason to continue testing, according to William F. Scanlin, a weapons official at the Lawrence Livermore National Laboratory in California, one of two Federal centers where nuclear arms are designed. "These systems don't retain their military effectiveness forever," he said. "It's like a car. You can't put it in a garage for 20 years and expect it to run. You have to turn it over every once in a while."

Critics say reliability can be designed into a weapon so that it never needs to be tested once it enters the stockpile. "There is simply no technical case that testing must continue for reliability," said Hugh E. DeWitt, a Livermore physicist who does not work on weapons and who favors a test ban. But weapons scientists say serious flaws are sometimes discovered only by testing.

NEVER GOING TO BE FINISHED

The development of ordinary nuclear warheads, like those for cruise missiles and the Midgetman missile, is seen as another important reason to test. Robert Barker, assistant to the Secretary of Defense for atomic energy, told Congress in March that "we are never going to be finished" testing, because of a need to create new arms as adversaries change targets, tactics and weapons. "Neither we nor the Soviets in my view are going to be finished," he said.

Federal officials say Dr. Barker is being considered to head the American delegation to the new negotiations.

Proponents say other reasons to test include the need to expose key military systems like satellites, missile silos and warheads to nuclear blast and radiation to make sure they can survive enemy attack. Another is an attempt to gain a fuller understanding of how nuclear weapons work so that if tests are ever banned, atomic scientists will have the best possible data for carrying on their work.

IN DEFENSE, AN OFFENSIVE POTENTIAL

One of the newest and most important reasons is seen to be the development of arms for the "Star Wars" system, which Federal officials nonetheless often characterize as non-nuclear.

In theory, these new weapons, including the nuclear X-ray laser, are meant to channel the vast energy of nuclear explosions into beams that flash across space to destroy enemy targets. Although being developed by the antimissile program, experts say the devices, if perfected, could be used for offense as well as defense.

Federal officials usually say that such top-secret research is pursued mainly to understand how the Russians might use these weapons and that they do not plan to use nuclear-driven beams. Critics charge that the Government is weighing the use of such nuclear arms in the American antimissile program.

"Far from making nuclear weapons obsolete, 'Star Wars' is actually helping make them more versatile," said Steven Aftergood, director of the Los Angeles-based Committee to Bridge the Gap, which opposes the antimissile program.

AN ESPECIALLY ATTRACTIVE OPTION

In a striking departure from the usual Government explanation for research on nuclear beam weapons, James W. Culpepper, deputy assistant Secretary of Energy for military applications, told Congress in secret testimony last March that the new arms offered a technical edge over the Soviet Union.

"For the United States," he said in the testimony, which has since been declassified, such research "is an especially attractive option, for it permits us to exploit the advantages of high technology, an area of United States superiority."

The new "Star Wars" devices are third-generation nuclear arms. The first and second generations of nuclear weapons were atomic bombs, developed in the 1940's, and hydrogen bombs, perfected in the 1950's. These conventional weapons radiate their energy spherically, whereas third-generation weapons are meant to focus their power in beams across vast distances. Work on them began in the early 1980's.

John E. Pike, head of space policy for the Federation of American Scientists, which favors rapid movement toward a test ban, said a review of the Federal budget suggested that there was enough money for three or four antimissile nuclear tests a year. Nuclear tests in general cost $10 million to $40 million, with antimissile tests thought to be some of the most expensive of all.

In 1986, Lieut. Gen. James A. Abrahamson, the director of the Pentagon's antimissile program, told Congress that more

money was needed to "accelerate the underground testing in several areas, not just the X-ray laser, also the Prometheus concept and one other." Private experts believe this third type of nuclear weapon is meant to beam microwaves through space.

THE NUCLEAR TESTING AGENDA—NUCLEAR EXPLOSIONS BEING CONDUCTED BY FEDERAL SCIENTISTS

	Tests per year
New warheads: Development of conventional nuclear warheads for new weapons such as cruise missiles and the Midgetman missile.	8 to 12.
"Star wars" antimissile devices: Research on exotic arms meant to channel power of nuclear blasts into focused beams.	3 or 4.
Mock attack: Exposure of critical military systems such as satellites, missile silos and warheads to nuclear blast and radiation to make sure they can survive enemy attack.	1 or 2.
Nuclear mysteries: Research on understanding exactly how nuclear weapons work so that if tests are banned atomic scientists would have the best possible data for carrying on their work.	1 or 2.
Reliability: Explosion of weapons from the nation's nuclear stockpile to make sure they remain effective.	1 or 2.

Mr. PROXMIRE. I yield the floor.

QUORUM CALL

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

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

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER [Mr. PROXMIRE]. Without objection, it is so ordered.

(Mr. WIRTH assumed the chair.)

RECOGNITION OF SENATOR SANFORD

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized.

SOCIAL SECURITY NOTCH ADJUSTMENT ACT

Mr. SANFORD. Mr. President, I am pleased to introduce legislation today, joined by my distinguished colleagues, Senators ARLEN SPECTER, RICHARD LUGAR, BARBARA MIKULSKI, and LARRY PRESSLER, to correct the Social Security "notch."

This is a workable, affordable solution.

When Abigail Van Buren wrote a column on the "notch" in 1983, there were probably very few people who appreciated just how widespread her "Dear Abby" readership is. From what I have heard, it did not take long for Congress to appreciate just how many readers she has, especially readers who were born between 1917 and 1921.

These individuals, of course, are the "notch babies." They were angry then and, understandably, they remain angry today. The source of their consternation is no secret. They are perturbed because they believe they have been robbed of some of their Social Security benefits.

I think by now most Members of this body understand the "notch" issue. In 1977 Congress altered the Social Security benefit formula to correct a flaw. Automatic benefit increases adopted in 1972 proved to be too generous. These projected high benefit levels were a real threat to the Social Security trust fund, and clearly something had to be done. But the Social Security Amendments of 1977 had unintended consequences, in my opinion, as we experienced high rates of inflation. The gap in benefit levels paid to those born before 1917 and those born in 1917 and later increased dramatically.

Today, an average earner born in 1916 who retired at age 65 receives more than $700 per month in Social Security benefits, while an average earner born in 1921 who retired at age 65 receives only $583. One individual is receiving $1,500 more each year in Social Security benefits for no other reason than that he was born 5 years earlier, not because he earned a higher wage before he retired. This simply does not make sense.

My bill proposes to change the current state of affairs. Under the Social Security Notch Adjustment Act, which I will send forward and introduce, benefits for those individuals born between 1917 and 1929 will increase. Increases will average no more than about $500 per year for the average "notch baby." Actual increases will range from less than $100 to $1,200 per year. In addition to this, my bill provides current retirees a retroactive, one time benefit up to $1,000, to help compensate for past periods of entitlement at depressed benefit levels.

My bill does not just increase spending, it also saves. It saves $4 billion over 10 years by eliminating future benefit increases to "bonanza babies," those who were born before 1917 and who continue to work and continue to receive "double indexed" benefit increases that have been denied "notch babies."

Under current law, "bonanza babies" who continue working after age 65 are allowed to have those additional yearly earnings calculated into their benefits. They can substitute those later year earnings for earlier, lower earnings years, and they earn higher retirement benefits because of this. "Notch babies," on the other hand, are excluded under current law from using any earnings after age 61 for the purpose of calculating their benefits. The Social Security Notch Adjustment Act would allow those individuals born in 1917 and later to use 4 additional years of earnings, through age 65, in calculating their retirement benefits.

I have several charts to illustrate what this bill does and what it will cost. The first chart shows how the Social Security Notch Adjustment Act will increase benefits for persons born between 1917 and 1929.

The red line on the first chart shows current benefit levels for workers born between 1917 and 1929, retiring at age 65 who always had average earnings. The blue line shows how my bill proposes to adjust that by increasing benefits. This adjustment fills in the pothole that now exists. And, as you can see, this gradual adjustment does not create another dramatic "notch."

One criticism of measures that propose to fix the notch is that it will bankrupt the Social Security trust fund. This is not so. This would be so if we would go back to the formula which was corrected in 1972, and let the payments take off for the sky as they were doing when those born before 1917 became the lucky "bonanza babies." My bill is limited. It simply fills in the pothole created by the 1977 adjustment, and brings the notch babies up to the level of those born after the notch period. It is not excessive. It is not all the notch babies want. It is fair, no more, no less.

The Social Security Notch Adjustment Act increases the yearly OASI benefit by less than 3 percent a year. I have a chart to illustrate this.

My bill adds less than 3 percent to the total OASI expenditure, except during the first year where we also include the retroactive payment. In 1996, the added cost of this bill will be only about half of the 1988 COLA increase.

The Social Security trust fund will continue to build up a surplus. I prefer to call that a reserve. By any name, the reserves are not endangered.

In 1996, the surplus for that year alone is projected to be $106 billion; 1996 estimates suggest that the Social Security trust fund will collect $106 billion more than it will pay in benefits. The cumulative research by that year is projected to be $697 billion. It has been estimated it will reach $1.3 trillion by the turn of the century. If my bill is adopted, that figure will be reduced by about one-fourth of this year's defense budget.

I believe the notch babies have been discriminated against far too long. If the flaw created in 1972 had been corrected in 1972, we would not have this problem. It wasn't, and now let's get on with ending this notch inequity once and for all. By the year 2000 it will have dug into the reserves by only about the same amount as one-fourth of this year's defense budget. That is a small price to pay for fairness.

Mr. President, I ask unanimous consent that the text of the bill, technical notes and a statement by Senator SPECTER, who has been very committed to correcting the notch injustice through his own legislation, be printed in the RECORD.

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

91-059 O-89-32 (Pt. 21)

S. 1830

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Social Security Notch Adjustment Act".

SEC. 2. EXPANSION OF PERIOD OF TRANSITION; NEW ALTERNATIVE FORMULA WITH RESPECT TO SUCH PERIOD.

(a) EXPANSION OF PERIOD OF TRANSITION.—Section 215(a)(4)(B)(i) of the Social Security Act (42 U.S.C. 415(a)(4)(B)(i)) is amended by striking "1984" and inserting in lieu thereof "1992".

(b) ESTABLISHMENT OF NEW TRANSITIONAL FORMULA.—Section 215(a) of such Act (42 U.S.C. 415(a)) is amended by adding at the end thereof the following new paragraph:

"(8)(A) Paragraphs (1) (except for subparagraph (C)(i) thereof) and (4) do not apply to the computation or recomputation of a primary insurance amount for an individual who had wages or self-employment income credited for one or more years prior to 1979, and who was not eligible for an old-age or disability insurance benefit, and did not die, prior to January 1979, if in the year for which the computation or recomputation would be made the individual's primary insurance amount would be greater if computed or recomputed under subparagraph (B).

"(B) The primary insurance amount computed or recomputed under this subparagraph is the amount computed or recomputed under section 215(a) as in effect in December 1978 (for purposes of old-age insurance benefits in the case of an individual who becomes eligible for such benefits prior to 1992) or as provided by section 215(d) (in the case of an individual to whom such section applies) reduced by the product derived by multiplying such amount by the sum of—

"(i) 5.0 percent;

"(ii) 1/12 of 1 percent for each month beginning after the month in which an individual attains the age of 62 and before the month in which the individual attains the age of 65 with respect to which the individual is not entitled to old-age insurance benefits; and

"(iii) the applicable percentage for the year in which the individual becomes eligible for old-age insurance benefits, as determined by the following table:

"If the individual becomes eligible for such benefits in:	The applicable percentage is:
1979	2 percent
1980	4 percent
1981	6 percent
1982	8 percent
1983	10 percent
1984	12 percent
1985	14 percent
1986	16 percent
1987	18 percent
1988	20 percent
1989	22 percent
1990	24 percent
1991	26 percent.".

(c) APPLICABILITY OF OLD PROVISIONS.—Section 215(a)(5) of such Act (42 U.S.C. 415(a)(5)) is amended—

(1) by inserting "(A)" after "(5)";

(2) by striking "For" and inserting in lieu thereof "Except as provided in subparagraph (B), for";

(3) by striking "effect," and all that follows through the period and inserting in lieu thereof "effect."; and

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

"(B) In applying this section as in effect December 1978 as provided in subparagraph (A)—

"(i) effective for January 1979, the dollar amount specified in paragraph (3) of subsection (a) shall be increased to $11.50;

"(ii) the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) for each year after 1978; and

"(iii) in the case of an individual to whom paragraph (1) does not apply by reason of paragraph (8)—

"(I) subsection (b)(2)(C) shall be deemed to provide that an individual's 'computation base years' may include only calendar years in the period after 1950 (or 1936 if applicable) and ending with the calendar year in which such individual attains age 65; and

"(II) the 'contribution and benefit base' (under section 230) with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1981 shall be deemed to be $29,700.".

(d) CONFORMING AMENDMENT.—Section 215(a)(3)(A) of such Act (42 U.S.C. 415(a)(3)(A)) is amended in the matter following clause (iii) by striking "(4)" and inserting in lieu thereof "(4) or (8)".

(e) EFFECTIVE DATE AND RELATED RULES.—

(1) Except as provided in paragraph (2), the amendments made by this section shall be effective as if included in the amendments made by section 201 of the Social Security Amendments of 1977.

(2)(A) In any case in which an individual (under title II of the Social Security Act) is entitled on the date of enactment of this Act to monthly insurance benefits under such title which were computed—

(i) under section 215 of the Social Security Act as in effect (by reason of the Social Security Amendments of 1977) after December 1978, or

(ii) under section 215 of such Act as in effect prior to January 1979 by reason of subsection (a)(4)(B) of such section (as amended by the Social Security Amendments of 1977),

the Secretary of Health and Human Services (notwithstanding section 215(f)(1)) of the Social Security Act) shall recompute such individual's primary insurance amount so as to take into account the amendments made by this section and shall pay to such individual in a lump sum the amount specified in subparagraph (B).

(B)(i) Except as provided in clause (ii), the amount specified in this subparagraph is any additional amount to which such individual is entitled (for the period beginning with the first month for which such individual was entitled to such benefits and ending with the month preceding the first month with respect to which recomputation under subparagraph (A) is effective) by reason of such amendments.

(ii)(I) In the case of a primary insurance amount applicable to monthly insurance benefits payable for months before January 1987, the total amount payable to any individual under subparagraph (A) on the basis of such primary insurance amount is $1,000.

(II) If the amount payable under subparagraph (A) on the basis of such primary insurance amount would (except for subclause (I)) exceed $1,000, any individual receiving monthly insurance benefits on the basis of such amount shall receive such benefits in the same proportion as the benefits would be received in January 1987 (except that no such individual shall receive less than $300).

(C) In the case of any individual who—

(i) is entitled on the date of enactment of this Act to monthly insurance benefits under title II of the Social Security Act,

(ii) dies after such date and before the date on which payment is made under subparagraph (A), and

(iii) is an individual with respect to whom monthly insurance benefits under title II of the Social Security Act are payable on the basis of such individual's primary insurance amount;

the amount payable to such individual under paragraph (A) shall be paid (on an equal basis) to individuals who (for any month beginning with December 1986 and ending with the month such individual dies) are entitled or eligible to receive such benefits on the basis of the deceased individual's primary insurance amount. If there is no individual for whom payment can be made under the preceding sentence, a lump sum not to exceed $300 may be paid (in accordance with this title) to cover the funeral expenses of such deceased individual.

SEC. 3. MODIFICATION OF AGE AT WHICH MONTHLY EARNINGS OF CERTAIN INDIVIDUALS ARE NO LONGER COUNTED IN DETERMINING PRIMARY INSURANCE AMOUNT.

(a) IN GENERAL.—Section 215(a)(5)(B) of the Social Security Act, as added by section 1(c), is amended—

(1) by striking "and" at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new clause:

"(iv) in the case of an individual to whom paragraph (1) does not apply by reason of paragraph (3), subsection (b)(2)(C) shall be deemed to provide that an individual's 'computation base years' may include only calendar years in the period after 1950 (or 1936 if applicable) and ending with the calendar year in which such individual attains age 70.".

(b) EFFECTIVE DATE.—

(1) Subject to paragraph (2), the amendments made by subsection (a) shall apply with respect to benefits payable under title II of the Social Security Act in or after January 1986.

(2) The amendments made by subsection (a) shall not have the effect of reducing or otherwise adversely affecting any monthly insurance benefit which is payable under title II of the Social Security Act.

TECHNICAL NOTES ON SANFORD NOTCH BILL

Technical description of the provisions of S. 1830, a bill proposed by U.S. Senator Terry Sanford (D-NC) to restore Social Security benefit equity for persons born in the 'Notch' years after 1916, by creating a fair transition benefit formula for persons born in 1917 through 1929.

1. *To Whom do provisions of S. 2830 apply?*

A. Retired workers born after January 1, 1917 and before January 1, 1930 and their dependents.

B. Survivors of workers born after January 1, 1917 and before January 1, 1930 if the worker died in or after the year of his/her 62nd birthday.

C. Disability beneficiaries born after January 1, 1917 and before January 1, 1930, beginning with the month they attain age 65 and are reclassified as retired workers.

2. *How are their benefits computed?*

Benefits are computed under three benefit formulae with benefits paid under the formula that produces the highest benefits. The three formulae are:

A. The permanent AIME Indexing formula enacted in 1977.

B. The current-law transition formula that applies to persons born between 1917 and 1921 inclusive.

C. The new transition provision contained in this legislation.

3. *How are benefits computed under the new Transition provisions?*

A. First, compute a "Preliminary Primary Insurance Amount (PIA)" under the old (1972) law's "1967 New Start" computation method as if the 1977 Amendments had never been enacted except that the maximum creditable earnings for years after 1981 shall be $29,700 and earnings in years after a person reaches 65 shall not be used to compute benefits under the transition.

B. Second, compute a "New Transition PIA" by reducing the "Preliminary PIA" by a percentage found by adding together steps 1, 2, and 3 below. (1) Take five percent (5%) plus, (2) two percent (2%) for each year of birth after 1916, plus (3) one-twelfth of one percent (0.083%) for each month retirement delayed (i.e. one percent per year) beginning with the month a person attains age 62 and ending with the earlier of the month of initial entitlement or the month of attainment of age 65.

The table below shows the percentage reductions that would be applied to the "Preliminary PIA" to produce the "New Transition PIA."

	Age of retirement			
	62	63	64	65
Date of birth:				
1917	7	8	9	10
1918	9	10	11	12
1919	11	12	13	14
1920	13	14	15	16
1921	15	16	17	18
1922	17	18	19	20
1923	19	20	21	22
1924	21	22	23	24
1925	23	24	25	26
1926	25	26	27	28
1927	27	28	29	30
1928	29	30	31	32
1929	31	32	33	34

C. The "New Transition PIA" then forms the basis for computing the actual benefits payable for all persons entitled to benefits in the same manner as under current law.

D. Persons who become entitled to benefits prior to age 65, but who do not draw benefits for some months because they return to regular work, shall, at age 65, have their reduction months under this transition increased by the same number of months that their reduction months for early retirement are reduced.

4. Miscellaneous Provision:

For persons born on or before January 1, 1917 earnings in or after the year such persons reach age 70, shall not be used to determine the amount of benefits payable for months in or after January 1986, except that no such person's benefits shall be reduced bacause of the passage of this provision.

5. When are the provisions effective?

All the provisions of the bill, except for the miscellaneous provision (see #4 above), are fully effective for benefits due in or after January 1987 for all affected persons entitled to benefits in or after the month of enactment.

In addition, benefits will be paid for all months prior to January 1987 retroactive to the month of initial entitlement except that the total amount of such retroactive benefits payable on any worker's account shall not exceed $1,000. Where such retroactive amounts would otherwise exceed $1,000, the retroactive benefits paid to each entitled person shall be in the same proportion as the proportion of the benefits due them in January, 1987 relative to all benefits payable on the account in January, 1987, except that each such individual shall receive at least $300.

In the event of the death of an affected person after the enactment of this legislation but prior to the payment of benefits, the under payment due such individual shall be divided equitably among the survivors who were entitled or eligible to be entitled to benefits on the affected person's record for any months beginning with January, 1987 and ending with the month following the month of such affected person's death. Where no such eligible survivors exist, a $300 lump sum death payment may be made to cover funeral expenses in accordance with established provisions of law.

Mr. SPECTER. Mr. President, the legislation which Senator SANFORD and I are introducing today seeks to restore Social Security equity to senior citizens born between 1917 and 1929, to address the Social Security notch issue. The so-called notch babies were treated very unfairly in the 1977 legislation and that inequity should be corrected. This bill is more modest than other legislative proposals and is a realistic effort to correct the existing injustice.

Our legislation, the Social Security Notch Adjustment Act, provides an average annual increase of approximately $500 per year for the notch babies. Actual increases would range from under $100 to $1,200 annually. Notch babies also would receive a one-time lump sum of up to $1,000 to help compensate for past benefit disparity.

My record on seeking a solution to this problem is a long one. As early as 1983 and again in 1985, I cosponsored legislation directing the Secretary of Health and Human Services and the Commissioner of Social Security to study the notch benefit disparity, and report to Congress on how this problem could be corrected. On September 30, 1986, I introduced legislation, S. 2892, to amend title II of the Social Security Act to restore benefits to notch babies. That bill was reintroduced as S. 1119 on May 1, 1987.

The legislation Senator SANFORD and I are introducing today is fair to the almost 9 million retired workers affected by the notch disparity, at a more modest cost.

Several organizations should be commended for their untiring efforts to gain equity for Social Security notch babies. Among these groups are the National Committee to Preserve Social Security and Medicare, the Gray Panthers, the Veterans of Foreign Wars and the Notch Babies Organization of Pennsylvania.

Mr. President, the time has come for us to restore benefit equity.

Mr. MELCHER. Mr. President, I am extremely concerned with the effectiveness of the Social Security system and the well-being of this country's older Americans. Social Security has done more than any other Government program to bring older Americans out of poverty. However, I'm sure that all of my colleagues have heard from members of a group who believe that they are being cheated by the Social Security system. These people are called notch babies.

The Social Security notch resulted from the 1977 Social Security amendments. In 1977, it looked as though Social Security would go broke if preventive action were not taken. The resulting amendments, however, subjected many retirees to different rules. The outcome has been that many people with similar work and salary histories receive different benefits simply because they were born a couple of years apart.

While many people may disagree about what should be done to eliminate this problem, it is clear that an inequity exists. Congress simply cannot ignore the notch problem and justice should be done to correct it.

For the Social Security system to remain effective, it must treat all beneficiaries fairly. This is why an issue like the Social Security notch is so important and why I want to commend my colleague from North Carolina for his work in this area. By introducing this legislation today, Senator SANFORD has demonstrated his compassion and fairness.

Because I believe this issue deserves the attention of Congress, as chairman of the Special Committee on Aging, I plan to hold a hearing on the notch situation early next year. It is my hope that this hearing will help us further along the road to finding a fair solution to this serious problem.

Mr. PRESSLER. Mr. President, I am pleased to join my distinguished colleague from North Carolina, Senator SANFORD, as an original cosponsor of this legislation. The Social Security notch problem has been around for several years. In every Congress, numerous pieces of legislation are introduced to bring the benefits of those born between 1917 and 1921 up to the level of those born in 1916. Every Congress these proposals die in the Finance Committee. It is time to address this issue. Equitable benefits must be given to those adversely affected by this notch problem.

When I am back home in South Dakota, I often hold meetings specifically to discuss senior citizen issues. The most popular—or should I say unpopular—item brought up at these meetings is the Social Security notch. It is not difficult to understand why. South Dakota has 30,246 retired workers who are subject to the notch dis-

crimination, simply because they had the misfortune to be born in the wrong year. These notch babies continue to contact my office, asking for news on the notch year corrective legislation. Unfortunately, I am constantly in the frustrating position of having to say the bill is still pending in the Finance Committee.

Mr. President, I know the Members of this body are compassionate and sensitive to the needs of the elderly. However, many senior citizens in this Nation live solely on their Social Security benefits. Some of these people receive significantly reduced benefits due to a flawed formula developed in the 1970's to protect the Social Security trust fund.

As a cosponsor of S. 225, legislation introduced in January by Senator D'AMATO, I remain committed to a full restoration of Social Security benefits for the notch babies. However, we all know how little progress has been made by proposals such as S. 225 during the past few years. Providing full and immediate equity to those affected by the notch would be a very costly endeavor. Therefore, I believe the legislation being introduced today will be a good starting point in the efforts to remedy the Social Security notch problem.

It is important to understand that the funds for this notch correction would not come from general revenues. The notch correction would be phased in under this compromise bill with moneys from the Social Security trust fund. Resolution of the problem would be achieved gradually to ensure that a steady buildup of trust fund reserves continues. In fact, Social Security assets would still exceed $1.2 trillion by the year 2000 should this bill become law.

Mr. President, I believe this is a well-crafted compromise that is deserving of some decisive action by the appropriate committees and this entire body. We should act promptly. No longer can we ignore the voices of over 8 million senior citizens. They have been subject to a great discrimination, which has caused them many hardships in paying for food, shelter, and medical care. Congress must live up to its responsibility and correct this inequity. I urge my colleagues to take a careful look at this legislation and to join me in supporting expeditious action on the measure.

THE LAST DAY OF 21 YEARS' SERVICE

Mr. BYRD. Mr. President, as Senators, the elected Members of this Chamber are the primary centers of attention and interest on this side of Capitol Hill.

But as all of our colleagues know, much of our performance as Senators depends upon the loyalty and hard work of the staff members who work in our offices. Acting in our names, these men and women have direct contact with our constituents back home. By their alertness, sensitivity, intelligence, and talent, good staff people can enhance the work and reputation of their Senators, or, on the contrary, by a lack of the same, can diminish and conceivably help to destroy careers.

Today, I want to pay tribute to one of my staff members who has, for 21 years, fulfilled her responsibilities in my office with exemplary loyalty and selflessness.

Tomorrow is Ms. Mary E. Bainbridge's final day of work on my staff. Mary is retiring as of tomorrow at noon. During her 21 years with me, Mary Bainbridge has served in a number of office roles. For the past several years, she has been my office manager. I want to take this opportunity to thank Mary Bainbridge for the diligence she has shown, for the extra miles that she has gone in my behalf, and for the numberless contributions that she has made to the people of West Virginia in the two decades-plus that she has been on my staff.

A native of Norfolk, VA, Ms. Bainbridge was brought early to Washington by her family. After attending school locally, she launched her working life at the General Accounting Office, after which she worked at the State Department, the law firm of Covington and Burling, and then at Georgetown University Law School.

Following service on staffs in the House of Representatives, to my good fortune, Mary Bainbridge joined my staff.

Now that phase of her life is coming to its end. Mary will be retiring to a newly purchased home in Baltimore to spend her time enjoying classical music and operas.

I hope that there, she will also remember warmly the years that she spent working on my staff. I hope also that the years to come will bring her every blessing and satisfaction for which she could wish, and that she will count among her triumphs the outstanding record that she carved for herself in the Senate office of ROBERT C. BYRD.

Mary, may God's angels watch over you always.

ALLOCATION OF TIME

Mr. BYRD. Mr. President, I ask unanimous consent that the time of Mr. MELCHER under the order be under my control.

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

Mr. BYRD. Mr. President, I ask unanimous consent that the time I just used be charged against the order of Mr. MELCHER.

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

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. SYMMS. 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.

CUBAN MISSILE CRISIS ANNIVERSARY

Mr. SYMMS. Mr. President, I think it is very appropriate at this time, that we look back at what happened 25 years ago with respect to the Cuban missile crisis: The entire question of the late 1950's of Fidel Castro taking over Cuba, the response from the United States regarding the fiasco at the Bay of Pigs, and, in my judgment, the fiasco the next year with the so-called Cuban missile crisis where, in fact, the establishment news media at that time reported that it was a great victory for the United States. I think if one looks back in history you can see that it was a great victory for the Soviet Union and a defeat for the United States.

I bring this up today in context with where we are in Central America—as a member of the Senate observation team to the Guatemala Peace Accords and to the implementation of those accords.

I think it is appropriate for Senators, Representatives, and all Americans, to be very cognizant of what happened 25 years ago with respect to Cuba and what appears to be happening in Central America and Africa today.

I believe there is a parallel. In this morning's Washington Times, an article states: "Republicans stall Contra aid request. The reason, of course, is that they are not certain whether they have the votes in the Democratic-controlled Congress to pass Contra aid. I believe that if, under Democrat or Republican controlled Congress, the United States stands eye to eye with the Soviets and blinks, history will point out that the problems that will come back to haunt us will be the establishment of another Soviet satellite country in Central America. This will certainly bring problems to the U.S. security and to the security of the free world.

Mr. President, I think it is important that we mark the 25th anniversary of the Cuban missile crisis. That 2-week event, which ended a quarter century ago yesterday, was heralded as a victory by the supporters of President Ken-

nedy but, in fact, it guaranteed the spread of communism in the Americas and Africa, and the decline of United States power and influence around the world.

In July 1960, then Soviet Premier Nikita Khrushchev stated, "In the short time I have to live, I would like to see the day when the Communist flag flies over the world."

In the years since that statement the Soviet Union, Mr. President, and its proxies, have labored to make that wish a reality. If the United States and our Western allies do not stand unified in an effort to combat the Soviet aggression in this hemisphere and throughout the world, the Soviet Union may succeed.

I think that is something we have to recognize. It is a reality, that we live in a world that is not as we wish it were. We live in a world where there is an adversarial position to the freedoms we respect and live by, and the standards of our free society.

We live in a world where our chief adversary does not respect human rights, does not respect personal freedom such as freedom of speech, religion, and emigration. Our adversaries, the Soviet Union, have troops in Africa, Central America, and Afghanistan. They have a trememdous genocide program against the people in Southeast Asia. Particularly, it is now going on in Afghanistan.

Although historians have heaped praise on the late President Kennedy's handling of the Cuban missile crisis, little attention has been focused on the repercussions of his actions. Many of today's struggles against communism can be linked to the missile crisis and the agreements reached 25 years ago.

In the Kennedy-Khrushchev agreement of 1962 the Soviets agreed to withdraw and not reintroduce the offensive nuclear missiles they had placed in Cuba. In turn, President Kennedy publicly stated that the United States would never attempt an invasion of Cuba or the overthrow of the Castro regime. Later, he agreed to remove the medium-range Jupiter missiles in Turkey.

In my view, those concessions, and the crisis in general, drastically changed the course of events of the past 25 years and will certainly have great impact on the future of democracy in the world.

I recall in 1982 when President Reagan made the same pledge, that he would not use United States troops to ensure freedom in Nicaragua. I said at the time to the President and his advisers that I thought it was a mistake to ever make that statement of what you will not do. I believe we do not need American troops to solve the problem in Central America, but I do not believe that the United States of America should ever say that they would not use them if they thought it was necessary to ensure the security of the United States. Securing freedom for Nicaragua is going to have an implication to the freedom of the people in the United States of America. I think it is a mistake to make that pledge.

What happened in Cuba over those 25 years, once the United States guaranteed that we would not invade, was we virtually gave Fidel Castro a free hand to solidify his base and strengthen his position in Cuba with no threat that there might be people airdropped from Florida in the hills of Cuba and start back with a revolution where he would have to defend the oppression of his government against people who might, in fact, start showing some resolute resistance to the oppressiveness of the Castro government.

Certainly, the most outrageous United States concession was guaranteeing the security of a Soviet satellite country only 90 miles from our border.

That, in my view, was an outrageous mistake, and we should not have done it. But it is done, and we now should look back at history and not make the same mistake in Central America.

Since 1960, the Soviet Union has pumped over $9 billion in military aid and supplies into Cuba. The Soviets have supplied over $4 billion in economic assistance during the 1960's alone.

Fidel Castro has repaid the Soviets in spades, Mr. President, by exporting Soviet communism throughout Central America and Africa by being the proxy forces for his bosses in Moscow.

This U.S. concession is a blatant violation, Mr. President, of the Monroe Doctrine which states that:

> The American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European power. We could not view any interpostition for the purpose of oppressing them, or controlling, in any other manner, their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition towards the United States.

Mr. President, several times the U.S. Congress has reaffirmed our Nation's commitment to that doctrine. We have done it most recently in the Senate within the past weeks. We have done it several times since this Senator has been a Member of the Senate. Many of those amendments have been offered by myself or Senator HELMS or others. We have restated the concern of the American people through our actions that we want to uphold the Monroe Doctrine, but we have never gotten the kind of reaffirmation that by our actions as a nation, working together with the executive branch and the congressional branch the United States exert what it is we say we believe in.

We have an opportunity to reverse the Brezhnev doctrine not only in Afghanistan but in Angola and in Nicaragua. I think it is most important that we reverse the Brezhnev doctrine. It is like a football game. There is an offense and a defense. If we are on the offense, our adversaries will have to defend their own terrain, and will be forced to withhold their new expansionist ideas.

Free from any worry about United States interferences, Cuban mercenary activities have been widespread and effective. In Nicaragua, there are presently up to 8,000 Cubans helping Dictator Daniel Ortega establish yet another Communist beachhead on this continent. The Nicaraguan freedom fighters have fought the expanding Sandinista military since the Somoza regime collapsed in 1979. With the assistance of United States military and economic aid, the Contras have contained the spread of the Communist cancer, but I believe the situation in Central America and Nicaragua should be of grave concern to every freedom loving American. Should the Contra freedom fighters fail, the United States will have again allowed the "Red tide" of communism to flow closer to the shores of America.

Cuban troops are active in 17 African countries. Angola is the clearest example. Jonas Savimbi, and the Unita forces are struggling to fight the Cuban backed Communist domination of their region. Unita has made great strides in combating the estimated 30,600 foreign troops in Angola, approximately one-third of which are Cuban.

Because of Savimbi's commitment and the bravery of the Unita troops, it looks as though the recent Communist offensive in Angola will fail. The October 24 article in Jane's Defense Weekly details the extensive fighting. I commend Jane's for printing what I believe to be an illuminating update on Angola, and I recommend that all Senators read it.

I have mentioned these various fights for freedom because they are the direct result of the United States' guarantees which have permitted the Castro regime to wield their Communist sickle in Nicaragua and pound their hammer in Angola. Castro's troops have marched into countries, destroyed their economies, and crushed those who are struggling to promote freedom and democracy. Cuba has been a training ground for terrorism and subversion and can be directly linked with several of the recent massacres around the globe. Castro has been a leader in the Communist movement. His disciples include: Nicaragua's Daniel Ortega, Libya's Mu'ammar Qadhafi, Mozambique's Samora Machel and Joaquim Chissano, Ethiopia's Mengistu, and

the SWAPO leader, Nujoma. Though Castro pulls the strings of many, he himself is no more than a puppet in the hands of the Politburo in Moscow.

In addition to allowing Castro's devastating reign of terror and Communist expansion, the Cuban missile crisis directly altered the strategic military balance between the United States and the Soviet Union.

At the time of the crisis, the United States held a strategic advantage over the Soviets in deliverable nuclear weapons. The total numbers of ICBM's, SLBM's, and IRBM's for the United States in 1962 was 478. The Soviet numbers totaled 183, including the 42 in Cuba. With our bomber force included, the U.S. strategic superiority was 12 to 1 over the Soviets in 1962.

In the 25 years since the missile crisis, the Soviet Union has successfully reversed that ratio. Following those tense weeks in 1962, Soviet Foreign Minister Vasily Kuznetsov stated that the Soviet Union would never again be caught in a position of strategic inferiority. In validating that statement, the constant Soviet buildup of nuclear forces has catastrophically altered the strategic balance between the United States and the Soviet Union. The Soviets changed our 12-to-1 advantage to their 10-to-1 advantage. This strategic position would leave the United States vulnerable should we face another crisis similar to that of a quarter century ago.

That is what the strategic space shield is all about, Mr. President. That is why it is so imperative we have that today because the strategic balance of nuclear superiority is actually in favor of the Soviet Union today.

A recent article in the Washington Times quotes several authorities in United States-Soviet relations, including Raymond Garthoff, a former State Department official who was involved in the missile crisis, Ray Cline, the deputy director for intelligence at the time, and David Sullivan, who is a member of the Senate Foreign Relations staff and consults Senators on defense and strategic issues. Each believed the missile crisis was certainly a long-term defeat for the United States and a strategic victory for the Soviet Union. Sullivan believes the Kennedy-Khrushchev agreement represented a total defeat for the Monroe Doctrine since it permitted Soviet power to grow. He also states that "the Soviet nuclear delivery threat from Cuba today is more than twice what it was during the Cuban missile crisis."

As a consequence of the missile crisis, Cuba's ports and military bases today back a Soviet capability to disrupt United States sealanes to Western Europe, which would be vital in case of war; 55 advanced Mig-23 fighters and 200 Mig-21's are based in Cuba and a submarine port has been in use since 1969. Soviet Bear-D reconnaissance aircraft from Cuba patrol off United States coasts. And the Soviets' largest electronic espionage facility outside the U.S.S.R. is at Lourdes, Cuba, where 2,100 Soviet technicians can monitor United States communications, including space launch activities in Florida and up to half of all United States telephone calls in the Southeastern United States.

In the 2 short weeks of 1962, the people of this world came closer than ever to nuclear Armageddon, a situation I hope we never again face. Because of Kennedy's weakness at the Bay of Pigs and in the Berlin crisis, the Soviets initiated the missile crisis. Because of Kennedy's weakness in the Cuban missile crisis, Cuba has expanded the frontiers of communism and the Soviet empire has increased its nuclear superiority.

The lessons of the Cuban missile crisis are painful. Certainly, hindsight is 20-20. However, I firmly believe the past 25 years is proof-positive of what is in store for democracies if we do not take action to thwart Communist goals.

We can stop the expansion of communism. But not by using half-hearted attempts. Strength, unity, and the will to succeed are the keys to victory. Now more than ever do we, as leaders of the free world, need to recommit ourselves to rolling back the borders of communism and expanding the frontiers of freedom.

Mr. President, I ask unanimous consent that the following be printed in the RECORD.

First, a portion of the Department of Defense's "1987 Soviet Military Power" handbook, outlining the Soviet military buildup of Cuba.

Second, an article printed on October 24, in Jane's Defense Weekly, which describes the current offensive in Angola.

Third, an article printed on October 22, in the Washington Times, titled "'62 Cuban crisis viewed by analysts as tendering hemisphere to Soviets."

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

CUBA

The continuing flow of large amounts of military and economic aid highlights the importance Moscow attaches to Cuba, the focal point of Soviet policy in Latin America. Since 1960, Moscow has provided Havana with about $9 billion in military equipment at no cost to Cuba, emphasizing Havana's importance to Soviet planners. After very large deliveries from 1981 to 1985, Cuba in 1986 received modest quantities of new equipment, including FLOGGER aircraft, HIP helicopters, T-62 tanks, T-54/55 tanks, and BM-21 rocket launchers. The Soviets continue to support Cuba's military with 2,800 military advisers.

During the 1980s, the USSR has furnished Cuba with over $4 billion in economic assistance and subsidies per year. However, Soviet subsidies declined somewhat in 1986, primarily reflecting the lower market price of oil, some of which the Cubans re-export for hard currency. Soviet financial help in 1986 was not sufficient to solve Cuba's hard currency shortage. The Soviet Union continues to provide most of Cuba's oil supplies, either directly or through swap arrangements with third countries. Moscow has agreed to provide Havana with 2.5 billion rubles in new credits between 1986 and 1990, an increase of 50 percent over the 5-year period ending in 1985. One project the Soviet credits will fund is completion of the first phase (two of four reactors) of the Cienfuegos nuclear power station.

In return for its investment, the Soviet Union continues to reap substantial benefits. Cuba supports revolutionaries in Latin America with training and materiel and assists pro-Soviet states such as Nicaragua, Angola, and Ethiopia. For example, 2,000 to 2,500 Cuban military and security personnel are in Nicaragua. Cuba also provides the USSR with military and intelligence-collection benefits. At least nine deployments of BEAR D naval reconnaissance and five of BEAR antisubmarine warfare aircraft were made to Cuba in 1986. The 26th deployment of a Soviet naval task force to the Caribbean began in October. The task force, which consisted of a KARA-Class guided-missile cruiser, a KASHIN-Class guided-missile destroyer, a FOXTROT-Class submarine, and a BORIS CHILIKIN-Class oiler, conducted anti-surface, antisubmarine, and antiair exercises with Cuban naval units during the month-long deployment. The Soviet-manned intercept site at Lourdes, the largest outside the USSR, enables Moscow to monitor sensitive US maritime, military, and space communications as well as US domestic telephone calls.

The first session of the 3d Congress of the Cuban Communist Party and the 27th Congress of the Communist Party of the Soviet Union last February highlighted a renewed closeness in Soviet-Cuban political relations. Yegor Ligachev, the second most powerful Kremlin leader, headed the Soviet delegation to the 3d Congress, and President Fidel Castro led the Cuban delegation to the 27th Congress. In Moscow, Castro had his first two meeting with Gorbachev. Despite manifestations of close relations at the two congresses. Soviet-Cuban relations continued to be plagued primarily by economic differences. Cuba's hard currency shortage has forced Havana to seek even more financial support from Moscow, but the USSR may not be willing or able to satisfy its partner.

ANGOLA: CRUCIAL CONFRONTATION AHEAD

(By Helmoed-Römer Heitman)

The current offensive against antigovernment UNITA guerrillas by Angolan FAPLA forces has finally led to major engagements.

The most serious of these appear to have been on the Lomba river, 50 km north-east of Mavinga, one of the main objectives of the offensive. UNITA claims to have halted the attacks, inflicting heavy losses on the Soviet-led government forces.

UNITA's leader, Dr. Jonas Savimbi expects, however, that FAPLA will make at least one more major effort to take Mavinga, a UNITA strategic stronghold en route to the headquarters town of Jamba, before the start of the rainy season. He sees this as the crucial battle of the offensive, and, perhaps of the entire civil war.

FAPLA losses between 10 July and the end of September are given as four Soviet, 20 Cuban and 1023 FAPLA personnel killed and 31 Soviet and 75 Cubans wounded. A

total of 150 FAPLA soldiers and four pilots were captured by UNITA, while the latter's losses are given as 86 killed and 522 wounded.

Among FAPLA equipment claimed destroyed are seven T-55 tanks and 19 other armoured vehicles. At least one M-25 helicopter has been shot down and was shown to the press.

While UNITA figures need to be read with caution, the fact remains that Savimbi was able to hold a news conference in Mavinga during the weekend of 3/4 October, despite FAPLA's efforts to take the town and its strategically-located airfield.

FAPLA will soon have to continue with its offensive if it is to remain in its forward positions until the next dry season. If it is successful, taking Mavinga and holding it through the rainy season, FAPLA will be in an excellent position to push UNITA from Jamba in 1988.

Without Mavinga, it will have to either withdraw to this year's start lines or rely on overland resupply during the rainy season in the face of concerted UNITA harassment, or even serious disruption of logistic movements over a poor network of roads made worse by the rains.

UNITA not only realises the importance of Mavinga to FAPLA, but also needs to control the airport for its own resupply. Mavinga is reportedly the main airhead for supplies flown in from South Africa, the newly U.S.-refurbished Kamina air base in Zaire and Gabon.

Local residents are predicting an early start to this year's rains and this would suggest that UNITA will throw everything into holding onto Mavinga in the hope that the rains will come to their aid, disrupting FAPLA ground movements and complicating its air support.

Dr. Savimbi sees this offensive as FAPLA's last big gamble and feels that if it fails, the Angolan Government will have no alternative but to negotiate with UNITA. He feels that two successive failures—1985 and 1986—increasingly widespread UNITA operations and increasing Soviet disenchantment with FAPLA's commitment to the war, render this a make or break offensive.

For its part, UNITA is prepared to return to lower-key guerrilla warfare should it lose the impending battle, even though the loss of Jamba and the base areas would be a serious propaganda defeat and would cause logistic problems.

Savimbi said that the present fighting in south-eastern Angola is intended not only to weaken UNITA, but also to challenge South Africa. The introduction of the Mig-23s, Sukhoi Su-22s and modern surface to air missile (SAM) systems is excessive, relative to UNITA capabilities, he said, and must have a broader aim.

This, he believes, is to test South Africa, both in its resolve to face Soviet action in southern Africa and the capabilities of its armed forces, should South Africa choose to escalate its activities in the region.

Without doubt, this offensive has been planned on a lavish scale. According to reports, the offensive was planned and launched under the personal supervision of Soviet Gen Konstantin Shaganovitch, who is said to be the highest-ranking Soviet officer ever to have been posted outside of Europe or Afghanistan, and who arrived in Angola in December 1985. He is assisted by Soviet counter-insurgency expert Gen Mikhail Petrov.

Each FAPLA brigade is reported to have between 70-90 Soviet advisors and specialists attached to ensure that campaigns are carried out to the Soviet plans.

Apart from standard equipment, the estimated 18,200 troops involved in the offensive are enjoying heavier than usual armour—as many as 150 T-55s—and air support. This offensive has also seen the first deployment of M-46 guns in Angola and the first deployment of the new Mi-35 derivative of the Mi-24 Hind helicopter. The preparations for the offensive included as many as 12 An-24 flights into Luanda daily, over a considerable period of time.

The UNITA force deployed in the area apparently numbers some 8000 under the command of Gen Ben Ben, 5000 being deployed along a 40 km front opposite the main FAPLA force.

This year's offensive was late getting under way, delayed by UNITA harassment. UNITA also used a tactic which has served it well in the past—stepping-up operations in other parts of Angola to draw forces away from the main offensive thrust.

UNITA figures for such operations during April, May, June and July: 412 contacts, in which nine aircraft were downed, 882 FAPLA, 125 Cuban and four Soviet soldiers were killed, 85 FAPLA soldiers captured and 217 vehicles and 26 armoured vehicles were destroyed.

While UNITA figures need to be viewed with care, they have in the past tended to reflect trends fairly accurately and therefore give an indication of the effort which UNITA made towards disrupting the FAPLA deployment.

The first serious clash apparently took place on 10 July, with the offensive proper opening on 14 August. Towards the second week of September, at least two FAPLA brigades, apparently 21 and 47 Brigades, reached the Lomba river and forced a crossing. Overrunning a UNITA logistic depot.

According to UNITA, 250 FAPLA and 40 UNITA soldiers were killed in the fighting around the depot. Three FAPLA battalions finally consolidated positions on the southern bank of the Lomba, but failed to follow through, and were surrounded during a 13 September UNITA counter-attack, losing, according to UNITA, some 70 men, before retreating.

A MiG is also reported to have been downed during the four-hour battle. UNITA admits to losing 10 men.

Additional FAPLA forces advancing on Mavinga to resume the attack were halted by the South African Air Force, according to reports from Luanda, on 20 September. Further SAAF raids are said to have followed, with a major strike against the Cuito Cuanavale region of 30 September, while other targets were shelled by South African artillery.

A South African force of up to four battalions is reported to have entered southeastern Angola, where it clashed with FAPLA forces.

In one such incident, a 250-man mechanised FAPLA force is reported to have lost 160 men.

UNITA seized the initiative on 4 October, crossing the Lomba river and driving FAPLA forces from their positions on the northern bank, during a 10-hour battle.

According to UNITA Chief-of-Staff Gen. Demostenes Amos Chiljingutila, 232 FAPLA, seven Soviet and 20 UNITA soldiers died in the fighting. Two hundred vehicles including four T-55s, and at least one SA-8 system and mobile radar equipment were captured.

Having created some breathing space, it now seems that UNITA intends to concentrate on guerrilla warfare tactics in the rear of the FAPLA forces, to disrupt their logistics until the rains begin.

Additional operations can be expected in other parts of Angola in an effort to diffuse FAPLA concentrations. FAPLA, for its part is reported to be moving to the front one or two of its better trained brigades, that have yet to be committed to combat in this offensive.

The degree to which South Africa has become directly involved in the present campaign is far from clear.

South African Defence Minister Magnus Malan has acknowledged that South Africa is providing "moral, material and humanitarian" aid to UNITA, and that there is a "limited SADF presence" in southern Angola.

He implied that a major task of the force was to deal with SWAPO guerrillas before they could cross into South West Africa/Namibia during the forthcoming rainy season. Nonetheless, it does appear that South Africa is giving active support to UNITA, despite the risks.

South Africa faces a difficult choice. It would cetainly not want to see UNITA lose its base areas, if only because this could open up more of the Angolan border to SWAPO infiltration into northern SWA/Namibia.

A scaling-down of UNITA operations would follow a defeat, allowing SWAPO to withdraw some of its units from anti-UNITA and base defence operations, redeploying the available units against SWA/Namibia.

A strong UNITA also prevents Angola considering direct confrontation with South Africa. Added to this, Pretoria would not want to see a Soviet-backed victory anywhere near its borders.

On the other hand, South Africa does not wish to become involved in a new adventure in Angola. Memories of 1975-1976 are still too fresh.

A number of sources report that South African G-5 155 mm guns have played a major role in disrupting the FAPLA offensive, more so than the air strikes reported by the Angolan Government. This appears to make sense, as South-Africa would not want to expose its mainly imported fighter and strike force to the modern SAM/AA systems deployed in Angola. Artillery, however, can be replaced more easily.

The South African Army's artillery warfare doctrine is extremely effective. Tactics involve deploying G-5, G-6 or Valkiri guns, with armoured car and infantry support to within range of the enemy's rear targets, and destroying them from a distance. The low force: space ratios in the area make this tactic possible.

The key element in South Africa's support of UNITA appears to be its fire support from artillery combat groups. It is relatively low-profile, does not endanger equipment, and leaves other forces free to take action against SWAPO.

Much of South Africa's involvement appears to be concerned more with SWAPO than against FAPLA. Malan noted that SWAPO insurgents were to be found throughout southern Angola, and should be dealt with before they cross into SWA/Namibia.

This suggests that South Africa may have chosen to exploit FAPLA's offensive against UNITA, in order to attack SWAPO facilities in Angola, disrupting their preparations for their annual rainy season infiltration.

This would appear to tie-in with reports of South African operations around Xangongo, 'Ngiva and Mongua, and penetrations as deep as 200 km into the central sector of southern Angola.

There has not been any major operation, or series of minor operations of this nature since the December 1983/January 1984 Operation ASKARI, which led to the establishment of the Joint Monitoring Commission and the disengagement of South African forces from southern Angola.

Under the terms of the disengagement, agreement, Angola was to prevent SWAPO re-establishing itself in the south of the country. SWAPO has however returned to the region and has attempted to step-up its operations into SWA/Namibia.

SWAPO has also enjoyed FAPLA protection and logistic support. This has led to clashes between the SADA and FAPLA during cross-border pursuits of SWAPO.

The present offensive against UNITA's Mavinga stronghold has drawn resources from other parts of Angola, and FAPLA will now be less willing to protect SWAPO from any raiding force. This has created an opportunity which South Africa would not want to, and indeed appears not to, have missed.

[From the Washington Times, Oct. 22, 1987]

'62 CUBAN CRISIS VIEWED BY ANALYSTS AS TENDERING HEMISPHERE TO SOVIETS

(By Bill Certz)

The 1962 Cuban missile crisis, long regarded as a diplomatic victory by the United States over the Soviet Union, is viewed today by some analysts as a U.S. strategic defeat that solidified a Soviet foothold in the Western Hemisphere.

The affair that erupted 25 years ago today and brought the world to the brink of nuclear war has resulted in a Soviet base for military power projection and regional subversion, they say.

Ray Cline, deputy director for intelligence at the time, recalled the events of October 1962 as a time when senior administration leaders were unafraid to act from strength, a feeling he described as, "Don't worry, we can push this toward the military end of the spectrum."

"That was possibly the last time we'll have that luxury of military superiority in an international crisis," he said in an interview.

For two tense weeks in October 1962, the United States and the Soviet Union faced off over the secret introduction into Cuba of Soviet intermediate-range nuclear missiles that could easily reach much of the United States.

The crisis peaked on Oct. 22, when President John F. Kennedy announced on nationwide television that any missile fired from Cuba would be considered an attack by the Soviet Union on the United States.

He said U.S. Navy ships had blockaded the island and would turn away Soviet ships bound for Cuba.

Mr. Cline, who wrote the passage about the missile attack in Mr. Kennedy's speech, said: "It was a direct threat. It was saying, 'Don't think you can limit this because it's in Cuba.'"

The crisis subsided on Oct. 28 when Soviet leader Nikita Khruschev agreed to withdraw 42 SS-4 nuclear missiles from Cuba in exchange for a U.S. pledge not invade the island. Secretly, according to Robert Kennedy's book "Thirteen Days," the president also promised to remove 15 U.S. Jupiter ballistic missiles based in Turkey with NATO forces a short time after the crisis was over.

At the time of the crisis, the United States held a 10-to-1 advantage over the Soviet Union in nuclear ICBMs. Today, by some estimates, that has been reversed with the Soviets holding an advantage of about 4-to-1.

John Lenczowski, until recently a National Security Council staff specialist on the Soviet Union, blamed weak U.S. policies for "turning the Cuban missile crisis into a strategic defeat." In an interview, he said the most damaging effect of the agreement on Cuba has been felt by U.S. friends in Latin America.

"Our toleration of a Soviet base of political-military operations in Cuba has sent a signal of weakness to our Latin American friends that we do not have the will to resist communist insurgency in our hemisphere," said Mr. Lenczowski, now with the Ethics and Public Policy Center.

"As a result, our Latin neighbors are reluctant to make public their opposition to Nicaraguan communism."

Helmut Sonnenfeldt, a former State Department official with broad experience in U.S.-Soviet relations, said the Kennedy administration drew the line at offensive missiles when it could have demanded more.

As a result, the Cuban missile crisis helped the Soviets learn how far they could go in supporting revolution in the region.

"That permitted other military activities and allowed the Soviets to gain a foothold in the hemisphere," said Mr. Soonenfeldt, a Brookings Institution scholar.

Raymond L. Garthoff, a former State Department official closely involved in the crisis, believes U.S. military strength was a "bedrock factor" in the outcome of the affair, but that threat of nuclear war would have produced the same outcome with today's rough superpower parity.

The Kennedy administration, according to Mr. Garthoff, now a senior fellow at the Brookings Institution, should have sought a broader agreement aimed at complete demilitarization of Cuba.

"Future Cuban military involvements in Angola and Ethiopia would have been avoided because the Cubans would not have had the necessary military establishment," Mr. Garthoff wrote in Reflections on the Cuban Missile Crisis, scheduled for release today.

David Sulivan, a strategic expert on the staff of the Senate Foreign Relations Committee, aid he believes the Kennedy-Khrushchev agreement represented a "total defeat" for the Monroe Doctrine since it permitted Soviet power to grow.

"The Soviet nuclear delivery threat from Cuba today is more than twice what it was during the Cuban missile crisis of 1962," Mr. Sullivan said. "Moreover, the tables have been turned, and today the Soviets have a 4-to-1 advantage in ICBM warhead delivery capability, when in 1962 we had a 10-to-1 ICBM advantage over them."

The agreement undercut the Monroe Doctrine—the 1850s commitment to bar the spread of European influence in the Western Hemisphere.

Mr. Cline, now chairman of the Global Strategy Council, a research group, reflected on the affair a quarter of a century later as "an excellent intelligence performance, and a good decision-making performance."

However, the benefits have not withstood the test of time, he said.

"The political gains over the Soviet Union were frittered away over the next 25 years so that Cuba has become a major Soviet strategic base," Mr. Cline said. "The result is we have exactly the kind of Soviet military base in Cuba that Kennedy tried to prevent during the missile crisis."

Among the consequences since 1962 from the Cuba-Soviet connection:

Cuba's ports and military bases today back a Soviet capability to disrupt U.S. sea lanes to Western Europe, which would be vital in case of war there.

Fifty-five advanced MiG-23 fighters and 200 MiG-21s are based in Cuba and a submarine port of Cienfuegos has been in use since 1969.

Soviet Bear-D reconnaissance aircraft from Cuba patrol off U.S. coasts.

The Soviets' largest electronic espionage facility outside the U.S.S.R. is at Lourdes, Cuba, where 2,100 Soviet technicians can monitor U.S. communications, including space launch activities in Florida and up to half of all U.S. telephone calls in the southeastern United States.

Arms and explosives used by Puerto Rico terrorists were traced to weapons shipments from Vietnam to Cuba.

Mr. SYMMS. I thank the distinguished majority leader.

I yield the floor.

RECOGNITION OF SENATOR SASSER

The PRESIDING OFFICER. Under the previous order, the Senator from Tennessee [Mr. SASSER] is recognized for 10 minutes.

CATASTROPHIC HEALTH CARE LEGISLATION

Mr. SASSER. Mr. President, since the outset of the debate on catastrophic health care some months ago, I have attempted to focus attention on the overriding issue involved: long-term care. Yet, as the Senate concludes consideration of one of the most significant expansions of Medicare benefits since the program's inception, we see precious little on the question of long-term care. So while the bill passed earlier this week does bring some good news for our older Americans, it falls short of the mark in efforts to allay the health care concerns of the overwhelming majority of our older citizens.

Failure to address long-term care is not a new shortcoming in the Finance Committee bill that was passed here. You will recall that the debate on catastrophic health care coverage began in earnest last year, when the Secretary of Health and Human Services, Dr. Otis Bowen, delivered his comprehensive report to the President. While that report confirmed what many elderly Americans already knew from experience—that their insurance coverage is inadequate to cover a catastrophic illness—the Bowen report made few recommendations about providing long-term care.

The Bowen plan provided the basic framework for the bill we have considered and for the catastrophic health care bill passed earlier by our col-

leagues in the House of Representatives. The Finance Committee, I am delighted to say, has made significant changes in the Bowen plan. Some of them I think are very beneficial. But no language was added to address the elderly's long-term health care concerns. So while we are moving forward, we are forgoing an excellent opportunity to address the elderly's most pressing health care concern. The sad truth remains, Mr. President, that for all the improvements contained in this bill, our failure to address the issue of long-term care means continued risk of economic and emotional devastation for our elderly, for their sons, and for their daughters.

For the facts clearly show that long-term care remains the most pressing health care need of our older citizens. Studies show that annual out-of-pocket health costs for the elderly above $2,000 are almost entirely the result of lengthy nursing home stays—nursing home stays that are not covered by the bill we just passed. In fact, nursing home care is responsible for over 80 percent of these catastrophic costs. Hospital care, on the other hand, that is covered in this bill accounts for only 10 percent of the elderly's catastrophic costs when they are confronted with catastrophic illness.

I mention these facts to remind the Senate that though we have started moving in the right direction, we still have a long way to go. We have yet to grapple with the more serious problem of chronic, long-term care.

Statistics alone do not begin to tell the story of the ravages of long-term care. I have held a series of hearings both here and in the State of Tennessee focusing on this very issue, and the need for long-term care. Witness after witness filled in the human aspect of these grim statistics.

For example, Mrs. Bettie Durham from Memphis told me that her 87-year-old father, James Platt, has been confined to a nursing home for the last 4½ years. His income is $1,115 a month. However, his nursing home bill alone is $1,650 a month.

Neither Medicare nor Mr. Platt's private insurance cover any of these tremendous nursing home costs. And his income is $50 a month too much for him to qualify for Medicaid. His children, working people, must pay over $500 a month out of their own earnings to keep their father in the nursing home.

Mrs. Dean Carr from Piney Flats, TN, told a similar story. Her 92-year-old father—Ollie Shell—has cancer. Mr. Shell has been in a nursing home since March. His life savings of $10,000 were rapidly consumed by medical and nursing home bills—which run about $2,000 a month.

Mr. Shell receives $450 a month in Social Security retirement benefits. That covers only a small portion of his medical expenses. Medicare and his supplemental insurance policy cover none of the nursing home costs. Mr. Shell's four children, who themselves have limited resources, must pay for most of his care.

In relating her father's plight at the hearing Mrs. Carr said, "I just pray that no one in this room ever has to go through what we have gone through * * * because it tears your heart out."

Tragically, Mr. President, this situation promises to get worse before it gets better. In fact, a recent report by the Department of Health and Human Services indicates that the financial nightmare of long-term care is reaching epidemic proportions among the elderly. The report estimates that as many as 500,000 elderly persons a year completely exhaust their personal resources—all that they have been able to accumulate during their lifetime of earnings—paying for nursing home care. Indeed, according to this report, half of the 75-year-olds and older who enter private nursing homes are bankrupt within 13 weeks.

And what does the future promise for our older citizens? Over the past two decades, the number of Americans age 65 and older has grown twice as fast as the rest of our population. The growth of the elderly population will continue well into the next century.

By the year 2030, more than 1 in 5 Americans will be 65 or older, increasing from 25.5 million in 1980 to 64.6 million in 2030. Even more startling, there will be a nearly eightfold increase in the 85-plus population by the year 2050—from 2.2 million people in 1980 to 16 million by the year 2050.

Now, I know how many of my colleagues will respond to my argument. They will agree about the need to address the question of long-term care. But, they will argue costs simply prohibit such steps at this time, that it is just too costly a step to take at this time. And to those colleagues I would say yes, there is no doubt that cost is a legitimate concern. However, I question whether the issue of cost has become a convenient excuse for inaction.

Moreover I would point out that the Government is already paying a significant long-term care cost. Presently, the Federal Government pays about half of the elderly's nursing home costs, a key long-term care cost. So we are already paying a sizable sum for long-term care for the elderly. But this cost is not borne by Medicare—the health program for the elderly. This cost is borne by Medicaid funding. My colleagues will recall that Medicaid is the Government health program for the poor. It only helps our older citizens after they have lost their financial independence. No, much of the Government money paying for nursing home care for the elderly is Medicaid funding.

Yet, my colleagues will recall that Medicaid is the Government health care program for the poor. It only helps the elderly after they have lost their financial independence. Thus, the Government is assisting seniors who need long-term care—but not before they impoverish themselves in the process and exhaust their life's savings; and then, and only then, can they access the Medicaid system and get some assistance in paying their long-term health care policy.

So the question of cost, while important, should not deter us from tackling a problem that has pushed many of our senior citizens to the point of despair. We are already paying for long-term care. We are simply paying in an inequitable and inefficient manner. Rather than become mired on this point, Mr. President, I believe we would do well to focus on how best to restructure Medicare to make it a true, geriatric program—a program that meets the special needs of the elderly as was originally intended.

Medicare is presently modeled after private health insurance for employees. As a result, it protects older citizens, largely against the costs of hospitalization for acute illnesses—that is, illnesses that can be cured so that the patient returns to 100 percent capacity. That is a sound strategy for young and middle-aged workers, but it is seriously flawed when applied to an elderly population.

Our current Medicare Program does not reflect the basic health differences between the young and the aged. The elderly—unlike younger persons—are often plagued by a host of chronic conditions. These ailments require the attention of physicians who are familiar with the symptoms that are displayed among the elderly. The proper evaluation and treatment of these conditions should allow the patient to return to as much of a desired lifestyle as possible, since return to full capacity is not always possible. These conditions also require preventive care to avoid further disability. They require long-term care once patients can no longer be managed at home.

As presently structured, Medicare fails to address these points. Medicare helps seniors survive acute illnesses, only to let them fall into poverty when chronic illnesses strike. The bill we passed will help to alleviate that problem, but we must not be content with what I view as a partial solution.

To do the job right, we should be discussing full coverage for long-term care services. Services such as home health care, nursing home care, adult day care, and respite care ought to be on the table during any debate on catastrophic health care.

"We should explore redirecting Medicare coverage toward keeping the elderly healthy through preventive care benefits such as health screening and dental, eye, and hearing care. By focusing on preventive medicine, expensive hospital and long-term care can be avoided.

Mr. President, I am a realist. It is clear that a bill of this scope will not be addressed this year, but I submit to my colleagues that is the wave of the future. If we are going to fully address the question of catastrophic health care, we will have to return to these issues at a later date.

Mr. President, I do not wish to denigrate the fine effort put into the catastrophic health care bill that passed this body. Although we are not solving the problem of long-term care with this bill, we have passed a bill that will benefit millions of senior citizens. It is definitely a step in the right direction.

As a Chinese philosopher said hundreds of years ago, "A journey of a thousand miles starts with the first step." This legislation that we passed does move us down the path of providing quality health care for our Nation's elderly, but I submit to my colleagues that we still have a way to go.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1988

The PRESIDING OFFICER. Under the order, the hour of 9:30 having arrived, the Senate will now resume consideration of H.R. 2890, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2890) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1988, and for other purposes.

The Senate resumed consideration of the bill.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent to proceed out of order for 5 minutes.

Mr. STEVENS. May I make the same request?

Mr. BYRD. For not to exceed 10 minutes, to be equally divided between Mr. STEVENS and myself.

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

RESOLUTION TO LIMIT DEBATE ON THE MOTION TO PROCEED

Mr. BYRD. Mr. President, today I am introducing, along with the Senator from Alaska [Mr. STEVENS] and the Senator from Arkansas [Mr. PRYOR], a resolution which provides a 2-hour time limitation for debate on the motion to proceed to legislation.

This debate limitation would apply only to motions to proceed made by the majority or minority leader at a time other than the morning hour, which consists of the first 2 hours of session following an adjournment. In addition, there would be no time limitation on a motion to proceed to a change in Senate rules.

Controversy has surrounded nondebatable motions to proceed on several occasions during this first session of the 100th Congress—specifically, on the energy appliance standards bill and the Department of Defense authorization. These measures eventually came up for consideration by the Senate, but valuable time was wasted in the effort to have the Senate consider the bills.

A majority leader does not have the luxury of time in attempting to address the problems facing this Nation, and wasted time is the result of prolonged and unlimited debate on motions to proceed.

The suggestion that there should be a time limitation on motions to proceed is not a new one. Although this resolution does reserve the right to make a motion to proceed under a time limitation to the majority leader and the minority leader, it does not eliminate the Senate tradition of unlimited debate on legislation. This resolution simply removes one layer of filibuster. It is still possible to have unlimited debate on a measure itself and on amendments thereto, on motions that the Senate insist on its amendments, on motions that the Senate request a conference with the House on the disagreeing votes, on motions to appoint conferees, and at various other stages if the Senate so chooses.

Under this proposal, the majority leader would at least have an opportunity to bring a bill up for consideration, provided a majority of the Senate votes to proceed. Adoption of a time limitation on motions to proceed would enhance the ability of a majority leader to set the Senate agenda—a responsibility and prerogative generally recognized by both sides of the aisle as belonging to a majority leader.

I am hopeful that the Rules Committee will give this proposal careful consideration and report it back to the full Senate for its approval.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. HELMS. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. STEVENS. Yes.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Senator from Alaska.

Maybe I should direct this to the majority leader. Are we moving back the time of the vote with these statements?

Mr BYRD. Slightly we are; yes, indeed we are, and I apologize for that.

Mr. HELMS. It is of no concern to me. I just want to know what the situation is.

Mr. BYRD. As soon as the distinguished Senator completes his statement regarding the introduction of the resolution we will be done.

Mr. HELMS. Very well.

I thank the Chair and the distinguished majority leader, and I thank Mr. STEVENS.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I am grateful to the Senator from North Carolina. We had no intention to delay the vote but it is obvious we have slightly delayed the vote.

I join my good friend and distinguished colleague, our majority leader, in submitting a Senate resolution to establish a reasonable limit on the amount of discussion which could occur upon motions to proceed to the consideration of legislation before the Senate.

This is not the first time that I have submitted such a resolution. I have served in the Senate for a considerable period of time. I am completing my 19th year this year, and I believe that, based upon the time I have served in the leadership, I have witnessed firsthand the experience that leaders have, the sense of frustration that develops when it is not possible to move the Senate to the consideration of the substance of a measure.

It is important to remember that extended debate on the motion to proceed in and of itself does not address the substantive issue.

There have been now, in the period since 1979, 10 motions to proceed offered in the 96th Congress, 12 offered in the 97th Congress, 22 offered in the 98th Congress, 17 offered in the 99th Congress, and 6 offered so far in this Congress.

I point out the fact that during that period of time one party controlled the 96th Congress, the Democratic Party, my party controlled the 97th, 98th, and 99th and now the Democratic Party controls the 100th.

It is obvious that the leadership of both parties have faced contested motions to take the Senate to substantive legislative matters.

The only thing this creates is the opportunity for a preliminary filibuster. Such debate does not address the merits of legislation. It does not deal in any way with the substance of the matter that the majority leader seeks to make the pending business, and it only delays the Senate.

As far as I can tell there have only been three instances in which debate on such motions ultimately succeeded in ending consideration of a matter.

On those three occasions the debate on the substance itself would have succeeded, but the Senate delayed itself in reaching that result.

We argue about the quality of life in the Senate and yet we use our time on procedural delays which do not address the merits of the proposal before the Senate. In my view that is contrary to the functioning of democracy and circumvents the purpose of the Senate which is to address the substance of proposals before us.

We have had a series of calls for reform since 1959, and several distinguished groups of Senators have brought proposals to limit debate on motions to proceed before the Senate. In April 1983, Senators Ribicoff and Pearson proposed a 2-hour time limit on such debate. My dear friend, Senator Jim Pearson, of Kansas took the lead in espousing this reform. In doing so, he argued forcefully for the proposition that the will of the Senate was being thwarted by what he called the double filibuster and I call the preliminary filibuster. In late 1984, my colleague and good friend from Rhode Island JOHN CHAFEE named a Republican ad hoc Committee on Proposed Amendments to Rules Relating to Floor Action in the U.S. Senate. Among the recommendations of that ad hoc committee was a suggestion which is identical to the resolution being offered by Senator BYRD and myself today. It is interesting to note that the January 1985 ad hoc committee recommendation on limiting debate on motions to proceed was concurred in by Senators GORTON, EVANS, MATHIAS, and QUAYLE.

The Chafee committee's conclusion that debate on motions to proceed should be limited to 2 hours, was concurred in later in 1985, when the committee chaired by Senator DAN QUAYLE of Indiana reported its recommendations to the Senate, on June 6, 1985.

The Quayle committee before whom I appeared and made this suggestion filed its recommendations on debate on motions to proceed. They supported the concept that is before the Senate now in this resolution offered by Senator BYRD and myself. Members of the Quayle committee voting to support this recommendation included Senators QUAYLE, Mathias, GARN, WALLOP, RUDMAN, and KASTEN—by proxy.

As I indicated previously, the resolution which we offer today resembles in many ways resolutions which have been introduced by Senators on both sides of the aisle dating back to the late 1950's. The resolution being offered today has one, and only one, purpose—to allow a debate, within reasonable limits, on a motion to proceed and then depending upon the vote on that motion, to move, in a timely fashion, to consideration of the legislation.

Mr. President, this resolution does not preclude or eliminate the ability of any Senator to debate a motion to proceed. It only places a very reasonable limit upon the time which such debate can occupy.

This resolution does not limit, in any way, the ability of any Senator to debate, fully and at whatever length the Senator feels is appropriate, the legislation itself. I repeat, Mr. President, this resolution will not preclude extended debate on any substantive legislative matter.

This resolution represents a balanced and reasonable approach to a persistent and troubling issue with respect to the operation of the Senate.

I want to emphasize that this resolution does not in any way limit the ability of any Senator to debate fully and at whatever length the Senator wishes, whenever he thinks it is appropriate, the legislation itself. The majority leader has listed the number of times a Senator can debate any motion once we are on the substance of a bill. Such debate on a motion would, in effect, bring about another filibuster.

I do believe that this resolution represents a balanced and reasonable approach to a persistent and troubling issue with respect to the operation of the Senate.

We should not waste our time debating and trying to decide whether we should ultimately decide a question.

I thank my friend, the majority leader, for permitting me to join him in this matter.

The PRESIDING OFFICER. The Senator from Alaska has yielded the floor.

The majority leader.

Mr. BYRD. Mr. President, if the distinguished Senator from South Carolina would just allow me 30 seconds.

Mr. President, I ask unanimous consent that the Senate resolution which has been discussed here be placed directly on the calendar.

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

Mr. BYRD. Mr. President, I also submit the same resolution for appropriate referral.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1988

The Senate resumed consideration of the bill (H.R. 2890).

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I rise today as chairman of the Committee on Commerce, Science, and Transportation. Under rule XXV of the Standing Rules of the Senate, the Commerce Committee has jurisdiction over legislation dealing with the regulation of civil aviation, and the proposed committee amendment clearly seeks to regulate in this area, and the Chair has so ruled. The Senator from New Jersey has appealed the ruling of the Chair and is asking the full Senate to validate his infringement on the jurisdiction of the Commerce Committee.

Mr. President, the committee system was set up for many reasons, one of which was to allow the committee with expertise on an issue to provide full consideration of the issue before it reaches the floor of the Senate. The Commerce Committee has already received one bill that deals with smoking on public conveyances, S. 51, offered by the Senator from Utah [Mr. HATCH], and I have indicated to Senator HATCH that hearings will be held on the bill. The Commerce Committee is prepared to provide the forum to examine all aspects of any legislation that comes within its jurisdiction.

I strongly urge the Senate to maintain the structure provided by the rules and the committee system. As we enter the final stage of the budget and appropriation process, it is imperative that the Senate indicate that it has the discipline to uphold its own rules and support the jurisdiction of its committees.

Mr. President, with respect to the pending matter, the appeal of the distinguished Senator from New Jersey of a point of order by my colleague from North Carolina [Mr. HELMS] as the chairman of the Committee on Commerce, Space, Science, and Transportation, I should advise the Senate that we have an aviation consumer bill that has been reported out and is on the floor of the Senate and ready for consideration. We have not ignored the interests of the flying public; on the contrary, we are ready to move forward.

Now what you see in this particular amendment by the Senator from New Jersey, in the Senate transportation appropriation bill, is an end run around the committee system, just another example of a breakdown of discipline in the Congress.

If there is one regret this Senator has in his experience in this body, it is having to witness a total breakdown of discipline. We are passing treaties over in the House. In the Senate, we are passing treaties by majority vote rather than the required two-thirds.

Any committee can pick up any issue under any subterfuge, taking over the jurisdiction and, of course, no one knows exactly where we are on any score.

I want to support the point of order by our colleague, the Senator from North Carolina, on rule XV. Under rule XVI there is another point of order lies because this is clearly legislating on an appropriations bill.

So I hope, Mr. President, that we will simmer down and look at the

proper way to approach these problems. The Commerce Committee has not dragged its feet. We have the Hatch bill, S. 51, relative to smoking on all public transportation, not just the airlines, but the buses, trains, and otherwise.

We agreed that we will have a hearing this fall on it. The Transportation Department is making a study. So the issue here is not whether this matter is getting enough attention, it is whether the Senate intends to show some discipline, follow its own rules and shut down this end run proposed by our friend from New Jersey. I hope that the Senate will support the point of order.

The PRESIDING OFFICER. The Senator from South Carolina has yielded the floor. Who yields time?

Mr. LAUTENBERG. Mr. President, we have the time divided, as I understand the consent agreement of last night, between the two sides. Would the Parliamentarian just define for us now how that time splits and how these comments are being allocated?

Mr. HELMS. And how much time remains?

The PRESIDING OFFICER. Debate time has been limited to 16 minutes, equally divided, with time to be controlled by the Senator from New Jersey and the Senator from North Carolina.

Mr. LAUTENBERG. Sixteen minutes equally divided.

The PRESIDING OFFICER. Correct.

Mr. LAUTENBERG. And the comments of the Senator from South Carolina, has that time been charged to the 16 minutes?

The PRESIDING OFFICER. The time is presumed to be charged to the Senator from North Carolina.

Mr. LAUTENBERG. I thank the Chair.

Mr. HELMS. Parliamentary inquiry. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from North Carolina has 5 minutes and 24 seconds under his control.

Mr. HELMS. Mr. President, inasmuch as the distinguished Senator from South Carolina [Mr. HOLLINGS], the chairman of the Commerce Committee, is especially interested in the implications of this matter, I am going to yield my time to him.

Mr. HOLLINGS. That is all right. I am finished.

Mr. FORD. Mr. President, could I have some time?

Mr. HELMS. The Senator can have as much time as I have remaining.

The PRESIDING OFFICER. The Senator yields to the Senator from Kentucky that time which he requires up to 5 minutes and 17 seconds remaining.

The Senator from Kentucky.

Mr. FORD. Mr. President, I will not take but just a minute. I rise to support the Senator from North Carolina and my chairman of the Commerce Committee, of which I am a member, and I am also chairman of the Aviation Subcommittee. I think the motion that was made by the distinguished Senator from North Carolina was correct. I think the statement by our distinguished chairman was correct. He is not dragging his feet. We are not dragging our feet. We are trying our best to reach an accommodation that would be meaningful.

I think the distinguished Senator from North Carolina said last night that a proposal by the Department, had it been in the bill, there would have been no objection.

If you look at what has transpired here, we would probably eliminate, for all practical purposes, except from on the coast-to-coast flights, smoking on airlines because of the hub-and-spoke situation. What we find is a need to have a meaningful study and that we do not have under this proposal.

So, Mr. President, I am very pleased with the apparent decision of the Chair yesterday. I am pleased with the support that my chairman of the Commerce Committee is giving to the proponents of this.

Mr. President, I would like to explain why I am supporting the efforts of the Senator from North Carolina to remove portions of H.R. 2890 that pertain to banning smoking on airlines on flights of 2 hours or less for a 3-year period. The Commerce Committee, which has jurisdiction of all matters pertaining to transportation rightfully should be reporting legislation on this matter.

Many Senators may be surprised to learn that I want to resolve this issue. I have talked with the chairman of the Transportation Subcommittee, the Senator from New Jersey, on many occasions on this issue. I have agreed that a ban should be imposed, but I suggested that it be a 1-hour ban. Due to the current hub-and-spoke system utilized by most of the airlines, I believe a 1-hour ban would be a more realistic test. The 2-hour ban was selected by the proponents of a ban because it is the closest one can get to a total ban without declaring a total ban. I am sure politically 2 hours sounds better.

Mr. President, what will actually occur with a 2-hour ban is that approximately 85 percent of the flights in the United States will ban smoking. Only on the coast-to-coast, nonstop flights will smoking be allowed. I have been interested in compromising, but have been unsuccessful; I do believe there is a more reasonable way to accomplish the ban.

Mr. President, the procedure used to ban smoking on aircraft is not the correct procedure under the Senate rules. The Senate Commerce Committee should have a hearing and review the ramifications of this action. Many airlines, particularly the smaller ones, have contacted me to explain their opposition. There is a competitive issue involved in that about 30 percent of airline passengers smoke. Those 30 percent are going to seek nonstop flights rather than the short segments provided by the smaller airline companies. All of this should be reviewed in a hearing.

For the past 14 years, the airlines have been governed by Federal regulations which provide for the segregation of nonsmoking and smoking passengers and for the guarantee of a seat in the nonsmoking section to all passengers who so request. The airlines are satisfied with the current situation as are most passengers. The majority of the complaints received by the airlines come from smokers who are denied a seat in the nonsmoking section.

Last Tuesday, the airlines met with the Department of Transportation to discuss a complete review of environmental tobacco smoke on aircraft to be conducted by an independent contractor which will be chosen by the DOT. In an effort to resolve this issue, I had suggested to the chairman of the Transportation Subcommittee to have the National Institutes of Health conduct a 2-year study. I am certainly satisfied with the procedures of the DOT in using funds to further review the proposals of the National Academy of Sciences report of 1986. The National Academy of Sciences stated that little is known about the environment in the passenger cabins of commercial aircraft under routine flight conditions and what is known is limited in scope. The DOT is correct in responding to the issues raised in that report since they have recognized the absence of research on aircraft air quality. All passengers, not just smokers, will benefit from that research.

Mr. President, I had planned on offering an amendment to this bill to require a 1-hour ban for a 2-year period with a study to be conducted by the National Institutes of Health. I will not offer the amendment and instead will support the efforts of the Senator from North Carolina. I firmly believe that hearings are essential; this is not the way for the Senate to approve a major legislative, not appropriations, issue. If the Senator from North Carolina is successful, I will do all that I can to see that the Commerce Committee moves expeditiously on this matter.

The PRESIDING OFFICER. Who yields time?

Mr. SANFORD. Mr. President, the Senator from Kentucky has the time.

Mr. FORD. I yield it back.

Mr. HELMS. Mr. President, I yield all except 30 seconds to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina [Mr. HELMS] yields all but 30 seconds of his remaining time to the Senator from North Carolina [Mr. SANFORD].

Mr. SANFORD. Mr. President, I respectfully urge my colleagues in this Chamber to sustain the decision of the Chair to rule out of order the proposed smoking ban amendment to this appropriations bill. I think the Parliamentarian was correct and the Chair was correct. Quite aside from the issues involved, I think it is incumbent upon us to adhere to the rules.

I think we have talked a great deal about new rules to keep extraneous discussions off the floor in order to get us home before Christmas. We simply cannot get the business done if we do not sustain our rules.

Clearly, each of us in this Chamber has an interest in protecting and preserving the health, safety, and comfort of the traveling public. It is unquestionably within the meaning of rule 15 a "significant matter." I do not believe, however, that this bill provides the proper context in which to debate these issues, nor do I believe this is an issue properly within the jurisdiction of the Appropriations Committee.

There are, as my distinguished colleague from North Carolina has already pointed out, a good many other complaints besides smoking about which airline passengers feel strongly. Surveys have demonstrated time and again that smoking on planes is, among the many others, one of the issues about which they feel least strong. Instead the flying public has asked that Congress do more to improve passenger safety; that we improve air traffic control; that we demand better on-time records; that we see to it that their baggage arrives when they do; and that we assure their reservations are honored.

It seems to me that if we are concerned about improving the quality of air travel in this country we ought not to limit our efforts to make air travel safer just to restricting or otherwise banning inflight smoking, particularly without first determining if there might be some other, less intrusive way to achieve our goals.

We should first explore the possibilities the market itself may provide to offer the flying public both smoking and nonsmoking flights. If the demand for nonsmoking flights is as great as some believe it might be, then surely the airlines will begin offering nonsmoking flights to respond to this demand. Indeed, the airlines already make it their policy to accord preferred treatment to nonsmokers whenever conditions warrant their doing so.

But why, Mr. President, should we squander our efforts to make meaningful improvements in the quality of air travel on no more than the imposition of a 2-hour inflight smoking ban? How can we fairly say we are dealing responsibly with the problems in the airline industry when we elect to address only smoking to the exclusion of other problems that weigh far more heavily on the minds of the flying public?

No, Mr. President, as I have said earlier, this is not a bill to which a matter as significant as a smoking ban should be attached. If there are among my colleagues in this Chamber enough who believe that smoking, along with the many other—and, in my view, far more serious—problems that plague the airline industry, ought to be addressed by this body, then such legislation, as far as I'm concerned, should be offered and debated as a freestanding measure. It has no place, however, being made part of this legislation.

Once again, Mr. President, I ask my colleagues to uphold the ruling of the chair, and I yield the floor.

I yield back to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina has 2 minutes 24 seconds under his control. Who yields time?

Mr. HELMS. Mr. President, I yield myself such time as I may require.

The issue here at the moment is not the committee amendment in the appropriation bill authored by the distinguished Senator from New Jersey. The issue is whether we are going to destroy the committee system. In the situation that developed last night, I raised a point of order that the provision, the amendment by the Senator from New Jersey, was a violation, and a clear one, of rule XV, paragraph 5. Let me read it slowly and carefully. And Senators ought to be mindful of the chaos that will result if this rule is destroyed by agreeing to the Senator from New Jersey's appeal to the ruling of the Chair.

Here is what the rule says:

> It shall not be in order to consider any proposed committee amendment (other than a technical, clerical, or conforming amendment) which contains any significant matter not within the jurisdiction of the committee proposing such amendment.

Now, obviously, if this rule is stricken by voting in favor of the appeal to the ruling of the Chair by the Senator from New Jersey, then any committee will have free license to invade the province of any other committee. So that is the issue, whether we are going to destroy the committee system in the U.S. Senate.

I reserve the balance of my time.

The PRESIDING OFFICER. The Senator reserves the remainder of his time, which is 6 seconds.

The Senator from New Jersey.

Mr. LAUTENBERG. Thank you, Mr. President. What we have heard in these last minutes is a challenge to the process. I would like to take a couple of minutes to discuss it because I do not think we are discussing process. We are discussing an amendment to a bill that has carried with it from the House a ban on smoking for 2 hours.

Mr. President, when the Senate suspended action on the transportation appropriations bill last night, pending was my appeal of the ruling of the Chair on a point of order on rule XV. I made that appeal in order to preserve my rights and keep my options open.

On reflection, I have concluded that I ought to let the ruling of the Chair stand and offer another amendment, in lieu of the language that the Chair has ruled out of order.

I am, therefore, prepared to agree to withdraw my appeal of the ruling of the Chair. Whether the Senate ends up voting on a procedural matter or the substance of the airplane smoking ban, we have got to be clear about what I earlier said; what it is we are discussing. We are not talking about committee rights or germaneness or anything else like that. We are talking about health. We are talking about the health of the flying public. We are talking about the health of flight attendants who work on those airplanes. And when the Senate votes, it is not going to be voting on whether or not to uphold the position of the National Academy of Sciences. The tobacco industry will always say more research is needed. The tobacco industry still disputes that cigarettes are harmful. But in reference to controlling passive smoke, the Surgeon General has made his position very clear. He said:

> Measures to protect the public health are required now.

I have a lot of respect for Dr. Koop and I think my colleagues share in this respect. We should vote this morning to protect the public health, to allow a 3-year ban on smoking on scheduled airline flights of 2 hours or less, to go into effect. We have an opportunity today to vote in this body, to make a difference in people's lives. I can tell you that today's vote can make that difference.

Since the day I announced I was proposing this smoking ban I received letters and phone calls from people all over this country. They have called to thank me.

Flight attendants called to say they find it hard to do their work because of smoke in the air. Parents call me to say they cannot travel on airplanes because their child is allergic to smoke. These are not highly paid lobbyists speaking for the powerful tobacco companies sending out thousands of telegrams. These are ordinary citizens pleased that somebody is there looking out for their health.

Mr. President, yesterday the distinguished Senator from North Carolina talked about the small vote by which the amendment carried. Sixty percent of the Senators in the Appropriations Committee voted to ban smoking—60 percent.

If this were an election, it would be a landslide. It would not be simply a matter of changing three votes.

Any of us would like to win an election with a 60-percent vote and feel pretty good about it.

Mr. President, I ask unanimous consent that the appeal of the ruling of the Chair be withdrawn.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Reserving the right to object, and I will not object, I wish it were possible to vitiate this whole episode beginning with the point of order, and I will state why.

Rule XVI was devised to protect appropriations bills from having legislation attached thereto, but also to permit the Senate to respond to House legislative language.

Rule XV was devised to protect authorizing committees from having their jurisdiction intruded upon by other authorizing committees.

Rule XVI and the precedents interpreting it implicitly recognize the right of the Appropriations Committee to report legislative proposals which could otherwise be interpreted to violate rule XV, provided such proposal is voted by the Senate to be germane to language inserted by the House.

Rule XVI allows for a point of order against a legislative amendment and then for the raising of a question of germaneness. Thus, the right of the Senate to respond to House initiated legislation is protected on appropriations bills. By virtue of rule XV having been invoked here, and the Chair having ruled—properly, as it did—if that becomes a precedent then the Senate may at some future time find itself defenseless against a House bill which comes in here which has opened the door and the Senate would not be able to offer an amendment to legislation from the House which was already included in the bill. The issue is not whether one committee has invaded the jurisdiction of another. The issue is whether the process under rule XVI which allows the Senate to decide if an amendment is germane to a legislative provision of the House shall remain valid.

We have precedents here to the extent that if the House has already opened the door on a nongermane or legislative matter, the Senate has a right to amend that language because the House has already opened the door with legislation on an appropriation bill. But now we are about to say that this point of order, in the future, can be raised. We ought not do that. Rule XVI protects the rights of Senators as well as the Senate's prerogatives relative to the House. We are going to find at a later date this precedent confronting us; that even though the House has underlying language, as it has here, that this Senate is defenseless and cannot offer an amendment to it.

I just wish we could vitiate the whole business. We are about to vitiate the appeal, I think, anyhow, which will leave the Chair's ruling stand. The Chair ruled, I think, correctly. I wish the point of order had been made under rule XVI. But if we can vitiate the whole thing, then the Senator is going to offer an amendment anyhow. If the appeal is withdrawn, if consent is given to that request, he is going to offer an amendment anyhow and his rights would be reserved in either case to offer the amendment.

I wonder if we could get unanimous consent to vitiate ab initio, the point of order and just go from there?

Mr. HELMS. Would the distinguished majority leader yield?

Mr. BYRD. Yes.

Mr. HELMS. If it can be included that the Senator from New Jersey will agree to strike his amendment in the bill and offer it as an amendment, a floor amendment, that would be perfectly satisfactory to me. But the proposal of the majority leader lacks a little bit of appeal because the amendment, which ought not to have been in the bill in the first place, remains in the bill.

Any Senator can offer a floor amendment, as the distinguished majority leader has indicated. I wonder if the distinguished majority leader would ask unanimous consent to extend the time, put in a quorum call and let me talk to some of my colleagues who are interested in doing this, for just about 5 minutes.

Mr. BYRD. Before I do that I think we would be happy and would be well advised to remove, ab initio, the point of order and the amendment from the bill and let the Senator then proceed from there with his amendment, which he can do in any event.

Mr. LAUTENBERG. I thank the majority leader. I would agree to that, provided that we are very clear that the amendment in the committee bill that could be withdrawn need not be exactly replicated when I introduce my amendment after that.

Mr. HELMS. Well, if the Senator would yield, if the majority leader will yield, I will have to see the amendment. I do not want to buy a pig in a poke.

Mr. LAUTENBERG. It is essentially the same amendment with slightly different language. But I am going to reserve the right to introduce that amendment.

I agree to pull down that portion of the bill that we have been discussing.

Does that, then, permit us to vitiate that whole process, including the challenge under rule XV?

Mr. BYRD. Let me say on the record that I am for greater safety on airlines. I will probably agree with Senator FORD and Senator HOLLINGS and Senator HELMS on this question, unless we can reach some modification on the amendment.

Right now I am putting all of that aside and urging that we look at what we are about to do with respect to Senate rules and precedents. I would hope we could, as I say, vitiate the whole thing.

Mr. HELMS. Just for the record, I understand what probably is afoot. I know what I would do under the same circumstances, if I were the Senator from New Jersey. Of course, he is entitled to do it and he is entitled to offer whatever amendment he wishes.

Mr. LAUTENBERG. Of course.

Mr. HELMS. I am a little concerned about the probable efforts to tree it, but on the other hand I can still offer an amendment in contradiction of his. Whether I can get it passed or not I do not know but I have no objection to the suggestion of the majority leader and I will be glad to ask unanimous consent that my point of order be withdrawn.

Mr. BYRD. Mr. President, could I make the request, as I began, that the point of order and all subsequent actions and motions be vitiated and that the amendment be deleted.

The PRESIDING OFFICER. Is there objection? If not, it is so ordered.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER (Mr. SANFORD). The Senator from New Jersey.

Mr. HELMS. Mr. President, if the Senator will yield, did I use all my time?

The PRESIDING OFFICER. The Senator has 10 seconds remaining.

Mr. HELMS. Mr. President, Senator TRIBLE has been waiting for some time. Would the Senator agree for him to have 2 minutes?

Mr. LAUTENBERG. I was looking for the Senator from Oregon.

Mr. TRIBLE. May I ask for 10 seconds?

Mr. LAUTENBERG. Yes.

Mr. TRIBLE. Mr. President, I oppose the Lautenberg language because of important procedural and institutional reasons.

What we see here is yet another example of the decline of the legislative process in the Senate.

We have before us an amendment to an appropriations bill circumventing both the standing rules and committee jurisdiction.

We have these rules and the committee of jurisdiction precisely because the Senate is intended to be a deliber-

ative body. That requires orderly procedure and division of legislative labor.

Yet, this amendment, like so many others, contributes as my colleague from Missouri Senator DANFORTH once characterized it as a "Cacophony of Confusion."

The reason for this Mr. President, is that we have resorted to deciding issue after issue as a committee of the whole. We ignore our procedures so that we are able to respond to the individual agenda of 100 Senators, as a result of the life of this body has become fractions, fragmented and partisan to the point of paralysis.

The Senate cannot conduct itself—it cannot do business—as a standing committee of the whole. It is quite simply impossible and certainly inconsistent with deliberation to put every issue of importance to 1 Senator before the other 99.

Yet, that is our direction. That is where we are tending. And, Mr. President, irrespective of what I think of the merits of this measure, I would oppose it for both procedural and institutional reasons.

At some point as Senators we must say enough. We must be willing to assert that our rules and committee jurisdiction are more than matters of mere convenience that we can dismiss because our own political agenda requires it.

Legislation to ban smoking on board commerical aircraft is also unwarranted and inappropriate for other reasons. Smoking aboard aircraft is already sharply restricted; every passenger is guaranteed a no smoking seat—even if a smoking section must be reduced or eliminated to satisfy that guarantee.

A 1987 Airline Pilots Association poll determined airline passengers, by a margin of 87 to 12 percent, believe that the "current practice of separating smoking and nonsmoking passengers is a reasonable policy that respects the rights of each." Moreover, reviews of recent DOT consumer complaint reports consistently show no more than a single smoking complaint for each 1 million passengers. Smoking complaints are declining both in absolute terms and relative to all other consumer concerns.

Finally, a smoking ban would pose serious compliance problems, and significant administrative and practical problems for airlines and passengers alike.

For these and other good reasons I believe the Lautenberg language should not be accepted.

Mr. LAUTENBERG. Mr. President, I am happy to yield for a RECORD statement under the unanimous-consent agreement, provided I do not lose the floor to the junior Senator from Kentucky.

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

SMOKING BAN ON AIRLINE FLIGHTS

Mr. McCONNELL. Mr. President, I rise today to express my opposition to this amendment to ban smoking on all domestic airline flights of 2 hours or less. This amendment characterizes one of the worst tendencies of our political system—our inexorable urge to regulate, regardless of whether or not there is information to back up legislation, regardless of whether or not there is any kind of public consensus.

I sincerely wonder why this amendment has been offered—public opinion does not warrant such a ban. A recent poll conducted by the Airline Pilots Association found that 87 percent of those polled agreed that "the current practice of separating smoking and nonsmoking passengers is a reasonable policy that respects the rights of each." Complaints about smoking and air travel rank in the bottom fourth of Department of Transportation complaint categories, accounting for less than 3 percent of all complaints. Clearly those who travel on airplanes do not perceive that smoking is a serious problem. In fact, a ban on smoking on any flights would likely increase complaints of those who feel they have the right to smoke, but are told they cannot.

Our present regulations governing smoking on airlines are adequate. Currently, every passenger with reservations is guaranteed a nosmoking seat, even if a smoking section must be reduced or eliminated to satisfy the guarantee.

One of the tenets being used to advance this amendment is that environmental smoke is a hazard. The simple fact is that there is no solid, incontrovertible evidence that this is the case. The Surgeon General's Report on Environmental Tobacco Smoke [ETS], and the National Academy of Sciences' which recommended a ban on inflight smoking, failed to include any scientific data to conclude that ETS is harmful to nonsmokers. No scientifically valid studies have ever been conducted on airplane cabin conditions.

However, my fear for this legislation is ultimately caused by the great impact this ban will have on an important industry in Kentucky—tobacco. Tobacco is a legal crop, upon which 150,000 Kentuckians base their livelihood. The industry nationwide employs 710,000 workers, pays nearly $19 billion in wages and accounts for nearly $31.5 billion on our GNP. While I make a personal decision not to smoke, I do not think it is acceptable to impose restraints on those who do.

I do not think that anyone can deny that this is a serious matter which merits careful and thorough study. Both the Department of Transportation and the Air Transport Association agree definitive determinations should be made on exposure to enivornmental tobacco smoke aboard aircraft before a decision is reached to ban smoking on commerical flights.

In the mad rush to legislate, the proponents of this amendment are overlooking the facts, or rather the lack of facts. There are over 150,000 individuals in Kentucky who derive their livelihood from the tobacco industry. Such smoking bans, we must realize, would directly effect this industry. The very least the Americans deserve is the knowledge that any action on this matter is well thought out, is supported by scientific evidence, is debated in the appropriate fora, and is taken only when we are convinced that this is the best possible way to address the problem, if there is a problem.

Mr. President, I encourage my colleagues to oppose the proposed ban on smoking on airlines.

AMENDMENT NO. 1098

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 1098.

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

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

The amendment is as follows:

On page 57, after line 2, add the following: "(c) After the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 36 months less a day thereafter, except that subsections (a) and (b) shall be null and void upon the date of enactment, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 2 hours or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulations as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000."

Mr. LAUTENBERG. Mr. President, this amendment restores the substance of the committee amendment pertaining to smoking on airlines. To be specific, it makes it unlawful to smoke on scheduled domestic flights of 2 hours or less. The amendment will accomplish all of the objectives of the amendment originally offered by the committee.

Let me briefly summarize the main provisions.

First, there will be a 3-year ban on smoking on scheduled domestic flights of 2 hours or less.

Second, persons violating the ban will be subject to fines up to $1,000.

Three, tampering with or disabling smoke detectors——

Mr. BYRD. Mr. President, will the distinguished Senator yield? I beg his pardon for interrupting.

Mr. LAUTENBERG. I yield to the majority leader.

Mr. BYRD. Mr. President, on last evening, I stated to Senators that there would be a rollcall vote beginning at 10 o'clock. Both the assistant Republican leader and I made it clear that there would be a rollcall vote, if not on the appeal, which now has been avoided, then on a motion to instruct the Sergeant at Arms.

Senators have come to the floor expecting that.

I think if we are going to say there will be a rollcall vote, then there should be one.

I wonder if the distinguished Senator will indicate how much longer he will be speaking.

Mr. LAUTENBERG. I will probably need an additional 15 minutes and then we will return to the bill after the vote.

Mr. BYRD. Will the Senator allow us, by unanimous consent, to proceed with the live quorum call, have the rollcall vote, and get unanimous consent that he be recognized after the quorum has been established, and his statement not show an interruption?

Mr. LAUTENBERG. Without losing my right to the floor, I will be glad to do that.

Mr. BYRD. Mr. President, I make that request.

The PRESIDING OFFICER. Is there objection?

Mr. LAUTENBERG. Mr. President, before we leave the pending business, I would like to ask for the yeas and nays to be ordered on this amendment.

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

The yeas and nays were ordered.

Mr. BYRD. Mr. President, has my request been entered? I suggest the absence of a quorum, and it will be a live quorum.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk called the roll and the following Senators entered the Chamber and answered to their names.

[Quorum No. 32]

Boschwitz	Johnston	Sanford
Byrd	Lautenberg	Stevens
Exon	McConnell	Trible
Ford	Pryor	Wallop
Helms	Roth	
Hollings	Rudman	

The PRESIDING OFFICER. A quorum is not present. The clerk will call names of absent Senators.

Mr. BYRD. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absentees and I ask for the yeas and nays on the motion.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the distinguised Senator from West Virginia. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennesse [Mr. GORE] and the Senator from Illinois [Mr. Simon] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from New York [Mr. D'AMATO] and the Senator from Vermont [Mr. STAFFORD], are necessarily absent.

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

The result was announced—yeas 80, nays 16, as follows:

[Rollcall Vote No. 357 Leg.]

YEAS—80

Adams	Ford	Metzenbaum
Armstrong	Fowler	Mikulski
Baucus	Glenn	Mitchell
Bentsen	Graham	Moynihan
Biden	Grassley	Murkowski
Bingaman	Harkin	Nunn
Boren	Hatch	Packwood
Boschwitz	Hatfield	Pell
Bradley	Heflin	Pressler
Breaux	Heinz	Pryor
Bumpers	Helms	Reid
Burdick	Hollings	Riegle
Byrd	Humphrey	Rockefeller
Chiles	Inouye	Roth
Cochran	Johnston	Rudman
Cohen	Karnes	Sanford
Conrad	Kassebaum	Sarbanes
Cranston	Kennedy	Sasser
Danforth	Kerry	Shelby
Daschle	Lautenberg	Simpson
DeConcini	Leahy	Stennis
Dixon	Levin	Stevens
Dodd	Lugar	Thurmond
Dole	Matsunaga	Trible
Domenici	McClure	Warner
Durenberger	McConnell	Wirth
Exon	Melcher	

NAYS—16

Bond	Kasten	Symms
Chafee	McCain	Wallop
Evans	Nickles	Weicker
Garn	Proxmire	Wilson
Gramm	Quayle	
Hecht	Specter	

NOT VOTING—4

D'Amato	Simon
Gore	Stafford

So the motion was agreed to.

The PRESIDING OFFICER. A quorum is present.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1988

AMENDMENT NO. 1099

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 1099.

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

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

The amendment is as follows:

In amendment numbered 1098, strike all after the word "After" and insert the following:

"the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 36 months and one day thereafter, except that subsections (a) and (b) shall be null and void upon the date of enactment, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 2 hours or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulations as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000."

Mr. STEVENS. Mr. President, will my good friend yield without losing his right to the floor?

Mr. LAUTENBERG. I yield.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senator be permitted to yield to me without losing his right to the floor so that I may make a motion with consent of the majority and minority leaders.

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

Mr. STEVENS. Mr. President, the other night on the Consent Calender there was an item Calendar Order 318, H.R. 278 which was temporarily removed because of a temporary objection.

ALASKA NATIVE CLAIMS SETTLEMENT ACT AMENDMENTS

Mr. STEVENS. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 381, H.R. 278, the

amendments to the Alaska Native Claims Settlement Act.

Mr. BYRD. Mr. President, it has been cleared on this side.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 278) to amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act, and for other purposes.

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

That (a) this Act may be cited as the "Alaska Native Claims Settlement Act Amendments of 1987".

(b) Unless otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or subsection, the reference shall be considered to be made to a section or subsection of the Alaska Native Claims Settlement Act of 1971, as amended (43 U.S.C. 1601-1629a).

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(1) the Alaska Native Claims Settlement Act was enacted in 1971 to achieve a fair and just settlement of all aboriginal land and hunting and fishing claims by Natives and Native groups of Alaska with maximum participation by Natives in decisions affecting their rights and property;

(2) the settlement enabled Natives to participate in the subsequent expansion of Alaska's economy, encouraged efforts to address serious health and welfare problems in Native villages, and sparked a resurgence of interest in the cultural heritage of the Native peoples of Alaska;

(3) despite these achievements and Congress's desire that the settlement be accomplished rapidly without litigation and in conformity with the real economic and social needs of Natives, the complexity of the land conveyance process and frequent and costly litigation have delayed implementation of the settlement and diminished its value;

(4) Natives have differing opinions as to whether the Native Corporation, as originally structured by the Alaska Native Claims Settlement Act, is well adapted to the reality of life in Native villages and to the continuation of traditional Native cultural values;

(5) to ensure the continued success of the settlement and to guarantee Natives continued participation in decisions affecting their rights and property, the Alaska Native Claims Settlement Act must be amended to enable the shareholders of each Native Corporation to structure the further implementation of the settlement in light of their particular circumstances and needs;

(6) among other things, the shareholders of each Native Corporation must be permitted to decide—

(A) when restrictions on alienation of stock issued as part of the settlement should be terminated, and

(B) whether Natives born after December 18, 1971, should participate in the settlement;

(7) by granting the shareholders of each Native Corporation options to structure the further implementation of the settlement, Congress is not expressing an opinion on the manner in which such shareholders choose to balance individual rights and communal rights;

(8) no provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1987) shall—

(A) supersede the declaration of policy set forth in section 2 of the Alaska Native Claims Settlement Act of 1971,

(B) rescind the extinguishment of aboriginal land claims and hunting and fishing rights effected by section 4 of that Act, or

(C) confer on any Native organization any degree of sovereign governmental authority over lands (including management, or regulation of the taking, of fish and wildlife) or persons in Alaska; and

(9) the Alaska Native Claims Settlement Act, as amended, and this Act are Indian legislation enacted by Congress pursuant to its plenary authority under the Constitution of the United States to regulate Indian affairs.

NEW DEFINITIONS

SEC. 3. Section 3 (43 U.S.C. 1602) is amended—

(1) by inserting "group," after "individual," in subsection (h);

(2) by striking out "and" at the end of subsection (k);

(3) by striking out the period at the end of subsection (l) and inserting in lieu thereof a semicolon;

(4) by striking out "Native Group." in subsection (m) and inserting in lieu thereof "Group Corporation;"; and

(5) by adding at the end thereof the following new subsections:

"(n) 'Group Corporation' means an Alaska Native Group Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of a Native group in accordance with the terms of this Act;

"(o) 'Urban Corporation' means an Alaska Native Urban Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of an urban community of Natives in accordance with the terms of this Act;

"(p) 'Settlement Common Stock' means stock of a Native Corporation issued pursuant to section 7(g)(1) that carries with it the rights and restrictions listed in section 7(h)(1);

"(q) 'Replacement Common Stock' means stock of a Native Corporation issued in exchange for Settlement Common Stock pursuant to section 7(h)(3);

"(r) 'Descendant of a Native' means—

"(1) a lineal descendant of a Native or of an individual who would have been a Native if such individual were alive on December 18, 1971, or

"(2) an adoptee of a Native or of a descendant of a Native, whose adoption—

"(A) occurred prior to his or her majority, and

"(B) is recognized at law or in equity;

"(s) 'Alienability restrictions' means the restrictions imposed on Settlement Common Stock by section 7(h)(1)(B); and

"(t) 'State-Chartered Settlement Trust' means a trust established by a Native Corporation under the laws of the State of Alaska for the sole benefit of holders of its Settlement Common Stock.".

ISSUANCE OF STOCK

SEC. 4. Subsection (g) of section 7 (43 U.S.C. 1606(g)) is amended to read as follows:

"(g)(1) SETTLEMENT COMMON STOCK.—(A) The Regional Corporation shall be authorized to issue such number of shares of Settlement Common Stock (divided into such classes as may be specified in the articles of incorporation to reflect the provisions of this Act) as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 5.

"(B)(i) Notwithstanding any other provision of law, a Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock to—

"(I) Natives born after December 18, 1971,

"(II) Natives who were eligible for enrollment pursuant to section 5 but were not so enrolled, or

"(III) Natives who have attained the age of sixty-five, for no consideration or for such consideration as may be specified in such amendment or in a resolution approved by the board of directors pursuant to authority expressly vested in the board by the amendment. The amendment to the articles of incorporation may specify which class of Settlement Common Stock shall be issued to the various groups of Natives.

"(ii) Not more than one hundred shares of Settlement Common Stock shall be issued to any one individual pursuant to clause (i).

"(iii) In amending its articles of incorporation pursuant to clause (i), a Regional Corporation may provide that Settlement Common Stock issued to a Native pursuant to such amendment (or stock issued in exchange for such Settlement Common Stock pursuant to subsection (h)(3) or section 37(d)) shall be deemed cancelled upon the death of such Native. No compensation for this cancellation shall be paid to the estate of the deceased Native or to any person holding the stock.

"(iv) Settlement Common Stock issued pursuant to clause (i) shall not carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m) unless, prior to the issuance of such stock, a majority of the class of existing holders of Settlement Common Stock carrying such rights separately approve the granting of such rights. The articles of incorporation of the Regional Corporation shall be deemed to be amended to authorize such class vote.

"(C)(i) Notwithstanding any other provision of law, a Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon each outstanding share of Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

"(ii) The amendment authorized by clause (i) may provide that shares of Settlement Common Stock issued as a dividend or other distribution shall constitute a separate class of stock with greater per share voting power than Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

"(2) OTHER FORMS OF STOCK.—(A) Notwithstanding any other provision of law, a Regional Corporation may amend its articles

of incorporation to authorize the issuance of shares of stock other than Settlement Common Stock in accordance with the provisions of this paragraph. Such amendment may provide that—

"(i) preemptive rights of shareholders under the laws of the State shall not apply to the issuance of such shares, and

"(ii) issuance of such shares shall permanently preclude the corporation from—

"(I) conveying assets to a State-Chartered Settlement Trust, or

"(II) issuing shares of stock without adequate consideration as required under the laws of the State.

"(B) The amendment authorized by subparagraph (A) may provide that the stock to be issued shall be one or more of the following—

"(i) divided into classes and series within classes, with preferences, limitations, and relative rights, including, without limitation—

"(I) dividend rights,

"(II) voting rights, and

"(III) liquidation preferences;

"(ii) made subject to one or more of—

"(I) the restrictions on alienation described in clauses (i), (ii), and (iv) of subsection (h)(1)(B), and

"(II) the restriction described in paragraph (1)(B)(iii); and

"(iii) restricted in issuance to—

"(I) Natives who have attained the age of sixty-five;

"(II) other identifiable groups of Natives or identifiable groups of descendants of Natives defined in terms of general applicability and not in any way by reference to place of residence or family; or

"(III) State-Chartered Settlement Trusts; or

"(IV) entities established for the sole benefit of Natives or descendants of Natives, in which the classes of beneficiaries are defined in terms of general applicability and not in any way by reference to place of residence, family, or position as an officer, director, or employee of a Native Corporation.

"(C) The amendment authorized by subparagraph (A) shall provide that the additional shares of stock shall be issued—

"(i) as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon all outstanding shares of stock of any class or series, or

"(ii) for such consideration as may be permitted by law (except that this requirement may be waived with respect to issuance of stock to the individuals or entities described in subparagraph (B)(iii)).

"(D) During the period in which alienability restrictions are in effect, no stock, whose issuance is authorized pursuant to subparagraph (A), shall be—

"(i) issued to, or for the benefit of, a group of individuals composed only or principally of employees, officers, and directors of the corporation; or

"(ii) issued more than thirteen months after the date on which the vote of the shareholders on the amendment authorizing the issuance of such stock occurred if, as a result of the issuance, the outstanding shares of Settlement Common Stock will represent less than a majority of the total voting power of the corporation for the purpose of electing directors.

"(3) DISCLOSURE REQUIREMENTS.—(A) An amendment to the articles of incorporation of a Regional Corporation authorized by paragraph (2) shall specify—

"(i) the maximum number of shares of any class or series of stock that may be issued, and

"(ii) the maximum number of votes that may be held by such shares.

"(B) If an amendment to the articles of incorporation of a Regional Corporation authorized by paragraph (2) authorizes the issuance of classes or series of stock that, when issued singly or in combination, may cause the outstanding shares of Settlement Common Stock to represent less than a majority of the total voting power of the corporation for the purpose of electing directors, the shareholders of such corporation shall be expressly so advised in a proxy statement or other informational material distributed to such shareholders in advance of their vote on the amendment.

"(4) SAVINGS.—(A)(i) No shares of stock issued pursuant to paragraphs (1)(C) and (2) shall carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m). No shares of stock issued pursuant to paragraph (1)(B) shall carry such rights unless authorized pursuan to paragraph (1)(B)(iv).

"(ii) Notwithstanding the issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2), a Regional Corporation shall apply the ratio last computed pursuant to subsection (m) prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987 for purposes of distributing funds pursuant to subsections (j) and (m).

"(B) The issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2) shall not affect the division and distribution of revenues pursuant to subsection (i).

"(C) No provision of this Act shall limit the right of a Regional Corporation to take an action authorized by the laws of the State unless such action is inconsistent with the provisions of this Act.".

SETTLEMENT COMMON STOCK

SEC. 5. Subsection (h) of section 7 (43 U.S.C. 1606(h)) is amended to read as follows:

"(h)(1) RIGHTS AND RESTRICTIONS.—(A) Except as otherwise expressly provided in this Act, Settlement Common Stock of a Regional Corporation shall—

"(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to shareholders;

"(ii) permit the holder to receive dividends or other distributions from the corporation; and

"(iii) vest in the holder all rights of a shareholder in a business corporation organized under the laws of the State.

"(B) Except as otherwise provided in this subsection, Settlement Common Stock, inchoate rights thereto, and rights to dividends or distributions declared with respect thereto shall not be—

"(i) sold;

"(ii) pledged;

"(iii) subjected to a lien or judgment execution;

"(iv) assigned in present or future;

"(v) treated as an asset under—

"(I) title 11 of the United States Code or any successor statute,

"(II) any other insolvency or moratorium law, or

"(III) other laws generally affecting creditors' rights; or

"(vi) otherwise alienated.

"(C) Notwithstanding the restrictions set forth in subparagraph (B), Settlement Common Stock may be transferred to a Native or a descendent of a Native—

"(i) pursuant to a court decree of separation, divorce, or child support;

"(ii) by a holder who is a member of a professional organization, association, or board that limits his or her ability to practice his or her profession because he or she holds Settlement Common Stock; or

"(iii) as an inter vivos gift from a holder to his or her child, grandchild, great-grandchild, niece, or nephew.

"(D) A transfer made pursuant to subparagraph (C)(iii) shall not subject the holder or his or her child, grandchild, great-grandchild, niece, or nephew to any form of Federal, State, or local taxation.

"(2) INHERITANCE OF SETTLEMENT COMMON STOCK.—(A) Upon the death of a holder of Settlement Common Stock, ownership of such stock (unless cancelled in accordance with subsection (g)(1)(B)(iii)) shall be transferred in accordance with the lawful will of such holder or pursuant to applicable laws of intestate succession. If the holder fails to dispose of his or her stock by will and has no heirs under applicable laws of intestate succession, the stock shall escheat to the issuing Regional Corporation and be cancelled.

"(B) The issuing Regional Corporation shall have the right to purchase at fair value Settlement Common Stock transferred pursuant to applicable laws of intestate succession to a person not a Native or a descendant of a Native after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987 if—

"(i) the corporation—

"(I) amends its articles of incorporation to authorize such purchases, and

"(II) gives the person receiving such stock written notice of its intent to purchase within ninety days after the date that the corporation either determines the decedent's heirs in accordance with the laws of the State or receives notice that such heirs have been determined, whichever later occurs; and

"(ii) the person receiving such stock fails to transfer the stock pursuant to paragraph (1)(C)(iii) within sixty days after receiving such written notice.

"(C) Settlement Common Stock of a Regional Corporation—

"(i) transferred by will or pursuant to applicable laws of intestate succession after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987, or

"(ii) transferred by any means prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987, to a person not a Native or a descendant of a Native shall not carry voting rights. If at a later date such stock is lawfully transferred to a Native or a descendant of a Native, voting rights shall be automatically restored.

"(3) REPLACEMENT COMMON STOCK.—(A) On the date on which alienability restrictions terminate in accordance with the provisions of section 37, all Settlement Common Stock previously issued by a Regional Corporation shall be deemed cancelled, and shares of Replacement Common Stock of the appropriate class shall be issued to each shareholder, share for share, subject only to subparagraph (B) and to such restrictions consistent with this Act as may be provided by the articles of incorporation of the corporation or in agreements between the corporation and individual shareholders.

"(B)(i) Replacement Common Stock issued in exchange for Settlement Common Stock issued subject to the restriction authorized by subsection (g)(1)(B)(iii) shall bear a legend indicating that the stock will

eventually be cancelled in accordance with the requirements of that subsection.

"(ii) Prior to the termination of alienability restrictions, the board of directors of the Native Corporation shall approve a resolution to provide that each share of Settlement Common Stock carrying the right to share in distributions made to shareholders pursuant to subsections (j) and (m) shall be exchanged either for—

"(I) a share of Replacement Common Stock that carries such right, or

"(II) a share of Replacement Common Stock that does not carry such right together with a separate, non-voting security that represents only such right.

"(iii) Replacement Common Stock issued in exchange for a class of Settlement Common Stock carrying greater per share voting power than Settlement Common Stock issued pursuant to subsections (g)(1)(A) and (g)(1)(B) shall carry such voting power and be subject to such other terms as may be provided in the amendment to the articles of incorporation authorizing the issuance of such class of Settlement Common Stock.

"(C) The articles of incorporation of the Regional Corporation shall be deemed amended to authorize the issuance of Replacement Common Stock and the security described in subparagraph (B)(ii)(II).

"(D) Prior to the date on which alienability restrictions terminate, a Regional Corporation may amend its articles of incorporation to impose upon Replacement Common Stock one or more of the following—

"(i) a restriction denying voting rights to any holder of Replacement Common Stock who is not a Native or a descendant of a Native;

"(ii) a restriction granting the Regional Corporation, or the Regional Corporation and members of the shareholder's immediate family who are Natives or descendants of Natives, the first right to purchase, on reasonable terms, the Replacement Common Stock of the shareholder prior to the sale or transfer of such stock (other than a transfer by will or intestate succession) to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance; and

"(iii) any other term, restriction, limitation, or provision authorized by the laws of the State.

"(E) Replacement Common Stock shall not be subjected to a lien or judgment execution based upon any asserted or unasserted legal obligation of the original recipient arising prior to the issuance of such stock.".

VILLAGE, URBAN, AND GROUP CORPORATIONS

SEC. 6. Subsection (c) of section 8 (43 U.S.C. 1607(c)) is amended to read as follows:

"(c) APPLICABILITY OF SECTION 7.—The provisions of subsections (g), (h), and (o) of section 7 of this Act shall apply in all respects to Village Corporations, Urban Corporations, and Group Corporations.".

PROCEDURES FOR CONSIDERING AMENDMENTS AND RESOLUTIONS

SEC. 7. The Alaska Native Claims Settlement Act of 1971, as amended, is further amended by adding the following new section:

"PROCEDURES FOR CONSIDERING AMENDMENTS AND RESOLUTIONS

"SEC. 36. (a) COVERAGE.—Notwithstanding any provision of the articles of incorporation and bylaws of a Native Corporation or of the laws of the State, except those related to proxy statements and solicitations that are not inconsistent with this section—

"(1) an amendment to the articles of incorporation of a Native Corporation authorized by subsections (g) and (h) of section 7, subsection (d)(1)(B) of this section, or section 37; or

"(2) a resolution authorized by section 38(a)(2);

shall be considered in accordance with the provisions of this section.

"(b) BASIC PROCEDURE.—(1) An amendment or resolution described in subsection (a) may be approved by the board of directors of a Native Corporation in accordance with its bylaws. If the board approves the amendment or resolution, it shall direct that the amendment or resolution be submitted to a vote of the shareholders at the next annual meeting or at a special meeting (if the board, at its discretion, schedules such special meeting). One or more such amendments or resolutions may be submitted to the shareholders and voted upon at one meeting.

"(2)(A) A written notice (including a proxy statement if required under applicable law), setting forth the amendment or resolution approved pursuant to paragraph (1) (and, at the discretion of the board, a summary of the changes to be effected) together with any amendment or resolution submitted pursuant to subsection (c) and the statements described therein shall be sent, not less than fifty days nor more than sixty days prior to the meeting of the shareholders, by first-class mail or hand-delivered to each shareholder of record entitled to vote at his or her address as it appears in the records of the Native Corporation. The corporation may also communicate with its shareholders at any time and in any manner authorized by the laws of the State.

"(B) The board of directors, at its discretion, may exclude from a communication made to the shareholders regarding an amendment or resolution approved pursuant to paragraph (1) information concerning the value of land, or any interest in land, received by the corporation pursuant to this Act if such land or interest in land is committed by the corporation to traditional or cultural uses or is of speculative value on the date such communication is prepared. The exclusion of such information shall be disclosed to the shareholders of the corporation in such communication. No provision of this subparagraph shall be interpreted to require the disclosure of such information in other circumstances.

"(C) If the board of directors determines, for quorum purposes or otherwise, that a previously-noticed meeting must be postponed or adjourned, it may, by giving notice to the shareholders, set a new date for such meeting not more than forty-five days later than the original date without sending the shareholders a new written notice (or a new summary of changes to be effected). If the new date is more than forty-five days later than the original date, however, a new written notice (and a new summary of changes to be effected if such a summary was originally sent pursuant to subparagraph (A)), shall be sent or delivered to shareholders not less than thirty days nor more than forty-five days prior to the new date.

"(c) SHAREHOLDER PETITIONS.—(A)(1) With respect to an amendment authorized by section 7(g)(1)(B) or section 37(b) or an amendment authorizing the issuance of stock subject to the restrictions provided by section 7(g)(2)(B)(iii), the holders of shares representing at least 25 per centum of the total voting power of a Native Corporation may petition the board of directors to submit such amendment to a vote of the shareholders in accordance with the provisions of this section.

"(B) The requirements of the laws of the State relating to the solicitation of proxies shall govern solicitation of signatures for a petition described in subparagraph (A) except that the requirements of Federal law shall govern the solicitation of signatures for a petition that is to be submitted to a Native Corporation with a class of equity securities registered pursuant to the Securities Exchange Act of 1934, as amended (48 Stat. 881). If a petition meets the applicable solicitation requirements and—

"(i) the board agrees with such petition, the board shall submit the amendment and either the proponents' statement or its own statement in support of the amendment to the shareholders for a vote, or

"(ii) the board disagrees with the petition for any reason, the board shall submit the amendment and the proponents' statement to the shareholders for a vote and may, at its discretion, submit an opposing statement or an alternative amendment.

"(2) Paragraph (1) shall not apply to a Native Corporation that elects application of section 37(d) in lieu of section 37(b). Paragraph (1) shall not apply to a Native Corporation that elects application of section 37(c) in lieu of section 37(b) until December 18, 1991. Insofar as they are not inconsistent with this section, the laws of the State shall govern any shareholder right of petition for such corporations.

"(d) VOTING STANDARDS.—(1) An amendment or resolution described in subsection (a) shall be considered to be approved by the shareholders of a Native Corporation if it receives the affirmative vote of shares representing—

"(A) a majority of the total voting power of the corporation, or

"(B) a level of the total voting power of the corporation greater than a majority (but not greater than two-thirds of the total voting power of the corporation) if the corporation establishes such a level by an amendment to its articles of incorporation.

"(2) A Native Corporation in amending its articles of incorporation pursuant to section 7(g)(2) to authorize the issuance of a new class or series of stock may provide that a majority (or more than a majority) of the shares of such class or series must vote in favor of an amendment or resolution described in subsection (a) (other than an amendment authorized by section 37) in order for such amemdment or resolution to be approved.

"(e) VOTING POWER.—For the purposes of this section, the determination of total voting power of a Native Corporation shall include all outstanding shares of stock that carry voting rights except shares that are not permitted to vote on the amendment or resolution in question because of restrictions in the articles of incorporation of the corporation.".

DURATION OF ALIENABILITY RESTRICTIONS

SEC. 8. The Alaska Native Claims Settlement Act, as amended, is further amended by adding the following new section:

"DURATION OF ALIENABILITY RESTRICTIONS

"SEC. 37. (a) GENERAL RULE.—Alienability restrictions shall continue until terminated in accordance with the procedures established by this section.

"(b) OPT-OUT PROCEDURE.—(1) A Native Corporation may amend its articles of incorporation to terminate alienability restrictions in accordance with this subsec-

tion. Such an amendment may be considered and voted on not more than once prior to December 18, 1991, and not more than once annually thereafter.

"(2) An amendment authorized by paragraph (1) shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which alienability restrictions shall terminate.

"(3) Rejection of an amendment authorized by paragraph (1) by the shareholders of a Native Corporation shall not preclude consideration of subsequent amendments to terminate alienability restrictions.

"(c) RECAPITALIZATION PROCEDURE.—(1)(A) On or prior to December 18, 1991, a Native Corporation may amend its articles of incorporation to implement a recapitalization plan pursuant to this subsection. Rejection of an amendment or amendments to implement a recapitalization plan by the shareholders shall not preclude consideration of a subsequent amendment or amendments to implement such a plan prior to December 18, 1991.

"(B) An amendment or amendments submitted pursuant to subparagraph (A) (and any subsequent amendment submitted pursuant to subparagraph (C)) may provide for the maintenance or extension of alienability restrictions for—

"(i) an indefinite period of time;

"(ii) a specified period of time not to exceed fifty years; or

"(iii) a period of time that shall end upon the occurrence of a specified event or condition, including a shift in the capital structure of the corporation such that stock other than Settlement Common Stock represents a majority of the total voting power of the corporation for the purpose of electing directors.

"(C) If an amendment or amendments approved pursuant to subparagraph (A) or this subparagraph maintains or extends alienability restrictions for a specified period of time, termination of the restrictions at the close of such period may be postponed if a further amendment to the articles of incorporation of the corporation is approved to extend the restrictions. There shall be no limit on the number of such amendments that can be approved. Such amendments shall not be effective to extend the restrictions unless approved prior to the expiration of the period of maintenance or extension then in force.

"(D) Notwithstanding any other provision of law, the board of directors may ask the shareholders to approve en bloc pursuant to a single vote a series of amendments (including an amendment to authorize the issuance of stock pursuant to section 7(g) and, in the case of Cook Inlet Region, Incorporated, an amendment to authorize a plan providing for the issuance and sale of stock, other than Settlement Common Stock, to officers and employees) to implement a recapitalization plan that includes a provision maintaining alienability restrictions.

"(2)(A) If an amendment to the articles of incorporation of a Native Corporation maintaining or extending alienability restrictions for a specified period of time is approved pursuant to paragraph (1), the restrictions shall automatically terminate at the end of such period unless the restrictions are extended in accordance with the provisions of paragraph (1)(C).

"(B)(i) Notwithstanding any other provision of this subsection, a Native Corporation that approves an amendment pursuant to paragraph (1) to maintain or extend alienability restrictions may later amend its articles of incorporation to terminate the restrictions. Such amendment shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which the restrictions shall terminate.

"(ii) Rejection of an amendment described in clause (i) by the shareholders shall not preclude consideration of subsequent amendments to terminate alienability restrictions.

"(3) If a recapitalization plan approved pursuant to paragraph (1) distributes voting alienable common stock to each holder of shares of Settlement Common Stock (issued pursuant to section 7(g)(1)(A)) that carries aggregate dividend and liquidation rights equivalent to those carried by such shares of Settlement Common Stock (except for rights to distributions made pursuant to sections 7(j) and 7(m)) upon completion of the recapitalization plan, then such holder shall have no right under section 38 to further compensation from the corporation with respect to action taken pursuant to this subsection.

"(d) OPT-IN PROCEDURE.—(1)(A) Subsection (b) shall not apply to a Native Corporation whose board of directors approves, no later than one year after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987, a resolution electing the application of this subsection.

"(B) This subsection shall not apply to Village Corporations, Urban Corporations, and Group Corporations located outside of the Bristol Bay and Aleut regions.

"(2)(A) Alienability restrictions imposed on Settlement Common Stock issued by a Native Corporation electing application of this subsection shall terminate on December 18, 1991, unless extended in accordance with the provisions of this subsection.

"(B) The board of directors of a Native Corporation electing application of this subsection shall, at least once prior to January 1, 1991, approve, and submit to a vote of the shareholders, an amendment to the articles of incorporation of the corporation to extend alienability restrictions. If the amendment is not approved by the shareholders, the board of directors may submit another such amendment to the shareholders once or more a year until December 18, 1991.

"(C) An amendment submitted pursuant to subparagraph (B) and any amendment submitted pursuant to subparagraph (D) may provide for an extension of alienability restrictions for—

"(i) an indefinite period of time, or

"(ii) a specified period of time not to exceed fifty years.

"(D) If an amendment approved by the shareholders of a Native Corporation pursuant to subparagraph (B) or this subparagraph extends alienability restrictions for a specified period of time, termination of the restrictions at the close of such period may be postponed if a further amendment to the articles of incorporation of the corporation is approved to extend the restrictions. There shall be no limit on the number of such amendments that can be approved. Such amendments shall not be effective to extend the restrictions unless approved prior to the expiration of the period of extension then in force.

"(3) If an amendment to the articles of incorporation of a Native Corporation extending alienability restrictions for a specified period of time is approved pursuant to paragraph (2), the restrictions shall automatically terminate at the end of such period unless the restrictions are extended in accordance with the provisions of paragraph (2)(D).

"(4)(A) Notwithstanding any other provisions of this section, a Native Corporation that approves an amendment to its articles of incorporation pursuant to paragraph (2) to extend alienability restrictions for an indefinite period of time may later amend its articles of incorporation to terminate the restrictions. Such amendment shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which the restrictions shall terminate.

"(B) The rejection of an amendment described in subparagraph (A) by the shareholders shall not preclude consideration of subsequent amendments to terminate alienability restrictions.

"(5)(A) If a Native Corporation amends its articles of incorporation pursuant to paragraph (2) to extend alienability restrictions, a shareholder who—

"(i) voted against such amendment, and

"(ii) desires to relinquish his or her Settlement Common Stock in exchange for the stock or payment authorized by the board of directors pursuant to subparagraph (B),

shall notify the Corporation within ninety days of the date of the vote of the shareholders on the amendment of his or her desire.

"(B) Within one hundred and twenty days of the date of the vote described in subparagraph (A), the board of directors shall approve a resolution to provide that each shareholder who has notified the corporation pursuant to subparagraph (A) shall receive either—

"(i) alienable common stock in exchange for his or her Settlement Common Stock pursuant to paragraph (6), or

"(ii) an opportunity to request payment for his or her Settlement Common Stock pursuant to section 38(a)(1)(B).

"(C) This paragraph shall apply only to the first extension of alienability restrictions approved by the shareholders. Notwithstanding any other provisions of law, no dissenters rights of any sort shall be permitted in connection with subsequent extensions of such restrictions.

"(6)(A) If the board of directors of a Native Corporation approves a resolution providing for the issuance of alienable common stock pursuant to paragraph (5)(B), then on December 18, 1991, or sixty days after the approval of the resolution, whichever later occurs, the Settlement Common Stock of each shareholder who has notified the corporation pursuant to paragraph (5)(A) shall be deemed cancelled, and shares of alienable common stock of the appropriate class shall be issued to such shareholder, share for share, subject only to subparagraph (B) and to such restrictions consistent with this Act as may be provided by the articles of incorporation of the corporation or in agreements between the corporation and individual shareholders.

"(B)(i) Alienable common stock issued in exchange for Settlement Common Stock issued subject to the restriction authorized by section 7(g)(1)(B)(iii) shall bear a legend indicating that the stock will eventually be cancelled in accordance with the requirements of that section.

"(ii) Alienable common stock issued in exchange for a class of Settlement Common Stock carrying greater per share voting power than Settlement Common Stock issued pursuant to subsections (g)(1)(A) and (g)(1)(B) shall carry such voting power and be subject to such other terms as may be pro-

vided in the amendment to the articles of incorporation authorizing the issuance of such class of Settlement Common Stock.

"(iii) In the resolution authorized by paragraph (5)(B), the board of dirctors shall provide that each share of Settlement Common Stock carrying the right to share in distributions made to shareholders pursuant to subsections (j) and (m) of section 7 shall be exchanged either for—

"(I) a share of alienable common stock carrying such right, or

"(II) a share of alienable common stock that does not carry such right together with a separate, non-voting security that represents only such right.

"(iv) In the resolution authorized by paragraph (5)(B), the board of directors may impose upon the alienable common stock to be issued in exchange for Settlement Common Stock one or more of the following—

"(I) a restriction granting the corporation, or the corporation and members of the shareholder's immediate family who are Natives or descendants of Natives the first right to purchase, on reasonable terms, the alienable common stock of the shareholder prior to the sale or transfer of such stock (other than a transfer by will or intestate succession) to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance; or

"(II) any other terms, restriction, limitation, or other provision permitted under the laws of the State.

"(C) The articles of incorporation of the Native Corporation shall be deemed amended to implement with the provisions of the resolution authorized by paragraph (5)(B).

"(D) Alienable common stock issued pursuant to this subparagraph shall not be subjected to a lien or judgment execution based upon any asserted or unasserted legal obligation of the original recipient arising prior to the issuance of such stock.

"(7)(A) No share of alienable common stock issued pursuant to paragraph (6) shall carry voting rights if it is owned, legally or beneficially, by a person not a Native or a descendant of a Native.

"(B)(i) A purchaser or other transferee of shares of alienable common stock shall, as a condition of the obligation of the issuing Native Corporation to transfer such shares on the books of the corporation, deliver to the corporation or transfer agent, as the case may be, a statement on a form prescribed by the corporation identifying the number of such shares to be transferred to such transferee and certifying—

"(I) that such transferee is or is not a Native or a descendant of a Native;

"(II) that such transferee, if not a Native or a descendant of a Native, understands that shares of such alienable common stock shall not carry voting rights so long as such shares are held by the transferee or any subsequent transferee not a Native or a descendant of a Native;

"(III) that such transferee, if a purchaser, understands that such acquisition may be subject to section 13(d) of the Securities Exchange Act of 1934, as amended, and the regulations of the Securities and Exchange Commission promulgated thereunder; and

"(IV) that such transferee will be the sole beneficial owner of such shares (if not, the transferee must certify as to the identities of all beneficial owners of such shares and whether such owners are Natives or descendants of Natives).

"(ii) The statement required by clause (i) shall be prima facie evidence of the matters certified therein and may be relied upon by the corporation in effecting a transfer on its books.

"(iii) For purposes of this subparagraph, a beneficial owner of a security includes any person (including a corporation, partnership, trust, association, or other entity) who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares—

"(I) voting power, which includes the power to vote, or to direct the voting of, such security; or

"(II) investment power, which includes the power to dispose, or to direct the disposition of, such security.

"(iv) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the requirements imposed by this section or section 13(d) of the Securities Exchange Act of 1934, as amended, shall be deemed for purposes of such sections to be the beneficial owner of such security.

"(C) The statement required by subparagraph (B) shall be verified by the transferee before a notary public or other official authorized to administer oaths in accordance with the laws of the jurisdiction of the transferee or in which the transfer is made.".

DISSENTERS RIGHTS

SEC. 9. The Alaska Native Claims Settlement Act of 1971, as amended, is further amended by adding the following new section:

"DISSENTERS RIGHTS

"SEC. 38. (a) COVERAGE.—(1) Notwithstanding the laws of the State, if the shareholders of a Native Corporation—

"(A) fail to approve an amendment authorized by section 37(b) to terminate alienability restrictions, a shareholder who voted for the amendment may demand payment from the corporation for all of his or her shares of Settlement Common Stock; or

"(B) approve an amendment authorized by section 37(d) to continue alienability restrictions without issuing alienable common stock pursuant to section 37(d)(6), a shareholder who voted against the amendment may demand payment from the corporation for all of his or her shares of Settlement Common Stock.

"(2)(A) A demand for payment made pursuant to paragraph (1)(A) shall be honored only if contemporaneously with the vote giving rise to the demand, the shareholders of the corporation approved a resolution providing for the purchase of Settlement Common Stock from dissenting shareholders.

"(B) A demand for payment made pursuant to paragraph (1)(B) shall be honored.

"(b) RELATIONSHIP TO STATE PROCEDURE.—(1) Except as otherwise provided in this section, the laws of the State governing the right of a dissenting shareholder to demand and receive payment for his or her shares shall apply to demands for payment honored pursuant to subsection (a)(2).

"(2) The board of directors of a Native Corporation may approve a resolution to provide a dissenting shareholder periods of time longer than those provided under the laws of the State to take actions required to demand and receive payment for his or her shares.

"(c) VALUATION OF STOCK.—(1) Prior to a vote described in subsection (a)(1), the board of directors of a Native Corporation may approve a resolution to provide that one or more of the following conditions will apply in the event a demand for payment is honored pursuant to subsection (a)(2)—

"(A) the Settlement Common Stock shall be valued as restricted stock; and

"(B) the value of land, or an interest in land, received by the corporation pursuant to this Act shall be excluded by the shareholder making the demand for payment, the corporation purchasing the Settlement Common Stock of the shareholder, and any court determining the fair value of the shares of Settlement Common Stock to be purchased if such land, or interest in land—

"(i) is committed by the corporation to traditional or cultural uses, or

"(ii) is of speculative value,

on the date the vote described in subsection (a)(1) is conducted.

"(2) No person shall have a claim against the Native Corporation or its board of directors based upon the failure of the board to approve a resolution authorized by this subsection.

"(d) FORM OF PAYMENT.—(1) Prior to a vote described in subsection (a)(1), the board of directors of a Native Corporation may approve a resolution to provide that in the event a demand for payment is honored pursuant to subsection (a)(2) payments to each dissenting shareholder shall be made by the corporation through the issuance of a negotiable note in the principal amount of the payment due, which shall be secured by—

"(A) a payment bond issued by an insurance company or financial institution;

"(B) the deposit in escrow of securities or property having a fair market value equal to at least 125 per centum of the face value of the note; or

"(C) a lien upon the real property interests of the corporation valued at 125 per centum or more of the face amount of the note, other than lands or interests in land that are committed to traditional or cultural uses and the percentage interest in the corporation's timber resources and subsurface estate that exceeds its percentage interest in revenues from such property under section 7(i).

"(2) A note issued pursuant to paragraph (1) shall provide that—

"(A) interest shall be paid semi-annually, beginning as of the date on which the vote described in subsection (a)(1) occurred, at the rate applicable on such date to obligations of the United States having a maturity date of one year, and

"(B) the principal amount and accrued interest on such note shall be payable to the holder at a time specified by the corporation but in no event later than the date that is five years after the date of the vote described in subsection (a)(1).

"(e) DIVIDEND ADJUSTMENT.—(1) The cash payment made pursuant to subsection (a) or the principal amount of a note issued pursuant to subsection (d) to dissenting shareholders shall be reduced by the amount of dividends paid to such shareholder with respect to his or her Settlement Common Stock after the date of the vote described in subsection (a)(1).

"(2) Upon receipt of a cash payment pursuant to subsection (a) or a note pursuant to subsection (d), a dissenting shareholder shall no longer have an interest in the shares of Settlement Common Stock or in the Native Corporation.".

STATE-CHARTERED SETTLEMENT TRUST OPTION

SEC. 10. The Alaska Native Claims Settlement Act, as amended, is further amended by adding the following new section:

"STATE-CHARTERED SETTLEMENT TRUST OPTION

"Sec. 39. (a) CONVEYANCE OF CORPORATE ASSETS TO A STATE-CHARTERED SETTLEMENT TRUST.—(1) Notwithstanding any other provision of law and in addition to any other authority, a Native Corporation may convey assets (excluding title to, or any other interest in, subsurface estate in land received pursuant to this Act), stock, or beneficial interests to a State-Chartered Settlement Trust established by the corporation in accordance with the laws of the State and the provisions of this section. A conveyance of title to, or any other interest in, subsurface estate of land received pursuant to this Act in violation of this paragraph shall be void ad initio and shall not be given effect by any court.

"(2)(A) Notwithstanding any provision of the laws of the State, a Native Corporation that has established a State-Chartered Settlement Trust shall have sole authority to—

"(I) appoint the trustees of the trust, and

"(II) remove the trustees of the trust for cause.

An appointment or removal of a trustee in violation of this provision shall be void ab initio and shall not be given effect by any court.

"(B) Notwithstanding any other provision of the laws of the State, a Native Corporation that has established a State-Chartered Settlement Trust may—

"(i) expand the class of beneficiaries to include holders of Settlement Common Stock issued after the creation of the trust without compensation to the original beneficiaries; and

"(ii) amend the specific purposes for which the trust was established so long as such amendment does not conflict with the provisions of subparagraph (C).

"(C) The general purpose of a State-Chartered Settlement Trust shall be to preserve the heritage and culture of Natives and to promote the health, education, and welfare of its beneficiaries. A State-Chartered Settlement Trust shall not—

"(i) operate as a business;

"(ii) alienate land or any interest in land received from the settlor Native Corporation; or

"(iii) discriminate in favor of a group of individuals composed only or principally of employees, officers, or directors of the settlor Native Corporation.

An alienation of land or an interest in land in violation of this provision shall be void ab initio and shall not be given effect by any court.

"(3) So long as the establishment and operation of a State-Chartered Settlement Trust complies with the conditions established in this subsection, the trust shall not be held to violate any laws against perpetuities.

"(4)(A) The initial trust instrument prepared by a Village Corporation, Urban Corporation, or Group Corporation to establish a State-Chartered Settlement Trust shall be reviewed by the Regional Corporation for the region in which the Village Corporation, Urban Corporation, or Group Corporation is located. The Regional Corporation may approve, disapprove, or refuse to act on the trust instrument in its sole and unreviewable discretion. If the trust instrument is not approved by the Regional Corporation, it shall be of no force and effect. Amendments to the trust instrument, if made within three years of the creation of the trust, shall also be subject to the review and approval of the Regional Corporation in accordance with the provisions of this subparagraph.

"(B) No provision of this paragraph shall create a fiduciary obligation on the part of a Regional Corporation with respect to—

"(i) its review of a trust instrument or amendments thereto of a Village Corporation, Urban Corporation, or group Corporation, or

"(ii) the operation of the State-Chartered Settlement Trust governed by such instrument.

"(b) SAVINGS.—(1) The provisions of this Act (including, but not limtied to, section 14) shall continue to apply to any land, or interest in land, conveyed to a State-Chartered Settlement Trust as if the land, or interest in land, were still held by the Native Corporation that conveyed the land, or interest in land.

"(2) No timber resources subject to section 7(i) conveyed to a State-Chartered Settlement Trust shall be harvested for sale, exchanged, or otherwise conveyed (other than a reconveyance to the Regional Corporation that made the original conveyance) except as necessary to—

"(A) dispose of diseased or dying timber or to prevent the spread of disease or insect infestation;

"(B) prevent or suppress fire; and

"(C) ensure public safety.

The revenue, if any, from such timber harvests shall be paid to the Regional Corporation that made the original conveyance and shall be subject to section 7(i) as if such conveyance had not occurred.

"(3) Notwithstanding any other provision of law, the conveyance of assets, stock, or beneficial interests pursuant to subsection (a) to a State-Chartered Settlement Trust shall not affect the applicability or enforcement (including specific performance) of a valid contract, judgment, lien, or other obligation (including an obligation arising under section 7(i)) to which such assets, stock, or beneficial interests were expressly or potentially subject immediately prior to such conveyance.

"(4) A claim made pursuant to paragraph (1), (2), and (3) shall be enforceable against the State-Chartered Settlement Trust holding the land, interest in land, or other assets, stock, or beneficial interests in question to the same extent as such claim would have been enforceable against the transferor Native Corporation. No transferee State-Chartered Settlement Trust shall make a distribution or conveyance of assets (including cash), stock, or beneficial interests that would render it unable to satisfy a claim made pursuant to paragraph (1), (2), and (3). A distribution or conveyance made in violation of this provision shall be void ab initio and shall not be given effect by any court.".

ALASKA LAND BANK

SEC. 11. Section 907 of the Alaska National Interest Lands Conservation Act of 1980 (43 U.S.C. 1636) is amended—

(a) by striking out "subsection (c)(2)" throughout the section and inserting in lieu thereof "subsection (d)(1)";

(b) in the proviso of subsection (a), by striking out "lands not owned by landowners described in subsection (c)(2) shall not" and inserting in lieu thereof "no lands shall";

(c) by amending subsections (c), (d), and (e) to read as follows:

"(c) BENEFITS TO PRIVATE LANDOWNERS.—(1) In addition to any requirement of applicable law, the appropriate Secretary is authorized to provide technical and other assistance with respect to fire control, trespass control, resource and land use planning, and the protection, maintenance, and enhancement of any special values of the land subject to the agreement, all with or without reimbursement as agreed upon by the parties, so long as the landowner is in compliance with the agreement.

"(2) The provision of section 21(e) of the Alaska Native Claims Settlement Act of 1971, as amended, shall apply to all lands which are subject to an agreement made pursuant to this section so long as the parties to the agreement are in compliance therewith.

"(d) AUTOMATIC PROTECTIONS FOR LANDS CONVEYED PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.—(1) Notwithstanding any other provision of law, all land, and interests in land, conveyed by the Federal Government pursuant to the Alaska Native Claims Settlement Act of 1971, as amended, to a Native individual or Native Corporation or subsequently reconveyed by a Native Corporation pursuant to section 39 of that Act to a State-Chartered Settlement Trust shall be exempt, so long as such land and interests are not developed (or leased or sold to third parties) from—

"(A) adverse possession and similar claims based upon estoppel;

"(B) real property taxes by any governmental entity;

"(C) judgments resulting from a claim based upon or arising under—

"(i) title 11 of the United States Code or any successor statute,

"(ii) other insolvency or moratorium laws, or

"(iii) other laws generally affecting creditors' rights;

"(D) judgments in any action at law or in equity to recover sums owed or penalties incurred by a Native Corporation or State-Chartered Settlement Trust or any employee, officer, director, or shareholder of such corporation or trust, unless this exemption is contractually waived prior to the commencement of such action; and

"(E) involuntary distributions or conveyances related to the involuntary dissolution of a Native Corporation or State-Chartered Settlement Trust.

"(2) DEFINITIONS.—(A) For purposes of this subsection, the term—

"(i) 'Developed' means a purposeful modification of land, or an interest in land, from its original state that effectuates a condition of gainful and productive present use without further substantial modification. Surveying, construction of roads, providing utilities, or other similar actions, which are normally considered to be component parts of the development process but do not create the condition described in the preceding sentence, shall not constitute a developed state within the meaning of this clause. In order to terminate the exemptions listed in paragraph (1), land, or an interest in land, must be developed for purposes other than exploration, and the exemptions will be terminated only with respect to the smallest practicable tract actually used in the developed state;

"(ii) 'Exploration' means the examination and investigation of undeveloped land to determine the existence of subsurface nonrenewable resources; and

"(iii) 'Leased' means subjected to a grant of primary possession entered into for a gainful purpose with a determinable fee remaining in the hands of the grantor. With respect to a lease that conveys rights of ex-

ploration and development, the exemptions listed in paragraph (1) shall continue with respect to that portion of the leased tract that is used solely for the purposes of exploration.

"(B) For purposes of this subsection—

"(i) land shall not be considered developed solely as a result of—

"(I) the construction, installation, or placement upon such land of any structure, fixture, device, or other improvement intended to enable, assist, or otherwise further subsistence or other customary or traditional uses of such land, or

"(II) the receipt of fees related to hunting, fishing, and guiding activities conducted on such land;

"(ii) land upon which timber resources are being harvested shall be considered developed only during the period of such harvest and only to the extent that such land is integrally related to the timber harvesting operation; and

"(iii) land subdivided by a State or local platting authority on the basis of a subdivision plat submitted by the holder of the land or its agent, shall be considered developed on the date of final approval of the subdivision plat unless the subdivided property is a remainder parcel.

"(3) ACTION BY A TRUSTEE.—(A) Except as provided in this paragraph and in section 14(c)(3) of the Alaska Native Claims Settlement Act of 1971, as amended, no trustee, receiver, or custodian vested pursuant to applicable Federal or State law with a right, title, or interest of a Native individual or Native Corporation shall—

"(i) assign or lease to a third party,

"(ii) commence development or use of, or

"(iii) convey to a third party,

any right, title, or interest in any land, or interests in land, subject to the exemptions described in paragraph (1).

"(B) The prohibitions of subparagraph (A) shall not apply—

"(i) when the actions of such trustee, receiver, or custodian are for purposes of exploration or pursuant to a judgment in law or in equity (or arbitration award) arising out of any claim made pursuant to section 7(i) or section 14(c) of the Alaska Native Claims Settlement Act of 1971, as amended; or

"(ii) to any land, or interest in land, which has been—

"(I) developed or leased prior to the vesting of the trustee, receiver, or custodian with the right, title, or interest of the Native Corporation; or

"(II) expressly pledged as security for any loan or expressly committed to any commercial transaction in a valid agreement.

"(4) EXCLUSIONS, REATTACHMENT OF EXEMPTIONS.—(A) The exemptions listed in paragraph (1) shall not apply to any land, or interest in land, which is—

"(i) developed (or leased or sold to a third party);

"(ii) held by a Native Corporation in which neither—

"(I) the Settlement Common Stock of the corporation,

"(II) the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock, nor

"(III) the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock and by Natives and descendants of Natives,

represents a majority of either the total equity of the corporation or the total voting power of the corporation for the purposes of electing directors; or

"(iii) held by a State-Chartered Settlement Trust with respect to which any of the conditions set forth in section 39 of the Alaska Native Claims Settlement Act of 1971, as amended, have been violated.

"(B) The exemptions described in paragraphs (1)(C), (1)(D), and (1)(E) shall not apply to any land, or interest in land—

"(i) if, and for so long as, such land or interest is expressly pledged as security for any loan or expressly committed to any commercial transaction in a valid agreement, and

"(ii) to the extent necessary to enforce a judgment in any action at law or in equity (or any arbitration award) arising out of any claim made pursuant to section 7(i) or section 14(c) of the Alaska Native Claims Settlement Act of 1971, as amended.

"(C) If the exemptions listed in paragraph (1) are terminated with respect to land, or an interest in land, as a result of development (or a lease to a third party), and such land, or interest in land, subsequently reverts to an undeveloped state (or the third-party lease is terminated), then the exemptions shall again apply to such land, or interest in land, in accordance with the provisions of this subsection.

"(5) TAX RECAPTURE UPON SUBDIVISION PLAT APPROVAL.—Upon the final approval by an appropriate government authority of a subdivision plat submitted by, or on behalf of, a Native individual, Native Corporation, or State-Chartered Settlement Trust with respect to land described in paragraph (1), such individual, corporation, or trust shall pay all State and local property taxes on the smallest practicable tract integrally related to the subdivision project that would have been incurred by the individual, corporation, or trust on such land (excluding the value of subsurface resources and timber) in the absence of the exemption described in paragraph (1)(B) during the thirty months prior to the date of the final approval of the plat. The State and local property taxes (together with interest at the rate of 5 per centum per annum commencing on the date of final approval of the subdivision plat) shall be paid in equal semi-annual installments over a two-year period commencing on the date six months after the date of final approval of the subdivision plat.

"(6) SAVINGS.—No provision of this subdivision shall be construed to impair, or otherwise affect, any valid contract or other obligation that was entered into prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987.

"(e) CONDEMNATION.—Notwithstanding any other provision of law, all land subject to an agreement made pursuant to subsection (a) and all land, and interests in land, conveyed or subsequently reconveyed pursuant to the Alaska Native Claims Settlement Act of 1971, as amended, to a Native individual, Native Corporation, or State-Chartered Settlement Trust shall be subject to condemnation for public purposes in accordance with the laws of the State."; and

(d) by adding at the end thereof the following new subsection:

"(g) STATE JURISDICTION.—Except as expressly provided in subsection (d), no provision of this section shall be construed as affecting the civil or criminal jurisdiction of the State of Alaska.".

CONFORMING AMENDMENTS

SEC. 12. (a) SECTION 7.—Subsection (o) of section 7 (43 U.S.C. 1606) is amended to strike everything following the word "stockholder" except the period at the end of the subsection.

(b) SECTION 21.—Section 21 (43 U.S.C. 1620) is amended—

(1) by inserting after "distributions" in subsection (a) "(even if the Regional Corporation or Village Corporation distributing the dividend has not segregated revenue received from the Alaska Native Fund from revenue received from other sources)";

(2) by inserting at the end of subsection (c) the following: "First commercial development shall not occur solely because of the receipt of advance payments, including bonuses or royalties, that may qualify for depletion deductions.";

(3) by striking out "Village Corporation" and inserting in lieu thereof "Native Corporation" in subsection (j);

(4) by striking out everything after "one and one-half acres:" in subsection (j) and inserting in lieu thereof: "Provided further, That if the shareholder receiving the homesite subdivides such homesite, he or she shall pay all Federal, State, and local taxes that would have been incurred but for this subsection together with simple interest at 6 per centum per annum calculated from the date of receipt of the homesite, including taxes or assessments for the provision of road access and water and sewage facilities by the conveying corporation or the shareholder."; and

(5) by adding at the end thereof the following new subsection:

"(k) The adjusted basis for determining gain or loss, for Federal, State, and local income tax purposes, of—

"(1) stock of a Native Corporation received by a holder directly from the corporation pursuant to this Act (including, but not limited to, Settlement Common Stock and Replacement Common Stock);

"(2) stock of a Native Corporation issued by the corporation as a dividend or distribution on its outstanding stock; or

"(3) stock described in paragraphs (1) and (2) which is acquired (before such stock is first actively traded on an established market) by gift or through inheritance,

shall be the highest of the adjusted basis of the property of the corporation allocable to such stock, the original basis of the property of the corporation allocable to such stock, or the highest sales price of the stock on an established market during the first ten days of trading. The corporation shall make this basis determination when such stock is first actively traded on an established market or, if it is not so traded, at any time the determination is necessary. The corporation shall notify the holders of the stock of its determination.".

(c) SECTION 30.—Subsection (b) of section 30 (43 U.S.C. 1627(b)) is amended by striking out "prior to December 19, 1991" and inserting in lieu thereof "while the Settlement Common Stock of all corporations subject to merger or consolidation remains subject to alienability restrictions.".

(d) SECURITIES EXCHANGE ACT OF 1934—Section 13(d)(1) of the Securities Exchange Act of 1934 is amended by inserting "or any equity security issued by a Native Corporation pursuant to section 37(d)(6) of the Alaska Native Claims Settlement Act of 1971, as amended" after "Investment Company Act of 1940".

SEVERABILITY

SEC. 13. Section 27 (85 Stat. 688) is amended to read as follows:

"SEVERABILITY

"SEC. 27. The provisions of this Act, as amended, and the Alaska Native Claims Settlement Act Amendments of 1987 are severable. If any provision of either Act is deter-

mined by a court of competent jurisdiction to be invalid, such invalidity shall not affect the validity of any other provision of either Act.".

SECURITIES LAWS EXEMPTION

SEC. 14. Section 28 (43 U.S.C. 1625) is amended to read as follows:

"SECURITIES LAWS EXEMPTION

"SEC. 28. (a) A Native Corporation shall be exempt from the provisions, as amended, of the Investment Company Act of 1940 (54 Stat. 789), the Securities Act of 1933 (48 Stat. 74), and the Securities Exchange Act of 1934 (48 Stat. 881) until the earlier of the day after—

"(1) the date on which the corporation issues shares of stock other than Settlement Common Stock in a transaction where—

"(A) the transaction or the shares are not otherwise exempt from Federal securities laws; and

"(B) the shares are issued to persons or entities other than—

"(i) individuals who held shares in the corporation on the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987;

"(ii) Natives;

"(iii) descendants of Natives;

"(iv) individuals who have received shares of Settlement Common Stock by inheritance pursuant to section 7(h)(2);

"(v) State-Chartered Settlement Trusts; and

"(vi) entities established for the sole benefit of Natives or descendants of Natives;

"(2) the date on which alienability restrictions are terminated; or

"(3) the date on which the corporation files a registration statement with the Securities and Exchange Commission pursuant to either the Securities Act of 1933 or the Securities Exchange Act of 1934.

"(b) No provision of this section shall be construed to require or imply that a Native Corporation shall, or shall not, be subject to provisions of the Acts listed in subsection (a) after any of the dates described in subsection (a).

"(c)(1) A Native Corporation that, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall annually prepare and transmit to its shareholders a report that contains substantially all the information required to be included in an annual report to shareholders by a corporation subject to that Act.

"(2) For purposes of determining the applicability of the registration requirements of the Securities Exchange Act of 1934 on or after the date described in subsection (a), holders of Settlement Common Stock shall be excluded from the calculation of the number of shareholders of record pursuant to section 12(g) of that Act.

"(d) Notwithstanding any other provision of law, the provisions of the Investment Company Act of 1940 shall not apply to any Native Corporation prior to January 1, 2001.".

ELIGIBILITY FOR FEDERAL PROGRAMS, MINORITY STATUS

SEC. 15. Section 29 (43 U.S.C. 1626) is amended by adding the following new subsections:

"(c) In determining the eligibility of a household, an individual Native, or a descendant of a Native to—

"(1) participate in the Food Stamp program,

"(2) receive assistance under the Social Security Act, or

"(3) receive financial assistance or benefits under any other Federal program or federally-assisted program,

no compensation (including in-kind or cash dividends on stock received from a Native Corporation to the extent such dividends do not, in the aggregate, exceed $2,000 per individual per annum), stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock), partnership interest, land or interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock), or other benefits received by such individual, such household, or a member of such household under this Act shall be taken into account, regardless of whether such compensation, stock, partnership interest, land or interest in land, or other benefit is subject to Federal, State, or local taxation.

"(d) Notwithstanding any other provision of law, Alaska Natives shall remain eligible for all Federal Indian programs on the same basis as other Native Americans.

"(e)(1) For all purposes of Federal law, a Native Corporation shall be considered to be a corporation owned and controlled by Natives and a minority business enterprise if—

"(A) the Settlement Common Stock of the corporation,

"(B) the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock; or

"(C) the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock and by Natives and descendants of Natives,

represents a majority of both the total equity of the corporation and the total voting power of the corporation for the purposes of electing directors.

"(2) For all purposes of Federal law, direct and indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation qualifying pursuant to paragraph (1) shall be considered to be an entity owned and controlled by Natives and a minority business enterprise if the shares of stock or other units of ownership interest held by such Native Corporation and by the holders of its Settlement Common Stock represent a majority of both—

"(A) the total equity of the subsidiary corporation, joint venture, or partnership; and

"(B) the total voting power of the subsidiary corporation, joint venture, or partnership for the purpose of electing directors, the general partner, or principal officers.

"(3) No provision of this subsection shall—

"(A) preclude a Federal agency or instrumentality from applying standards for determining minority ownership (or control) less restrictive than those described in paragraphs (1) and (2), or

"(B) supersede any such less restrictive standards in existence on the date of enactment of the Alaska Native Claims Settlement Act Amendments of 1987.

"(f)(1) Section 3 of Public Law 97-451 (96 Stat. 2448) is amended by inserting 'for which is administered by the United States pursuant to section 14(g) of Public Law 92-203, as amended' after 'alienation' in subsection (3) and subsection (4).

"(2) The amendment made by paragraph (1) shall be effective as if originally included in section 3 of Public Law 97-451.

"(g) For the purposes of implementation of the Civil Rights Act of 1964, a Native Corporation and corporations, partnerships, joint ventures, trusts, or affiliates in which the Native Corporation owns not less than 25 per centum of the equity shall be within the class defined in section 701(b) of Public Law 88-352 (78 Stat. 253), as amended, or successor statutes.".

JUDICIAL REVIEW

SEC. 16. (a) STATUTE OF LIMITATIONS.—(1) Notwithstanding any other provision of law, a civil action that challenges the constitutionality of an amendment made by, or other provision of, this Act (the Alaska Native Claims Settlement Act Amendments of 1987) shall be barred unless—

(A) if the civil action challenges—

(i) the issuance or distribution of Settlement Common Stock for less than fair market value consideration pursuant to section 7(g)(1)(B) or 7(g)(2)(C)(ii) of the Alaska Native Claims Settlement Act of 1971, as amended; or

(ii) an extension of alienability restrictions that involves the issuance of stock pursuant to subsections (c) or (d) of section 37 of the Alaska Native Claims Settlement Act of 1971, as amended:

the civil action is filed within six months of the date of the shareholder vote authorizing the challenged issuance, distribution, or extension and a request for a declaratory judgment or injunctive relief is made before stock is issued or distributed; or

(B) with respect to any other civil action, the civil action is filed within two years of the date of the enactment of this Act.

(2) No Native Corporation taking an action described in paragraph (1)(A) shall issue or distribute stock within fourteen days of the date of the shareholder vote authorizing such action.

(b) JURISDICTION AND PROCEDURE.—(1) The United States District Court for the District of Alaska shall have exclusive original jurisdiction over a civil action described in subsection (a). The action shall be heard and determined by a court of three judges as provided in section 2284 of title 28 of the United States Code. An appeal of the final judgment in the action shall be made directly to the United States Supreme Court.

(2) No money judgment shall be entered against the United States in a civil action subject to this section.

(c) STATEMENT OF PURPOSE.—The purpose of the limitation on civil actions established by this section is—

(1) to ensure that after the expiration of a reasonable period of time, Native shareholders, Native Corporations, the United States, and the State and its political subdivisions will be able to plan their affairs with certainty in full reliance on the provisions of this Act, and

(2) to eliminate the possibility that the United States will incur a monetary liability as a result of the enactment of this Act.

DISCLAIMER

SEC. 17. No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1987), exercise of authority pursuant to this Act, or change made by, or pursuant to, this Act in the status of land shall be construed to validate or invalidate or in any way affect—

(1) any assertion that a Native organization (including a federally-recognized tribe, traditional Native council, or Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), as amended) has or does not have governmental authority over lands (including management of, or regulation of the taking of, fish and wildlife) or persons within the boundaries of the State of Alaska, or

(2) any assertion that Indian country (as defined by 18 U.S.C. 1151 or any other au-

thority) exists or does not exist within the boundaries of the State of Alaska.

Mr. STEVENS. Mr. President, last week, the Alaska Federation of Natives met for its 21st annual convention. I am delighted to report that the convention delegates voted overwhelmingly to support the effort to secure passage of a 1991 bill this year.

Now that the Native people of Alaska have formally conveyed their desire to the Congress to see this legislation move forward, it is critical that we move quickly to pass this bill. Because of the decline in oil prices, the Alaska economy is sagging. Many Alaska businesses, including several Native corporations, are in serious financial trouble. The Senate substitute, which was reported out of the Senate Energy Committee on a 17-to-1 vote, would protect Native corporation lands from bankruptcy and judgments.

It is my hope that we can work together with the House in a spirit of cooperation to develop a final 1991 bill in the very near future. The Alaska congressional delegation deeply appreciates the tremendous help that Senator JOHNSTON and Senator MCCLURE, Senate Energy Committee chairman and ranking Republican member respectively, have given us in the long effort to preserve the heritage of Alaska's Native peoples. As we enter into these negotiations, I hope we will all keep in mind our ultimate goal—to protect the land conveyed under the 1971 land settlement.

Mr. President, I yield to my colleague from Alaska.

Mr. MURKOWSKI. Mr. President, I am extremely grateful for the Senate's action in passing H.R. 278 today. This legislation amends the Alaska Native Claims Settlement Act in order to ensure continued Native ownership of lands received in settlement of Alaska Natives' aboriginal claims.

Senator STEVENS and I have worked for 2 very long years to enact these amendments. With Senate passage today, we are very close to achieving that goal. I anticipate that we will now have a conference with the House to resolve the numerous minor differences between this bill and the House passed bill. It is my hope that we can complete that conference and pass a final bill before the Congress adjourns this year.

Mr. President, I cannot overemphasize the importance of this legislation to Alaska's Native people. The Alaska Native Claims Settlement Act of 1971 marked an historic experiment in this country's dealings with native Americans. The essence of that experiment was to make business corporations the recipients and holders of the proceeds of the settlement. All Alaska Natives were then made shareholders of these corporations.

To ensure that Alaska's Natives received the full benefits of the settlement, Congress imposed a 20-year restriction on the ability of individual Natives to sell or otherwise transfer their stock. That 20-year period will expire in 1991 and there is grave concern in the native community about the potential impacts of that expiration. As a result, this legislation provides a menu of options designed to maintain Native ownership of settlement lands and to ensure that future generations of Natives share in the proceeds of the settlement. The shareholders of each corporation will be able to select the options which best meet their needs.

Mr. President, we would not have been able to pass this legislation without the extraordinary efforts of several people. First, I want to thank two staff members of the Committee on Energy and Natural Resources—Tom Williams and Tony Bevinetto. Their efforts and guidance are always appreciated.

Janie Leask, John Shively, Morris Thompson, Oliver Leavitt and Glenn Fredericks of the Alaska Federation of Natives devoted considerable time and resources to this endeavor. In particular, I want to recognize the contribution made by Julie Kitka of the Alaska Federation of Natives. Julie's unwavering devotion to this project has been above and beyond the call of duty. It is safe to say, that without Julie's able assistance we would not be passing this bill today.

Also, I particularly want to recognize the outstanding staff assistance of Grey Chapados of Senator STEVENS' office, Rick Agnew of Congressman YOUNG's office and Tom Roberts and John Moseman of my staff.

Mr. INOUYE. Mr. President, the Senate, today, is acting upon H.R. 278, a bill to amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Alaska Native Claims Settlement Act. This act, enacted in 1971, attempted to resolve conflicting claims of Native Alaskans and nonnatives to land in the State of Alaska by, among other things, setting aside 40 million acres of land in that State for Native Alaskans, providing certain monetary compensation, and delineating the hunting and fishing rights of the Native Alaskans. A central part of this legislation was the establishment of 13 regional Native corporations with issuance of shares of stock to the individual Native members and the provision that restricted alienation of either stock or land for a period of not less than 20 years. An important additional element is that that legislation, ANCSA, took no position whatsoever on the governmental authority of Native entities within the State of Alaska.

Mr. President, December 18, 1991, the 20 year expiration date for restriction upon alienation of Native Alaskan land or stock in the regional corporations, is fast closing upon us. The Alaskan Natives are rightfully worried about the consequences that would attend the expiration of this date without remedial legislation that would protect their interests in their lands and natural resources. The advance of this date is clearly a strong factor in eliciting the support of the Native community for the legislation that is before us today. But even so, there have been strong expressions of concern about the effects this legislation might have on the rights of the Native Alaskans, and these concerns undoubtedly led to the failure of proposed remedial legislation in the last Congress.

In this Congress the House Committee on Interior and Insular Affairs has labored hard to draft a bill which they believe is a fair and equitable resolution of the 1991 issues. The Senate Committee on Energy and Natural Resources has labored equally hard and with equal concern to achieve a fair and just resolution to these thorny issues. There are significant differences in the two bills, but each propose a solution that would allow for continued protection of the Native resources.

Mr. President, I commend both the House and the Senate committees for the work they have done on this legislation. I would like only to comment on the issues that have been brought to my attention and speak to my understanding of the intent of this legislation. One of the most important concerns that has been pressed is that the legislation may not be totally neutral on the issue of the governmental status of traditional Native councils and villages that may be organized under the Indian Reorganization Act of 1934, as amended in 1936 to include Alaskan Natives, or Indian tribes with the State of Alaska. The language of the House and the Senate bills differ in this respect, yet each purports to be totally neutral with respect to this issue. I have reviewed both bills and have spoken with my colleagues on this matter. It is my understanding, and I am satisfied in this regard, that it is the intent of both the House and the Senate committees that nothing in this legislation should be considered or interpreted to in any way suggest that an Alaskan Native entity or the State or a political subdivision of the State, has any particular governmental authority. In other words, the legislation is totally neutral on this subject.

A second major concern is that the definition of undeveloped land for purposes of State taxation is not sufficiently clear. Since any developed lands would most likely be located in

the villages themselves, it is the very homeland of the Natives that could be placed in jeopardy. As defined in the Senate bill, the term developed means a change in the land, or an interest in the land, that effectuates a condition of gainful and productive use.

A third area of concern is the failure of the Senate bill to specifically provide that a traditional Native council or a group organized under the Indian Reorganization Act could be a qualified transferee entity from a "native corporation." On this issue I would only note that there is a difference between the House bill and the Senate bill and that this is a matter that must be resolved by the House and Senate conferees.

Finally I would like to note that section 15 of the Senate bill specifically provides for the continued eligibility of Alaskan Natives for programs of assistance to American Indians on the same basis as those programs are made available to members of Indian tribes in the lower 48. I have two thoughts on this matter. In general, programs that are available to Indian tribes under the Indian Health Service or the Bureau of Indian Affairs in the lower 48 are premised on a unique political status often referred to as a government-to-government relationship between the United States and the Indian tribes. This is a relationship that has existed between the tribes and the United States since the inception of this Nation, and has been reaffirmed in recent years not only by the courts, but also by Presidents Johnson, Nixon and Reagan in major policy statements. The status of Native Alaskan entities is currently before the Federal courts. I support this legislation, among other reasons, because it is neutral on the governmental status of Alaskan Native entities.

My second thought on this provision is that it will once and for all put to rest the notion propounded by some in Washington that the Alaskan Native Claims Settlement Act of 1971 terminated the relationship of the United States with the Alaskan Native people. Time and again the Congress has rejected this view, not only in subsequent legislation dealing directly with Native Alaskan issues but also through appropriation legislation. In this vein, I welcome the clarification of Native eligibility provided through this legislation.

Finally, I would note that this legislation is deemed, properly so, to be Indian legislation enacted by the Congress pursuant to its plenary authority under the Constitution of the United States to regulate Indian affairs. This is important for two reasons. Number 1, it confers upon the Congress significant authority, though not unlimited, to legislate in matters affecting Indians and native Americans. No. 2, as Indian legislation, this act is entitled to those favorable rules of judicial construction that attend all other Indian legislation.

Mr. President, with these thoughts in mind I support the bill before us today and commend both the House and the Senate committees for their diligence and hard work on this most difficult of issues.

Mr. JOHNSTON. Mr. President, I am pleased that the Senate has chosen to pass by unanimous consent the amended Alaska Native Claims Settlement Act amendments. My committee has labored long and hard to produce the measure, and I wish to compliment the Senators from Alaska, their staffs, and the others who have expended so much time and effort. This complex bill is quite different from the one passed by the other body. Some improvements may yet be necessary to best serve the interests of the Alaska Native community and of the Nation, and I will work toward that goal.

The PRESIDING OFFICER. 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 PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read a third time.

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

So the bill (H.R. 278) was passed.

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

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I move that the Senate insist on its amendment and request a conference with the House of Representatives on the disagreeing votes of the two Houses and that the Chair be authorized to appoint conferees on the part of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alaska.

The motion was agreed to.

Mr. STEVENS. Let me thank my good friend from New Jersey. I appreciate very much his yielding.

Conferees are not at the desk, Mr. President. We will submit them later.

Mr. MURKOWSKI. I wish to join my colleague in thanking the Senator from New Jersey and the leader for accommodating us for this time. We are most appreciative.

Mr. STEVENS. We appreciate the cooperation very much.

Mr. MURKOWSKI. That goes for the Alaska Native people.

Thank you very much.

Mr. BYRD. Both Senators are welcome.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1988

The Senate continued with consideration of H.R. 2890.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 1099

Mr. LAUTENBERG. Mr. President, let me be specific about what it is that we are proposing in this second-degree amendment.

To be specific, we are banning smoking on scheduled domestic flights of 2 hours or less.

The amendment will accomplish all the objectives of the amendment originally reported from the committee, and I will summarize briefly for the record once again what the amendment includes.

First of all, there would be a 3-year ban on smoking on scheduled domestic flights of 2 hours or less. Persons violating the ban would be subject to fines up to $1,000. Tampering with or disabling smoke detectors would be punishable by fines of up to $2,000.

The Secretary would enforce these provisions by regulation and the language in the House bill, which was there when that bill came over and therefore made this amendment germane, requires airport authorities to enforce the 2-hour ban which (a) seems unworkable and (b) needed to be refined in order to give some teeth to this ban.

That 2-hour ban as developed on the House side would therefore be vitiated if this amendment carries.

Mr. President, I have no desire to detain the Senate on this matter. We have had debate on the essential issues. I think that the core arguments have been made and I believe a majority of my colleagues agree. To be sure, others may wish to make their views known today, and I believe they ought to be able to do that, but I think we are past the time for delay by parliamentary maneuvering.

The issue is the health and comfort of those who fly on our Nation's airplanes.

Smoke in an aircraft cabin is not only irritating, it has been said by the Surgeon General and by the National Research Council that passive smoking can be injurious to one's health, and I think that we ought to offer passengers on airline flights of up to 2 hours a smoke-free environment.

We discussed yesterday at length that air quality in airplanes has generally deteriorated as the technology of

the aircraft has improved. A new aircraft takes in less outside air and therefore it is recirculating foul cabin air.

So the issue that we are discussing right now is whether or not those who object to smoking other people's cigarettes have the right to do so.

It is not our intention to penalize the small farmer. I would assume that a 2-hour smoking ban would not be the difference in their existence.

Mr. President, I think the time is now to decide this issue. I would invite, as I earlier said, any of my colleagues who would like to make their comments to do so, and I yield the floor, Mr. President.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. 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 (Mr. SHELBY). Without objection, it is so ordered.

RECESS UNTIL 12:09 P.M.

Mr. BYRD. Mr. President, some negotiations are going on at the moment. Rather than keep the Senate in a quorum, I think it would be well to let the doorkeepers, and others, to have a little respite so they can get a drink of water, and a breath of fresh air.

I ask unanimous consent, therefore, that the Senate stand in recess for 30 minutes.

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

Thereupon, at 11:39 a.m., the Senate recessed until 12:09 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. DASCHLE].

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from the State of South Dakota, suggests the absence of a quorum.

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.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business, that Senators may speak therein for not to exceed 15 minutes and that when Mr. CONRAD, who is planning to speak for 15 minutes, completes his speech, the Senate then stand in recess for 15 minutes.

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

Mr. BYRD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CONRAD. 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 ECONOMIC EVENTS OF LAST WEEK

Mr. CONRAD. Mr. President, I want to take a few minutes to discuss the economic events of the last week and to reflect on the underlying causes for the market crash that we have experienced in this country and the ongoing economic instability that this country is experiencing.

When I returned home, as I did this weekend, to talk to the people of my State, I was repeatedly asked why I thought the market lost some 20 percent of its value in just 1 week, why we were seeing such a high level of anxiety in the foreign markets, why we saw such economic instability.

I think we all know the reasons for the precipitous crash, the triggering mechanisms, the things that had occurred just prior to the crash—the new trade deficit numbers for August that indicated we were not making progress on the trade deficit, the action by the Federal Reserve to increase the discount rate, the action by the Germans to increase their interest rates, and the tensions in the Persian Gulf. But, more important, Mr. President, are the underlying causes, the underlying reasons for the lack of confidence in the markets.

Yesterday, Hobart Rowen had a column in the Washington Post which I think neatly describes the underlying causes for the market collapse. Mr. Rowen, in his column, wrote:

> Despite assurances by supply-siders that lower tax rates would generate larger revenues, the deficit was created by the huge 1981 tax cut. In turn, the deficit (financed largely by foreigners) set off high interest rates, an overvalued dollar and enormous trade and current account deficits.

Mr. President, I have prepared charts that show, I think, the precise pattern as described by Mr. Rowen that, perhaps, will make it easier for people to visualize the set of forces that have led us to where we are today.

This first chart shows the Federal spending and revenues over the last 10 years. The spending line, as people can see, has been on a constant upward pattern.

Revenues, on the other hand, over the last 10 years, have had a different pattern.

In 1981, revenues took a U-turn. It is easy to see from this chart that spending and revenues from the midseventies until about 1981 were closely tracking. They were running on almost a parallel track. It is true we were running deficits above $40 to $50 billion, but in 1980 and 1981 when spending continued on its incline but revenue took a U-turn, our deficits absolutely exploded.

Let me just show the next chart which shows, as a result of that pattern of spending and revenue, the public debt in this country absolutely exploded.

Again, over the last 10 years, from 1977 to 1987, this chart depicts what has happened with the public debt. We went from a public debt in 1977 of less than $800 billion to a public debt, today, of over $2.4 trillion. A tripling of the public debt in just the last 10 years.

People ask me, well, what difference does that make? What difference does it make that the public debt has exploded? I had one Senator ask me, he said: you know, I think it makes a difference what happens with the deficit. But interest rate is down, inflation is down, unemployment is down—I am beginning to wonder if it does make any difference that we have had a massive increase in the public debt.

Here is the difference it makes. Just as Mr. Rowen described in his column that we have had an increase in interest rates over the last 6 or 7 years as a result of the exploding public debt, I have prepared this chart that shows that he is precisely correct. Real interest rates, the difference between inflation and the interest rates people pay, have jumped and gone up quite noticeably.

The fact is a lot of people, if you ask them what has happened to interest rates in the last 6 years, will tell you interest rates have gone down. And they are right, too. Nominal interest rates have declined. But real interest rates, which is what matters in economic terms, that difference between inflation and the interest rate you pay, has gone up, not down.

This chart shows over the last 25 years the relationship of long-term business real interest rates. What it shows is that for 20 years, from 1961 to 1981, real interest rates averaged 2.3 percent. In other words, if inflation was 3 percent, you could expect to pay 5 or 6 percent for interest. But look what happened in the midseventies, Mr. President. Real interest rates were negative. Inflation was actually higher than the interest rates people were being charged. What did that tell people to do? That told people to go out and borrow money because it was actually being subsidized by inflation.

That, of course, is precisely what people did. They went out and borrowed. Then in the late seventies, real interest rates started climbing and they skyrocketed to over 8.5 percent,

the highest real interest rates in our history.

Even now, with interest rates having declined and pulled back some, we still are left with real interest rates which are much higher than what we have traditionally experienced in this country. We will have a real interest rate level of about 6 percent.

What difference does that make? Well, this next chart shows what has happened to the value of the American dollar. This chart shows the increase in the value of the U.S. dollar, again in the period from 1976 to 1987. You can see at the same time that real interest rates skyrocketed, in the early eighties; the value of the U.S. dollar skyrocketed.

In fact, from 1980 to 1985 it went up over 70 percent in value. Now it has pulled back some but it is still at very high levels, if one compares it to the value of the dollar in the midseventies.

What does that mean to us? What is the effect of a dollar that has skyrocketed in value? Many people say: Gee, that is good; a strong U.S. dollar, strong country. That has a superficial appeal. The problem with the skyrocketing value of the U.S. dollar is what it did to our ability to compete in the international marketplace, in our ability to sell our products. That can be seen in the next chart which shows what has happened with the trade picture in this country. This chart shows the merchandise trade balance from 1968 to 1986 in this country. We can see that the trade deficit has absolutely gone out of control. One statistic that I would leave the audience with is the trade deficit, in 1986, was greater than the total of all the trade surplus accumulated by this country since World War II. In just 1 year we were able to completely eliminate all of the trade surplus accumulated since World War II and that, of course, is a direct result of the explosion in value of the U.S. dollar which was like a hidden tax on all of our exports.

Well, the final chart shows the impact on this country of those trade deficits because we have now become a debtor nation for the first time since 1914. For the first time in over 70 years the United States owes more money than it is owed. We can see on this chart that we went from being a creditor nation. We were a large creditor. That is, people owed us more than we owed them, until late 1984. Then we became a debtor nation. Since that time our status as a debtor nation has grown dramatically.

We are not only the largest debtor Nation in the world, we are the largest debtor Nation in the history of the world. We have a larger accumulated foreign external debt than Mexico and Brazil and Argentina combined.

What difference does that make? Well, Mr. President, what difference does it make when you go to the bank and you have a large deposit? How are you treated in comparison with how you are treated when you go and you have a large note outstanding. That is the difference. If you were in that kind of relationship with the bank, you have a large deposit, the banker does not have much to say about what you do with your economic life. But if you have a large note outstanding at that bank, all of a sudden that banker has a lot of say in what you do and that is precisely the status that our country finds itself in today. We are now going to have dictated to us part of the economic decisionmaking of this country by the willingness of others to extend credit to us.

Mr. President, I hope I have been able to outline here some of the underlying causes of the market deterioration we have seen; the lack of confidence that is being demonstrated by others in the future of our economy because we have moved to a new status in the world. We have moved to a situation in which this country now is dependent on others to extend credit to us to finance these deficits. That is why it is imperative that we do something about our budget deficits. That is why it is imperative, in my judgment and in the judgment of some 48 other of my colleagues who have signed a letter, along with me, to those who are negotiating on the budget deficit, to do more than is outlined in the Gramm-Rudman-Hollings Act.

The Gramm-Rudman-Hollings Act called for $23 billion of budget deficit reduction this year. The problem with that is that it does not assure year-to-year deficit reduction. If we are to be credible, we are going to have to demonstrate that we can reduce the budget deficit on a year-to-year basis. The $23 billion simply does not do it. The reason it does not is because it is off a projection. The $23 billion that is bandied about in the media is not a reduction from last year's budget. It is a reduction from the projection of next year's deficit.

Mr. President, let me just quickly indicate that in 1987 this country ran up a budget deficit of $148 billion. It is projected by the Office of Management and Budget to be $163 billion next year and by the Congressional Budget Office to be $179 billion next year. If we reduce CBO's figure by $23 billion we will achieve a budget deficit of $156 billion in fiscal 1988.

That would be a deficit that is increasing from year to year, not being reduced. That would send all of the wrong signals to the marketplace, it would send all of the wrong signals to the international community, and, in my judgment, would simply demean our economic problems.

Mr. President, the first thing we must do is reduce the deficit on a year-to-year basis, a multiyear plan, that assures everyone we are making genuine progress on that deficit.

Second, we have included in our letter to the negotiators that we also send a message to the Federal Reserve Board that it is critical that they be accommodating in terms of the monetary policy during this time.

Why is that? Very simply, Mr. President, if they are not, we can put this economy into a recession. The reason for that is very simple: If we are going to be raising taxes, if we are going to be cutting back on spending, obviously those are steps that will slow down the economy. The only way to offset that is to have the Federal Reserve Board be more accommodating on monetary policy.

Finally, Mr. President, we cannot get out of the soup alone. It is imperative that our allies in Western Europe and Japan, also be engaged in expansionary policies if we are going to avoid a worldwide recession, in my judgment, with the situation in which we find ourselves.

So, Mr. President, I would also urge that the President and those of his administration immediately engage our allies in discussions about how we can convince them to be expansionary during this period when we, of necessity, have to pull back so that we can reduce our budget deficit and at the same time convince our Federal Reserve Board to be more accommodating in the monetary policy of this country so that while we are reducing our deficit, we do not push this economy into recession, and not only our economy but the world economy as well.

With that, Mr. President, I ask unanimous consent to have printed in the RECORD a column by Mr. Hobart Rowen, which appeared in yesterday's Washington Post.

I also ask unanimous consent to enter into the RECORD the letter signed by 48 of our colleagues, including the distinguished occupant of the chair.

I further ask unanimous consent to have printed in the RECORD the article which appeared in the Washington Post today by Mr. Michael Kinsley, relating to the economic policy of the country.

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

[From the Washington Post, Oct. 28, 1987]

CUTTING THE DEFICIT IS NOT ENOUGH

(By Hobart Rowen)

Yes, we need a significant cut in the American budget deficit. But when Wall Street and other fragile markets tell political leaders all over the world to "Get to work!" the message has a broader and deeper meaning.

It would be a mistake to think that a nod in the direction of fiscal sanity will be enough to avoid the deep recession that analysts think likely next year. There remain the critical issues of the trade deficit, ex-

change rate levels, the protectionist threat and the ugly overhang of $1 billion in Third World debt.

At a dinner here Monday among liberal Democrats and members of the West German Social Democratic Party, Gina Despres, a top aide to Sen. Bill Bradley (D-N.J.), heard no disagreement when she said:

"The problems and the solutions we face are international: America can't solve this crisis alone. Just cutting the American budget deficit won't help unless West Germany and Japan expand their economies. It will only cause recession.

"If you [Germans] don't expand, we will have a bitter protectionist reaction, and we will all go to hell in a handbasket."

Wolfgang Roth, a member of the German parliament and the SPD's "shadow" economics minister, acknowledged that confidence must be restored in the ability of the major governments to work together. Treasury Secretary James A. Baker III, Roth said, "was right to criticize the Kohl government's high-interest-rate policy. It doesn't make any sense, and I couldn't justify it in any way."

Yet the markets are just as unsure whether West Germany, which plays such a key role in Europe's economy, will face up to its responsibilities as they are about the U.S. government's ultimate response.

In Washington, politicians are still fingering each other for blame in the crisis. But what financial markets await is a fast and credible move (no smoke and mirrors, please) to cut the budget deficit significantly, not just the $23 billion that would arise anyway out of the Gramm-Rudman-Hollings legislation.

Financial markets need the assurance of a deficit reduction on the order of $40 billion to $50 billion in fiscal 1988. That would offset the inflationary potential of the Federal Reserve Board's welcome market-rescuing, money-easing steps that reversed its tight money policy.

In a telephone conversation Monday, New York Gov. Mario Cuomo said: "If they [the White House and congressional budget negotiators] come back and say, 'We've giving it our best shot, and we can't come up with more than $23 billion,' then we've got to say: 'It's not enough, you've got to do better,' They need to send a signal that they are sensitive to this issue."

One senses that President Reagan is not sufficiently scared. He temporizes about a tax increase arguing that nothing worse than a "correction" is taking place, and that the economy is pretty much okay.

But how about the Democrats? I don't hear the half-dozen or so Democratic presidential candidates using the dreaded words "tax increase." As political analyst Ted Van Dyk says: "The Democratic presidential candidates' economic proposals have been, to this point, a joke."

The idea of a tax increase must be put in perspective. Several readers, recalling that higher taxes in the 1930s exacerbated the economic decline then, wonder about the wisdom of raising taxes now. It's a good question. But no one is suggesting a Hoover-like tax program, designed to wipe out the deficit. Rather, it must be a carefully balanced package to reduce the deficit—and be coordinated, as Gina Despres said, with offsetting stimulating moves by the Fed here and governments abroad.

Despite assurances by supply-siders that lower tax rates would generate larger revenues, the deficit was created by the huge 1981 tax cut. In turn, the deficit (financed largely by foreigners) set off high interest rates, an overvalued dollar and enormous trade and current account deficits.

With the fiscal policy so loose and stimulating a consumer boom, the Fed necessarily followed a tight monetary policy. That's why interest rates had been shooting up this year and became one of the elements underlying the stock market collapse. That's also why the budget deficit has to be curtailed—so that interest rates can come down and stay down.

Then there is the question of the trade deficit and protectionism. One of the triggers for the Great Depression, most scholars now agree, was passage of the misguided Smoot-Hawley Tariff Act in 1930, after the market crashed in 1929. Yet you can search the Congressional Record fruitlessly for a statement by any protectionist that it would be better, now, to put aside any notions of trade restrictions.

Imagine the tonic if Democratic trade hawks, led by Rep. Richard Gephardt of Missouri, were to announce that they were abandoning their protectionist mischief that panicked financial markets.

U.S. SENATE,
Washington, DC, October 29, 1987.

DEAR COLLEAGUE, we are writing to urge you, as a member of the Senate's negotiating team, to push for an agreement with the Administration for more than $23 billion of deficit reductions in fiscal 1988.

It is absolutely essential, in the aftermath of the stock market's turbulence, to send a strong signal to the financial world that the Federal deficit is going to come down on a year-to-year basis. The $23 billion of savings required under the Gramm-Rudman-Hollings law will not achieve this result.

As you know, the fiscal 1987 deficit was $148 billion. Using Congressional Budget Office projections, implementing $23 billion of savings will reduce the fiscal 1988 deficit to $156 billion. Using OMB's more optimistic baseline deficit of $163 billion, a package of $23 billion would bring the deficit to $140 billion. We should, in our view, be striving for a package of savings that will achieve significant year-to-year declines in the level of the deficit—as the linchpin of Federal efforts to keep the economy on a stable and sustainable course.

There are grave risks that recent events will profoundly shake the public's confidence—prompting a general retrenchment that drains the economy of its strength. A significant fall-off in consumer spending or business investment could easily undermine the economy's performance. The need for reassurance—through actions rather than words—is urgent. We have an ideal opportunity through the present negotiations to enact the elements of a forceful policy.

For this approach to work, monetary policy must continue to ease. The Federal Reserve promptly responded to the shocks of last week by boosting supplies of money and credit, and those moves must be sustained. We hope the current negotiations will emphasize to the Fed that an accommodative monetary policy must be part of the package that restores confidence in our economy.

If your negotiations produce an agreement to reduce the deficit by more than $23 billion, we will push to see that it is implemented. As recent events make clear, the world is watching the decisions we reach on the fiscal 1988 budget. We cannot let this opportunity to make substantial progress on the deficit slip by.

Sincerely,

Thomas A. Daschle, Wyche Fowler, Jr., Max Baucus, Bob Graham, Dennis DeConcini, J. Bennett Johnston, Spark M. Matsunaga, Sam Nunn, Howell Heflin, Terry Sanford, Dale Bumpers, Kent Conrad, Timothy E. Wirth, Carl Levin, Tom Harkin, William Proxmire, Daniel K. Inouye, David Boren, Jeff Bingaman, John F. Kerry, Ted Stevens, Alfonse D'Amato, John Glenn, George J. Mitchell, Rudy Boschwitz, Alan Cranston, Dave Karnes, Don Nickles, Richard Shelby, Jay Rockefeller, Patrick J. Leahy, Paul Simon, Quentin Burdick, Daniel J. Evans, John C. Danforth, Frank H. Murkowski, Arlen Specter, Jake Garn, Steve Symms, Larry Pressler, Alan J. Dixon, Kit Bond, Pete Wilson, Chuck Grassley, Don Riegle, John Breaux, Edward M. Kennedy and John Melcher.

[From the Washington Post, Oct. 29, 1987]

BLAME SOMEONE—EVEN LORD KEYNES

(By Michael Kinsley)

Well whaddya know. The collapse of the stock market was just "a long-overdue correction." So explained President Reagan at his press conference Oct. 22. Funny, no one around the White House mentioned that a correction was overdue before it happened. Until then, the soaring stock market was proof of the wisdom of Reaganomics.

But what is—or rather, what was—Reaganomics? There's some confusion on this point between the president and his loyal supporters. At his press conference, Reagan blamed our current impasse on "more than half a century" of Democratic domination in Congress. "They have followed, beginning with what they call the Keynesian theory, deficit spending. . . . I think I'd like to point out that Maynard Keynes didn't even have a degree in economics."

Reagan may reject the theory, but he has embraced the practice with a vengeance. During the six fiscal years he's been in charge, deficits have totaled $1.4 trillion, compared with $999 billion for the previous two centuries.

As usual, Reagan places the blame elsewhere. "I have repeatedly asked the Congress for less money and they have turned around and given more to spend." In fact, Reagan has proposed budgets totaling $3.14 trillion and Congress has given him budgets totaling $3.129 trillion—$11 billion less than he has asked. The shape of those budgets was different: we spent more on social programs and less on defense than Reagan wanted. But total spending has been more or less exactly what he requested.

Yet even as the president inveighs against 50 years of Keynesianism, some conservatives—most prominently, presidential candidate Jack Kemp—defend his record as the brilliant flower of Keynesianism, Pseudo-populists of the right (joined, oddly, by some on the left) warn that the deficit scare is Herbert Hooverism. Reducing the deficit now, they say, especially by raising taxes, could cause a depression. FDR took office promising to balance the budget, but wisely did the opposite. What's needed is looser money and lower interest rates. Why, they ask, did the stock market boom during five years of growing deficits and collapse when the deficit went down by a third?

Let's answer that question with another question: if taxes are dangerous and our current deficits are harmless or even healthy, why stop here? Why not eliminate taxation, borrow it all, speed up the printing presses and really have a good time? Obviously there's a point at which such behavior becomes self-defeating. Once this is conceded, it becomes hard to maintain that we're not past that point.

Politicians may wish to believe that federal deficits are coming down, but the market is not so naive. Ostensibly the deficit dropped from $221 billion in fiscal 1986 to $148 billion in fiscal 1987. Of that drop, however, $20 billion reflected a one-time-only bonus from tax reform, mainly people cashing in their capital gains before the rate goes up. Next year the same factor will reduce revenues by $12 billion. Another $15 billion was saved this year through accounting tricks, such as pushing paydays into next year and selling off assets, including the right to collect on government loans. Selling off loans to reduce the deficit is like cashing in a CD to pay the Mastercard bill. It helps in the present but makes the future worse.

An honest figure for the 1987 deficit is more like $185 billion. The Congressional Budget Office projected deficits to stay about there for the next two or three years, and that was on pre-crash assumptions about steady growth with low inflation that look unlikely now. With Reagan advocating more asset and loan sales as preferable to raising taxes, the market is right to be unconsoled.

Hooverism? No. A reduced fiscal stimulus (i.e., smaller deficit) won't lead to a calamitous self-feeding contraction like the Great Depression because institutions like federal deposit insurance now exist to prevent a rout. However, there's no denying that higher taxes and lower government spending will depress economic activity and could cause or aggravate a recession. The problem is that, thanks to Reagan's deficits, the alternatives are even riskier.

If it weren't for a flood of foreign capital we long ago would have faced the choice between higher interest rates, which would have throttled the recovery, or printing money, which would have reignited inflation. We still face that choice, only in aggravated form because we now owe billions more a year on our past debts.

Since the beginning of 1987, foreign private investors have supplied no net new capital. The money has come, under duress, from foreign central banks, which have spent about $80 billion of their own reserves shoring up the value of the dollar. They won't keep this up. To keep attracting foreign capital we must either let the dollar sink, which means inflation, or raise interest rates, which probably means a recession. This is the classic dilemma of economic policy, which the supply-siders claimed to have abolished. But the smaller the deficit, the lower the dose of either medicine we have to take.

Poor Lord Keynes. The same crowd that blames him for the present mess is invoking his shade in their efforts to make things worse.

Mr. CONRAD. With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired.

RECESS UNTIL 1:15 P.M.

Mr. BYRD. Mr. President, I ask unanimous consent, in view of the fact that negotiations are still going on with respect to the transportation legislation, that the Senate stand in recess until 1:15 p.m. today.

There being no objection, the Senate, at 12:33 p.m., recessed until 1:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. CONRAD).

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, I ask unanimous consent that I may speak out of order for 5 minutes.

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

HOUSE VOTE ON BUDGET RECONCILIATION

Mr. DOLE. Mr. President, I am pleased to inform my colleagues that the House, just a short time ago, rejected the rule and—for the moment—consideration of the budget reconciliation package.

This should heighten chances for our efforts to bring about significant and meaningful reductions in the Federal deficit, and it should also be welcome news to the stock markets around the world.

As I have said, we are threatened by a crisis. But this looming crisis has also presented us with an opportunity to take substantial positive steps that will have a lasting healing effect on our economy.

First, we must start with a pledge to put new spending on hold. Mr. President, the House reconciliation package contained $2.4 billion in this fiscal year, including $179 million for welfare reform, $336 million for Medicaid, $500 million for pay increases, and $300 million for the Rural Development Bank.

I do not suggest that the Congress should not continue to review its spending priorities, only that massive new spending is not what the economy—or the markets—need at this juncture.

I have been involved in negotiations between the Senate and House leadership, as well as representatives of the President, on a package for deficit reduction. These negotiations should be allowed to continue through to completion before either House takes action on budget reconciliation, and I commend all those in the House who voted to reject the House rule.

Mr. President, I want to again restate my concern, as I view it, about the seriousness of the problem we are facing not just in the United States but globally with reference to the economy and the necessity for action.

I know that we have Republicans and Democrats, Senators and House Members, who are working diligently, and I was privileged to attend that meeting this morning.

I can only comment in a general way that I think progress is being made. We agreed we would not talk about details, and I do not intend to. I am advised in a poll that has not yet been released that for the first time the Federal deficit when you ask the open-ended question by far and away is No. 1. The American people, whether they are stockholders or not, know that if the economy falls everyone is going to be in difficulty.

As the Presiding Officer knows, we went through a lot of this in the Midwest 3 years ago. The Midwest went through an economic wringer. Many small business men and women lost their businesses. Many farmers lost their farms. Land prices dropped dramatically, you might say just about like the stock market lost a third in value, 20 percent, 50 percent. So we understand how serious it is and we understand the need for that strong signal to come from the administration and from Congress.

I do not often comment on actions in the other body because I know they are just as concerned, and maybe have different ways to do it, but I must say I was a bit encouraged when I learned this morning that in the House of Representatives a bipartisan majority had rejected the rule on reconciliation because the reconciliation bill in the House, even though it nets out some savings, has about $7 billion in new spending over the next 3 years, $7 million, including a welfare reform package, the goals of which may be desirable. But it would seem to me if we really have a crisis, we ought to just stop passing spending bills.

So I congratulate the Republicans and Democrats who did reject the rule. Maybe they will go back; maybe it will be worked out. But I think this is the first indication that the message is getting to Congress and to individual Members that the American people, whether they make their living on Wall Street or not, are beginning to react to this serious problem.

So I hope that it is an indication we may put new spending programs on hold. The House reconciliation package contained $2.4 billion for this fiscal year in new spending, including $179 million for welfare reform, $336 million for Medicaid, $500 million for pay increases and $300 million for the Rural Development Bank.

I think we have to continue to review our spending priorities, continue to do as we are doing here—we are passing appropriation bills—give the President a chance to look those over and go to conference.

But I do believe that whatever may happen this afternoon or tomorrow in the House or next week on reconciliation, that this signal will be heard. The signal, as I understand, was 213 House Members said no. I am not cer-

tain we really feel the urgency that must be out there.

I indicated that we had a little meeting last night in Houston. Nothing much happened, I must say, but we all showed up. There was no blood on the door. But I sort of got the feeling that in that debate the question should have been focused on this very serious problem, on the economic problem, and it was not. There were no questions, in effect.

It is a global problem. The world changed, as I said a couple of weeks ago, in the last 2 weeks and we no longer control it. If we are going to further deflate, then we have to have some reflation on the part of Japan and West Germany. I understand they may have lowered their interest rates today. And we ought to insist that, for every dollar we have in budget deficit reduction, we have a dollar in reflation in Japan and West Germany. And I would also suggest Japan might want to put $30 billion or $40 billion into less developed countries to stimulate the economies in those countries so they can start buying and keep the economy going. And maybe that can be done.

And it is about time that the so-called Tiger countries—Korea, South Korea, Taiwan, Singapore and Hong Kong—cut loose from the dollar and let their currencies float. So it is a global problem.

And I want to commend my colleagues who have been in S-211 the day before yesterday, all day yesterday, all this morning, and they are going to be there all afternoon, all day tomorrow, Saturday, if necessary, to demonstrate that we are taking action in the Congress.

I also want to commend the distinguished majority leader for his leadership.

RECESS FOR 20 MINUTES

Mr. BYRD. Mr. President, negotiations are continuing on the transportation appropriation bill. We may be saving time by having those negotiations; we may not.

I ask unanimous consent that the Senate stand in recess for another 20 minutes.

There being no objection, the Senate, at 1:22 p.m., recessed until 1:42 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. CONRAD].

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from North Dakota, suggests the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

20-MINUTE RECESS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for an additional 20 minutes.

There being no objection, the Senate recessed at 1:54 p.m. until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. CONRAD].

THE U.S. ECONOMY

Mr. MELCHER. Mr. President, I hate to see market losses and the resulting misery for investors, but solid markets have to be built on an economy that is sound. The U.S. economy has weak spots. I draw your attention to basic commodity price weakness and remind the Senate that the strength of basic industries forms the base of the U.S. economy. So go the basic industries, so goes the Nation. Ignoring them is perilous. Let us look at where these markets are in comparison to the stock market.

If cattle prices had increased 300 percent since 1980, every rancher would have his ranch in as good shape as any "Ponderosa" ever was, and if wheat and corn prices had tripled over the past 7 years, farmers would be buying cadillacs and yachts. If copper and silver prices were 300 percent higher than in 1980, mining companies would be buying up computer firms. If oil and gas prices had trebled in the same timeframe, royalty owners would be on easy street, and if lumber prices had likewise trebled, sawmill operators would be vacationing in luxurious spas.

If all of those commodity prices had matched the rapid growth of the stock market, folks both in and out of those businesses would be saying, "Well, what goes up must come down," and would take it for granted that their markets had expanded too rapdily and had been overextended. None of us really believe that cattle prices should be $187 per hundred, which is three times the average 1980 price; nor would we think that wheat should be at $11 per bushel, corn at $9 per bushel, oil at $72 per barrel, copper at $3 per pound, or lumber at $609 per thousand board feet, which is three times the 1980 price. If those markets had ever had a 300-percent runup, would any of us believe that it was a lasting market price?

Instead, so far this decade, commodity prices have dropped, and dropped drastically and they have had very little public concern. The stock market wringing out of one-third in value has caused consternation, and the attention of Wall Street and the public has been riveted on Congress and the administration to do something about the twin towering deficits—Federal and trade—and to correct past fiscal and trade policies. I am all for doing that, but I do not want to mislead anybody that the puny actions we may take in reducing the Federal deficit $23 billion will create economic stability and bring back U.S. economy strength.

I have pointed out on this Senate floor on several occasions over the past year that the U.S. economy is not built on bedrock but is built on sand and that the low commodity prices in agriculture, energy, minerals and forest products were a serious threat to the overall economy of the country.

These commodity prices have been sick because we either imported too much of those commodities or exported too little of them, and particularly those that we produce in surplus too little has been exported. That is not just basic economic theory, it is common sense. The god-awful truth is that too many people have been lulled into believing that it is not significant when our own producers and their industries go down the tubes because we were shifting all of that economic strength to something called a "service-oriented" economy.

If a service-oriented economy is identified as one providing communications, health care, medicines, insurance, financing, computers, and so forth, who is producing the wealth out of the ground to pay for all of that? If we are not going to take coal and metals and produce steel, aluminum and copper to put into finished products, where does the money start? If we downgrade farmers as being too productive, will we not ignore our basic economic strength? What is the advantage of economic policies that attract imports and weaken U.S. exports?

The answers to these questions are obvious, but we have had too many people following a "pied piper" of a changing U.S. economy to meet modern trends and that the basic questions would not have to be addressed, let alone answered. Somebody has to pay the piper and the only way to pay it is to produce basic commodities that are turned into products and profits upon which the economy is built.

I feel only sadness for the investors who have taken a licking in the stock market decline. But I have no illusions that a few fiscal corrections by the Federal Government will make everything right to underpin the shaky U.S. economy. Certainly, it is good that the leading economic indicators of unemployment, liquidity of banks, and with the stock market advances earlier this year even the gross national product has shown improvement.

But I am realistic in recognizing that economic indicators have been mixed and that we do not have historic experience in measuring economic indicators against the circumstances that have engulfed our economy. For several years, we have had Federal deficits greater than $150 billion matched by U.S. trade deficits which have averaged $150 billion, and we have become a debtor nation. The U.S. economy never has been anywhere near this point before in all of our history, and any other government in any other country anywhere in the world that has ever had a fraction of these types of fiscal and trade deficits has found itself in the throes of terrible economic circumstances.

To paraphrase Merrill Lynch's current television ads, "I'm bullish on America, but mule-headed enough to know that we have to get back to fundamentals and get America back on track."

One of the first things we must do to get back on track is to provide the underpinnings for the agricultural economy by restructuring farm credit. Farmers and ranchers are still paying 11- to 14-percent interest rates on their loans, which will not cut it. They must have lower interest rates—competitive with those who have been buying the stocks and bonds on Wall Street. We shall have a farm credit bill on this Senate floor in a matter of days and the bill is structured to restructure the debt of 30-60 percent of American agricultural producers. To start building the U.S. economy on bedrock rather than sand, we have to provide the type of economic conditions where credit for agricultural producers is not just equitable and reasonable but also competitive. We have the power and know-how to do just that. The question is, are there enough of us here who have the foresight to vote so that it can be accomplished? I believe so, because I believe in the innate common sense of the American people and their representatives.

What is needed now is a reawakening that basic industries and their products are not passé; their markets are important; that these industries create the jobs and economic activity that can really make the U.S. economy sound.

Furthermore, we are efficient and competitive in these industries and the portion of the U.S. economy that is "service oriented" can only flourish when the basic industries of the United States are thriving.

Mr. President, I yield the floor.

Mr. HATFIELD. Mr. President, I ask unanimous consent for 3 minutes to speak on a subject relating to the ban on smoking.

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

SMOKING ON AIRLINES

Mr. HATFIELD. Mr. President, my office has been flooded in recent days with mailgrams which state that Congress should not limit smoking on airlines because it takes away a smoker's right to enjoy a cigarette. As a former smoker, I am very much aware of the pleasures of smoking, but there is an even more fundamental right at stake here: the right of every American boarding an airplane to know that they will breathe clean air for the duration of the flight.

It is a simple fact of biology that we all must breathe to live. We have no choice in the matter. And certainly the quality of air we breathe depends on many factors, including whether we choose to smoke or to live with someone who chooses to smoke. That is the point, smoking is a choice that is made freely, at least until the addiction of smoking grips the body. Today when a person boards a commercial airliner, the choice about the quality of air to be breathed is limited. Although there are choices of seating in smoking and nonsmoking sections, the nature of an airline's closed cabin results in all passengers being exposed to cigarette smoke. I am reminded of a cartoon I recently saw which depicted a ticket agent asking an airline passenger if he preferred a seat in smoking or passive smoking.

It once was believed that the dangers of cigarette smoking were limited to those who chose to smoke. Thanks to studies done by Surgeon General Koop, we know better today. The Surgeon General found a direct link between so-called second-hand smoke and respiratory diseases, including lung cancer. As Federal legislators we have a responsibility to protect Americans from factors which threaten their health and safety. That is precisely what the committee bill does.

No less august group than the National Academy of Sciences recommends a total ban on commercial airline flights because there is no way to protect passengers from the effects of second-hand smoke. Currently there is no protection—no physical barrier—which separates smokers from nonsmokers, nor should there be such a barrier. The solution to the problem is offered, at least for flights of 2 hours or less, in the committee bill. The Department of Transportation clearly recognizes the problem by banning smoking on all commercial aircraft with capacity for 30 passengers or less. It is time to extend that provision to include all commercial aircraft.

Mr. President, we are going to hear a good deal about how the committee bill is an attack on the small tobacco farmer. Nothing could be further from the truth. Yes, Mr. President, I have received a large number of mailgrams on this issue from my constituents who choose to smoke. But that correspondence was not generated by tobacco farmers, but by the cigarette companies. The companies are carrying out one of the slickest, well organized lobbying efforts I have seen since we encountered the bankers a few years ago on the issue of interest withholding. We are not talking about the interests of small farmers but the interests of corporate giants.

The committee bill is not antifarmer; it is prohealth, proclean air, prolife. As I have said, we have a solemn duty to protect the health of our citizens. Buried in the statistics of the nearly 1,000 Americans who die from smoking-related diseases every day in this country are nonsmokers who die from the effects of second-hand smoke. We may not be able to stop this tragedy, but we can help to control it.

The risks of air travel are great enough, we should not compound these risks by continuing to subject the passengers and crew of commercial airline flights to the dangers of second-hand smoke. I urge my colleagues to vote to retain the language contained in the committee bill.

The PRESIDING OFFICER (Mr. DIXON). The Senator from Texas [Mr. GRAMM].

Mr. GRAMM. Parliamentary inquiry, Mr. President. Would it be in order for me to speak on the nomination of Douglas Ginsburg to be a member of the U.S. Supreme Court?

The PRESIDING OFFICER. The Senator may speak on any subject he wishes.

Mr. BYRD. Mr. President, the Senator should speak as in executive session. Would he indicate how lengthy his speech would be, because we have had the negotiations go forward on the pending matter and I would hope we would not delay that long.

Mr. GRAMM. I certainly understand that. I ask unanimous consent that I may proceed for a maximum of 5 minutes as if in executive session.

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

NOMINATION OF JUDGE DOUGLAS HOWARD GINSBURG TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. GRAMM. Mr. President, when Judge Robert Bork's nomination was sent to the Senate by President Reagan, I was relatively unfamiliar with Judge Bork, other than simply having read about him in the paper, having met him on a couple of occasions and having general knowledge of his record. I, therefore, considered it important to withhold my final judgement until the committee had held hearings and until everyone had an opportunity to state their views.

In the case of Judge Bork, after listening to both his critics and those who supported him, I decided to support him. There were certainly issues, many of them economic—the balanced budget amendment to the Constitution being one—on which I strongly differed with him. But I believed then, as I believe now, that the President is elected by the people of the United States; that Presidential elections set a road map in terms of political philosophy, and that we ought to expect the President to appoint someone who agrees with his philosophy. So I voted for Judge Bork. I was as disappointed as any Member here when he was rejected by the U.S. Senate.

In contrast with my initial lack of familiarity with Judge Bork, I know Judge Doug Ginsburg well. I am familiar with his record. I have worked with him. I have followed his record in the Justice Department, at the Office of Management and Budget, and as a Federal judge. I strongly support his nomination.

I know him so well, I support him so strongly, that I do not have to listen to his critics to know that his appointment today by the President fulfilled a promise that Ronald Reagan made when the Senate rejected Judge Bork. And that promise was that he would come back with the appointment of a conservative, of a conservative who shared his view and the view of the American people that judges should interpret the law and not make it. He promised he would come back with an appointment to the Supreme Court of a person who believed in strict construction of the Constitution, an appointment of a person who was concerned about victims' rights as well as criminal rights.

I believe, based on my knowledge of Judge Doug Ginsburg, that he has done that. I strongly support this nomination. I intend to work for the confirmation of Judge Ginsburg by the U.S. Senate. I commend my colleagues to look at his outstanding record. I believe that he brings to this task an excellent set of tools—tools as a scholar, tools as a student of the law, tools as a person who has worked in the Justice Department and who has worked in the Office of Management and Budget on economic matters.

I have long believed that the Constitution protects not just our political rights, but it protects our economic rights, as well. So I commend our President for this nomination. I commend my colleagues to look at his record and join me in supporting him.

I yield the floor.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL 1988

The Senate resumed consideration of the bill.

AMENDMENT NO. 1099

Mr. LAUTENBERG. Mr. President, I send a modification of the pending second-degree amendment regarding the smoking provision in the transportation appropriations bill to the desk, and ask that it be adopted.

The PRESIDING OFFICER. The Senator has a right to modify his second-degree amendment.

The amendment will be so modified.

The modification is as follows:

In amendment numbered 1098, strike all after the word "After" and insert the following: "the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 24 months and 1 day thereafter, expect that subsections (a) and (b) shall be null and void upon the date of enactment, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 90 minutes or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulations as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000.".

Mr. LAUTENBERG. Under the modification of this amendment, we change the period of time during which smoking shall be banned on aircraft from 3 to 2 years, 24 months. Flights scheduled for 90 minutes or less will be those upon which there will be a smoking ban.

After several hours of negotiations on this—and we worked very hard—I indicated I was willing to make minor modifications in my amendment and I would renew the request to make that modification.

The PRESIDING OFFICER. That modification has been made, may I say to the Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, public support for a smoking ban is certainly there. Flight attendants want it; air travelers want it. There is a majority, a significant majority, of the public in support and there is a majority of the Senate in support. We are ready to clear the air.

I do not want to prolong the debate. We do not want to delay action on this very important bill. With the amendment as modified, we take a major step forward, a step that opponents of the ban have opposed throughout. At this point, Mr. President, with the modification of the amendment, we can go ahead and move this bill, and ban smoking on most U.S. flights.

Mr. President, I ask unanimous consent that no amendments related to the smoking ban be in order.

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

Mr. LAUTENBERG. Mr. President, I further ask unanimous consent that the yeas and nays on my first amendment be vitiated.

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

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that a letter from Julius Richmond, the former Surgeon General, now a professor of health policy at Harvard University, be printed in the RECORD.

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

HARVARD UNIVERSITY, DIVISION OF HEALTH POLICY RESEARCH AND EDUCATION,

Boston, MA, October 28, 1987.

Senator FRANK LAUTENBERG,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: As a former Surgeon-General of the U.S. Public Health Service and Assistant Secretary for Health of the Department of Health and Human Services, I am writing to support enthusiastically your proposed legislation to prohibit smoking on airplane flights of less than two hours duration. I should add that I would be equally enthusiastic about banning smoking on all flights.

Your proposed legislation is clearly in the interest of health of the public. The data covering the hazards of passive smoking are so pursuasive that action is necessary to protect the health of non-smokers. The cumulative effect of passive smoking is destined to take a toll on non-smokers. They should not be coerced into a smoke filled environment while flying.

Please let me know if there is anything more I can do to further the passage of this legislation.

With very best wishes,
Sincerely yours,

JULIUS B. RICHMOND, M.D.

Mr. HELMS. Mr. President, let me say that while this compromise is not satisfactory really to either side, from this Senator's standpoint it is a substantial improvement. I appreciate the cooperative attitude of the distinguished Senator from New Jersey and the time spent by the distinguished majority leader on it.

It still is not good from the standpoint of this Senator or the tobacco farmers who I am proud to represent, but, as I say, it is a vast improvement. I thank the Senator for his time.

Mr. SIMPSON. I strongly support the Senator from New Jersey's amendment to the transportation appropriations bill which would ban smoking on all scheduled domestic flights of 2 hours or less.

Recent studies by the National Academy of Sciences and the Surgeon General confirm that there is a significant risk taken by those who inhale passive smoke, or second-hand smoke. The Surgeon General states the inha-

lation of this smoke does cause disease, including lung cancer and emphysema.

I spend a great chunk of my time in the air between Washington and Wyoming, and I can personally attest to the unassailable fact of physics that the swirls of smoke in an airplane do not know the difference between the smoking and nonsmoking sections. This smoke affects every single one of us. It enters our nostrils, our sinuses, and our mouths and causes headaches, allergy, and nausea in some persons. Now I used to be a three-pack-a-day smoker myself, so I know the strength and power of that particular pervasive habit—I also know of the enjoyment that seems to be derived by many smokers. It is an awful tough habit to break. I remember when I quit cold turkey I sat and shook for about 3 days.

That is a smoker's choice to inhable these noxious fumes. And in that pleasure is their choice to inhale the residue of the incineration of these shredded and dried bits of vegetation. But I made a conscious, personal choice not to any longer inhale such fumes and subject my body to the potential damages.

I do not in any way view this as an antitobacco issue. It is not to me a win-or-lose confrontation. I do not view this as a discriminatory issue either: I view this solely as a health issue. I certainly do not need another test or study or white paper to tell me that my body physically reacts to the presence of any subsequent inhalation of another person's smoke.

In your own home—the sky's the limit—you can light a campfire in your own living room if you wish—but spare me the debilitating smoke on an aircraft—at least for 2 hours.

Mr. GARN. Mr. President, I rise today in support of the committee language in the fiscal year 1988 Department of Transportation appropriations bill banning smoking on commercial airline flights of less than 2 hours. I believe this is action that the Senate should have taken long before this day arrived.

I was 1 of the 12 members of the Appropriations Committee who supported this language when it was considered by the full committee. This language, crafted by my distinguished colleague, Senator LAUTENBERG, is a better solution to the problem of smoking on commercial airlines than that proposed by the Durbin amendment in the House transportation appropriations bill. The Durbin amendment would place burdensome and onerous enforcement responsibilities on airports and their managers, who would lose vital airport improvement funds as a result of allowing smoking airplanes in the air for less than 2 hours to land at their airport. The burden to enforce this policy should not be on the shoulders of the airport authorities; instead, it should be up to the respective airlines and FAA officials to enforce this policy. I have tremendous reservations about the Durbin solution, which is why I support the Senate language and hope it is adopted in conference.

Recently, I received a phone call to my office from a constituent of mine. She indicated to me that she had the occasion to travel from the east coast to Utah several weeks ago on one of our major airlines. After making a stop along this route, and before boarding a plane to continue her trip, the ground personnel indicated that the airline was prohibiting smoking on her next flight due to the malfunction in one of the airline's air conditioners that would prevent the proper circulation of the cabin's air. I don't recall the duration of this particular flight, but this constitutent stated that the difference in this flight with other flights was obvious. She also said that several other passengers noticed the difference and how more enjoyable, in their own words, this flight was than the other flights where smoking was permitted. I think this example, though not widespread, is important to note in this debate.

Mr. President, I am pleased this body and the Congress is finally doing something about involuntary smoking in public and on public conveyances, such as airplanes. This action has resulted because of the two widely cited studies by the National Academy of Sciences and the Surgeon General. The Surgeon General's report is particularly enlightening on this subject. In the foreword of this report, the Surgeon General states the following regarding involuntary smoking:

First, involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.

Second, the children of parents who smoke, compared with the children of nonsmoking parents, have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung functions as the lung matures.

Third, simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, exposure of nonsmokers to environmental tobacco smoke.

These are conclusions which it appears those who support maintaining smoking on all flights, and smoking in all public places, either are not aware of or simply wish to ignore. I am not against people who smoke, but I don't necessarily believe these individuals should have the right to jeopardize the health of others, especially in light of the conclusions from the Surgeon General's report, to protect their right to smoke. The majority of airline passengers are nonsmokers who have the right to expect that their health will be protected on airline flights. I think this language prohibiting smoking on flights of 2 hours or less, that is prohealth and which sunsets in 3 years, is appropriate and necessary at this time. I hope my colleagues will agree that the time to act is now, now that these studies have been released which document the negative and harmful effects of passive smoke.

I urge my colleagues to support this language and our colleague, Senator LAUTENBERG, on this subject.

SMOKING BAN ON DOMESTIC AIRLINERS

Mr. WIRTH. Mr. President, our Nation's foremost health experts have long been united in their belief that the hazards of passive smoking are nearly equal to those encountered by regular smokers, particularly in close quarters with poor ventilation.

As a result, Congress mandated a study more than 2 years ago to determine whether air quality on board commercial airliners is hazardous and whether Federal standards adequately protect the health and safety of air travelers. The National Research Council, an agent of the National Academy of Sciences, subsequently embarked upon an 18-month study at the request of the Federal Aviation Administration [FAA].

The results of that study call for a Federal ban on smoking on all domestice commercial flights in order to protect the health and safety of airline passengers and crews. Citing the lack of any Federal agency that is responsible for health aboard planes, the council pointed to the special insular conditions that exist on airliners as compelling reasons for enactment of a total smoking ban.

For example, on a typical flight, with a full cabin and less than half of the passengers smoking, it would take a ventilation rate of 50 to 75 cubic feet of air per passenger per minute to alleviate the irritation caused by cigarette smoke. But the Aerospace Industries Association, has indicated that the maximum ventilation for five different aircraft is less than 20 cubic feet per passenger per minute with some aircraft dropping to as low as 6.9 cubic feet.

The National Research Council concluded that a complete smoking ban should be implemented to not only reduce irritation and potential health hazards associated with tobacco smoke, but also to reduce the possibility of fires caused by cigarettes and to bring cabin air quality into line with established standards for other closed environments.

Accordingly, I was pleased to join with my distinguished colleague from New Jersey, in seeking approval of the amendment to the transportation appropriations bill requiring that airports wishing to receive Federal funds implement a ban on smoking on all do-

mestic flights of less than 2 hours' duration.

Based on the evidence compiled by the National Research Council, I believe that the health threat posed by second hand smoke on airlines is certainly sufficient to warrant a ban on smoking for flights lasting less than 2 hours. However, judging from recent debate on the floor of this Chamber, it has become obvious that if we hope to take any progress toward improving the air quality on commercial flights, we must accept a compromise on this particular issue at this time. For that reason, I will support the modified amendment which will apply the smoking ban only to those flights shorter than 90 minutes in duration, enforceable over the next 2, rather than 3, years.

By basing Federal funding eligibility on compliance to the smoking ban, the Federal Government provides the same incentive to airports as that employed to encourage the enforcement of speed limits on interstate highways and a minimum drinking age in States across the Nation. All domestic air carriers offering flights of less than 2 hours duration would simply be required to ban smoking in order to use the facilities of any airport that hopes to qualify for Federal funding.

The Federal Government spends an enormous amount of money each year in its attempt to clear the air of pollutants. The Environmental Protection Agency and the Occupational Safety and Health Administration are just two of the institutions committed to improving our public health—but their jurisdiction does not extend to the environment of airliners.

Moreover, our Federal health programs bears a terrible burden in medical costs for smokers who succumb to the debilitating or fatal effects of the use of tobacco. Now, we know that environmental tobacco smoke causes as much, if not more, of the lung cancer and death each year than all of the hazards associated with evironmental air pollution.

In light of our national commitment to clean air and our concern for the public health of our citizens, I am convinced that we would be negligent of our duty if we were to ignore recommendations of the study we called for just 2 years ago. I encourage my colleagues to join in this commonsense approach to further ensure the safety of the Nation's skyways.

Mr. GLENN. Mr. President, I rise in support of the pending provision to ban smoking on all scheduled domestic airplane flights of 90 minutes or less.

The link between cigarette smoking and several serious illnesses—including such deadly diseases as lung cancer, emphysema, and heart disease—is undisputed. And the latest scientific evidence indicates that nonsmokers are harmed by the smoke from others. The Surgeon General, in his December 1986 report "The Health Consequences of Involuntary Smoking," concludes that involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.

Experts tell us that the simple separation of smokers and nonsmokers aboard an airplane does not sufficiently diminish the nonsmokers' exposure to airborne tobacco smoke. Nonsmokers exposed to passive smoke in the confined space of an aircraft often experience acute physical reactions, such as eye, nose, and throat irritation. And it is not only the nonsmoking passengers, but also the in-flight crew, which we must protect from the dangers of passive smoking. I have heard from many individual flight attendants who have told me of the problems posed by the heavy concentration of smoke in sections of the airplane. These problems have ranged from burning eyes, to strained breathing, and even dizziness. I feel very strongly that these flight attendants, who provide not only for the comfort, but also for the safety of the flying public, must be protected from this health hazard.

The amendment before us today would establish a direct 2-year prohibition of smoking on scheduled domestic flights of 90 minutes or less, impose a civil penalty of up to $1,000 for each violation, and prohibit tampering with or disabling smoke alarms aboard the aircraft. Unlike a similar amendment which the House passed on July 13, 1987, the Senate version does not make enforcement of this ban a responsibility of the airports, nor does it tie enforcement to the awarding of Federal airport improvement grants. Rather, the amendment before us directs the Secretary of Transportation to enforce these provisions by regulation and provides for a public comment period on the proposed regulations. I commend my colleague from New Jersey for improving on the House amendment by providing for a more appropriate method of enforcement.

The National Academy of Sciences has issued two studies which support the Surgeon General's findings and recommend that all smoking aboard domestic commercial airline flights be banned. In addition, many medical associations have voiced their support for a ban on smoking on airplane flights. In short, the medical and scientific communities of this Nation are in favor of this amendment. I am pleased to join them today in offering my support for this ban on smoking on flights of 90 minutes or less.

Mr. HATCH. Mr. President, I think it is time we in Congress caught up with the scientific evidence—cigarette smoking is both a health and a safety risk to nonsmokers, as well as smokers who travel. This is especially true for airline passengers who are often forced to sit for hours in confined areas, breathing air contaminated by cigarette smoke.

In 1985, Congress asked the Office of Technology Assessment to review the scientific evidence as to whether cigarette smoke causes illness and disease in nonsmokers. In May 1986, OTA issued a report entitled, "Passive Smoking in the Workplace; Selected Issues," which contained the following conclusions:

> There is ample evidence that nonsmokers are exposed to elements of tobacco smoke when they are around people who are smoking * * * Children and people with pre-existing lung disease might be more susceptible than healthy adults to some of the effects of passive smoking.

Most importantly, the authors of the report stated:

> More than a dozen studies have been published during the 1980's that address the possible association of passive smoking and lung cancer. Taken one by one, the studies cannot be considered 'definitive'; however most investigators have found that passive smoking elevates a nonsmoker's risk of lung cancer, and results in about half the studies were statistically significant. The consistency of the results argues for stronger conclusions than could be drawn from individual studies; examined together, the evidence is generally consistent with an increased risk of lung cancer, on the order of a doubling of risk, among nonsmokers regularly exposed to environmental cigarette smoke compared with nonsmokers without exposure.

Congress also asked the National Research Council to evaluate cigarette smoking on commercial aircraft. In their 1986 report entitled, "The Airliner Cabin Environment, Air Quality and Safety," the Council concluded:

> A contaminant in aircraft cabins that can be detected by its characteristic odor and visibility is environmental tobacco smoke—the combination of exhaled mainstream smoke and the smoke generated by smoldering cigarettes. Environmental tobacco smoke is a hazardous substance and is the most frequent source of complaint about aircraft air quality.
>
> Because of the high concentration of environmental tobacco smoke generated in the smoking zone, it cannot be compensated for by increased ventilation in that zone. Moreover, strict separation of the airplane into smoking and nonsmoking zones does not prevent exposure of flight attendants and nonsmoking passengers to environmental tobacco smoke.

The scientific experts considered several ways of reducing environmental tobacco smoke in aircraft including structural or engineering changes, but concluded that they were economically infeasible.

The National Research Council went on to recommend:

> A ban on smoking on all domestic commercial flights, for four major reasons: to lessen irritation and discomfort to passengers and crew, to reduce potential health hazards to cabin crew associated with environmental tobacco smoke, to eliminate the possibility of fires caused by cigarettes, and to bring the cabin air quality into line with

established standards for other closed environments.

Other scientific experts have been just as definitive. In a 1981 report entitled, "Indoor Pollutants," the National Research Council stated:

Public policy should clearly articulate that involuntary exposure to tobacco smoke has adverse health effects and ought to be minimized or avoided where possible.

But perhaps the strongest conclusions have been reached by the Surgeon General of the United States, C. Everett Koop. In his 1986 report entitled, "The Health Consequences of Involuntary Smoking," the Surgeon General made the following statement:

The comparison of the chemical composition of smoke inhaled by active smokers with that inhaled by involuntary smokers suggests that the toxic and carcinogenic effects are quantitatively similar, a similarity that is not too surprising because both mainstream smoke and environmental tobacco smoke result from the combustion of tobacco.

The Surgeon General went on to the following three major conclusions.

First. Involuntary smoking is a cause of disease, including lung cancer in healthy nonsmokers;

Second. The children of parents who smoke compared with the children of nonsmoking parents have an increased frequency of respiratory infection, increased respiratory symptoms and slightly smaller rates of increase in lung function as the lung matures; and,

Third. The simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke.

Mr. President, similar results and opinions can be found in other reports such as a 1986 report by the National Research Council entitled, "Environmental Tobacco Smoke; Measuring Exposure and Assessing Health Effects," a 1985 Surgeon General's report, "Health Consequences of Smoking; Cancer and Chronic Lung Disease in the Workplace," and other studies by private researchers and State and local governments.

Clearly, there seems to be little real disagreement among objective scientific experts on the health consequences of passive smoking. Passive smoking threatens the health of everyone who is exposed, and it is especially hazardous to the very young and very old. It is not a theoretical health hazard. We are not talking about assumptions based on the death of a few laboratory specimens. The Surgeon General has made it clear that every day the 1,000 cigarette smokers who die prematurely are taking 12 to 15 nonsmokers with them. In other words, it is estimated that up to 5,000 nonsmokers die prematurely each year from exposure to the cigarette smoke of others.

Mr. President this year there has been much debate on this floor about the rights of individuals, about protecting our basic rights as individuals against a variety of threats and challenges. Well, passive smoking is a very real threat against perhaps our most fundamental individual rights—the right to life.

Let me share with you a letter I received from Anna Carroll of Alexandria, VA. She has been diagnosed as having nonhereditary pulmonary emphysema. Not only has she never smoked, no one in her family has smoked, including her husband. Medical experts told her that her emphysema was directly related to the fact that she was surrounded by chain smokers at work for more than 25 years.

As tragic as her story is, that wasn't the reason she contacted me. Her reason was to request legislation to protect nonsmokers while traveling. She stated that when she attempts to use public transportation—trains, buses, or airplanes—she has severe reactions due to exposure to tobacco smoke. The flight attendants would sometimes be forced to keep a close watch on her and provide her with supplemental oxygen because of the tobacco smoke. She also gets chest pains and must struggle to breathe when exposed to cigarette smoke.

When I introduced legislation on January 6, 1987, to ban smoking on airplanes and other public conveyances, I put Ms. Carroll's letter in the CONGRESSIONAL RECORD and an interesting thing happened. I received letters from others like her. I won't read all of them, but I would like to read a few lines from a representative few.

Ms. Loretta M. Skewes from Michigan stated:

On flight 004 the smoking was very heavy and although I complained to the attendant, nothing was done and I suffered a breathing problem which resulted in a full blown asthma attack. I had not suffered an attack for years but now the allergic cycle has been restarted.

Gerald and Sharon Campbell of Woodside, NY, said in their letter:

Since smoke sensitive people also find it necessary to travel on public conveyances, and they find it necessary to breathe during these trips, to permit smoking is to deny others the opportunity to travel. Senate Bill 51 will give us the "right" to travel without paying the penalty of an asthma attack, the infliction of carcinogenic and radioactive materials on our innocent lungs and the possibility of long-term illness and shortened lifespans.

Mrs. Wanda F. Tozer of Cincinnati, OH, wrote:

My respiratory system is highly sensitive to smoke. Yet there are times when I must fly to get somewhere on time. I find myself dreading each time I must fly because I nearly panic knowing that I will barely be able to breathe.

Again, I could go on and on with these letters. I have received stacks of letters from Utah and all over the country in support of this legislation. I have even received letters from Boy Scouts who are members of Troop 55 in Amalga, UT. But instead of going on, I will place these letters in the RECORD, but I want to read one more paragraph from Anna Carroll's letter. She said:

Letters to the Secretary of Transportation, the FAA, airlines, etc., have done little to any good. There are no laws on the books so nobody takes responsibility for protection of the innocent nonsmoker.

Mr. President, people can choose to smoke but there is no such choice about breathing. We should not ban individuals from airplanes or other public conveyances simply because they cannot safely breathe air polluted by other passengers. Our much heralded right to travel should not be subject to the risks posed by passive smoking.

There is another factor we should consider, Mr. President. Smoking on airlines also poses a safety risk to all passengers. A recent study by the Federal Aviation Administration found that 6 percent of in-flight aircraft fires were caused by careless smoking.

Perhaps Michael Brown of Arlington, TX, put it most succinctly when he wrote in a recent editorial:

Consider this; we put an average of 150 people inside of an enclosed metal cylinder filled with highly flammable oxygen and tons of explosive jet fuel, pressurize the cabin, take the aircraft 6 miles above the Earth and then allow smokers to pull out an open flame and light up.

Mrs. Georgia Schafer, a flight attendant from Golden, CO, wrote about another safety problems, she stated:

I experienced on a flight the cabin pressure going crazy. This caused peoples ears to block and become very painful as well as headaches. The Flight Engineer could not control the cabin pressure. When the mechanics came to repair the problem they found that the valves were covered in nicotine and the valves had stuck shut.

Mr. President, we are fortunate that cigarette smoking has not yet resulted in a fatal airline crash in this country, but how long will our luck last? The opponents of banning smoking on airlines have raised two principal arguments. First, they contend that a ban will increase the risk of in-flight fires, because it will encourage smokers to sneak back to the restrooms and light up.

Mr. President, the Federal Aviation Administration [FAA] has already addressed this concern. I ask unanimous consent that that section 121.308 of the Federal Aviation regulations on lavatory fire protection be placed in the RECORD along with part (e) and (f) of section 25.854.

These regulations require every lavatory in a commercial airplane to be

equipped with a smoke detector and every trash receptacle to be equipped with a fire extinguisher. If a smoke alarm sounds as soon as a cigarette is lit, notifying flight attendants, it is unlikely that smokers will continue to try to smoke in airplane lavatories.

The second argument frequently raised against the proposed ban is the need to protect the rights of smokers. Smokers do have rights but, as with every right, there are limits. Smokers have the right to endanger their own health, but that right ends when they start endangering the health and safety of others.

The evidence is clear that lighting up a cigarette on a commercial airliner does just that, it endangers the health and safety of others. Our laws are replete with examples of the regulation of individual conduct which poses a health or safety risk to others. Banning smoking from airlines would not be an anomaly. If anything, our failure to protect nonsmokers is the anomaly.

Today, we have the chance to correct this failure. We have the chance to protect the Anna Carrolls of this country and give them the right to travel the rest of us enjoy. We have the chance to protect our children, our parents, and ourselves from the dangers of cigarette smoke.

The public supports this move. A recent Gallup Poll found that 85 percent of nonsmokers, 75 percent of former smokers and 63 percent of smokers felt that smokers should not smoke around nonsmokers. Recently, the Society for Respiratory Care surveyed 2,306 travelers in the Salt Lake City Airport. Sixty-six percent said they wanted smoking banned compared to only 26 percent who didn't.

The scientists of this country have spoken, the American public has spoken, the flight attendant's unions have spoken. Today, it's time for the Senate to act. It's time for us to protect the health and safety of passengers on airlines by eliminating tobacco smoke from the airlines.

Mr. President, as I am sure my colleagues realize, I would prefer a prohibition of smoking on any public conveyance, and on January 6 of this year, I introduced legislation to accomplish that goal. I feel it is the only effective way to ensure that all public transportation is safe for all our citizens, regardless of the length of time an individual is a passenger.

Nonetheless, I realize that some of my colleagues feel that this is too drastic a step, that we should start out with a 2-hour ban, and then move forward if necessary.

Consequently, in deference to their wishes, I will support such a limited ban, but I hope my support is not mistaken for a decision on my part to relinquish my fight to ban smoking on all flights. The scientific basis already exists to justify such a prohibition. At some point, this body must come to terms with the dangers of passive smoking and realize that exposure to smoke, especially on long airplane flights or bus trips, is extremely dangerous to the health of everyone.

I hope my colleagues will support my amendment. It's time that we again ensure that the Anna Carrol's of this world can exercise the right to travel in this country.

Mr. KERRY. Mr. President, I rise today in support of an amendment which will ban smoking in aircraft on flights of 90 minutes or less for a trial period of 2 years. I believe, as recent studies indicate, that this ban will result in a more healthy environment for both passengers and crew. The atmosphere inside an airplane is artificial, ventilation is impossible, passengers and air stewards are currently being required to breath recycled bad air.

As we have heard throughout the course of this debate there are serious health consequences associated with breathing passive smoke. The Surgeon General's report released last December, the Health Consequences of Involuntary Smoking, clearly documents that involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers. The report further states that cigarette smoke puts children at an increased risk of lung infection, and that simple separation of smokers from nonsmokers does not eliminate the exposure.

Moreover, the National Academy of Science report last year, the Airliner Cabin Environment, addressed the issue of air quality on aircraft in some detail and strongly recommended a ban on smoking in aircraft.

In a recent meeting in my office, an airline stewardess echoed testimony of the Association of Flight Attendants and stated that attendants experience a high level of acute sinus and bronchial problems. She went on to say that she personally experienced or witnessed each of the following symptoms: dizziness, nausea, severe headaches, and coughing spells. She attributed each of these symptoms to the smoky environment of the cabin.

We have heard here today the example of Air Canada, the first airline in North America to eliminate smoking on certain flights of 2 hours or less, but I think the results are worth repeating. Mr. President, 96 percent of the Air Canada passengers surveyed after flying a nonsmoking flight said they approved of the ban. Further, an Air Canada spokesman said:

> We have to keep our eye on the bottom line. If sales had gone down on the nonsmoking flights, we might have had to reconsider. But sales in fact went up.

I believe that the Surgeon General's report on the adverse effects of passive smoke, the National Academy of Science study on airliner cabin environment, and the testimony of flight attendants yields conclusive evidence that smoking in aircraft is a real health threat to passengers and particularly crew members. I believe that the American people are becoming increasingly aware of this threat and recognize the need to separate smokers from nonsmokers where possible and to limit smoking were adequate separation is not possible. I urge the adoption of this amendment.

Mr. LAUTENBERG. Mr. President, we will, with this ban, be capturing more than half of the flights that take place. That is based on data provided by the FAA's office of air control and, Mr. President, I ask, now, for approval of this amendment. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. Is there any further debate on the second-degree, modified amendment? If not, the question is on agreeing to the amendment of the Senator from New Jersey.

The amendment (No. 1099), as modified, was agreed to.

Mr. HELMS. Mr. President, I would like the RECORD to reflect that even though the amendment as approved is a substantial improvement, I nevertheless want to be recorded as voting in the negative.

The PRESIDING OFFICER. It will be noted.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the first-degree amendment, as amended.

The amendment (No. 1098), as amended, was agreed to.

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

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

The motion to lay on the table was agreed to.

NOMINATION OF JUDGE DOUGLAS GINSBURG TO BE AN ASSOCIATE SUPREME COURT JUSTICE

Mr. DOLE. Mr. President, I wonder if the distinguished Senator from New Jersey would yield that I may speak as if in executive session for 2 minutes, if the majority leader has no objection.

Mr. BYRD. Mr. President, I have no objection. The Senator may speak for any length of time that he wishes. I hope however, that the other Senators will not speak for too long on the subject of the Ginsburg nomination.

Mr. DOLE. I think there are only a couple of other Senators who want to speak very briefly.

We have just come from the White House where the President indicated he is going to nominate Douglas Howard Ginsburg of the District of Columbia to succeed Lewis Powell as Associate Justice of the U.S. Supreme Court.

Judge Ginsburg is a member of U.S. Court of Appeals for the District of Columbia Circuit. He graduated from Cornell University and the University of Chicago School of Law. He served as a law clerk for Justice Thurgood Marshall of the Supreme Court and then became a tenured professor at Harvard Law School. He has authored a number of articles in law journals and other publications and in the Harvard Review. He rose to be Assistant Attorney General for the Antitrust Division.

I have met Judge Ginsburg. I think Judge Ginsburg will be scrutinized very carefully, as he should be. I believe, even though the Bork nomination failed, all of us in the Senate learned a great deal about the nominating process. And I am certain that, Judge Ginsburg is going to be carefully scrutinized. That is the way the process works. This will be done as rapidly as possible. Hopefully, we will have hearings scheduled quite soon, then we can get to this nomination before we leave this year.

I have heard a great deal about Judge Ginsburg today, and in the past few days, because he was on a list that the Chief of Staff, Mr. Baker, brought to Senators on both sides.

I am very happy to stand here today and indicate that, based on what I know, I am prepared to support Judge Ginsburg. I want to wait until we have the hearing, obviously. But, based on the information we have received, this man is well qualified. He is a young man, 41 years of age. If he is confirmed, he will have a long and, hopefully, distinguished career on the Supreme Court.

So I congratulate him and his family; and the President, for making the nomination.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I ask unanimous consent to proceed as in executive session.

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

Mr. McCLURE. Mr. President, I am pleased to join with my colleagues in commending the President for the nomination just announced with respect to Judge Ginsburg's nomination to serve as Associate Justice of the Supreme Court.

Mr. President, I want to read an excerpt of the President's remarks in presenting Judge Ginsburg in the East Room of the White House, just a few moments ago.

I read from the President's statement.

I am announcing today that, in accordance with my duty under the Constitution, I intend to nominate and ask the Senate to confirm Judge Douglas Ginsburg of the United States Court of Appeals for the District of Columbia circuit for the position of Associate Justice of the Supreme Court.

Judge Ginsburg is a highly-regarded member of the legal profession. His career as a federal judge, as Assistant Attorney General of the United States, as a senior official at the Office of Management and Budget, as a distinguished professor at Harvard Law School, and as a former law clerk to Supreme Court Justice Thurgood Marshall makes him eminently qualified to sit on our highest court.

Just as importantly, Judge Ginsburg is highly respected by his peers across the political spectrum. When I nominated him to the U.S. Court of Appeals last year, he was unanimously confirmed by the Senate and won lavish praise not just from conservatives but from liberals as well.

Judge Ginsburg is, as I am, as every justice I have nominated has been a believer in judicial restraint—that is, that the proper role of the courts is to interpret the law, not make it. In our democracy, our elected representatives make laws, and unelected judges interpret the laws. That is the foundation of our system of government. Above all, judges must be guided by our most fundamental law—the Constitution. Every judge that I appoint must understand that he or she serves under the Constitution, not above it, Judge Ginsburg is such a judge.

Throughout his professional career, Judge Ginsburg has shown that he also believes, as I do, that the courts must administer fair and firm justice while remembering not just the rights of criminals but, equally important, the rights of the victims of crime and the rights of society.

Too often, judges have interpreted the Constitution and have made law enforcement a game in which clever lawyers try to find ways to trip up the police on the rules.

This is not what our Founding Fathers intended when they framed our Constitution 200 years ago. They knew that among the most vital duties of government was to "insure domestic tranquility." They drafted a constitution and gave us a system that was true to that duty while protecting the rights of all Americans.

I believe that Judge Ginsburg will take a tough, clear-eyed view of this essential purpose of the Constitution while remaining sensitive to the safety of our citizens, and to problems facing law enforcement professionals.

Much has been said about my agenda for the courts. I want courts that protect the rights of all citizens. No one has rights when criminals are allowed to prey on society. Judge Ginsburg understands that. That's why I am nominating him. That's why I have selected each of the people I have put forward for the Supreme Court.

In taking up this nomination, I hope we can all resolve not to permit a repetition of the campaign of pressure politics that has so recently chilled the judicial selection process.

It is time for the Senate to show that it will join with me in defending the integrity and independence of the American system of justice.

A good way to begin would be by holding hearings promptly. When Justice Powell announced his retirement 4 months ago, he made it plain that he believed it would be unfair to the parties with cases before the Supreme Court, and unfair to the remaining members of the court, to be left without nine full-time justices. He graciously stepped down from the court to enable the President and the Congress to select his replacement before the October term began.

But, as a result of the longest delay in starting hearings to fill a vacant seat on the court since the custom of taking testimony from Supreme Court nominees first began in 1939, the Nation's highest court is still operating at less than full strength over 4 months later.

The long delay in scheduling hearings for Judge Bork had other results as well. Since June 1987, when Justice Powell resigned, the work of the Supreme Court has grown ever more burdensome. All during the months of July, August, and September, nearly one-third of the literally hundreds of cases that the remaining eight justices reviewed for hearing were criminal cases. Throughout this time, the empty seat on the Supreme Court has been a casualty in the fight for victims' rights and the war against crime.

During the last 25 years, the average time between nomination and the start of hearings has been less than 18 days. In fact, in the entire 200-year history of our country since the nomination of John Jay, the average start-to-finish time from a President's appointment to confirmation or other action by the Senate has been only 24 days.

One Senator has boasted that the reason for the 70-day delay in beginning Judge Robert Bork's hearings was to allow time to gear up the political campaign against him. That was, very simply, a disservice to the court and to the Nation. If these hearings take longer than 3 weeks to get going, the American people will know what's up.

It is time to put the national interest ahead of partisan political interests. No excuses about the press of other business before the Senate Judiciary Committee. There is more important business before that committee than to bring the Supreme Court up to full strength. The Senate has a duty in this regard, just as I do.

So this is my call to the Senate today. Let us all resolve that the process of confirming a Supreme Court nominee will never again be distorted, as it was in Judge Bork's case. Alexander Hamiltion wrote that "the complete independence of the courts of justice is * * * essential in * * * the Constitution." Let us resolve this time that guarding that independence will be the Senate's highest priority. The American people want this. They have a right to expect it.

By selecting Judge Ginsburg—I have gone the extra mile to ensure a speedy confirmation. I have been impressed by the fact that in academia, in government, and on the bench, Judge Ginsburg has been enormously popular with colleagues of all political persuasions. A word that many have used to describe Douglas Ginsburg is "unpretentious." That's quite a compliment for a judge. But I guess that's just one reflection of a man who believes profoundly in the rule of law. In the last analysis it is just such men and women who ensure the continued respect for our constitutional system. That is why I am so pleased to nominate Judge Douglas Ginsburg to the highest court of our Nation.

Let me say in closing, it is up to all of us to see to it that Senate consideration of Judge Ginsburg's nomination is fair and dispassionate—and above all, prompt. I believe America is looking for a sign that, this time, the process will protect the independence of our judiciary—as the framers of the Constitution intended. I urge Senator Biden and Senator Thurmond and the other members of the Senate Judiciary Committee to join me in the spirit of bipartisan cooperation, and to demonstrate this spirit by meeting during the coming week to schedule hearings on this nomination.

Mr. President, I commend the President for making the nomination that he has made. I look forward to the hearings that I am sure will proceed very promptly. I know how talking with Senator BIDEN about it that there is no intention to delay, unduly, the nomination process, and I commend Senator BIDEN for that—not only the appearance but the reality of fairness in the process. I look forward to participating with the Senate in the consideration of this nomination. I am confident that after reflection the Judiciary Committee will vote to approve this nomination and we will have the opportunity on the floor of this Senate in yet this year to vote upon that confirmation. I thank the Chair.

Mr. HATCH. Mr. President, I am also pleased to note that President Reagan nominated Judge Ginsburg, of the District of Columbia Court of Appeals to be an Associate Justice of the Supreme Court. I commend the President for sending up this outstanding nominee, whose qualifications for this most important post are truly exemplary.

Particularly in light of these extraordinary qualifications, I trust that my colleagues will perform their advise and consent function in the responsible manner contemplated by the Constitution, without the pressure politics that so infected Judge Bork's confirmation process. First and foremost, it is imperative that we hold the hearings on Judge Ginsburg as promptly as possible. There can be no repetition of the unprecedented 72 day delay of the Bork hearings; a delay calculated to allow the special interest groups to mount their campaign of opposition in the media and the Senate. Since 1962, it has taken the Senate Judiciary Committee only 18 days, on average, to begin hearings on Supreme Court nominations.

The 10-week delay for Judge Bork's hearings was the longest since the custom of taking testimony from Supreme Court nominees began in 1939.

We simply cannot allow partisan political concerns to again override the broader national interest. Any dilatory tactics in connection with this confirmation will deprive the President of his constitutionally vested authority to appoint judicial nominees, deprive the full Senate of its power to exercise its advise and consent function and, most important, deprive the Supreme Court of the ability to effectively perform its most important responsibilities. We will have failed in our duties if we allow all three branches to be so hampered in performing their constitutionally prescribed roles. This is not the civics lesson that we want to send to the American people in this, the bicentennial year of our Constitution.

As Justice Powell stated when he stepped down, if the Supreme Court is at less than full strength, it "create[s] problems for the Court and for litigants." Due to Judge Bork's extremely protracted confirmation process, the Court has already been operating at less than full strength for well over a month. The Court is currently considering some very complex and significant cases involving a multitude of important constitutional issues. The American people, as well as litigants before the Court, expect and deserve a Court that is able to effectively decide these cases and carry out its other duties. We are obligated to minimize the instability, delay, and confusion that necessarily results from an incomplete Court. It is only fair that we establish a Court that is able to dispense complete and final justice.

This means that we must forgo an early Thanksgiving recess. It means we must forgo excuses about the press of other business that the Judiciary Committee must take up before the nomination of Judge Ginsburg. You will undoubtedly hear that the nominee's record is so extensive that we must delay to fully explore it, or we will hear that the record is so incomplete that we must delay to probe further into his background. These excuses for stalling simply will not wash.

All of Judge Bork's opponents were fully aware that the interminable delay in his confirmation—and his defeat—would result in a vacancy on the Court at this late date in the term. They cannot be heard now to complain that we must turn to other business before filling the vacancy that their efforts created.

Today, in announcing the nomination of Judge Ginsburg, President Reagan warned that if we adjourn before acting on this nomination, he may well convene a special session to take final action on this question. No one will be less happy than I about spending Christmas in Washington on this matter, but the President will be fully within his rights to keep us here if we refuse to do what the national interest requires.

In sum, let us pledge now that we will separate politics from the confirmation process. Let us prove to the American people that we can fulfill our role in a statesman-like manner, without political wrangling or politically motivated delay.

As a matter of fact, I join in Senator MCCLURE's comments. Senator BIDEN has personally told me that there will be no delays and as best we can we will move ahead quickly and with dispatch shown. I want to commend him for that attitude. If that happens, and I believe that it will, the American people will owe him a great debt of gratitude.

Let me finish with these two thoughts.

Judge Ginsburg has served with distinction in all areas of the legal profession. He currently serves as a judge on the U.S. Court of Appeals for the District of Columbia, often referred to as the second most important court in the Nation. He was a Government litigator, serving with distinction as the Assistant Attorney General for the Antitrust Division of the Justice Department and was Administrator for the Information and Regulatory Affairs Office in the Office of Management and Budget. He is a distinguished scholar who served for 10 years as a professor at the Harvard Law School and is the author of numerous books and articles on antitrust, economic regulation, and the first amendment. He is familiar with the workings of the Supreme Court since he served as a clerk to Justice Thurgood Marshall.

In light of Judge Ginsburg's outstanding credentials, it is little wonder that the American Bar Association unanimously recommended him as qualified to serve on the court of appeals. Indeed, so impressive is Judge Ginsburg's record, that two of my colleagues on the other side of the aisle, who are not generally known for their support of President Reagan's judicial nominees, have both sung Judge Ginsburg's praises and highly recommended his confirmation as an appellate court judge.

In introducing Judge Ginsburg, Senator KENNEDY noted that he is a man with an insightful mind who is "able to dissect particular legal issues and questions with clarity and with a sense of compassion and with an understanding of the law." Senator KENNEDY also said that Judge Ginsburg is "open-minded * * * willing to listen, and * * * willing to consider views which he has not himself held."

The other Senator from Massachusetts, Senator KERRY, echoed this praise, stating, "there could be no more highly qualified candidate for a judgeship on the U.S. Court of Appeals for the D.C. Circuit than Douglas Ginsburg." Senator KERRY went on to say, "I know that he commands the greatest respect from our mutual friends at Harvard such as Alan Dershowitz and Larry Tribe. Alan has indicated to me that he regards Doug Ginsburg as a legal scholar of the highest order—nonideological, nonpolemical and the best possible nomina-

tion that the President could make for the Federal judiciary."

Finally, I just want to add my voice for Judge Ginsburg. I have known him for quite a while and watched his career with a great deal of interest. I have to say he is one of the finest young legal minds in the Nation. He is the type of a person who will make a great Supreme Court Justice. He has the intellect to really add to the Court. He has the industry to add to the Court. He is physically strong and, I think, he is emotionally a very strong individual as well.

I might add that he has great judicial temperament, a man of very modest personality. He does not build himself at the expense of others. He is a person that I think almost anybody who would take the time to shake his hand and get acquainted with him would like.

I want to say what a tremendous appointment this is. I feel sorry for the Borks, sorry for what they had to go through. I am sorry that we had to go through that kind of a process. But let us not make this a repeat. Let us do what is right.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I am one of those who urged the President to send up a conservative nominee to fill the vacancy on the Supreme Court. I am confident that the Judiciary Committee will act with calmness, dispassionately, and fairly.

I think it is time for everybody in this body and outside this body, at this end of the avenue and at the other end of the avenue, to curb our rhetoric so that the Senate can make a decision in a way that will promote public confidence in us and in the process and in the Court.

The Judiciary Committee has not only the right but also the responsibility to give full and careful consideration to Judge Ginsburg's qualifications and his experience and his philosophy. I would hope that we would stop raking over the old ashes; and, as I said the other day with respect to budget deficits, stop pointing fingers, bickering and badgering, and look ahead, not backward. We do not gain anything by looking backward.

As one who tried to remain dispassionate and tried to view the Bork nomination with calmness and who tried to deal fairly with it, who urged on all my colleagues on both sides and on the White House to go slow on the rhetoric, I think I have some credibility in this regard. But I urge us all to take care that we do not fan old flames, and that we concentrate on the business of the Senate, and the Ginsburg nomination will be part of that business.

I have heard some talk today about convening a special session. I do not know how much time it will take for the Judiciary Committee to adequately prepare itself for the hearings. I hope it takes whatever time is adequate, no more, no less. But I caution people at the White House, the other end of the avenue who helped to polarize the country and who contributed in great measure to the politicization of the Bork nomination. I urge us all to be cautious, that we do not contribute in the same manner to this nomination. The scriptures say that "the wicked flee when no man pursueth." So let us not conjure up a ghost that is pursuing when there is none. Nobody is advocating any unreasonable delay, but the Senate does have to take a little time. The committee will require a little time. I hope that the White House will not be pointing the finger, as we have seen happen too many times, at this Senate, start badgering it and pillorying it and saying it has to do this or that by a certain date or time, or convene a special session, or make veiled threats of that kind. I go into this with an open mind and with an intent to support, wherever I can, a conservative nominee to the Court. But this Senate is not going to be pilloried or badgered or stampeded by anyone.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1988

The Senate continued with the consideration of the bill.

Mr. BYRD. Mr. President, I hope now that we can get on with the bill. I understand there are about three amendments remaining.

AMENDMENT NO. 1100

(Purpose: To assure that grant applicants under airway science programs will not be penalized on the basis that such applicants previously received funds under such program)

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator from North Dakota.

Mr. CONRAD. I have an amendment I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. CONRAD], proposes an amendment numbered 1100.

Mr. CONRAD. Madam President, I ask unanimous consent the clerk dispense with further reading of the amendment.

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

The amendment is as follows:

On page 12, line 16, immediately before the period, insert a comma and the following: "but in no event shall an applicant for an airway science grant be denied such grant, in whole or in part, on the basis that the applicant had previously received funds under the airway science programs".

Mr. CONRAD. Madam President, the amendment I have sent to the desk is basically technical in nature. It simply ensures that all grant applicants for airway science programs are playing by the same rules; that the college or university that received funds from the Airway Science Program will not be penalized because it received funds in prior years.

Madam President, very simply the University of North Dakota has received in the past earmarked funds from these grant sources, and now there is no longer earmarking. There is a pool from which all States can apply, and we just want to ensure that because some schools may have received earmarked funds in the past they are not precluded from competing on an equivalent basis with all other institutions in the future.

Madam President, this amendment has been cleared, to my understanding, by both managers. I move its adoption.

Mr. LAUTENBERG. Madam President, we have looked at this amendment and there is no objection. Therefore, on this side I am prepared to accept the amendment.

Mr. D'AMATO. Madam President, we certainly think this amendment is eminently fair.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from North Dakota.

The amendment (No. 1100) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1101

(Purpose: To deny funds for transportation projects in the United States that use the engineering, architectural, and construction services of any foreign country that does not provide such services of the United States access to the markets of the foreign country)

The PRESIDING OFFICER. The Senator from Alaska.

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI], for himself and Mr. STEVENS, proposes an amendment numbered 1101.

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

The PRESIDING OFFICER. The amendment is as follows:

At the end of the bill, add the following:

SEC. . DENIAL OF FUNDS FOR PROJECTS USING CERTAIN SERVICES OF FOREIGN COUNTRIES THAT DENY FAIR MARKET OPPORTUNITIES.

(a) IN GENERAL.—

(1) None of the funds appropriated by this Act may be used to carry out within the United States, or within any territory or possession of the United States, any transportation project which uses any service of a foreign country during any period in which such foreign country is listed by the United States Trade Representative under subsection (c).

(2) Paragraph (1) shall not apply with respect to the use of a service in a project if the Secretary of Transportation determines that—

(A) the application of paragraph (1) to such service would not be in the national interest,

(B) services offered in the United States, or in any foreign country that is not listed under subsection (c), of the same class or kind as such service are insufficient or are not of a satisfactory quality, or

(C) exclusion of such service from the project would increase the cost of the overall project by more than 20 percent.

(b) DETERMINATIONS.—

(1) By no later than the date that is 30 days after the date on which each report is submitted to the Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)), the United States Trade Representative shall make a determination with respect to each foreign country of whether such foreign country—

(A) denies fair and equitable market opportunities for services of the United States in procurement, or

(B) fair and equitable market opportunities for services of the United States in bidding.

for construction projects that cost more than $500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled by such foreign country.

(2) In making determinations under paragraph (1), the United States Trade Representative shall take into account information obtained in preparing the report submitted under section 181(b) of the Trade Act of 1974 and such other information as the United States Trade Representative considers to be relevant.

(c) LISTING OF FOREIGN COUNTRIES.—

(1) The United States Trade Representative shall maintain a list of each foreign country with respect to which an affirmative determination is made under subsection (b).

(2) Any foreign country that is added to the list maintained under paragraph (1) shall remain on the list until the United States Trade Representative determines that such foreign country does permit the fair and equitable market opportunities described in subparagraphs (A) and (B) of subsection (b)(1).

(3) The United States Trade Representative shall annually publish in the Federal Register the entire list required under paragraph (1) and shall publish in the Federal Register any modifications to such list that are made between annual publications of the entire list.

(d) DEFINITIONS.—For purposes of this section—

(1) The term "service" means any engineering, architectural, or construction service.

(2) Each foreign instrumentality, and each territory or possession of a foreign country, that is administered separately for customs purposes shall be treated as a separate foreign country.

(3) Any service provided by a person that is a national of a foreign country, or is controlled by nationals of a foreign country, shall be considered to be a service of such foreign country.

Mr. MURKOWSKI. Mr. President, this amendment has been cleared on both sides. Senator STEVENS and Senator D'AMATO join me in introducing the amendment. What it does quite simply is requires reciprocity in bidding for design engineering, construction, and architectural services associated with our transportation projects.

I believe my colleagues are well aware of the difficulties United States construction firms are having in penetrating the Japanese construction market despite the fact that our firms are internationally competitive. One example, the $8 billion Kansai International Airport has become a symbol for the phrase, "closed to foreign participation."

The Senate has adopted this reciprocity provision on three other funding bills for public projects: The DOD authorization bill, the military construction appropriations bill, the Airport and Airways Improvement Act.

In addition, we have included language on the trade bill calling for a 302 investigation on barriers to United States design engineering, construction, and architectural services in Japan.

I believe this sends a strong signal to our friends in Japan that we are determined to use the leverage of our marketplace to insure United States firms are given fair and equitable opportunities to bid on public projects in Japan.

I thank the bill managers for their support of this important provision.

Madam President, the amendment I am introducing on behalf of the senior Senator from Alaska and myself is a straightforward one. It simply requires that in order for foreign design engineering, construction, and architectural firms to participate in projects funded under this act, the firms home market must be open to participation by U.S. firms.

This body has seen fit to include this provision in the DOD authorization bill, the military construction appropriations bill, and most recently in the Airport and Airways Improvement Act.

My amendment uses the leverage of our marketplace in addressing a serious inequity. For the past 2 years, we have been actively encouraging the Government of Japan to take action to open up their construction market to United States construction firms. In the next decade over $62 billion worth of major projects will be built in Japan. The first of these, the Kansai International Airport, an $8 billion project, is underway. U.S. firms have invested a great deal of time and capital in pursuing contracts for this project. Yet despite their efforts, and the fact that they are internationally competitive in this area, we have made little progress. While the Kansai International Airport Co. has awarded in excess of $2 billion in contracts, less than $2.2 million of these have gone to U.S. firms. In fact, no United States firms has won a major contract in Japan since 1965. In contrast, Japanese construction firms' share of the United States market continues to grow. In the past 4 years, their share of the U.S. market has grown over 50 percent, in 1986 their U.S. contracts were valued in excess of $2.2 billion.

I want to state firmly that there is nothing wrong with Japanese construction firms, or for that matter firms from any country participating in our market if they are able to provide these services at the most competitive price. However, we must look at the long-term impact this will have on the health of the domestic industry if they can't make up for lost domestic market share by bidding on projects overseas. We are not demanding the U.S. firms be given contracts, all we are asking for is the opportunity to bid on projects on a fair and equitable basis.

This is not a "Buy America" provision. It starts from the premise that our projects are open to foreign participation, but places the stipulation that participation be based on reciprocal opportunities for U.S. firms overseas.

In the 2 years that I have been active on this issue, I have heard from construction firms from all over the United States, all expressing their frustration over the inequity.

I would like to quote the president of one of these firms, based in Illinois:

While the Kansai project is an airport, the same exclusion exists with respect to subway, sewer, highway and rail tunnel construction in Japan. It is impossible for a U.S. construction contractor to secure such work, whether individually or in joint venture with Japanese partners. It is likewise impossible for tunneling machine suppliers to secure orders from Japanese contractors irrespective of price or delivery vis-a-vis Japanese construction equipment suppliers.

In contrast, there are no barriers to Japanese contractors securing such federally funded underground work in the U.S. and there are likewise no barriers to Japanese tunneling machine suppliers securing orders from U.S. contractors performing federally funded underground work here. Of late they have been quite successful in securing such major construction work.

In summary, I urge you to consider broadening the scope of your reciprocity bill to encompass all federally funded construction irrespective of project purpose. Underground U.S. infrastructure construction

work involving tunneling is an enormous market—but not as dramatic or evident to the average citizen as major airports.

I would also at this time like to cite an article entitled "Opening the Japanese Construction Market," written by Franklin J. Agardy, the president of URS Corp., a major United States international engineering and construction firm based in California. This article appeared in a recent edition of Export Today.

Mr. Agardy writes:

It is my personal opinion that the Japanese will only very reluctantly open their engineering/construction market to foreign firms and will only do so under heavy pressure. The two primary reasons for this attitude are that, first, the Japanese truly do not believe any foreign firms can perform better than their own companies and, second, their domestic industry appears to be very profitable. Outside competitors only reduce the earnings of Japanese firms * * * and make no mistake about it, the Japanese will go to extraordinary lengths to protect their domestic market. For example, no American company could manage a project in Japan without using Japanese subcontractors, but it is common knowledge that we cannot hire them. That's because Japanese prime contractors tell subcontractors they will never get a contract from a Japanese firm if they work for a foreign competitor.

To correct the total imbalance of trade in this critically important sector of both nations' economies, the U.S. must begin to establish a level playing field through governmental regulatory action. If United States companies cannot bid on public works projects in Japan, then we must not allow them to bid on public works here.

I ask unanimous consent that the full text of the article be printed in the RECORD.

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

CONSTRUCTION MARKET

(By Franklin J. Agardy)

(The Japanese engineering/construction industry takes in $5 billion a year in revenues in the U.S., but American firms do virtually no business in Japan. A top executive who discussed this problem with the Japanese as part of a Presidential Trade Delegation found there is little incentive for Japan to open its market, so the rules of the game must change. Dr. Agardy is president and chief operating officer of URS Corporation, a New York Stock Exchange-listed professional services firm, headquartered in San Mateo, CA.)

In late 1986, a Presidential Trade Delegation made up of 10 executives from leading U.S. construction, engineering design, and equipment supply firms visited Japan for meetings with senior government and industry officials.

Led by Assistant Secretary for Trade Development H.P. Goldfield, the delegation's general purpose was to discuss how U.S. firms might begin to participate in the Japanese construction and engineering market. Our specific purpose was to learn about the bidding practices to be used in the building of Kansai International Airport—the largest airport project ever undertaken—and to explore ways in which American companies might compete for a portion of the work to be carried out on this project.

I and most of my colleagues were under no illusions about the likelihood of immediate success with the Japanese. While the U.S. is the world's largest export market for the Japanese engineering and construction industry—providing it with some $5 billion in revenues in 1986—U.S. firms do virtually no business in Japan. Attempts to penetrate the Japanese market have met with a total lack of success.

Despite the fact that U.S. officials have pressed for American participation in the Kansai project since the early 1980's, the Japanese have excluded foreigners from bidding for work through the closed "designated bid" system and have carried out a pattern of harassment aimed at discouraging outside bidders.

From the start, the Kansai International Airport company—whose personnel are drawn almost exclusively from the Japanese government and ex-government officials—maintained that Japan had all the technology and equipment to build the project. Also, not surprisingly, past and present chairmen of the Japan Civil Engineering Association have opposed allowing foreign bidders to participate in Kansai and said that to do so would "cause confusion." Yet the company of the present chairman of the Association, Mr. Taichiro Kumagai, is reported to have received contracts in New York City totaling over $1.2 billion in just the past two years.

A DELEGATION TO TOKYO

Our delegation's visit to Japan was arranged even with the Japanese industry's intransigence because of an exchange of letters between President Reagan and Prime Minister Nakasone as well as high-level discussions regarding the U.S. governments desire to see the domestic Japanese market opened to the American engineering/construction industry. While Prime Minister Nakasone in July of 1986 called for greater freedom of participation by foreign firms and said the issue threatened to become "a knotty political problem," the impact of his words on the Japanese bureaucracy and industry appears to have been negligible.

President Reagan and other U.S. government officials were—and are—particularly interested in having U.S. firms participate in the Kansai project. This complex facility, which may cost over $8 billion when completed in the 1990s, is to be built on an artificial island in Osaka Bay and will serve the cities of Osaka, Kyoto and Kobe. Obviously, a project of this size requires an enormous amount of engineering and construction expertise as well as technical equipment, and many American companies stand ready to provide it with state-of-the-art technology at fair prices.

Most importantly, the U.S. government properly sees American participation in Kansai as an opening wedge that will create even more business through the $60 billion in other infrastructure projects that the Japanese have planned for the next decade.

WHAT AMERICANS CAN OFFER

Apart from the self-interest of the American government and companies, the fact is that the Japanese have limited experience in building international airports and the Kansai project, specifically, could well benefit from foreign participation. For example, no meaningful studies of the environmental impact of building a huge artificial island in a sensitive aquaculture where a large fishing industry exists have been formulated.

Also, virtually all of Japan is seismically vulnerable, and the island will place a tremendously unusual load on the floor of Osaka Bay. Yet, in my opinion, seismic analysis and design considerations have not been adequately thought through. American firms lead the world in environmental and seismic analysis capabilities but, of course, none of them were asked to advise or consult on these important matters.

In addition, there is a serious question about the advisability of the Japanese plan to design and construct the artificial island before the airport itself is fully designed because, if for no other reason, the size, shape, and structure of the island would obviously be impacted by the most efficient way of handling passenger and cargo movements.

In the Presidential Trade Delegation's discussions with officials of the Kansia International Airport Company and the Japanese government, our attitude was typically American—and perhaps naive. We felt there was a serious problem here, and that well-intentioned people carrying out honest negotiations could come to at least partial agreement on how to solve it. While this approach was considerably less than successful, I feel it was proper, at least initially, because resolution of trade difficulties through negotiations is far preferable to the imposition of tariffs and other artificial barriers.

PROBLEMS WITH CONSENSUS

Frankly, meaningful progress in our discussions with the Japanese was stopped dead in its tracks by their "consensus" approach to decision making. A firm "yes" or "no" was seldom hard, but "maybes" abounded. When we tried to pin down an issue, we were told that a solution was "impossible" unless a great many people were solicited and their agreement obtained. When we talked with those people we found many new and different "maybes" raised that would require endless discussion in order to reach consensus. At the conclusion of talks like this, we found that we'd been very politely treated, had been told that we should be optimistic about the future, but in reality had accomplished almost nothing.

Much of the information we received from the Japanese had to do with the reasons why foreign participation in their construction and engineering market could not work. Some of the reasons were:

Foreign companies must first show long-term commitment and "staying power"—and that means at least 20 years;

Foreign companies don't know how to work with Japanese firms and couldn't efficiently manage relationships with subcontractors;

There is, by their definition, serve and chronic unemployment in Japan (it amounts to 2.5–3 percent) and they can ill afford to have Americans or other foreigners create further problems.

In another line of defense that I call "pass the football," both public and private sector representatives claim that they have no authority to resolve the problem. The government says that the Kansai Airport is a private project and, while they'd like to help out the Americans, they don't have the power to force participation. The Kansai Airport people agree theirs is a private project, but point out that all construction in Japan proceeds only with the approval of the ministry in Tokyo. Since we were never able to get both sides to the same table at the same time, resolution of the disagreement was impossible.

REPORTING BACK HOME

Even with the frustrations encountered during our visit and the lack of concrete achievement, industry members of the delegation believe that the overall effect was worthwhile. In a report to the Department of Commerce following our return home, we said the trip was a strong and unmistakable signal to both the Japanese government and industry that the U.S. is most serious about pursuing access to their engineering/construction market. We were successful in generating wide publicity for our objective and did much to elevate this issue as a priority that must be further addressed by the Nakasone government.

While no discernible progress was realized on the broader objective of appraising specific steps taken by the government to provide a "fully open, transparent, and nondiscriminatory bidding system," the trip did provide extermely valuable insight into bidding practices on the Kansai Airport and other major projects in Japan. It is possible that a foundation has been laid for U.S. companies to pursue contract opportunities individually through joint ventures and other means. (In early 1987, Bechtel Group, Inc. of San Franciso received a $200,000 consulting contract to study passenger terminal designs and to suggest improvements for that phase of the Kansai project. A European construction executive called the award "blatant tokenism—a scrap of meat thrown out to keep the barking dogs quiet.")

In our report, we also expressed the unanimous opinion that the Department of Commerce should be commended for its efforts in organizing and chairing the Presidential Trade Delegation. Assistant Secretary Goldfield was particulary effective in presenting a clear and consistent message throughout the meetings in Japan and in involving each industry participant as an active and integral member of the team.

RELUCTANT OPENING

It is my personal opinion that the Japanese will only very reluctantly open their engineering/construction market to foreign firms and will only do so under heavy pressure. The two primary reasons for this attitude are that, first, the Japanese truly do not believe any foreign firm can perform better than their own companies and, second, their domestic industry appears to be a very profitable. Outside competitors only reduce the earnings of Japanese firms which have already been hurt by the decline in major construction activity throughout the world.

And, make no mistake about it, the Japanese will go to extraordinary lengths to protect their domestic market. For example, no American company could manage a project in Japan without using Japanese subcontractors, but it is common knowledge that we cannot hire them. That's because Japanese prime contractors tell subcontractors they will never get a contract from a Japanese firm if they work for a foreign competitor.

WHAT TO DO

To correct the total imbalance of trade in this critically important sector of both nations' economies, the U.S. must begin to establish a level playing field through governmental regulatory action. If an American contractor or engineering firm is prevented from working for another U.S. company in Japan as they now are, then similar restrictions must apply here. Why should the Japanese be allowed to build a plant for Honda in Ohio if an American firm can't design a building for IBM in Tokyo? Also, if U.S. companies cannot bid on public works project in Japan, then we must not allow them to bid on public works here.

These steps, while harsh compared with the current practice, are preferable to drastic congressional action that would be much more difficult to repeal once put in place. To those who say that we simply need to educate the Japanese more about our system and desires while trying to understanding their culture better, I say, "You don't understand the situation." Even if that were a viable alternative (which I doubt, because the Japanese already understand our position very well), it would take a lifetime to accomplish.

Another helpful step American companies could take to obtain engineering/construction business in Japan would be for them to form joint ventures and thus share the risk and cost of seeking such contracts. The odds of success now are so overwhelmingly negative that it's probably not prudent for one firm to try to go it alone, but a well-funded and carefully organized joint venture could eventually make some headway. It is also possible that joint ventures with Japanese firms in Japan will help correct the situation, but the fact that few if any combinations exist in the Japanese market leads me to the conclusion that only one group of potential partners is really interested.

While the difficulties I've described with the Japanese engineering/construction market result in part from a rather unique set of circumstances, they are related to the overall need to improve our industry's competitiveness in international trade. I believe the solution to this larger problem lies in the formulation of a closer business-government partnership like the one created by the Department of Commerce during our delegation's trip to Japan. What we need is nothing short of a "Team America" approach that can take advantage of the U.S. professional services industry's leading edge position to increase exports of American manufactured goods and services.

NO PROTECTORS, PLEASE

Let me emphasize that our industry doesn't need or want a "grand protector," but rather a helpmate. To achieve success, it is critical that the variety of federal agencies involved in trade promotion and foreign assistance become even more export-sensitive and better integrate and coordinate their working relationships with each other and the U.S. firms that can be winners in offshore markets. Beyond that, it's up to the private sector to realize international success by providing an innovative, solid technical product that meets the client's needs at an attractive price.

MAJOR CONSTRUCTION PROJECTS IN JAPAN

Six major projects in Japan, scheduled for completion about 2000, will cost approximately $50 billion. Many other projects are also in the planning stage, including a plan to build an airport in almost every prefecture in Japan and a number of urban redevelopment projects.

Project	Completion date	Estimated cost (billions)
Rokko Island	1990	$7
Kansai Airport	1992	8
Tokyo Bay Bridge	1996	7
Akashi Straits Bridge	1998	6
Osaka Bay Technopolis	2000	11
Yokohama Bay Port	2001	11

Source: U.S. Department of Commerce.

Mr. MURKOWSKI. Madam President, my amendment does not place any new administrative burdens on the executive branch. It would prohibit foreign firms from countries listed in the U.S. Trade Representative's "Annual Report on Foreign Trade Barriers" from bidding on these projects. This annual report which was mandated by Congress in the Trade Act of 1974 identifies those countries which have barriers to U.S. construction services.

This amendment has been drafted to allow substantial discretion for the administration. The escape clause would allow the provision to be waived if the Secretary of Transportation determines that:

First. Application is not in the national interest.

Second. Services offered in the United States or by foreign countries not listed in the report are neither sufficient nor of satisfactory quality; or

Third. Exclusion would raise the project cost over 20 percent—this figure is based on legislative precedent.

As I indicated earlier, this provision was accepted by the Senate on three other bills, DOD authorization, military construction, and airport and airway improvement reauthorization.

The fight against foreign trade barriers must take place on many fronts, the industry and USTR cannot do it alone, all we are asking is that the Department of Transportation do their part.

I urge my colleagues to support the adoption of this amendment.

Mr. LAUTENBERG. Madam President, this amendment by the distinguished Senator from Alaska has merit, and it has been cleared on this side.

Mr. D'AMATO. Madam President, I want to commend my colleague from Alaska for his work in this area. What we seek is fairness, reciprocity, and we see continual erosion as it relates to our companies being allowed to bid business in other areas. What we want is fair play.

Let me commend my colleague. I hope he will add me as a cosponsor.

Mr. MURKOWSKI. The Senator from New York has been added.

Mr. D'AMATO. I certainly support it.

Mr. MURKOWSKI. Madam President, I thank the manager and comanager. I am most appreciative of their remarks. I ask for adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Alaska [Mr. MURKOWSKI].

The amendment (No. 1102) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1102

(Purpose: To ensure that certain highways that are designated as interstate highways under section 139(c) of title 23, United States Code, are subject to the provisions allowing a 65-mile-per-hour speed limit)

Mr. MURKOWSKI. Madam President, I have an amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI] for himself and Mr. STEVENS, proposes an amendment numbered 1102.

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

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

The amendment is as follows:

On page 59, line 6, strike out "either".

On page 59, line 9, strike out "or".

On page 59, line 14, strike out the period and insert in lieu thereof "; or".

On page 59, between lines 14 and 15, insert the following:

(3) constructed to the geometric and construction standards adequate for current and probable future traffic demands and for the needs of the locality and is designated by the Secretary of Transportation as part of the Interstate System in accordance with section 139(c) of title 23, United States Code.

Mr. MURKOWSKI. Madam President, this amendment will ensure that the State of Alaska has the same privileges as any other State with regard to raising the speed limit on rural portions of the Interstate Highway System.

As my colleagues are aware, the original Interstate Highway System did not include any roads in Alaska. However, recognizing that circumstances in Alaska are unique, Congress added approximately 1,000 miles of Alaskan highways to the system several years ago.

As my colleagues are also aware, an option allowing States to raise the speed limit on portions of interstate within their borders was provided during this year's debate on the highway reauthorization.

At the time, we assumed that the Alaskan highways designated as part of the Interstate System were included, and to make sure of that, a colloquy among Senator SYMMS, Senator BURDICK, and myself was included in the RECORD of the debate. That colloquy made it absolutely clear that the Senate intended Alaska to have the same option as any other State.

However, for reasons unknown to me, certain Department of Transportation attorneys have maintained that Alaska does not have that option, and ignored the colloquy on which we were depending.

This amendment will make the Senate's intentions amply clear, and allay any objections that might be based on the contention that the existing law does not allow this change to be made.

I might also point out that the State of Alaska has assured the Department of Transportation that the State has no intention of raising the speed limit on any highways before it has conducted a detailed engineering and safety study on any proposed increase.

Madam President, I move adoption of the amendment.

Mr. LAUTENBERG. Madam President, this amendment has been cleared and we are all set on this side.

Mr. D'AMATO. We have no objection.

Mr. MURKOWSKI. I thank my colleagues from New Jersey and New York. I ask for adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alaska.

The amendment (No. 1102) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BYRD. Madam President, the fiscal year 1988 transportation and related agencies appropriation bill provides $1.258 billion for airport facilities and equipment. The navigation directional beacon at the Grant County, WV airport was damaged in the November 1985 flood and is inoperable. Is it the intention of the managers that some of the funding for airport facilities and equipment will be used for the Grant County, WV airport for navigational aids?

Mr. LAUTENBERG. Yes. We are aware of the problem at the Grant County airport. There is sufficient funding in the bill to provide for a localizer system at the Grant County airport, and it is the intention of the managers of the bill that FAA make this funding available to that airport.

It is the intention of the managers of the bill that the FAA make this funding available to the airport.

Mr. D'AMATO. I join in that request, Madam President, and I certainly believe that is an intent that should be carried out.

Mr. BYRD. Madam President, I thank both the manager and the ranking manager for their statements, for their understanding of our problem there, for their consideration, and for the positive position that they have taken on the matter. I appreciate that very much.

Madam President, I wonder if we could proceed with a technical amendment, and go to third reading before, if the distinguished Senator would wait just a couple of minutes. We might proceed to third reading first.

Mr. LAUTENBERG. Madam 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. KASTEN. Madam President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. KASTEN. I ask unanimous consent to proceed as if in executive session for not to exceed 2 minutes.

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

THE NOMINATION OF DOUGLAS HOWARD GINSBURG TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. KASTEN. President Reagan today fulfilled one of his most important constitutional responsibilities. He nominated a new Associate Justice to our Nation's highest court.

We have had a remarkable debate over the last 3 months, a truly valuable national discussion of what ends the awesome power of the Supreme Court should properly serve.

Should the Supreme Court seek to make the political will of its own members the law of the land? Or should legislation be left to the elected branches of government?

Many of us have been thinking about these questions. I know President Reagan has. And he's decided that the people's representatives in Congress, not judges, should make our laws.

His nominee to the Supreme Court, Judge Douglas Ginsburg, has served with distinction on the D.C. Circuit Court of Appeals. I think it is especially noteworthy that when this body approved him to that court a year ago on October 8, we did it unanimously.

Judge Ginsburg has written about and participated in many important cases. He was a prominent professor at the Harvard Law School, a committed law enforcement official at the Justice Department, and a dedicated public servant at the Office of Management and Budget.

The Senate Judiciary Committee has an ample public record to examine in its consideration of Judge Ginsburg. The committee and the full Senate now have an extraordinary opportunity to show all Americans that the

Senate has good judgment, and that the Senate plays fair.

I plan to carefully study the record and announce my decision on this nomination when I have all the facts. I would say now that Judge Ginsburg appears to share with me the view that it is the job of the people's elected representatives to make the law—not the judiciary.

In conclusion, I call upon the Judiciary Committee to act promptly to get hearings underway so we can fill the vacancy on the Supreme Court.

Madam President, I yield the floor.

Mr. LAUTENBERG. Madam 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. D'AMATO. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

DEPARTMENT OF TRANSPORTATION APPROPRIATIONS

AMENDMENT NO. 1103

(Purpose: To make technical corrections to H.R. 2, the "Surface Transportation and Uniform Relocation Assistance Act of 1987")

Mr. D'AMATO. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York (Mr. D'AMATO), for Mr. SYMMS proposes an amendment numbered 1103.

Mr. D'AMATO. Madam 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 Sec. 332 (page 60) and insert in lieu thereof the following:

"SEC. 332. Section 149(b)(82) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 is amended to read as follows: "(82) subsections (a)(82) and (a)(83) $2,300,000;". Section 149(b)(83) of such Act is repealed, and succeeding paragraphs are renumbered accordingly."

Mr. D'AMATO. Madam President, this amendment is technical in nature. Basically it combines two highway projects in the State of Idaho. It does not provide for any additional dollars. It gives the State the needed flexibility to deal with both of these projects. I am pleased to state that it has been cleared on both sides.

On behalf of Senator SYMMS, I offer this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Idaho [Mr. SYMMS].

The amendment (No. 1103) was agreed to.

Mr. D'AMATO. Madam President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1104

Mr. LAUTENBERG. Madam President, I send to the desk a technical amendment and ask consent for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey (Mr. LAUTENBERG) proposes an amendment numbered 1104.

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

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

The amendment is as follows:

On page 56, after line 6, strike all through "$2000" on the last line of the agreed to Lautenberg amendment, as modified, and insert in lieu thereof the following:

"SEC. 327. After the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 24 months thereafter, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 90 minutes or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulations as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000."

Mr. LAUTENBERG. Madam President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there any debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Jersey [Mr. LAUTENBERG].

The amendment (No. 1104) was agreed to.

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

Mr. D'AMATO. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LAUTENBERG. Madam President, I know of no further amendments.

Before we go to third reading, however, I want to take a moment to express my appreciation to my distinguished colleague from New York, Senator D'AMATO. He is the distinguished ranking member of our subcommittee and has played a major role in developing this bill and moving it through the committee and the Senate. I am grateful to him for his help, advice, and cooperation.

I also want to recognize the contributions of the people who support us throughout this process—the subcommittee staff. Both the majority staff—Jerry L. Bonham, Patrick McCann, Joseph McGrail, and Veronica Queen—and the minority staff—Anne Miano and Dorothy Pastis—have continued the committee's tradition of impartial professional assistance and hard work. They serve the committee and the Senate well.

Mr. D'AMATO. Madam President, I join in the accolades that the manager of the bill, Senator LAUTENBERG, has given to our staff. I say that because it is truly professional. I think we can particularly be proud on the Appropriations Committee of the professionalism that has been demonstrated down through the years and continues in this session. I think it is a mighty fine group.

I commend the distinguished manager of the bill for undertaking a very sensitive, highly charged matter contained in the bill, as well as the many other demanding issues contained in it. He has succeeded in meeting the requirements of safety in the skies for the FAA, and satisfying the multifaceted obligations of the Coast Guard. At the same time he has managed to assure that mass transit Amtrak and other important projects were not neglected. I must note that he has done an outstanding job in arriving at a compromise as it relates to cigarette smoking on board scheduled air carrier flights.

I think Senator LAUTENBERG has done an outstanding job, and I would not want to miss this opportunity to pay tribute to him. All too often, we are involved in the battles, and we do not take the time to say, "A job well done."

Mr. LAUTENBERG. I thank my colleague. I appreciate his comments and his support.

Mr. PELL. I wonder if I might direct an inquiry to the majority floor manager, the distinguished chairman of the Transportation Appropriations Subcommittee, Senator LAUTENBERG.

Some weeks ago I wrote to the chairman concerning a matter involving the State of Rhode Island and Amtrak. The problem concerns the legal rights which will be granted to the State for the operation of commuter rail service out of the new Providence Rail Station owned by Amtrak. For many

months Amtrak and the State of Rhode Island have been attempting, unsuccessfully, to negotiate a resolution of this issue, which in essence consists of the State's desire to have an easement to fully protect their interests as a commuter operator in the new station, and Amtrak's refusal to go beyond giving the State an agreement which would not constitute an actual property interest.

I would point out here that the new station was funded in part by the State of Rhode Island, which was responsible for the unprecedented agreement that relocated the main rail line through downtown Providence and conferred a great benefit on Amtrak in the form of a beautiful new station, one of the very few new rail stations to be built in the last 40 years.

I wonder if I might inquire of the distinguished chairman as to his view of the problem I have raised.

Mr. LAUTENBERG. I thank my friend, the senior Senator from Rhode Island for raising this point, which I know has been a difficult problem for the Rhode Island State Department of Transportation. I would say to my friend that I sympathize with the problem his State is facing in regard to the easement issue, particularly in light of the State's contribution to the new Amtrak station in Providence. My committee is reluctant to engage in what we might call micromanagement on matters of this sort and we cannot address the problem within the parameters of this bill. I would hope, however, that Amtrak would go back to the negotiating table, if you will, with the State of Rhode Island, and see if an operating agreement cannot be devised that will give Rhode Island adequate protection of its legal interests in the operation of commuter service out of the new station.

AIRPORT SURVEILLANCE RADAR

Mr. BAUCUS. Mr. President, I am pleased that the committee report includes funding to establish an airport surveillance radar [ASR] system at Missoula, MT. I thank the distinguished Senator from New Jersey [Mr. LAUTENBERG], for the assistance that he and his able staff member, Mr. Bonham, provided by working with me and the FAA on this matter.

The committee's action recognizes the urgent need for advanced radar equipment for Missoula. This airport is located in a valley surrounded by five mountains in the heart of some of the most challenging and formidable terrain in the United States.

Severe local weather conditions in the valley such as frequent low ceilings, air inversions and winter snow and ice storms contribute to the difficulties that even experienced pilots face when landing at or departing from the Missoula airport.

What's more, pilots are often confronted by combinations of these conditions very suddenly when approaching Missoula's air space just when they are dropped from radar guidance provided from Salt Lake City.

I believe that there is no doubt that the installation of an airport surveillance system in Missoula will enhance public safety and save lives. By including Missoula in the committee's report, we have taken a major step forward to improve the quality of air travel in this region of the country.

I recognize that including the necessary funding for a radar system for Missoula is only the first step. I will be working closely with the members of the conference committee on this matter as they meet to reach a final agreement.

I am also aware of the leadtime needed by the FAA to complete the procurement actions for the acquisition and installation of these radar systems. I trust, however, that the FAA will recognize the importance of the Senate's action by including funding to meet the radar needs at Missoula.

Again, I appreciate the support that the committee has given me and the citizens of Montana by including Missoula on the list for future radar system support. And I thank the Senator from New Jersey for his support of this much-needed airport safety improvement.

ELIZABETHTOWN AIRPORT

Mr. FORD. I rise to engage the manager in a colloquy in the interest of aviation service and safety at the Elizabethtown Airport in Kentucky.

The Elizabethtown airport is near Fort Knox and provides passenger service to members of the Armed Forces and a growing number of other passengers. It is estimated that there will be between 3,500 and 4,000 landings at the airport yearly and the airport now has 12 daily air carrier flights.

I know the Senator is well aware of the need for precision landing capability at our airports in order that service can be provided in adverse weather conditions and safety can be enhanced. Presently, the Elizabethtown Airport has no such capability although it is certainly needed. The airspace near the airport is restricted because of Fort Knox security concerns. This makes landing approaches during adverse weather even more difficult. An ILS would provide the means of overcoming this limitation.

The report accompanying the bill under consideration identifies a number of locations where the committee recommends that an instrument landing system [ILS] be installed or upgraded. In that regard, the FAA Administrator has acknowledged the need to continue installing ILS's.

Therefore, I would ask the manager if he doesn't agree that the Elizabethtown Airport should be included in the list of airports designated in the committee report for an ILS.

Mr. LAUTENBERG. I thank my distinguished colleague from Kentucky for bringing this matter to our attention. He and I share many of the same concerns about the quality and safety of our aviation system. I fully agree that the Elizabethtown Airport should be included in the list of locations at which the committee recommends FAA install an ILS. Further, it is my intention, assuming we are able to hold this item in conference, to reference the Elizabethtown Airport in the statement of managers to assure that FAA moves promptly to install an ILS at that airport.

SPEED LIMIT PROVISION

Mr. LAUTENBERG. Madam President, I would like to be on record as opposing section 329 of the bill as considered and passed by the Senate. That provision would allow States to raise the speed limit from 55 miles per hour to 65 miles per hour on rural roads that are not classified as interstates but meet interstate highway standards. I respectfully submit that this is too much too soon.

Less than 7 months ago with the enactment of Public Law 100-17, the Surface Transportation and Uniform Relocation Assistance Act of 1987, States were allowed to raise the speed limit on rural interstate highways. Today, we simply do not have enough data to adequately assess the effect of that move.

But the preliminary data we do have from States such as New Mexico which increased the limit suggests that drivers are even exceeding the increased limit, and that the fatality rate is up.

We overturned a decade long policy when we raised the speed limit on rural interstates and now only 6 months later we are being asked to allow approximately 6,000 additional miles of rural roads to be eligible for the increased speed.

I believe we should wait. The very agency that oversees the effects of the speed limit, the National Highway Traffic Safety Administration, testified on March 19, 1987, in front of the Transportation Subcommittee of Appropriations that data on the effects of a speed limit increase is very difficult to collect because there are so many factors affecting what happens on the highways. When asked what speed control programs the agency has carried out, Administrator Diane Steed stated "I think I can fairly say, Mr. Chairman, that we have not done as much as we should have with regard to speed over the last few years."

When asked about what the agency has done to assess what the involvement of speed is relative to risk, Mr. Finkelstein, Associate Administrator

for Research and Development responded, "We know that overall there is a much larger fatality problem on rural roads than on high-speed roads, but we do not have the ability to see differences between, say, a 50-mile-an-hour speed limit road and a 55-mile-an-hour speed limit road on specific crashes."

I bring this to the Senate's attention because based on these responses the committee included a total of $450,000 above the budget request to assess speed limit safety impacts. I believe that with those additional funds NHTSA might better develop its data bases to make informed conclusions regarding the effect of speed on highway fatalities.

I fought the original increase on rural interstates and I am against allowing additional highways to post a 65-miles-per-hour speed limit. I believe it flies in the face of safety, that it abandons energy conservation goals that this Nation needs to pay serious attention to and finally it is unnecessary. The National Academy of Sciences estimated that the original limit saved 2,000 to 4,000 lives per year since 1974. Many, many serious injuries were prevented each year including paralyzing spinal injuries. I know of no safety related group that supports broadening the recently enacted 65-miles-per-hour speed limit.

I will be back on this issue. I strongly believe that armed with the data that the National Highway Traffic Safety Agency will collect, the weight of evidence will force us to rethink the position we took today. As chairman of the Subcommittee on Transportation I promise my colleagues that I will diligently follow the $450,000 earmarked for research on the safety impacts of the speed limit so that we will have before us as soon as possible information necessary to make informed decisions on this matter.

I thank the Senate.

SUPPORT OF THE PROGRAM FOR REGIONAL OBSERVING AND FORECASTING SERVICES CONTRIBUTES TO AVIATION SAFETY

Mr. WIRTH. Madam President, I would like to express concern about the Federal Aviation Administration's [FAA] lack of support for the National Oceanic and Atmospheric Administration's [NOAA] Program for Regional Observing and Forecasting Service [PROFS]. Despite remarkably high marks from users of PROFS, the FAA has in the past only reluctantly provided its share of support for this innovative weather radar system. This year, the FAA has ceased to utilize PROFS products entirely.

PROFS, a technology transfer project of NOAA, was created to apply weather information systems developed in academic environments to practical uses. First provided at the FAA's request in 1982, and upgraded in 1984, the PROFS project was designed to generate a unique set of data to help alleviate serious problems caused by adverse weather conditions at Denver Stapleton International Airport. Due to its central location, Stapleton can act as a bottleneck to the entire air traffic control system when adverse weather conditions develop unexpectedly. By providing minute by minute weather monitoring abilities, PROFS allows better and more efficient air traffic flow control.

According to a report issued in May of 1986 by the Department of Transportation's [DOT] inspector general:

> Use of this workstation has begun to pay big dividends in increased efficiency in air traffic control and airline operations because the CWSU meteorologists are able to prepare short-range projections of weather impacts on traffic flows and communicate them to the traffic management unit and area supervisors.

Furthermore, conversations with Denver air traffic controllers and meteorologists have underscored the significant contributions made to increased aviation safety in the Rocky Mountain region by the PROFS program. This strong support has been echoed by the manager of the Denver Air Route Traffic Control Center [ARTCC], who has written that the information provided by this NOAA service contributes significantly to increased airway safety and efficiency in Denver traffic control and terminal operations. The DOT inspector general has strongly urged that the FAA provide PROFS-type services to all 20 ARTCC's until a future weather system is available.

Unfortunately, despite broad agreement on the usefulness of the system, the FAA has repeatedly resisted providing its portion of the funding for PROFS. NOAA's annual costs are $3.5 million: the FAA's share of that amount is $300,000, to finance operation and maintenance expenses of the Denver ARTCC's workstation. In the past, following requests by myself and other members of the Colorado congressional delegation, the FAA has been persuaded to provide the necessary amounts, payable on a reimbursable basis. Unfortunately, for fiscal year 1987, the agency reneged on its obligation and, as of the beginning of fiscal year 1988, the Denver ARTCC workstation has been shut down.

The FAA has been inconsistent in its reasons for this lack of support. In correspondence to me, the FAA stated that current weather services were sufficient to meet aviation needs. However, 1 month later, the FAA stated that support for PROFS was discontinued in favor of the Terminal Doppler Radar, but that that system would not be available to air traffic controllers until late in 1989.

Mr. President, in this time of airway congestion and public demands for a safer air transportation system, we should not be discontinuing an effective, proven weather forecasting service such as PROFS. Rather, the FAA should be attempting to utilize every means at its disposal to insure that our Nation's air traffic arrives safely and efficiently to its destination.

To date, the FAA has resisted all efforts to work out an effective solution. Consequently, I had considered offering an amendment to the transportation appropriations legislation to require the FAA to continue its nominal support of PROFS. However, at this time, I am deferring to Chairman LAUTENBERG's wishes and withholding my proposal. However, I look forward to revisiting this issue in the near future.

Mr. DOMENICI. Mr. President, I rise in support of the Transportation appropriations bill for fiscal year 1988.

The bill as reported provides $11.1 billion in new budget authority and $9.9 billion in outlays for the Department of Transportation and related agencies.

I want to commend the distinguished chairman of the subcommittee, the Senator from New Jersey, and the distinguished Senator from New York, the ranking member, for producing a bill that is within their 302(b) allocation.

In particular, I know that the chairman and ranking member were hamstrung by a scoring provision in the fiscal year 1988 budget resolution that prohibits the scoring of loan asset sales as offsets.

In passing its transportation appropriations bill, the House allowed the scoring of an outlay offset of $240 million for the sale of redeemable rail preference shares, a loan asset sale. The chairman of the Senate Budget Committee, correctly interpreting the provisions in the fiscal year 1988 budget resolution, did not allow this loan asset sale to score as an offset.

Thus, this subcommittee produced a bill, within their 302(b) allocation, without the benefit of $240 million in outlay offsets used by the House in producing its bill.

As I have on previous bills, I would indicate that even though this bill is in compliance with the subcommittee's 302(b) allocation, it exceeds the approximate level for the subcommittee in the new Gradison baseline. As mandated by the Gramm-Rudman-Hollings Reaffirmation Act that the President recently signed into law, the sequester baseline is constructed by taking last year's appropriated level and adding an increase of 4.2 percent for inflation.

Since this, and other bills, are over the Gradison baseline levels, it will not contribute any savings toward the $23 billion in deficit reduction that the Congress must accomplish by November 20. Indeed, if enacted, this bill will

make it more difficult to reach the $23 billion in required reductions.

Mr. BINGAMAN. Mr. President, I am pleased to support the appropriations bill for the Department of Transportation and related agencies for fiscal year 1988. The bill assures funding for the Nation's transportation needs, including FAA, the Coast Guard, the Federal Highway Administration, Motor Carrier Safety, National Highway Traffic Safety Administration, Federal Railroad Administration, mass transit needs and more.

Perhaps most importantly, however, this bill addresses a number of the many issues affecting the safety of our airline industry in this country. There could be no other important matter for our consideration. This bill, in my opinion, attempts to address such concerns. I commend the chairman of Transportation Subcommittee and the ranking member for their work in this regard.

I am especially pleased the bill meets some of the transportation needs of my home State of New Mexico. The priority ranking of the Albuquerque and Taos airports ensures that needed expansion and improvement funds to these airports will continue. In a rural and growing State such as mine, this assistance is vital. Additionally, the instrument land system at the Las Cruces airport is also of great importance. This airport has experienced in recent years an increase in traffic as a reliever airport for the El Paso area.

I urge the swift passage and enactment of this important act in order to continue to provide for the transportation needs of the country.

Thank you, Mr. President.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. BYRD. Madam President, before the Senate goes to a vote, I compliment the manager and the ranking manager on the high degree of professionalism which they have demonstrated in managing this bill on the floor today. I think they can feel a very high sense of accomplishment as we proceed to the passage of this bill.

They have been able to deal with an extremely difficult, thorny, complicated matter. I sat in the meetings with the manager and others and I saw him demonstrate skill and knowledge and understanding and reasonableness that are high attributes for anyone. I witnessed it today when I saw FRANK LAUTENBERG in those negotiations.

I also want to thank Senator FORD, Senator HELMS, and all other Senators who participated in the negotiations and for the cooperation that was displayed. This is a bill which could have gone on and on and on. As a matter of fact, it could have been taken down, and then everything would have been left to a continuing resolution. All Senators demonstrated restraint, courage, and dedication.

I suppose that I, more than any other Senator, have the opportunity to watch Senators as they manage bills on the floor. I will not name names, but there are some Senators who are excellent managers and others who are a little less than excellent. Over the years, I have seen some who are quite poor, as a matter of fact. But in these two managers, I have seen very good managership and skill, and the Senate is in their debt.

Mr. LAUTENBERG. Madam President, I thank the majority leader for his kind comments—more important, perhaps, for the work that he put in, in terms of perfecting a compromise on a very sensitive part of this bill. His guidance and counsel were invaluable. In addition, as usual, his knowledge of the process and his wisdom in applying that process helped to get us through this very sticky part of the transportations appropriation bill.

Madam President, as is always said here, this is not a perfect bill. It is a very good bill. It takes care of a very important agenda for our country, and that is the transportation agenda. We are all concerned about safety in the skies and on the rails and on our highways and improving those systems to accommodate the needs we continue to see expand.

I was pleased to have the opportunity to chair this subcommittee and to manage this bill. It was not without some trepidation that we faced up to the issue of banning smoking on aircraft. We have a good bill; we have a good compromise. We will be banning smoking in aircraft cabins for any flight that is an hour and a half in duration or less. It provides a modicum of significant relief for most people. We will have 2 years during which an examination will be finally made—one which I believe will confirm that there is an impairment in the air and jeopardy to one's health. Mr. President, I do also want to thank Joy Silver of my staff, and all the representatives of the key health groups, including the Coalition on Smoking or Health, for their hard work on the smoking ban provision. Their contribution was significant.

Madam President, I am prepared now to ask for the yeas and nays on final passage of the transportation appropriations bill.

Mr. SASSER. Madam President, I rise today during consideration of the fiscal year 1988 transportation bill to clarify a matter of importance in the FAA account, "facilities and equipment."

The Senate bill deletes the appropriation necessary to replace the 25-year-old aircraft used by the FAA Administrator for official missions. The House provided this funding because, after the initial budget submission, testimony made clear that an internationally capable, current technology aircraft would provide significant cost savings. In fact, I have learned, the need for a replacement aircraft grows more critical with time as the existing, aging aircraft continues to need costly repairs.

I would appreciate the chairman's clarification of the Senate position and an expression of support for the funds necessary for a replacement aircraft, inasmuch as this item will be in conference.

Mr. LAUTENBERG. The Senator has correctly described the situation. The House provided funds for a replacement, and the Senate left the item open for further study. I agree that the FAA Administrator has many official responsibilities and a legitimate requirement for an internationally capable aircraft. I also agree that such an aircraft should represent the best U.S. technology has to offer and be compatible with Congress' other investments in aviation systems.

I will discuss this in conference, and I express to my colleague that I see the need, and I will do my best to meet that need as budget resources permit.

Madam President, I ask for the yeas and nays on the transportation appropriations measure.

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

The yeas and nays were ordered.

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

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD. Madam President, I shall suggest the absence of a quorum so that both Cloakrooms will have 2 or 3 minutes in which to alert Senators to the fact that a rollcall vote is about to occur and so that we might have the managers of the next bill prepared to take that bill up upon the disposition of the transportation appropriations bill.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BYRD. Madam President, I yield the floor.

The PRESIDING OFFICER. The bill, having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

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

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE], the Senator from Delaware [Mr. ROTH], the Senator from Vermont [Mr. STAFFORD], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

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

The result was announced—yeas 84, nays 10, as follows:

[Rollcall vote No. 358 Leg.]

YEAS—84

Adams	Fowler	Mitchell
Baucus	Glenn	Moynihan
Bentsen	Graham	Murkowski
Biden	Grassley	Nickles
Bingaman	Harkin	Nunn
Bond	Hatch	Packwood
Boren	Hatfield	Pell
Bradley	Hecht	Pressler
Breaux	Heinz	Pryor
Bumpers	Hollings	Quayle
Burdick	Inouye	Reid
Byrd	Johnston	Riegle
Chafee	Karnes	Rockefeller
Chiles	Kassebaum	Rudman
Cochran	Kasten	Sanford
Cohen	Kennedy	Sarbanes
Cranston	Kerry	Sasser
D'Amato	Lautenberg	Shelby
Danforth	Leahy	Simpson
Daschle	Levin	Specter
DeConcini	Lugar	Stennis
Dixon	Matsunaga	Stevens
Dodd	McCain	Thurmond
Domenici	McClure	Trible
Durenberger	McConnell	Warner
Evans	Melcher	Weicker
Exon	Metzenbaum	Wilson
Ford	Mikulski	Wirth

NAYS—10

Armstrong	Gramm	Proxmire
Boschwitz	Heflin	Wallop
Conrad	Helms	
Garn	Humphrey	

NOT VOTING—6

Dole	Roth	Stafford
Gore	Simon	Symms

So the bill (H.R. 2890), as amended, was passed.

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

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

The motion to lay on the table was agreed to.

Mr. BYRD. Madam President, on behalf of Mr. LAUTENBERG I move the Senate insist on its amendments, request a conference with the House, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Ms. MIKULSKI) appointed Mr. LAUTENBERG, chairman, Mr. STENNIS, Mr. BYRD, Mr. CHILES, Mr. HARKIN, Mr. INOUYE, Mr. D'AMATO, Mr. COCHRAN, Mr. KASTEN, Mr. WEICKER, and Mr. HATFIELD conferees on the part of the Senate.

AIR PASSENGER PROTECTION ACT

Mr. BYRD. Madam President, the order has been heretofore entered that the majority leader may, after consulting with the minority leader or his designee, go to Calendar Order No. 283, S. 1485, a bill to amend the Federal Aviation Act of 1958 to provide various protections for passengers traveling by aircraft, and for other purposes. I ask the Chair lay that before the Senate.

The PRESIDING OFFICER. The Clerk will report.

The legislative clerk read as follows:

A bill (S. 1485) to amend the Federal Aviation Act of 1958 to provide various protections for passengers traveling by aircraft, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, 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 italics.)

S. 1485

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Air Passenger Protection Act of 1987".

SEC. 2. (a) Title IV of the Federal Aviation Act of 1958 (49 App. U.S.C. 1371 et seq.) is amended by adding at the end the following:

"SUBMISSION OF CERTAIN INFORMATION

"REQUIRED INFORMATION

"SEC. 420. (a) The Secretary shall, within ninety days after the date of enactment of the Air Passenger Protection Act of 1987, promulgate regulations requiring air carriers to submit to the Secretary on a monthly basis the following information relating to scheduled air transportation between any airports in the United States:

"(1) on-time performance, measured as the average time of actual departure **[or]** *and* arrival past the scheduled departure **[or]** *and* scheduled arrival **[time, as appropriate,]** *time* for transportation between each two points served by each air carrier.

"(2)(A) The total number of passengers carried by each air carrier, (B) the number of such passengers who arrived at their final destination without one or more pieces of their checked baggage and who notify the air carrier that such baggage failed to arrive, and (C) what percent the passengers identified in subparagraph (A) of this paragraph are of the passengers specified in subparagraph (B) of this paragraph.

"(3)(A) The number of flights scheduled at each airport by each air carrier, (B) the number of such flights cancelled at each airport, and (C) what percent the flights identified in subparagraph (B) of this paragraph are of the flights identified in subparagraph (A) of this paragraph.

"(4) The number of passengers involuntarily denied boarding by each air carrier, and the compensation offered to such passengers.

"AVAILABILITY OF INFORMATION

"(b) The Secretary shall, with respect to information reported under subsection (a) of this section, take such action as may be necessary to make that information available to the public, including publication of summary information in the Federal Register and the issuance of monthly reports.

"COMPUTERIZED AIRLINE RESERVATION SYSTEMS

"REQUIREMENTS OF INFORMATION IN THE SYSTEM

"SEC. 421. (a) The Secretary shall, within ninety days after the date of enactment of the Air Passenger Protection Act of 1987, amend the regulations regarding computerized airline reservation systems offered to subscribers by an air carrier or any of its affiliates contained in **[section]** *part* 255 of title 14, Code of Federal Regulations, to require that—

"(1) for scheduled air transportation between any airports in the United States, the elapsed time shown for each flight displayed in such computer system shall not be less than a minimum realistic time established by the Administrator for such transportation;

"(2) no such computer system shall, for purposes of ordering the display of flight information, assign a weight of displacement for any flight having a scheduled departure time thirty minutes or less after the departure time requested or twenty-nine minutes or less before the departure time requested; and

"(3) each air carrier provide the Secretary with an average of the actual arrival times for each scheduled flight that it operates, based on the actual times of arrival for such flight during the previous month.

"SPECIFIC INFORMATION

"(b)(1) The Administrator shall determine the minimum realistic time under subsection (a)(1) of this section according to a formula to be developed by the Administrator and published in the Federal Register. Such formula shall be based on (A) the distance between the airports; (B) the standard cruise speed for the involved type of aircraft; (C) the typical taxi, landing, and take off times for the type of aircraft involved and, where the Administrator determines it to be appropriate, for the airport; and (D) where the Administrator determines it to be appropriate, meteorological factors.

"(2) The Secretary shall require that the information provided under subsection (a)(3) of this section is included in all schedules published in such computer reservation systems, and that such information is made available to the public.

"PROMULGATION OF CERTAIN REGULATIONS

"SEC. 422. The Secretary shall, within ninety days after the date of enactment of the Air Passenger Protection Act of 1987, promulgate regulations—

"(1) to establish a standardized definition of a delayed flight, as well as the causes of delays;

"(2) to establish a uniform designation symbol to be used by an air carrier in its schedules to identify aircraft having a passenger seating capacity of thirty seats or less;

"(3) to amend the final rule issued under [section] *part* 121 of title 14, Code of Federal Regulations, relating to carry-on baggage programs to establish uniform standards for use by all air carriers in controlling the size and amounts of carry-on baggage; and

"(4) to require that any carrier who advertises a fare for particular air transportation but does not make that fare available for all passengers on such transportation must include in any advertisement for such transportation a notice that availability of transportation at the advertised fare is limited.

The definition established under paragraph (1) of this section shall include considerations of weather, air traffic control, passenger service, maintenance, and any other safety factor. The Secretary shall require each air carrier, in reporting information under section 420(a)(1) of this Act, to report to the Secretary the cause of its delays. Such information shall be made available to the public.

"CONSUMER HOTLINE

"SEC. 423. (a) The Secretary shall, within ninety days after the date of enactment of the Air Passenger Protection Act of 1987, establish a twenty-four hour toll-free consumer hotline to provide consumer information on air carrier performance records, information as to the rights of consumers and responsibilities of air carriers, and assistance in resolving disputes between consumers and air carriers. Information with respect to the availability of such hotline and its purpose, together with the telephone number of such hotlines, shall be printed on each ticket jacket, and prominently displayed in appropriate locations at airports.".

(b) Notwithstanding any other provision of this Act, the Secretary of Transportation shall not implement any provision of this section, or any amendment made by this section, if the Secretary determines that such implementation will have an adverse impact on the safety of air transportation. If the Secretary makes such a determination, the Secretary shall publish notice of such determination in the Federal Register.

(c) Notwithstanding any other provision of this Act, information reported pursuant to this Act shall not be used by a vendor of a computerized airline reservation system to bias the display of flights or fare information.

[(c)] *(d)* The table of contents of the Federal Aviation Act of 1958 is amended by inserting immediately after the item relating to section 419 the following:

"Sec. 420. Submission of certain information.
"(a) Required information.
"(b) Availability of information.
"Sec. 421. Computerized airline reservation systems.
"(a) Requirements of information in the system.
"(b) Specific information.
"Sec. 422. Promulgation of certain regulations.
"Sec. 423. Consumer hotline.".

SEC. 3. The Secretary of Transportation shall establish an Advisory Committee to determine the appropriate level of capacity in the air traffic control system. The Advisory Committee shall be headed by the Administrator of the Federal Aviation Administration, and shall include representatives of aviation user groups. The Advisory Committee shall submit to the Congress and the Secretary a report on the level of capacity not later than December 31, 1988. The report shall include the levels of traffic which the air traffic control system is capable of handling safely and with a high level of dependability for each year within the five-year period beginning on January 1, 1989, the speed with which the capacity can safely be increased, and what additional resources should be made available to assure maximum safety and system capacity.

Mr. FORD. Mr. President, the legislation before us, the Air Passenger Protection Act of 1987, is designed to address the airline service problems that have plagued air travelers throughout the country this year.

S. 1485 is the culmination of several weeks of work by the Aviation Subcommittee, including the ranking member, Senator KASSEBAUM, and the Commerce Committee. I am pleased that this bill comes to the floor with strong support, as it is cosponsored by Senators HOLLINGS, DANFORTH, EXON, GORE, BINGAMAN, EXON, SIMON, ROCKEFELLER, and MELCHER.

The past year has clearly been a time of turmoil for the airline industry. Millions of air travelers have seen firsthand how this has translated into service of significantly reduced quality. We all agree that something must be done to ensure that the airlines develop more realistic schedules and that travelers be given more information on which they can make educated travel decisions.

This legislation is designed to do that. Let me briefly outline the major provisions of the bill for my colleagues before we begin debating and offering amendments to it.

First, in an effort to allow travelers to make informed choices about air travel, this bill requires the Secretary of Transportation to mandate the submission of monthly records on each airline's on-time performance, lost baggage, canceled flights, as well as the number of passengers involuntarily denied boarding. The Secretary is then required to make this information available to the public—through airline computer reservation systems, the publication of summary information in the Federal Register, and the issuance of monthly reports.

Prior to the sunset of the Civil Aeronautics Board in 1984, information of this type was submitted and regularly used by the carriers as a means of establishing a competitive advantage.

Mr. President, I see that happening now, where the airlines are beginning to advertise, "We are on time" a great percentage of the time, "Less luggage is being lost. Fewer are being denied boarding." So the work of the Department of Transportation, the Commerce Committee here in the Senate and the like committee in the House, has begun to take hold. I think the airlines are beginning to take heart, that we do mean business as we move cautiously but stubbornly along this path.

I believe this is a healthy way of both improving the flow of information to the air traveler, as well as providing the needed incentives in a deregulated environment to ensure service competition.

The bill requires the Secretary to establish a definition for delayed flights. There has been much confusion in the airline industry as to when a flight is delayed or when it is not. The FAA has one standard, while the airlines use another.

Our bill will require that a standard definition for delays be established. It will also require the airlines to report the cause for their delays—whether they be bad weather, limitations in the air traffic control system, maintenance problems, or any other factor that may cause a flight to take longer than its schedule states. This will enable us to better isolate and address the problems that have contributed to air service problems.

The bill also attempts—and I say attempts—to improve airline scheduling. It requires the FAA to determine what the minimum elapsed flight time is between any two airports in the country. Once completed, the Secretary is then required to ensure that no airline flight is scheduled for a shorter elapsed time than determined by the FAA. This will eliminate the practice of shaving time off flight schedules, making them unrealistically optimistic. And it will help improve on-time performance.

S. 1485 also attempts to encourage the airlines to spread out their flight schedules during peak travel hours by eliminating the incentive to schedule more flights at any one moment that an airport can handle.

Mr. President, I get a little bit tired of going to an airport, walking up to get my ticket validated to make a flight, and see that there are five flights leaving at the same time and that there is no way those five flights can take off at the same time. You just hope that you are called earlier than later because you would be 30 minutes late if you are the last one called, as opposed to being only 10 minutes late if you are the first one called.

Airline computer reservation systems encourage the carriers to do this because flights scheduled at certain peak times are given priority listing. The result is substantially more tickets sold by travel agents on those flights. Our bill eliminates any disadvantages that are currently assigned for flights that are not precisely at the time a traveler requests, therefore encouraging the airlines to spread out their schedules.

Mr. President, combined, these provisions will result in more realistic airline scheduling—an objective we all want.

Other provisions in this legislation include the creation of a 24-hour, toll-free hotline at the Department of Transportation. This hotline will provide travelers with a central location—other than with the airline—to resolve their flight problems. This hotline will also help ensure the collection of more realistic figures about traveler complaints. Our bill would require this toll-free number be printed or stamped on all airline ticket jackets and located at various points throughout an airport—ensuring its widespread distribution.

The bill addresses a number of other problems. It would require the development of a uniform designation symbol to be used by all airlines to denote the use of aircraft of 30 or fewer passenger seats. It requires the development of an industrywide standard for controlling the size and amount of carry-on baggage. And it requires that when an airline advertises a discount fare that is limited, it be required to provide notice of that fact.

Finally, S. 1485 directs the Secretary of Transportation to establish an advisory committee to determine the safe and adequate level of traffic in the air traffic control system for the future. To be headed by the Administrator of the FAA and made up of users of the air traffic control system, this committee would be directed to report to the Congress and the Secretary by December 31, 1988 on what the airway system can safely handle, the pace at which that capacity should be increased, and what resources will be needed to assure long-term safety and system capacity.

Mr. President, this means that we will try to project and be ahead of the curve instead of behind the curve as we are now in our airline system.

This legislation should not be viewed as a cure-all for the problems currently facing the airline industry. We attempted to address many of the long-term concerns when we earlier adopted S. 1184, the Senate reauthorization of the Airport and Airway Trust Fund. That bill will require the hiring of more controllers, the installation of more computers and navigational aids, and the construction of more airports and runways—all of which are desperately needed enhancements to our air transportation system.

Mr. President, other steps have been taken by the Department of Transportation and the airline industry to address some of the problems that this legislation is designed to resolve. Some may thus question why we need to pass this bill. The number of airline delays and complaints are down. However, I believe legislation is needed to ensure that over the long-run, travelers will be guaranteed that the airline industry will be responsive to their needs for quality service—and that the problems of the past year will not return in the years to come.

S. 1485 is a balanced approach—designed to improve the quality of air travel, without imposing undue burdens on the airline industry. It is a good compliment to our airport and airway authorization bill. And it is good for the traveling public.

I urge my colleagues to support passage of this legislation.

Mr. President, I would also hope that we would not get into long, controversial amendments. This is a bill that should be adopted very quickly, something that should be sent to conference so that in a very few weeks we might be able to have this piece of legislation in place. With this bill, those of us who travel by air will be able to see improvements to service and the travelling public will benefit from what we have attempted to do.

Mr. President, I yield the floor.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, let me begin by paying my respects to the Senator from Kentucky and to the staff of the Commerce Committee, both the majority staff and the minority staff, for a really remarkable piece of work they have accomplished in our committee.

This is the second very significant piece of legislation to reach the floor of the Senate in a day.

Yesterday we dealt with the airways trust fund question. The two managers of that bill, Senator FORD and Senator KASSEBAUM, managed to pass that bill without serious damage on the floor of the Senate. It was a necessary bill to pass if we are going to keep up with safety in air transportation and meet the expanded needs of a deregulated system.

This is a second major piece of legislation. It is something that Senator FORD has been working on, and Senator KASSEBAUM and I have been working on, for a long time.

I think it was last March that the idea was first conceived of having some sort of system of providing for better customer information on the true on-time performance for an airline.

It does not really do any good if I want to go, say, to Kansas City tomorrow morning and I call up the airport and they say, "Well, there is a plane that is arriving at 8 o'clock and it is due in Kansas City at 10 o'clock," if in fact the plane does not take off, does not leave the gate until 9 and then sits on the tarmac for half an hour or so and eventually arrives after the scheduled things that I am supposed to do in Kansas City have long since been completed.

So I think that this is a real step forward in arming consumers with the kind of information that they need if they are going to make informed choices. It is also, I think, the basis of a form of competition for the airlines that has been all too lacking in the age of deregulation.

Since deregulation of our air transportation the major form of competition among airlines has been rates, how much does it cost to get from point A to point B. There has been very little competition with respect to services. What this would do would be to provide a whole new basis for airlines competing on the basis of service, so that the consumer can find out what the on-time percentage is, what the possibilities of lost baggage and the like are. That kind of information and that kind of competition will improve air transportation.

It is interesting to me—and I do not have the statistics to back this up, Mr. President, but it certainly is based on my own observation—that in the last month or so the on-time performance of airplanes at least appears to be better than it was in the previous 6 months or so.

Maybe the reason for that is that increased attention has been given to the performance of air transportation. Magazine articles have been written, even cover stories in news magazines have been written about the dismal performance of air transportation. I think that the increased attention itself has had a beneficial effect.

What this bill does is to say that the attention is not going to be just a flash in the pan. It is not going to be the kind of thing that is going to take place for a month or so and then die down. There is going to be a continuing flow of information to the customer, so that the customer is going to be making choices on the basis of the performance of the airline and that is going to be cranked into the whole decisionmaking process.

I think it is really a terrific idea and one that is long overdue.

We are not going to go back, in the opinion of this Senator, to the age of regulated air transportation. Some people long for that. Some people wish that deregulation had never occurred in the first place. But really I do not think it is going to be possible and I do not think it would be desirable to try to unscramble this particular egg.

But the issue now is, since we have deregulation, how do we have a more adequate air transportation system than we do today. I have always believed that the best form of regulation is not something that is found in a rule book but, rather, an informed clientele, an informed consumer, and

that is precisely the basis of this particular bill.

Mr. President, several amendments I am sure are going to be offered, and I am about to offer one myself dealing with what I think is an issue that is even more important than the on-time performance of airplanes, and that is whether the airplanes or the trains or the trucks or any other mode of transportation meets its destination at all. This has to do with the question of drug use by people in safety-related positions in transportation.

It is clear that the use of drugs is a sad aspect of our society in general. According to the National Institute on Drug Abuse, 19 percent of all Americans over 12 years of age have used illicit drugs within the past year; 65 percent of people in the 18- to 25-year-old age group, representing those who are entering the work force, have used illicit drugs in the last year.

So this really is a national problem and it is not unusual that a problem that permeates all of society also has its outcroppings in all kinds of professions, including transportation, and this has had some disastrous effects.

Everybody knows the tragic story of the train accident in Chase, MD, which took place in January of this year when an Amtrak locomotive was hit by a Conrail train and a number of people were killed and people were injured in that very tragic accident—16 deaths in the Chase, MD, accident, 170 injuries. It is a tragedy, and when the engineer and the brakeman of the Conrail locomotive were tested for drugs in their system it was subsequently found that they were in fact on drugs.

There have been a number of other specific instances and there are a number of statistics which are equally appalling.

With respect to highway safety, a study published on May 9, 1987, showed that 30 percent of a random sample of truck drivers had taken drugs with the potential for abuse, that 14 percent of the drivers tested, tested positive for marijuana in their systems, 2 percent for cocaine. In Tennessee, in 1982, there were 75 drug-related arrests of commercial truck drivers. By 1985, that number in Tennessee had increased from 75 to 355. In 1986, in Tennessee, there were 389 drug arrests of commercial drivers.

In respect to the inter-city bus industry, during a strike in 1983, Greyhound took applications from a group of experienced inter-city bus drivers and found that 30 percent of the applicants' urine sample tested positive for marijuana. There are a number of specific examples. For example, in the State of California, a Los Agneles bus driver rear ended another bus in May 1986 injuring 23 passengers. The driver tested positive for cocaine.

On May 30, 1986, a Los Angeles city bus was involved in an accident which injured 26 passengers. The driver tested positive for marijuana.

In Los Angeles, on July 31, 1986, a Los Angeles city bus overturned onto a freeway injuring 27 passengers. One of whom later died. The testing showed that the driver was under the influence of drugs at the time of the accident. And so it goes, on and on with many, many examples to add to the Conrail/Amtrak situation, people who have been involved with accidents with buses, with trucks, with airplanes, with locomotives in transportation, where drugs had been the cause.

So, Mr. President, with that background, on behalf of myself and Senators HOLLINGS and MIKULSKI, I send an amendment to the desk and ask for its immediate consideration.

Mr. FORD. Will the Senator withhold? I have some committee work to do before that.

Mr. DANFORTH. I would be happy to.

Mr. FORD. I appreciate that very much.

Mr. DANFORTH. Mr. President, I ask unanimous consent that Senator FORD might be recognized for the purpose of offering committee amendments, and subsequent to the disposition of those amendments, that I might regain the floor.

COMMITTEE AMENDMENTS

Mr. FORD. Mr. President, there is one committee amendment at the desk. I ask that it be adopted.

The PRESIDING OFFICER. I say to the Senator from Kentucky that there are a series of committee amendments.

Mr. FORD. I ask unanimous consent that the committee amendments be considered en bloc.

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

The question occurs on agreeing to the committee amendments presented en bloc.

The committee amendments were agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendments were agreed to en bloc.

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

The motion to lay on the table was agreed to.

Mr. FORD. Will the Senator yield for a unanimous-consent request?

Mr. DANFORTH. Yes.

Mr. FORD. Mr. President, I ask unanimous consent that the amendments considered en bloc shall be considered as the original text for the purpose of further amendments.

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

Mr. FORD. I thank the Chair. I thank the Senator from Missouri.

AMENDMENT NO. 1105

Mr. DANFORTH. Mr. President, on behalf of myself and Senators HOLLINGS and MIKULSKI, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH), for himself, Mr. HOLLINGS, Ms. MIKULSKI, and Mr. DOLE proposes an amendment numbered 1105.

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

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

The amendment is as follows:

At the end of the bill, add the following:

SEC. . (a) The Congress finds that—

(1) alcohol and drug abuse poses significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, railroads, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the operation of aircraft, railroads, trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) the testing of uniformed personnel of the armed forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

(b)(1) Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"ALCOHOL AND CONTROLLED SUBSTANCES TESTING

"TESTING PROGRAM

"SEC. 613. (a)(1) The Administrator shall, in the interest of aviation safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires air carriers and foreign air carriers to conduct pre-employment, periodic recurring, random and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), and testing of such individuals upon a

reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(2) The Administrator shall establish a program applicable to employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions. Such program shall provide for pre-employment, periodic recurring, random and post-accident testing, and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

'(3) In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to such an individual, or the disqualification or dismissal of any such individual, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such individual has used, without lawful authorization, alcohol or a controlled substance.

"PROHIBITION ON SERVICE

"(b)(1) No person may use, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section and serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(2) No individual who is determined to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section shall serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(3) Any such individual determined by the Administrator to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section who (A) refuses to undertake, (B) fails to complete a rehabilitation program described in subsection (c) of this section, (C) has previously undertaken or completed such a rehabilitation program, or (D) has been determined by the Administrator to have served as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Adminstrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions while impaired by or under the influence of alcohol or a controlled substance, shall not be permitted to perform the duties relating to air transportation which such individual performed prior to the date of such determination.

"PROGRAM FOR REHABILITATION

"(c)(1) Each air carrier and foreign air carrier shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of employees referred to in subsection (b) of this section in need of assistance in resolving problems with the use, without lawful authorization, of alcohol or controlled substances. Each air carrier and foreign air carrier is encouraged to make such program available to all of its employees other than employees referred to in subsection (b) of this section. Nothing in this subsection shall preclude any air carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier or foreign air carrier.

"(2) The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

"PROCEDURES

"(d) In establishing the program required under subsection (a) of this section, the Administrator shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"EFFECT ON OTHER LAWS AND REGULATIONS

"(e) (1) No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to employees of an air carrier or foreign air carrier, or to the general public.

"(2) Nothing in this section shall preclude the Administrator from adopting or continuing in effect other regulations intended to protect persons or property on the ground or in the air from the hazards to safety associated with the potential use of alcohol or controlled substances by airmen, crewmembers, airport security screening contract personnel, air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), or employees of the Federal Aviation Administration) with responsibility for safety-sensitive functions.

"DEFINITION

"(f) For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Administrator has determined poses a risk to transportation safety.".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end thereof the following:

"Sec. 613. Alcohol and controlled substances testing.

"(a) Testing program.

"(b) Prohibition on service.

"(c) Program for rehabilitation.

"(d) Procedures.

"(e) Effect on other regulations.

"(f) Definition.".

(c) Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following:

"(l)(1) The Secretary shall, within one year after the date of enactment of this subsection, review existing rules, regulations, standards, and orders governing alcohol and drug use in railroad operations for the purpose of determining whether they are adequate to ensure safety. In conducting such review, the Secretary shall specifically—

"(A) require that all railroad employees responsible for safety-sensitive functions (as determined by the Secretary) by subject to testing on a random basis for the use, without lawful authorization, of alcohol or a controlled substance;

"(B) consider application of existing rules, regulations, orders, and standards to other categories of employees, including employees responsible for the safety of passengers, railroad rolling stock, or track and related structures;

"(C) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(D) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, standards or orders issued under this Act.

Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, standards and orders governing alcohol and

drug use in railroad operations issued before the date of enactment of this subsection.

"(2) In carrying out the provisions of this subsection, the Secretary shall develop requirements which shall—

"(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(B) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(i) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(ii) specify the drugs for which individuals may be tested; and

"(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(C) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any employee shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(D) require that all laboratories involved in the testing of any employee under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(E) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(F) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(3) For the purposes of this subsection, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary has determined poses a risk to transportation safety.".

(d)(1) The Commerical Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end the following:

"SEC. 12020. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) REGULATIONS.—The Secretary shall, in the interest of commercial motor vehicle safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires motor carriers to conduct pre-employment, periodic recurring, random and post-accident testing of the operators of commercial motor vehicles, and testing upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(b) TESTING.—(1) In promulgating such regulations, the Secretary shall require that post-accident testing of the operator of a commercial motor vehicle be conducted in the case of any accident involving a commercial motor vehicle in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

"(2) Nothing in subsection (a) of this section shall preclude the Secretary from providing in such regulations that such testing be conducted as part of the medical examination required by subpart E of part 391 of title 49, Code of Federal Regulations, with respect to those operators of commercial motor vehicles to whom such part is applicable.

"(c) PROGRAM FOR REHABILITATION.—The Secretary shall promulgate regulations setting forth requirements for a rehabilitation program for the identification and opportunity for treatment of operators of commercial motor vehicles who are determined to have used, without lawful authorization, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such operators shall be required to participate in such program. Nothing in this subsection shall preclude a motor carrier from establishing a program under this subsection in cooperation with any other motor carrier.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a) of this section, the Secretary shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) for employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to commercial motor vehicle employees, or to the general public.

"(f) APPLICATION OF PENALTIES.—(1) Nothing in this section shall be construed to supersede any penalty applicable to the operator of a commercial motor vehicle under this Act or any other provision of law.

"(2) The Secretary shall determine appropriate sanctions for commercial motor vehicle operators who are determined, as a result of tests conducted and confirmed under this section, to have used, without lawful authorization, alcohol or a controlled substance but are not under the influence of alcohol or a controlled substance, as provided in this title.

"(g) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary had determined poses a risk to transportation safety.".

(d)(2) The table of contents of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end thereof the following:

"Sec. 12020. Alcohol and controlled substances testing.".

(e)(1) The Secretary shall design, within nine months after the date of enactment of this section, and implement, within fifteen months after the date of enactment of this section, a pilot test program for the purpose of testing the operators of commercial motor vehicles on a random basis to determine whether an operator has used, without lawful authorization, alcohol or a controlled substance.

(2) The Secretary shall solicit the participation of States which are interested in participating in such program and shall select four States to participate in the program.

(3) The Secretary shall ensure that the selection made pursuant to this section is representative of varying geographical and population characteristics of the Nation, and takes into consideration the historical geographical incidence of commercial motor vehicle accidents involving loss of human life.

(4) The pilot program authorized by this section shall continue for a period of one year. The Secretary shall consider alternative methodologies for implementing a system of random testing of operators of commercial motor vehicles.

(5) Not later than thirty months after the date of enactment of this section, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the results of the pilot program conducted under this section. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for the random testing of operators of commercial motor vehicles.

(6) For purposes of carrying out this subsection, there shall be available to the Secretary $5,000,000 from funds made available to carry out section 404 of the Surface

Transportation Assistance Act of 1982 for fiscal year 1988.

(7) For purposes of this subsection, the term—

(1) "commercial motor vehicle" shall have the meaning given to such term in section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5241); and

(2) "Secretary" means the Secretary of Transportation.

Mr. DANFORTH. Mr. President, this amendment is basically a bill that has already been reported by the Senate Commerce Committee, I think by a vote of 19 to 1, providing for drug testing.

There are some points that have been added by Senator MIKULSKI dealing with lab certification and procedures for drug testing. But this is a drug testing amendment. It provides for preemployment drug testing, postaccident drug testing, drug testing for reasonable suspicion, but the key to it really is mandatory random drug testing. That is what it provides.

It provides that in the case of safety related personnel in the transportation industries, there be mandatory random drug testing. This is a very controversial item. We had witnesses appear before the committee on both sides of the issue.

The Federal Railroad Administrator, John Riley, testified that in his view mandatory random testing was the most important thing that we could do with respect to assuring that drug-related accidents do not occur. He believes that preemployment screening, postaccident screening, and reasonable suspicion testing just do not get the job done. He was asked particularly about testing for reasonable suspicion. He pointed out that in the case of the Chase, MD, accident, the engineer and the brakeman had been in the presence of their supervisor immediately before the accident. Apparently, they were able to mask their behavior in such a way that the supervisor had no idea that they had any drugs in their system.

So it is possible to be on drugs and have nobody know that you are on them. I think all of us have heard stories about kids who had been on drugs and finally their behavior becomes so erratic that the parents suspect that something has gone wrong, but they fooled their parents for a long period of time.

So it was the testimony before the Commerce Committee that testing for reasonable suspicion of a person who looks glassy-eyed, if a person does not walk property and the like, testing for reasonable suspicion really is not adequate to get the job done; and that the best deterrent to drug use is mandatory random testing. That really is the essential ingredient of any drug testing program. Without mandatory random drug testing you really do not have very much at all.

Witnesses came before the committee, and they testified against mandatory random testing. They said that somehow it interfered with their rights to privacy. They made a lot of that argument. But, Mr. President, when the question of drug testing has been raised in court even with respect to prison guards it has been held constitutional. Surely, if it is constitutional to test prison guards it should be constitutional to test airline pilots for drugs.

The constitutional issue is always one of balancing an individual's rights with the requirements of public safety. Here you have such an obvious threat to public safety, where there is statistical evidence of drug use by people in safety-related transportation areas, where there have been actual cases of death and injury as a result of drug use by safety-related transportation personnel, a clear danger to the public, a danger that has tragically proved itself in fact in the past.

What the individual is asked to do is so small—to give a urine sample. Transportation employees have physicals anyhow, and I have never heard of a physical examination without urine samples. I have never heard of them without blood samples, for that matter.

So it does not seem to me to be outrageous as a condition of employment to require people to have physicals. It does not seem to me to be outrageous as a condition of employment to require people to give samples. It is such a small requirement to give a urine sample when scores, maybe hundreds, of people's lives are in your hands.

People say: "Well, you can have drugs in your system and not actually be under the influence of drugs." Maybe that is so. Undoubtedly, it is so. But it would seem to me that it would be reasonable to expect that those who are in professions which take the lives of people in their hands should act professionally. It should be reasonable for the public to believe that those who are flying the planes and operating the locomotives and driving 18-wheelers down the highway are drug-free.

I do not think it is solace to the public to be told that their airline pilot has some drugs in his system but that he can operate with the drugs in his system, that some people can function under the influence of drugs. It is a reasonable requirement to say that those who are in safety-related professions must be absolutely free of drugs.

Mr. President, with respect to the question of what kind of imposition it is to give a sample, the Airline Pilots Association opposes this. Yet, every time you and I go to the airport, our luggage goes through an x-ray machine and we go through metal detectors. Is that an infringement on our privacy? Of course, it is. Of course, it is an infringement on our privacy to have people look through a machine, into our luggage, and have the right, as a matter of fact, to do more than look through the machine—to open up our bags and go through our laundry. It is an infringement on our privacy to go through a metal detector.

One might say, "What business is it of anyone if we have a metal belt buckle on or have a pocketknife in our pocket? What business is it of anyone if we have those things?" Yet, they have a right to know before we get on the plane. But it is a reasonable imposition on the traveling public to assure them that the people who are getting on the planes are not hijackers or do not have explosives, and the same is true in the case of testing. It is a reasonable assurance.

I daresay that the likelihood that any given passenger has explosives or has a gun in his possession is much less than the likelihood that a person in a safety-related transportation job is under the influence of drugs.

So, Mr. President, that is the nature of the amendment. As I say, this amendment was reported by the Commerce Committee as a bill. It was considered. Hearings were held. The vote in the Commerce Committee was 19 to 1. I think it is a very important piece of legislation.

I am delighted that the Senator from Maryland [Ms. MIKULSKI] has taken such a keen interest in this, and she really has. She has been very, very active in this whole field. I commend this to the Senate.

Ms. MIKULSKI. Mr. President, I rise in strong support of the amendment offered by the Senator from Missouri.

Our country was shocked and saddened last January 4 when a Conrail locomotive crashed into an Amtrak passenger train near Chase, MD that took the lives of 16 innocent people.

When I heard about it, my reaction was to rush to the scene. From the carnage I saw on TV, I knew I should go to the hospital. I went to Franklin Square Hospital to meet with and offer encouragement to the families and the hospital staff.

Members of my own staff participated in the volunteer effort to help the injured. Others went in to give blood.

But when the wreckage cleared, we knew there was other action that had to be taken. We knew it was of the utmost importance that we prevent this kind of tragedy from ever happening again.

I remember the first time I spoke to Roger Horn, whose 16-year-old daughter died in the crash. I told him I could not turn back the clock. But I could help him exercise his right to be heard. And heard he has been, as have all those who had loved ones or friends that were victims in the crash.

These families and their friends have helped turn this tragedy into action. Their grief has given birth to an effort to correct a transportation infrastructure whose safety systems have gone awry.

January's senseless tragedy happened largely because of human inattentiveness to safety. Standard safety warning devices on the Conrail locomotive were either disconnected or ignored. And this negligence was compounded by the fact that the Conrail locomotive engineer and his assistant were using illegal substances shortly before the crash.

The amendment before the Senate, which I am proud to cosponsor, is designed to put in place a system to help eliminate substance abuse in our transportation industries.

I know that there is a great deal of concern among some of my colleagues about the rights of transportation workers who would undergo random testing.

I share those concerns. However, I do not believe that there is a conflict between public safety and the constitutional rights of transportation workers. There is a balance between the two. Drug testing can go forward provided: That there are accurate labs which insure strict chain of custody and the best testing procedures are used; and that workers' due process rights, including the opportunity for rehabilitation, are protected.

If a worker undergoes a random test, he or she must be guaranteed that the testing is accurate and that all precautions to insure that accuracy are guaranteed.

That is why I am pleased that Senator DANFORTH has incorporated, at my request, the lab testing protections we put in the supplemental appropriations bill to insure accuracy in Federal worker drug testing.

Those protections will insure comprehensive, uniform testing standards at labs across the Nation. Labs are required to use the best available technology for testing and to guarantee strict procedures governing the chain of custody of drug testing specimens.

In addition, these recent changes to the amendment will require plans to specify the drugs for which employees may be tested.

Finally, the amendment would establish standards for certifying labs to be used, periodic review of those labs and criteria to revoke a lab's certification if it falls below these standards.

Mr. President, nothing can ease the pain or remove the sorrow from last January's tragedy. But we can take a major step toward making safety the highest priority of our Nation's transportation network and spare other families the anguish many of my constituents have had to bear.

This amendment is a step in that direction. I urge its adoption.

The PRESIDING OFFICER. Who seeks recognition?

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

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

Mr. SARBANES. Mr. President, I rise in support of the pending amendment.

I commend my very able and distinguished colleague from Maryland for her eloquent statement with respect to this amendment.

Mr. President, while the legislation before us is a matter of general application, it obviously has a very specific meaning and concern for those of us from Maryland since we experienced the terrible tragedy which occurred last January 4, in Baltimore County when Amtrak train No. 94 crashed into a Conrail train which crossed into its path killing 16 passengers and seriously injuring more than 170 others.

All of us were shocked and saddened by that catastrophe, Maryland's worst rail disaster, which brought grief and suffering to many, many families and friends of those who were killed and injured. I have spoken before on this floor about the exceptional and generous response to the tragedy that was made by countless citizens in our State particularly by the residents of Chase, MD.

Today, I particularly want to note the determined efforts now being made by the families of those who experienced this tragedy to obtain corrective legislation. To their credit, they have undertaken to translate their grief and sorrow into action by seeking a legislative remedy and they have come to the Congress again and again in pursuit of that goal. The families and friends of the victims of the January 4, 1987 Amtrak/Conrail train wreck in Chase, MD organized the Safe Travel America organization to seek action by the Congress strengthening our laws and regulations on travel safety.

Only recently, they were here on the Hill engaged in a very effective grass roots lobbying effort. I simply want to say to all of those who have been engaged in the effort that, while this deep personal loss cannot be undone, their action is, in a sense, the best tribute that they can pay to the loved ones whose lives were taken in that tragic accident.

The pending legislative proposal deals with a very serious matter: how do you address the problem of drug abuse by those who are placed in very responsible positions for the lives of others? In other words, we are concerned about people who have been given major responsibilities for the operation of our public transportation systems and into whose hands the safety and the lives of large numbers of people are placed every day.

This legislation is an effort to address that question. It seeks to deal with the drug question, not only by screening and testing mechanisms, but also by an important effort at rehabilitation. My colleague has had accepted as part of the pending proposal important safeguards with respect to laboratory testing to ensure their validity and accuracy and to make sure that no one is improperly questioned in that regard.

It is clear that this is a critical matter calling out for the affection of the Congress. It was addressed in the Commerce Committee and important legislation was reported out of that committee by an overwhelming vote. The proposal that is before us tracks that legislation.

I commend the Safe Travel America group for the efforts they have undertaken in behalf of this legislation. Anyone who was close to and experienced that tragic accident could not help but have it burnt into their memory forever and realize the necessity for corrective action. Mr. President, I hope the Senate will adopt this amendment.

Mr. President, I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina, Mr. HOLLINGS.

Mr. HOLLINGS. Mr. President, I want to commend the distinguished Senator from Missouri on this amendment. As the chairman of our Commerce, Science, and Transportation Committee last year and now as our ranking member this year, the distinguished Senator has taken an active role in this area. The amendment under consideration encompasses the substance of S. 1041, the Transportation Employee Safety and Rehabilitation Act of 1987, adopted by the Commerce Committee earlier this year. Approval of this amendment would represent a significant step toward improving the safety of the traveling public. Workers in the rail, aviation, and motor carrier industries would also be principal beneficiaries of this since they are the ones who find themselves on the front line of any accident that may occur on account of drugs or alcohol.

Incidentally, Mr. President, of course, workers in public transportation, owe a higher degree of care, as we all know, under all of the State laws and, therefore, a higher degree of responsibility. Therefore, we in the public sector owe a higher degree of responsibility to the traveling public

to make sure that we give not just a driving test or a vision test so you can see, or a reaction test, but certain tests of this kind on a random basis.

Drug and alcohol abuse in the transportation industries has been an issue of continuing concern on the part of the members of the Commerce Committee. I am certain that it has also been a major concern of Members of the Senate as a whole, particularly our colleagues from Maryland. Accidents such as the one earlier this year in Chase, MD, serve to show us just how tragic the results can be when safety is compromised. In that accident, 16 individuals were killed and over 170 were injured when an Amtrak train collided with three Conrail locomotives that had improperly pulled out into the Amtrak line. While we do not have a definitive conclusion as to the factors which led the Conrail engineer and brakeman to ignore three separate warning signals, we have every indication to believe that drugs may well have played a major part in that.

The accident at Chase, MD, is not the sole motivation for passage of S. 1041 and the amendment being considered. Rather, it is when this tragedy is added to the record that is already before us that one can see the full scope of the problem.

There is no question that drug and alcohol use among transportation employees is a problem. The record developed by the Commerce Committee in hearings held during the 99th and 100th Congress confirms this. For example, the Federal Railroad Administration reports that between 1975 and 1984, there were 48 rail accidents in which drugs or alcohol were "directly affecting" causes. These resulted in 80 injuries and 37 fatalities, and cost some $34 million in damages. In 1986, after having begun a program of post-accident drug and alcohol testing, the Federal Railroad Administration found that some 5 percent of the 759 rail employees tested showed signs of illicit drugs or alcohol in their systems.

The potential for problems exist in other areas of transportation, as well. In the commercial aviation area, we have learned that the Air Line Pilot Association—and, incidentally, I commend them for this—has administered a voluntary alcohol rehabilitation program in which some 800 commercial pilots have undergone treatment in recent years. While we have been fortunate in that no commercial air carrier accidents have been directly attributed to drugs or alcohol, certainly these statistics indicate the serious potential problem that exists among employees who may not have yet acknowledged their drug or alcohol problems.

Witnesses before the Commerce Committee also attested to the problems that exist in the motor carrier industry. For example, we were provided with the results of a study conducted by the Insurance Institute for Highway Safety that showed that of a random sample of 300 truck drivers, and among those 88 percent who agreed to be tested, 18 percent tested positive for the presence of controlled substances or alcohol. In the bus industry, we were informed that when Greyhound took applications from a group of experienced intercity bus drivers during a strike in 1983, some 30 percent of the applicants tested positive for marijuana. These are alarming statistics, Mr. President.

What then is the solution to this particular problem? Some might argue that drug and alcohol abuse is a societal problem—they got a problem for every solution. They would argue that you have to change the whole society before you can do anything. Such nonsense that goes on up here in Washington. That would not sell in downtown Atlanta, GA, or elsewhere I can tell you that.

"We are societal and you have got to look at it in the societal context." Well, the distinguished Presiding Officer and I do not buy that one.

In my view, those who choose to work in safety sensitive positions in transportation industries assume a special obligation since what they do directly affects the safety of the traveling public.

As legislators, we also have an obligation to the traveling public. That is to do all we can to ensure that transportation workers are free from the influence of drugs or alcohol when they have responsibility for the safe operation of a train, airplane, truck, or bus. We can help meet our responsibility in this regard through passage of the amendment that is before us.

The amendment under consideration seeks to deter drug and alcohol abuse through a program which includes five forms of testing. Testing would be required under this proposal prior to employment; on a periodic basis; following serious accidents; when there is reasonable suspicion to believe that an employee has used drugs or alcohol; and on a random basis. All of these are integral aspects of S. 1041 and this amendment. I would like, however, to focus a few remarks on the issue of random testing.

In my opinion, the random testing required by this amendment is the primary means we have to actually deter the unlawful use of drugs and alcohol. That is what we are trying to do. We are not trying to get rid of an employee for another reason. What we are trying to do here is create deterrents.

Preemployment, postaccident, reasonable suspicion and, to a degree, periodic testing, are all designed to detect actual drug or alcohol abuse. Contrasted with this is random testing. While random testing can detect the presence of drugs or alcohol, to be sure, it primarily serves as a deterrent to the unlawful use of these substances. It is the possibility that one might be tested at random that will serve to discourage the use of drugs or alcohol and that will do the most to improve transportation safety.

There are misconceptions about random testing, and you are going to hear from other speakers who will try to oppose this. We have had a very difficult time with regard to this from our friends in organized labor who have sought to defer a random testing proposal from consideration. That is why we have to move now with this amendment.

They seem to say it may be used as a means to harass employees or to allow employers to target certain individuals for testing. That is not the case.

The random testing authorized in this amendment is intended to be purely random. The text of the amendment and the report accompanying S. 1041 clearly seek to ensure that employees are selected from random tests by nondiscriminatory and impartial methods, For example, the committee report envisions that a computer-generated random selection process might be used to select employees for random tests. A procedure like this would ensure that random testing would be used solely for deterrent purposes, not for harassment.

The amendment under consideration also contains a number of important safeguards to protect employee privacy and ensure accuracy in testing.

If there is a frustration I have with this, it has been that we had not gotten this bill up earlier. Perhaps there is a silver lining in this however, and that most assuredly we are not just acting with this amendment in a reaction to the Maryland disaster. Even after these months since that disaster has ensued, we are still just as determined and still just as convinced of the rightness of this particular cause and this amendment.

It is also my understanding that this legislation authorizes the Secretary of Transportation to require the establishment of rehabilitation programs in the aviation, rail, and motor carrier industries. In this regard, I am particularly interested in seeing to it that programs are initiated which provide employees with an opportunity to voluntarily come forward and seek assistance for any drug or alcohol problems they might have.

That is on a voluntary basis. Obviously, however, there has to be a penalty for those who violate their trust in public safety by being caught under the influence and causing a tragedy of the kind that we have experienced, or any accident or injury to themselves.

We do not want to do away with the penalty itself, all on the premise that

there is no penalty and all that we will get is rehabilitation. I have heard that argument.

The sponsors of this amendment, and I am proud to join with the Senator from Missouri and the Senator from Maryland, favor rehabilitation. We commend those in the airline industry, particularly, who set up this particular program on a voluntary basis, tried and true. We hope it will follow with others in the rail and motor carrier industries.

I believe a requirement for carriers to provide employees with an opportunity to enter such self-help programs would do much to assist individual employees and society through the promotion of a safer transportation network.

With these remarks, I urge my colleagues to give their strong support to this amendment. Its adoption would send a clear signal that we are serious about doing all we can to improve the safety of transportation in the United States.

I yield the floor.

Mr. LEVIN. Mr. President, while I will vote against the motion to table the Danforth amendment, I am troubled by some of the specific language of the amendment as it now stands. For example, I would like to see greater clarity on the question of when an employee could use alcohol when not on the job. As the amendment stands, an employee could not, for instance, drink a beer even off the job, unless authorized by law.

Nevertheless, this amendment is heading in the right direction. It is designed to bring about greater certainty that the traveling public will not have its life and limb put at risk as a result of transportation workers operating under the influence of drugs or alcohol.

Furthermore, the underlying bill still must go to conference, at which time the overly broad language in this amendment could be, and hopefully will be, modified and fine tuned.

Mr. PELL. Mr. President, I shall vote in favor of the motion to table the amendment relating to mandatory random drug testing. Because of my concerns about the fundamental fairness of mandatory random drug testing for approximately 300,000 employees involved in public transportation services.

There is no question that these workers have the very highest obligation to uphold the safety of the passengers whose lives are entrusted to their professional services. I would point out here that, even with mandatory random testing out of the bill, there still would be a requirement for testing public transportation employees in preemployment, postaccident, and reasonable suspicion situations. These safeguards are sufficient, in my view, to protect the public without the added intrusiveness of mandatory random testing, a provision I find to be unfair and overbroad in its attempt to control private, off the job conduct.

Mr. CHAFEE. Mr. President, drug and alcohol abuse has become an increasing problem in the workplace. The costs of this abuse are clearly magnified in the transportation sector. When operators of a plane, bus, or train use drugs or alcohol on the job, they not only endanger their own lives, but the lives of passengers entrusted to their care or other passengers in the system.

Substance abuse clearly leads to impaired memory, lethargy, and reduced coordination. In the case of a transportation worker in a safety-sensitive position, delayed response time can result in the loss of life. I think what brings us here today is especially the memory of what happened in Maryland. There, when the Conrail train crashed into the Amtrak train and the loss of 16 individuals and 170 injuries ensued, it was a ghastly situation.

It particularly came to my attention, and affected me personally and those from my State, because there were two young sisters on that train, two young girls, sisters. Both of them were killed. They were from our State.

My heart goes out to their family. We do not want to see this happen again if we can avoid it.

The legislation we are now considering to require drug and alcohol testing for employees in safety-sensitive positions, had it been in effect, could have prevented this tragic accident.

Now there are those who will say that random drug testing of airline pilots, bus drivers, or truck drivers, is a violation of our civil liberties. I would agree with this assessment in every case, except where the lives of the public are at such risk. In undertaking a drug testing program of any sort, it is necessary to protect the privacy and rights of those being tested. S. 1041 takes the necessary precautions to protect these rights. The bill also provides safeguards to assure accurate test results. Mr. President, it is worth noting that this legislation takes great care to protect employees both by requiring that a second test of the highest laboratory quality be administered to confirm any initial screening which indicates the use of alcohol or drugs, and by requiring the confidential treatment of the initial screening.

The potential for catastrophic disaster created by those who abuse alcohol and illegal drugs while working in safety-sensitive transportation positions necessitates a drug testing program to deter this behavior. This legislation is an appropriate response to this difficult problem. If somebody has got a better idea, we would be glad to hear it. It is not just some esoteric problem that somebody has dreamed up. It happened. It happened in Maryland. It could happen again.

So I urge my colleagues to support this amendment and to vote against any motion to table.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, my beautiful State is as far away from the Nation's capital as any other State. In fact, it is beyond Alaska.

In the last 15 years on an average I have returned home to Hawaii 21 times a year. In addition to that, I have to, as part of my work, travel to other parts of the United States. In the past 15 years I have spent an average of 23 days up in the air; 23 days. I believe I have spent as much time up in the air as any other Senator.

Obviously, I am concerned about passenger safety. I am concerned about my life. That is normal, to think about one's own life.

But, Mr. President, according to statistics provided us by the Department of Transportation, this year over 425 million men and women and children of the United States will be traveling by flying. As of this moment we have not had any accident resulting in death cause by drug abuse.

This year over 425 million men, women, and children will be flying and, so far, no accident as a result of drug abuse.

Mr. President, like all, I am concerned about drug abuse. I think it is one of the worst tragedies confronting us in the United States. But I do not believe that this concern justifies violating the constitutional right to privacy of the vast number of transportation employees who would be subjected to random drug testing without reasonable suspicion should this measure become law.

We would be testing these pilots who so far have demonstrated that they can fly; who so far have demonstrated they have flown without drugs. But we have placed all of them under some cloud of suspicion by this bill.

In determining whether a search and seizure is reasonable, Mr. President, courts have balanced the Government's interest in searching against an individual's right to privacy. For example, the Supreme Court has found that seizing of blood constitutes a grave invasion of privacy as defined by the fourth amendment.

Furthermore, the degree of intrusion involved in the seizing of urine has been held akin to the taking of blood. As a result, an employer must have a compelling interest to test before it will be held constitutional.

Proponents of this measure contend that the Government has a substantial interest in protecting public safety. I do not disagree with this. But in light of recent court decisions

which found this interest alone insufficient to justify the random testing of U.S. Customs officers, firefighters, and police officers, I think there is a high probability that the Senate bill will not withstand constitutional scrutiny.

Mr. President, I cannot agree with the rationale that only those employees who are drug abusers would fear or find such testing repulsive.

However, it is the constitutional liberty of all employees that is at stake.

I do not believe that the Government's interest in random testing is compelling enough to justify invading the privacy of all employees without reasonable suspicion.

Much has been said about the recent tragic accident that occurred in the State of Maryland. I, too, was horrified by the pictures that appeared on television night after night. I, too, am concerned about the possibility that those who were operating this train may have used drugs or may have been under the influence of alcohol. But I think we should also keep in mind the millions of passengers who have taken this same route month after month, year after year, safely taking it to their destinations, without any fear of those in charge being under the influence of drugs or alcohol.

If this amendment passes in the same haste as it was written, I think that unsound public policy would be the result, and it will be measured by the countless numbers of lawsuits stemming from the unresolved constitutional question.

As I stated when this amendment, which was then S. 1041, was reported out of the Commerce Committee, I had serious reservations regarding the potential unconstitutionality of random drug testing, and my concerns have not been calmed. To the contrary, the U.S. Supreme Court has not decided this issue. No. U.S. court of appeals has upheld random drug testing on as massive a scale as that which this amendment would establish.

Recent court of appeals decisions uphold drug testing which is founded upon reasonable suspicion. That has been the law of the land for over 200 years.

Recent court of appeals decisions which do provide for random testing limit such testing to a distinct and well-defined class of employees who are responsible for drug interception or the prevention of drug trafficking in prison systems. There is no documentation, Mr. President, that transportation-related employees are drug users or who have the responsibility of drug interception. To the contrary, 425 million passengers this year, myself included, will be flying over the land without fear of pilots being drug abusers.

For these reasons, Mr. President, much as I hate to find myself in opposition to any of my dear friends, I would have to move to table the amendment.

Mr. DANFORTH. Mr. President, before the Senator does that, may I respond?

Mr. INOUYE. Please, yes.

Mr. DANFORTH. Mr. President, I ask unanimous consent that Senators DOLE, WILSON, MCCAIN, CHAFEE, and STEVENS be added as cosponsors to this amendment.

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

Mr. DANFORTH. Mr. President, first of all, with respect to airline pilots, the evidence that was presented in the Commerce Committee was that the Airline Pilots Association itself reported that 800 commercial pilots have acknowledged an attempt to end their addiction to alcohol through the association's voluntary rehabilitation program recently.

I say that for whatever it is worth, but I would point out that in the view of this Senator there is no sector in the country, there is no group of people, who are free from the problems of either alcoholism or drug abuse.

This is pervasive in American society. I do not think it is reasonable to believe there is any class of people, any group of people who somehow are absolutely free of the problem.

Second, with respect to the question of whether there is a cloud of suspicion hanging over every airline pilot or every locomotive engineer or every truck driver, the answer is, of course, no. It is not a question of suspecting people. It is not a question of hurting someone's feelings. This is a question of public safety. I do not feel that I am somehow under a cloud of suspicion when I go to the National Airport to take a plane to St. Louis and I have to go through a metal detector. I do not believe that people really say, "There goes JACK DANFORTH; he is a terrorist."

But the fact is that we have to protect against that tiny fraction of the population that is dangerous, because if there is a mistake, if there is one terrorist in a thousand, one terrorist in 10,000, there is real trouble. If there is one person under the influence of drugs who is piloting a plane or operating a locomotive, there is real trouble. There was real trouble in Chase, MD. There is real trouble with all of the bus accidents and the truck accidents that I cited in my opening statement on this amendment—real trouble. People's lives are taken. People's lives are lost. It is not a question of suspecting people, of saying, "Oh, my gosh, we suspect you of being an awful person because we are taking urine samples."

Urine samples are taken of airline pilots every 6 months, I believe, in their ordinary physical exams. I do not think that that is an imposition. I think that is a basic requirement because we want healthy pilots. Certainly, if we want healthy pilots, if we want healthy locomotive engineers, we want those who are free of drugs.

Finally, with respect to the constitutional question, the question of random testing has been raised in several cases that have been decided by the U.S. courts of appeals. Now, I do not know of any court of appeals case that has taken up the issue of random drug testing and alcohol testing where the testing has been held unconstitutional.

I could be wrong on that, but I just do not know of any case that has been decided by the court of appeals. District court cases have gone both ways. I believe the prevailing view in district courts is for drug testing, but I am not sure about that. But I know that in the court of appeals cases the cases have turned out in favor of the constitutionality of random drug testing.

The eighth circuit court of appeals decided a case with respect to prison guards; the second cricuit court of appeals with respect to FBI agents; the eighth circuit with respect to prisoners themselves; the third circuit court of appeals in the case of Shoemaker versus Handel certiorari was denied by the U.S. Supreme Court in that case incidentally—random drug and alcohol testing was held constitutional for jockeys.

Now, Mr. President, under what theory could it possibly be constitutional to test jockeys for drugs and not test locomotive engineers for drugs?

So I believe it is clear that this would be held constitutional by the U.S. Supreme Court if it ever were to get that far.

Mr. FORD. Will the Senator yield for a question? Mr. President, I want to ask the Senator a question.

Mr. DANFORTH. Yes.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. How often does the Senator anticipate that an individual might be tested during the period of 12 months if you go for random testing; he may or may not be tested?

Mr. DANFORTH. May or may not. The meaning of random is that you would never know if you were going to be tested or not.

Mr. FORD. So you would hold that over their head.

Mr. DANFORTH. Yes.

Mr. FORD. That is the essence of that.

Mr. DANFORTH. Very much like when you are driving down the street, do you know that a policeman is parked around the corner looking for speeders? Who knows? Hopefully there is deterrent effect.

Mr. FORD. I like them out on the highway where you can see them and they are useful instead of being behind a billboard.

If we have a group that is included in this legislation that would meet, or more than meet, the qualifications or suggestions on this and there is some provision, is there any way they might be excluded from this legislation? The pilots, for instance, are given physicals every 6 months. Why should this legislation be imposed upon them when they regularly have to do that in order to fly? It seems to me where they are doing that now, the remedy might be excluding them from random testing provided they have that test, then, that cloud would not necessarily be over their head. Of course, that means that you are going to test others, but others that might have to have physicals every 6 months and they comply with certain rules, standards, regulations, whatever it might be, they might be excluded under this legislation.

Mr. DANFORTH. Let us suppose that an airline pilot—I am not sure about how often they have physical exams.

Mr. FORD. So they would have a specimen taken and it would be reported if there was some unusual characteristic.

Mr. DANFORTH. Let us suppose that an airline pilot is tested every 6 months, and I think a locomotive engineer every year, 2 years, something like that. But let us suppose it is a 6-month physical exam that they have and they give urine samples as a matter of course during that exam. And let us suppose that a particular drug shows up in a urine sample for, say, 5 weeks or 3 days or whatever, but let us say 5 weeks after it is used. Then that would say you could feel you would be in the clear except for that limited period of time when it would show up in the sample. That is the problem. The testimony that we had in the committee was that without random testing, there is really no good way to assure that drugs will not be used in the workplace.

Mr. FORD. If you have a problem user, surely it would be difficult for that individual to stay off for 5 weeks or a longer period. You basically do not have a problem user if they can stay off any kind of drugs for several weeks. You may get a prescription for a bad cold or the flu or something like that. Under this provision, what do you do in case the test shows up positive for drugs? What kind of remedy does that individual have?

Mr. DANFORTH. Let me say, first of all, with respect to the problem user, I think from the standpoint of the passengers, a person who uses drugs once on a recreational basis is a problem user. I do not think that you have to be an addict to be a problem user as far as the public is concerned. I would assume that most of the people who use drugs probably—I do not know, but maybe or not—are not addicts.

Mr. FORD. Where they have a prescription but are not a problem user, how does that individual vindicate himself from this particular problem?

Mr. DANFORTH. My understanding—and the Congressional Research Service has done a study of this—is that even the initial screening is 98- to 100-percent accurate in finding what, if anything, is in the sample, that under the provisions of this bill subsequent to the initial screening, the person would continue to hold the job.

And a second test would be done on the sample. It is believed that that test is 100 percent accurate. The best belief that has been accepted, as a matter of fact, by the courts who have addressed this question, is that it is 100 percent accurate, and that it tells what the person has used. It does describe what is in the person's system, and the amount that is in the person's system. So I think there is no chance that an inaccurate result would come from something like eating poppyseed bread of something like that.

Mr. FORD. How many individuals will be covered under this piece of legislation as it relates to the airline industry?

Mr. DANFORTH. How many people are employed?

Mr. FORD. No. That would be subjected to the random testing?

Mr. DANFORTH. It would be about 175,000.

Mr. FORD. How many in the rail industry then would be covered? I have already read it. I can almost tell you.

Mr. DANFORTH. There are 120,000 rail employees.

Mr. FORD. One hundred seventy-five and 120,000, that is 295,000. How many in the trucking industry?

Mr. DANFORTH. Three million.

Mr. FORD. Three million? That is roughly 3,300,000 with my modern math. And 2 percent of that is how many?

Mr. DANFORTH. Senator FORD, about 60,000, I think.

Mr. FORD. About 60,000. So we have roughly 66,000 people that would have to take the second test. The cloud would be over them, if we said 98 percent positive, only 2 percent negative. I am just using the Senator's figures.

So we would have approximately 66,000 that would have a cloud over their heads, who would have to go take the second test. How many of that 2 percent would be found drug free, or would find that a mistake had been made on the first test?

Mr. DANFORTH. The belief is and the best evidence that I have, and that is from the Congressional Research Service, believe that the first screening——

Mr. FORD. Ninety-eight percent.

Mr. DANFORTH. Ninety-eight to one hundred percent accurate, and that is why no disciplinary measures are used against this person. In fact, there is not a cloud until the second test is completed and the second test is believed to be 100 percent.

Mr. FORD. They would have to take the second test if there was some problem in the 98 percent?

Mr. DANFORTH. The same sample would be subjected to the second procedure.

Mr. FORD. It still would be a second test under the original sample?

Mr. DANFORTH. That is right.

Mr. FORD. So it would have to go one step further.

Mr. DANFORTH. Yes.

Mr. FORD. The Congressional Budget Service gave the Senator this information?

Mr. DANFORTH. The Congressional Research Service.

Mr. FORD. What scientific background does the Congressional Research Service have? Do they go out and gather the material and give it to the Senator?

Mr. DANFORTH. Senator FORD, you are taxing my knowledge of the process that they undertook.

Mr. FORD. We would tax everybody's knowledge based on what we are getting ready to do here. I think we ought to be acquainted with what is going on.

Mr. DANFORTH. It would seem to me that where you have a clear case, not only on the basis of samples for example, random surveys at truck stops, but actual cases and a number of actual cases of people being killed and people being injured in real accidents, then the question is to use the best judgment we can on how to reduce the prospects of this kind of thing happening in the future. I think that makes sense when, for example, the Federal Railway Administrator comes before the Commerce Committee, and says this is really the only thing that makes sense. When that is the evidence before us, and when that is the best evidence that we have, and the courts have held this as a matter of fact on the basis of expert testimony provided to them, that there is 100 percent certainty as far as they are concerned on the basis of the second test of the same sample, then it seems to me that the time has come to act.

Mr. FORD. I say to my distinguished friend I have no problem with trying to eliminate drug users. I have no problem. But I want to be very careful that I do not impugn the integrity or the character of an individual and someone slips one too many either way. If we are treading on 66,000 who have to be tested the second time or

their original specimen would be tested the second time, that is a lot of questions being asked as it relates to random sampling.

Mr. DANFORTH. Let me ask the Senator from Kentucky this: If there is a 98-percent to 100-percent chance that an airline pilot has drugs in his system, does the Senator not believe that that should require a second test?

Mr. FORD. I do not mind the second test. But I have never found in all of the testimony, and I have listened to a lot of testimony like the Senator has, where any of the tests are 100 percent accurate. The Senator says 98 percent to 100. I do not think anybody will say to the Senator or to the committee, at least witnesses that I have heard, that they are at least 100 percent accurate.

Mr. DANFORTH. No; 98 percent to 100 percent on the first screening and the second test, too, believed to be 100 percent.

Mr. FORD. Why we not do it 100 percent the first time?

Mr. DANFORTH. Because it is the question of the process that is used.

Mr. FORD. And the cost. Is it an additional cost for the second?

Mr. DANFORTH. Sure.

Mr. FORD. What does the first one cost and who pays for it?

Mr. DANFORTH. It would be paid for by the industry itself; $13 to $20 for the first test.

Mr. FORD. So $20 for the first test, times 3 million is what it would cost the industry and how much for the second?

Mr. DANFORTH. No. That is not correct, Senator FORD. Nobody is suggesting that every employee must be tested once a year. That would be the cost of every employee who is tested once a year.

Mr. FORD. The airline pilot could be tested four times a year.

Mr. DANFORTH. But a mandatory random test would occur at numbers by the basic nature of things, and could not be predicted.

Mr. FORD. What is the second cost or the cost of the second test?

Mr. DANFORTH. Each test would be about $13 to $20.

Mr. FORD. The same as the original test, so just double it. It would be $20 for the first one, $20 for the second one, or a total of $40 to $50 for the first two tests? Is that correct?

Mr. DANFORTH. If you did two of them?

Mr. FORD. Two percent, you would have to do two, roughly, 98 percent to 100 percent.

Mr. DANFORTH. The Senator is getting the lowest figure, 98 percent. If you want to assume the lowest, that would be correct.

Mr. FORD. I am taking the Senator's figures, 98 to 100 percent. The worst it could be would be 2 percent. That is the very worst it could be, and so 2 percent is 66,000 times $40.

Mr. DANFORTH. Everybody who would test positively would be tested twice.

Mr. FORD. I understand that. But we have 2 percent, and that is the worst scenario.

Mr. DANFORTH. I am not really tracking with you.

Mr. FORD. The Senator says 98 percent to 100 percent postive.

Mr. DANFORTH. No. I am saying that the test, it is believed, the first screening, is 98 to 100 percent accurate.

Mr. FORD. All right. So we have 98 percent which would be the worst scenario under the Senator's scenario, that would be accurate, 98 percent. That would be 2 percent at the worst and it would have to be tested the second time.

Mr. DANFORTH. No. Everybody would be tested the second time if they tested positive.

Mr. FORD. That would be the 2 percent, roughly.

Mr. DANFORTH. No.

Mr. FORD. How many would be positive? We have no idea?

Mr. DANFORTH. No.

Mr. FORD. Of those tested positive, 2 percent have to be retested?

Mr. DANFORTH. No. Everybody who tested positive gets retested.

Mr. FORD. That should be——

Mr. DANFORTH. That is the safety measure that is used to protect the people because the first screening may be somewhere between zero and 2 percent inaccurate. So to make sure that even that 2 percent inaccuracy does not come into play, everybody who is tested positive gets the second test.

Mr. FORD. The point I am making, the Senator does not know how many are going to be tested?

Mr. DANFORTH. No.

Mr. FORD. He does not know how many are going to be positive or negative, and he does not know what the cost is going to be to the industry?

Mr. DANFORTH. No.

Mr. FORD. I thank the Senator.

Mr. DANFORTH. I also say we do not know on any given day at National Airport how many people are going to walk through the metal detectors carrying guns. We do not know on any given day how many people are going to show up in the airport in Louisville or anywhere else that are going to be toting bombs with them. I do not know who could take a sample, but I do not think anybody wants to take the chance that very many people are doing that.

Let us suppose, just for the sake of argument, that it were known that only 1 percent of the flights that took off at National Airport had people who were under the influence of drugs. It is not that high, I do not think. But let us suppose that only 1 percent of the flights that took off, or 1 percent of the locomotives on the tracks, were operated by people under the influence of drugs. The chances are 99 percent that you are going to reach your destination; OK, so what are you worried about? I do not think anybody would make that argument.

With respect to mandatory random testing, let us suppose that it costs $30 or $40 or whatever to do the program, per person who is tested, however many people that is. It seems to me that that is a very modest cost to pay to reduce the incidence of people being wiped out in public transportation in this country—a very modest cost.

Mr. HOLLINGS. Mr. President, we know what the commercial pilots have stated. We know what the motor carrier industry has pointed out; the 18 percent that tested positive in a random testing of 300 truck drivers. Thirty percent of the applicants for positions as intercity bus drivers tested positive for marijuana. We know what the facts are with respect to the Federal Railway Administration. They found that 5 percent of the 759 rail employees tested following accidents showed signs of illicit drugs or alcohol. So we do not have to guess.

We are seeing, if you please, a demand from the traveling public that they remove the cloud of suspicion. I never heard such a nonsensical analysis, that we are putting people under the cloud. Everybody now is under that cloud of suspicion with these statistics. So, in addition to deterrence, what I am trying to do and the amendment certainly will accomplish is to remove that cloud of suspicion, and see to it that there is some responsibility.

As to the invasion of privacy, taking blood, we had that argument way back 40 years ago in connection with smallpox vaccinations. We have done away with that. You could not stick a person. They have done away with smallpox by invading their privacy.

Under the contention of the Senator from Hawaii, we want to invade privacy. I want to, for the public good. When there is an overriding public interest, there is an overriding public duty for the highest degree of safety. So the cloud is a cloud of the highest degree of safety, and the cloud we are trying to remove here is a cloud of suspicion.

We would not measure who has traveled most in the U.S. Congress. Neither the Senator from Hawaii nor the Senator from California qualifies. There is the crowd on the political stump running for President. They are up there all the time. I know that in 1983, I missed 50 percent of the votes. But I was up in the air, going back and forth and traveling in all areas. Announce for the Presidency, if you want to win an award for staying up in the air.

I can tell you that what we have done is find a public need. We found it on the authorization bill for the Department of Defense. We mandated drug testing for those who are coming into the service. They give up certain rights when they volunteer, and you give up certain rights when you drive for the traveling public and not just privately.

In a similar fashion, as the Senator pointed out, we give jockeys drug tests. The American public has come forward in scholastic football for steroids testing. We are giving all those tests right on down the line. Yes, it is a miracle, and I stated so yesterday when we passed the airport and airways safety bill.

We found that of 425 million passengers, approximately 1.2 million passengers today will travel from 10,000 locations to 10,000 locations safely.

That is the argument, of course, of Reaganomics. Look at the great, wonderful binge we have been on. Then, all of a sudden, bang—and on October 14 we lost one-half of a billion dollars in 1 day, and we had the crash, because the people kept wanting and wanting. There comes a due date. You have to pay your bills, and you know that you are playing with danger, playing with fire.

In a similar fashion, in public safety, we are playing with fire, talking about the rights of privacy of those who are in control of airplanes, buses, or trains.

What does it cost? All the gymnastics about how much is this and that—what is the cost of 16 dead and 170 injured in Maryland this past year? Those are the costs we are looking at.

Here is what we found just 24 hours ago, by a vote of 96 to 1. We found that, yes, we have had in airlines all that safety. But we also see the gathering storm. Through September of this year, we have had 857 near-misses, a 37-percent increase over last year, and it went up last year over the previous year. We found 984 operational errors, an increase of 80 percent. We found 2,551 pilot deviations, where pilots deviated from the Federal air regulations, an increase of 54 percent. That is why this body, by 96 to 1, voted $15.6 billion.

But when we get to safety and what everybody can do in football and jockeying and horse racing in everywhere else in the world—where pilots themselves volunteer—and what have you, then all of a sudden this congressional crowd can go off on a toot about privacy.

Let us give Congress a drug test, and you will find that Congress is acting judiciously, although perhaps a little late.

The use of drugs was not of concern when we were young and coming along. But in this day and age, it is a concern of all of us.

What we are trying to do, at the most and at the best, is to get deterrence. If they know there is random testing and they are going to lose their livelihood and everything else, that will help them say "No." Otherwise, if they have not been able to say, "No," they can voluntarily come under this bill, under the rehabilitation program. It is not punitive. It is done in a deliberate, judicious fashion.

This amendment should not be tabled. We are using the guidelines of the Health and Human Services Department. It is not a cloud of suspicion. The cloud of suspicion is there. Congress has found it already, yesterday and today. Let us follow through now and adopt this particular amendment, so that we can remove the cloud of suspicion.

I yield the floor.

Mr. KERRY. Mr. President, I join with my colleague, the distinguished Senator from Hawaii, and others, in expressing concern about moving too quickly and perhaps too broadly to attempt to deal with an issue that we are all very concerned about. I voted for this bill in committee but, I think, as the chairman and the ranking member and others remember, it was an issue that we talked about and expressed certain concern about at the time.

I believe there was an agreement certainly among staff and I think an understanding among Senators that we would vote for it because we thought it was an issue of such importance it ought to come to the floor, but between the time of its being passed out of committee and coming to the floor, there was work to be done. There were issues yet to be resolved, issues about the scope of the testing, cost, appeals process, how we were going to deal with some of the unresolved uncertainties of the testing process itself.

Now, Mr. President, as a member of the committee, I would say that I do not believe we worked our those differences. I do not believe that at this point in time we should move forward to broadly create a new governmental program where we do not even know the costs, where we are not sure of the implications, that will open up a whole new testing ability of all transportation employees, particularly when some of those employees have never been characterized in any assertions as being part of the problem.

There is an editorial in the Baltimore Sun which says that "Frustration can lead to bad judgments. Transportation Secretary Elizabeth Dole's dismay at the loss of life in the Amtrak crash north of Baltimore coupled with frustration many feel over drug abuse may be behind her injudicious decision on random drug tests for all railroad and airline personnel."

There are countless other editorials across the country which raise the question of the Constitution, of rights of privacy, and other issues.

Mr. President, as legislators we are often put in the position of trying to balance an interest that we have in moving quickly ahead to satisfy what we perceive as a public demand, balanced against rights that are sometimes a little harder to touch and a little harder to put one's hand on or feel in political terms that are engraved in the Constitution.

I do not think that we should just casually dismiss those because there is an enormous cry by the public to do what the public has never even had defined for them as a particular problem. No airline crash has ever been attributed to an airline pilot's mistake or use of drugs.

And I do not think it is possible to say that the public is screaming about drug testing for pilots when there has never been an allegation that one accident in the air has been as a result of drugs and there has been no finding to that effect.

But equally as important, Mr. President, I think about the drug testing program itself, let me relate a few items to my colleagues.

Recently there was an incident in drug testing where on the very crash that is the cause of much of the feeling that we ought to have a random program, those particular tests, the laboratory test showed evidence of marijuana byproducts in the blood of Conrail employees involved in that January 4 collision, but the Transportation Department now acknowledges that the test results may be "procedurally flawed" even though they were conducted at the Premier medical laboratory run by the FAA.

Another item, a Washington, DC, television reporter last year documented a 70-percent error rate on a group of specimens sent blindly to six DC area commercial laboratories.

Another item, following the NCAA basketball final four, press reports term the drug testing procedures "Kafkaesque." Sports Illustrated reports that:

> Countless players were detained for hours after games, while they tried to overcome dehydration and produce specimens. Others, in legitimate need of medication, feared taking it, lest they test positive for a banned substance. Florida Coach Norm Sloan went so far as to move his Gators from their Syracuse hotel, fearing his players might test positive beause of passive marijuana smoke from another room.

These incidents should surprise no one, as numerous cases in both State and Federal courts have shown, the issues of privacy, accuracy, and due process raised by drug testing are exceedingly complex and controversial. I support the general notion of "mandatory drug screening programs" for se-

lected categories of employees and I believe that there is overwhelming public support for such a program. The challenge is how we translate this broadly supported goal into legislation which is fair, effective, and capable of withstanding the inevitable legal challenges we can expect.

Mr. President, in testimony before the Commerce Committee this year on this subject National Traffic Safety Board Chairman James Burnett made that point when he said that it would be a mistake to embark on a program of random mass testing which winds up creating a series of drug tests as a consequence of it. "Inevitably a lot of people will be injured creating a backlash against the whole concept of drug testing."

My primary concern, Mr. President, is with the legal and constitutional implications of arbitrary random drug testing in the transportation industry. No drug testing program will be effective in combating drug abuse unless it is on sound legal ground, and can withstand a constitutional challenge. If we pass a drug testing bill, and that bill is not upheld by the courts, then we have achieved nothing in the fight against drugs. On the contrary, we may have created the very backlash which Mr. Burnett talked about so that it makes it harder to get people to support the program or have confidence in it in the future. I believe for that reason we ought to proceed slowly here. We ought to look at how we strengthen this program, and I am convinced there is a good-faith willingness among the members of the committee to do precisely that.

Some have argued that compulsory drug tests violate the 14th amendment prohibition against unreasonable searches and seizures. Courts have so held. That is not made up. Courts have so held.

It has also been argued that drug tests violate the 5th amendment right against self-incrimination and 14th amendment guarantees of due process. It has also been argued that drug tests violate the right to privacy, which we all know particularly underscored by the Bork hearings is not specifically stated in the Constitution but which the courts have articulated and written about through the years.

Some State constitutions and statutes also specifically protect the right to privacy. Legal protections may also differ for public employees versus private employees, and for unionized employees versus nonunionized employees.

Even if the courts were to uphold the mass random testing program required by this legislation, I would have serious reservations about various issues which I believe are not adequately addressed by the current bill. These include the costs of the drug screening and confirmation testing, the cost, management, and evaluation of employee rehabilitation programs, and the rights of employees to appeal a positive finding of drug use.

I believe that the first improvement in the Commerce Committee's proposal would be to move away from the requirement for random testing of all employees, regardless of whether or not they have displayed any record of impaired performance, judgment, or other work or personality disorders which may indicate a substance abuse problem.

Mr. President, I personally obviously feel that the constitutional problems are significant enough to want to go slowly here. I realize that some of my colleagues do not share that view, and I understand that. But it seems to me that regardless of your view of the constitutional question here, it is obvious that the existence of that ambiguity is going to lead to protracted, expensive legal challenges, not just once, but potentially dozens of times as everyone from the airline pilots to package handlers to flight attendants seek to have the law struck down as it applies particularly to them. The clear direction of the Federal courts at this point is to rely heavily, when resolving such constitutional questions, on job-related factors, such as reasonable expectations of privacy and heavily regulated industry distinctions. Such considerations will lead to numerous lawsuits, and the consequent delays will not only be expensive for the Government, not only expensive for the industry and the workers, but they are going to lead to a delay in the very goal we are going to try to implement.

I believe we can work out details here which will allow us to have a mandatory drug testing program for selected kinds of employees, a prescreening program for employment as well as a program that applies specifically to those people, people who have been shown to have problems in the past and that would give us an enormous increase in the numbers of people who currently ought to be tested and are not being tested. If we did that we would move forward in a concerted way that would allow us to create a track record for testing, a track record for the results, understand the costs, and know what the final consequences are going to be on workers and on the drug problem itself.

I think that would be a far, far more sensible way to proceed. I hope my colleagues will decide that this is a moment to try to proceed with caution, come up with a good piece of legislation, not avoid the issue, open up a new area, but do so in an intelligent, workable, and most important, sustainable fashion.

Mr. President, I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I am pleased to rise in support of the amendment to incorporate into S. 1485 provisions to require random and other drug and alcohol testing for certain safety-sensitive employees in the aviation, rail, truck, and bus industries.

I ask unanimous consent that I be entered as a cosponsor.

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

Mr. EXON. As one of the early leaders of this effort, I am pleased that we are taking this action today. Despite the obvious split on the Commerce Committee on this subject, when this matter was voted out of the Commerce Committee after extensive hearings, it was 19 for and 1 against; although I could see that there were reservations, and some good ones, expressed by many of the members. It may be that that was closer to the tragic accident of the Amtrak train than we are experiencing today. I think that fact does not change the need for this legislation and I hope that the matter will go forward.

The Senate Surface Transportation Subcommittee, of which I am chairman, held hearings earlier this year on rail safety following the tragic accident near Chase, MD, involving Amtrak and Conrail trains. Among other issues, the problems posed by the unfortunate presence of drugs and alcohol in our society were a major concern. I worked along with Senators HOLLINGS and DANFORTH on legislation subsequently reported by the full Commerce Committee. Unfortunately, this bill has been held up for 7 months. Therefore, it is entirely appropriate that we take action today on this measure.

Two areas of particular concern to me, which were included in the legislation and this amendment, were to include provisions to set up testing programs for truck and bus drivers and to ensure that testing is not used to harass employees. Regarding truck and bus drivers, I have always believed that what is good for the goose is good for the gander and it would be unfair to test only rail and air employees. I added these provisions to the Commerce Committee bill.

Regarding prevention of harassment of employees, the legislation contains a provision which I originated to ensure that any regulations adopted contain provisions to ensure supervisors cannot single out employees they do not like. I believe that "random" drug testing should be truly random and contain procedures to ensure that. This could be done by such means as computer selection or other objective

means for selection of names of employees to be tested.

Finally, as a member of the Armed Services Committee, I am also aware that the drug testing initiatives undertaken in our Armed Forces have been extraordinarily successful. There has been a dramatic drop in the use of illegal drugs in our Armed Forces and random drug testing has been credited by persons in all four services with this progress. I think the general public deserves the same type of progress in increased protection from hazards caused by drugs and alcohol in our public transportation system.

Mr. President, I yield the floor.

Mr. DANFORTH. Mr. President, I ask unanimous consent that Senators DECONCINI and HELMS be added as cosponsors.

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

Mr. HELMS. Mr. President, I strongly support the amendment offered by the distinguished Senator from Missouri [Mr. DANFORTH]. We were saddened by the tragic accident in Maryland this past January involving an Amtrak passenger train. We were appalled when it was later disclosed that drug use by personnel operating the Conrail train may have played a part in the accident.

The pending amendment would authorize random drug testing of transportation employees whose duties affect the safety of the traveling public. Such random testing has been criticized as an unconstitutional invasion of worker privacy rights. Mr. President, I cannot agree. Any privacy rights real or imagined, cannot possibly outweigh society's right to ensure individuals operating public modes of transportation are in full possession of their faculties.

Random testing, by virtue of the fact that it is random, is the most effective method of deterring drug use in the workplace. As long as the selection procedure is truly random and the test results are accurate, I can see no great harm which would be visited upon transportation workers by such testing.

I have heard further arguments that workers should not be tested unless there are reasonable grounds to suspect them of drug use. Mr. President, I find this argument untenable because it basically advocates postaccident testing. The harm or loss of life the present amendment seeks to prevent will already have occurred in many instances before testing would be justified. This is the present state of the law and it did not prevent the accident in Maryland.

Finally, Mr. President, if transportation workers subject to random testing find it truly intrusive and degrading, then they should consider employment which does not affect public safety so directly. The argument that "what people do on their own time is their own business" does not, and never has, carried so far as to permit individuals to endanger large segments of society. It should be readily apparent that drug use off the job often affects performance on the job. Individuals entrusted with the lives of hundreds on an everyday basis do not have the right to endanger those lives under the banner of individual liberty or privacy.

Mr. President, I urge Senators to support Senator DANFORTH's amendment because it is a practical, effective means of preventing transportation accidents caused needlessly by illegal drug use.

Thank you, Mr. President. I yield the floor.

Mr. INOUYE. Mr. President, this amendment has been presented in the name of passenger safety. I, too, support passenger safety, but my question is: Where do we go from here?

Because if statistics are correct, and I have no reason to doubt them, more passengers have been killed in passenger vehicles on our highways in a period of 2 weeks than passengers have died as a result of accidents in the air, in buses, in trains and in trucks. If passenger safety is the justification, then I suppose the next step would be to require random drug testing for all drivers on the highways.

Mr. President, if there are no others speaking on this amendment, I move to table the amendment.

The PRESIDING OFFICER. The question is on the motion of the Senator from Hawaii to table the pending amendment.

Mr. INOUYE. I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Hawaii [Mr. INOUYE] to table the amendment of the Senator from Missouri [Mr. DANFORTH]. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON: I announce that the Senator from Tennessee [Mr. GORE], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Illinois [Mr. SIMON], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

Mr. SIMPSON: I announce that the Senator from Kansas [Mr. DOLE], the Senator from Utah [Mr. HATCH], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Delaware [Mr. ROTH], the Senator from Vermont [Mr. STAFFORD], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

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

The result was announced—yeas 7, nays 83, as follows:

[Rollcall Vote No. 359 Leg.]

YEAS—7

Adams	Kerry	Pell
Cranston	Matsunaga	
Inouye	Melcher	

NAYS—83

Armstrong	Ford	Moynihan
Baucus	Fowler	Murkowski
Bentsen	Garn	Nickles
Biden	Glenn	Nunn
Bingaman	Graham	Packwood
Bond	Gramm	Pressler
Boren	Grassley	Proxmire
Boschwitz	Harkin	Pryor
Bradley	Hatfield	Quayle
Breaux	Hecht	Reid
Bumpers	Heflin	Riegle
Burdick	Helms	Rockefeller
Byrd	Hollings	Rudman
Chafee	Humphrey	Sanford
Chiles	Johnston	Sarbanes
Cochran	Karnes	Sasser
Cohen	Kassebaum	Shelby
Conrad	Kasten	Simpson
D'Amato	Lautenberg	Specter
Danforth	Leahy	Stevens
Daschle	Levin	Thurmond
DeConcini	Lugar	Trible
Dixon	McCain	Wallop
Dodd	McClure	Warner
Domenici	McConnell	Weicker
Durenberger	Metzenbaum	Wilson
Evans	Mikulski	Wirth
Exon	Mitchell	

NOT VOTING—10

Dole	Kennedy	Stennis
Gore	Roth	Symms
Hatch	Simon	
Heinz	Stafford	

So the motion to lay on the table amendment (No. 1105) was rejected.

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

The amendment (No. 1105) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments?

Mr. FORD. Mr. President, we will have three or four fairly controversial amendments beyond this one. I would be very hopeful that we might take up another one and dispose of it this evening, if we have to stack the vote until tomorrow morning.

Is there a possibility we might get a unanimous-consent agreement on time for this particular amendment, which will be labor protection for pilots?

Mr. NICKLES. I did not hear all of the Senator's statement. Does he want a time agreement dealing with the labor protection amendment?

Mr. FORD. Yes, and to stack the vote until the morning. Or if you want to stay around tonight, we will be glad to.

Mr. NICKLES. Mr. President, I would like to see the amendment. I have seen a version of it. I would like to see the amendment. I would certainly be agreeable——

The PRESIDING OFFICER. The Senate is not in order. The Senator will suspend until conversations cease.

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I would like to see the amendment and I would certainly be agreeable to hold the vote over until tomorrow.

Mr. FORD. Would the Senator be agreeable to 1 hour equally divided?

Mr. NICKLES. I would not want to enter into that agreement yet until we have a chance to see the amendment and have a chance to assess it. I have no desire to extend the Senate late tonight or tomorrow.

I also want to have a chance to talk to a couple of other people and see what they have in mind.

Mr. FORD. I appreciate the Senator's courtesy and I yield the floor.

AMENDMENT NO. 1106

(Purpose: To amend the Federal Aviation Act of 1958 to ensure the fair treatment of airline employees in airline mergers and similar transactions)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. ADAMS] proposes an amendment numbered 1106.

Mr. ADAMS. 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:

Insert at the appropriate place: That (a) section 408 of the Federal Aviation Act of 1958 (49 App U.S.C. 1378) is amended by adding at the end the following:

"FAIR TREATMENT OF EMPLOYEES

"(g) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to adversely affect the wages and working conditions, including the seniority, of any air carrier employees, labor protective provisions calculated to mitigate such adverse consequences, including procedures culminating in binding arbitration, if necessary, shall be imposed by the Secretary as a condition of approval, unless the Secretary finds that the projected costs of protection would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving there will be no adverse employment consequences or that projected costs of protection would be excessive.".

(b) The item relating to section 408 in the table of contents of the Federal Aviation Act of 1958 is amended by adding at the end the following:

Mr. ADAMS. Mr. President, on my amendment I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

If the Senator will suspend. The amendment is drafted as a bill. Does the Senator wish it to be modified to read as an amendment?

Mr. ADAMS. Yes. I request that it be as an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1107

(Purpose: To amend the Federal Aviation Act of 1958 to provide for the efficient handling of airline mergers and to ensure the fair treatment of airline employees in airline mergers and similar transactions)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. ADAMS], proposes an amendment numbered 1107 to amendment 1106.

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

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

The amendment is as follows:

Strike all of the language proposed in amendment No. and insert the following:

SEC. 2. Section 1601(a)(7) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1551(a)(7)) is amended by striking all after "in effect on" and inserting in lieu thereof the following: "the date of enactment of the Airline Merger Transfer Act of 1987, except to the extent any such sections relate to labor protection provisions: *Provided*, That rights, duties, and obligations arising (1) in proceedings commenced before the Department of Transportation prior to April 1, 1987, or (2) pursuant to final orders adopted by the Secretary of Transportation or the Board under sections 408 and 409 and section 414 (relating to such sections 408 and 409) prior to the effective date of termination shall be administered and, as necessary, adjudicated, as if such sections were not terminated.".

SEC. 3. (a) Section 7 of the Clayton Act (15 U.S.C. 18) is amended—

(1) in the first and second paragraphs, by inserting ", nor any air carrier or foreign air carrier subject to the Federal Aviation Act of 1958, person controlling such air carrier or foreign air carrier, other common carrier, or person substantially engaged in the business of aeronautics," immediately after "Federal Trade Commission" wherever it appears; and

(2) in the last paragraph, by striking "Secretary of Transportation,".

(b) Section 11 of the Clayton Act (15 U.S.C. 21) is amended—

(1) in subsection (a), by (A) striking "in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958;", and (B) inserting ", except air carriers and foreign air carriers subject to the Federal Aviation Act of 1958," immediately after "other character of commerce"; and

(2) in subsections (b) through (l), by striking "Commission, Board, or Secretary" and "commission, board, or Secretary" wherever they appear and inserting in lieu thereof "commission or board".

SEC. 4. (a) Section 408(b) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378(b)) is amended by adding at the end the following:

"(4) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to affect adversely the wages and working conditions (including the seniority) of any air carrier employee, the Secretary shall impose labor protection provisions calculated to mitigate such adverse consequences, including procedures resulting in binding arbitration, if the Secretary considers such procedures to be necessary. The Secretary shall impose such provisions unless the Secretary finds that the projected costs of imposing such provisions would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving that there will be no adverse employment consequences or that the projected costs of the imposition of such protection would be excessive.".

(b)(1) Section 1601 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1551) is amended by adding at the end the following:

"LABOR PROTECTION PROVISIONS

"(f) The authority of the Department of Transportation in section 408 relating to labor protection provisions, the authority in section 204 relating to the exercise and performance of powers and duties under section 408, and the authority to make exemptions in section 416 relating to the requirements of section 408, are transferred to the Department of Labor.".

(2) The item in the table of contents of the Federal Aviation Act of 1958 relating to section 1601 is amended by adding at the end the following:

"(F) LABOR PROTECTION PROVISIONS.".

(c) All rules and regulations issued by any agency or official of any agency in the performance of any duty transferred by subsection (b) of this section shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the Secretary of Labor, a court of competent jurisdiction, or by operation of law.

SEC. 5. (a) The Secretary of Transportation shall compile, on a quarterly basis, information regarding the fares charged and frequency of service offered by air carriers during the previous quarter for scheduled airline service to or from the fifty United States airports with the greatest number of annual enplanements, as determined by the Secretary, at which any one air carrier provides more than 50 percent of the total number of flights offered to or from such airport.

(b) The Secretary of Transportation shall retain any information compiled under subsection (a) of this section for a period of five years after the date of its transmittal.

(c) As used in this Act, the term "air carrier" has the meaning given to such term in section 101(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(3)).

91-059 O-89-34 (Pt. 21)

Mr. ADAMS. Mr. President, I am asking that copies of the amendment in its complete form be sent to the Senator from Oklahoma. I say to the Senator from Oklahoma, I appreciate his consideration. I understand that he wishes to read it. I wanted to be certain that we had it so that it was in complete form so that he could examine it. I have asked that it be brought to him immediately.

Mr. President, while that is being done, I hope we can get a time agreement, after the Senator has had an opportunity to look at it and discuss it with whomever he wishes to discuss it, with an appropriate time for debate.

The amendment I am offering tonight is contained in S. 724. That was the Airline Merger Transfer Act of 1987, which was reported by the Commerce Committee earlier this year. This amendment was adopted by the Commerce Committee. There were hearings on it. I offer this amendment to the consumer bill because the parliamentary situation makes it unlikely that the merger bill will come to the floor in the near future. I state that to the other Members so that they understand that this is not something that is new. It is not something that is any different than has been discussed before, that has been passed from the committee. So that there are no tricks; this is nothing other than a straightforward presentation. I was going to leave it as part of the bill S. 724, but since that bill is not going to be brought up today, it is being offered as an amendment.

Mr. President, let me begin my explanation of this amendment——

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. CHAFEE. I wonder if we could interject here one moment and ascertain, if we could, from the majority leader how late we might be in this evening. Is this a proper time for such an inquiry?

Mr. ADAMS. I will yield without losing the floor to the majority leader for an explanation.

Mr. BYRD. Mr. President, the managers of the bill are entitled to go for a while yet this evening and either dispose of this amendment or have a time agreement under which all debate would take place tonight with only the vote to be carried over in the morning. That is the only way we will finish this bill tomorrow, because if we carry over the debate and the vote tomorrow, as I understand in talking with the manager of the bill, there are at least three other tough amendments, which will mean we are not going to finish tomorrow because about 3 o'clock Senators will want to know whether they can leave. And even though we will be in on Monday, I have indicated I will try to put votes that are ordered on Monday over to Tuesday. That will mean then we will not finish this bill until Tuesday. If we finish this bill tomorrow, the back is going to have to be broken tonight.

Mr. NICKLES. Will the majority leader yield just for a thought?

Mr. BYRD. Yes.

Mr. NICKLES. I now have a copy of the legislation before me. I have several questions I would like to ask the sponsor of the amendment. I know my colleagues wish to know the agenda for the evening. Would it be agreeable with the majority leader and with the sponsor of the amendment—I do not know how long the sponsor of the amendment wishes to take on the amendment—say, for an hour of debate tonight and possibly an hour of debate tomorrow with a vote tomorrow?

Mr. BYRD. No. No. The evening is early, and if we can do this tonight it will take 2 hours or probably an hour and a half to finish.

I do not mean to be abrupt in my answer. I am being realistic now, having stood on this floor for 21 years and having seen how these things work out. I think it is realistic to think we can finish this amendment tonight at a reasonably early hour.

Mr. FORD. Mr. President, will the Senator yield?

Mr. ADAMS. Yes, I will yield to the Senator from Kentucky.

Mr. FORD. Will the Senator from Oklahoma take 2 hours equally divided, and have a vote tomorrow? Those who want to debate it can stay that late and others can go on home. I think the quality of life committee would appreciate that. An hour and a half would suit me much better, but I am willing to give the Senator another half an hour.

Mr. NICKLES. I appreciate the offer of my good friend and colleague from Kentucky. There is one little problem. If I can get the majority leader's attention, we have one Senator who I believe wishes to be heard but cannot be heard tonight and would like to be heard tomorrow, I do not think requiring a great deal of time. If we could have 30 minutes or an hour tomorrow—an hour equally divided with the time certain for the vote, it is certainly agreeable with me. But I am trying to help one other Senator as well.

Mr. BYRD. I think it would be reasonable to have debate tonight, have one-half hour for debate tomorrow morning beginning, say, at 9 o'clock and begin the vote, rollcall at 9:30. If that would be agreeable, it seems to me that would work.

Mr. NICKLES. I will agree to that.

Mr. BYRD. Very well.

Mr. President, I ask unanimous consent that on this issue there be—I am not talking about the issue. I am talking about the amendment and the amendment to the amendment—there be not to exceed 2 hours tonight to be equally divided and controlled by the offeror of the amendment and the ranking manager or her designee, and that there will be 30 minutes tomorrow morning beginning at the hour of 9 o'clock to be equally divided between the offeror and the ranking manager or her designee; that the vote in relation to the amendments then occur at 9:30 a.m.

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

Mr. BYRD. I thank all Senators.

Mr. ADAMS. I thank the majority leader and I thank the Senator from Oklahoma and the managers of the bill for their cooperation and help in arranging this agreement.

Mr. BYRD. Mr. President, if the Senator will yield further.

Mr. ADAMS. I yield to the majority leader.

Mr. BYRD. Before I say there will be no more rollcall votes tonight, Mr. President, I ask unanimous consent, in view of the fact tomorrow is Friday and everybody knows we have a bill up here, it is an important bill—this will be the first vote which normally is a 15-minute rollcall vote—that tomorrow morning's vote be 30 minutes and that the call for the regular order occur automatically at the expiration of the 30 minutes, which means get here, do not be 1 minute late. Thirty minutes is ample time for that first vote tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Washington.

Mr. BYRD. There will be more rollcall votes tonight.

Mr. ADAMS. Thank you, Mr. President.

Let me begin my explanation of this amendment by reminding my colleagues that Congress began consideration of airline deregulation when I was Secretary of Transportation. While I was not entirely happy with the Airline Deregulation Act, I was pleased to see that it contained employee protection provisions. This was a very important part of having this original bill passed.

The PRESIDING OFFICER. Will the Senator withhold?

We need order in the Senate. Will Senators and staff please take their conversations to the cloakroom?

The Senator may proceed.

Mr. ADAMS. I thank you, Mr. President.

I was not entirely happy with the Airline Deregulation Act. As I say, I was pleased to see that it contained certain labor protection provisions. These were not extensive as had been granted in previous times to railroad employees or to certain other types of employees in the transportation industry. But it did contain certain employ-

ee protections that were designed to ensure that airline employees would not be asked to carry a disproportionate share of the burden of deregulation.

All of us involved in that bill knew that there would be burdens from deregulation. To give consumers certain rights and to give them a greater choice, it meant that certain portions of the industry were going to have to carry a burden.

The inclusion of labor protection made a good deal of sense. We knew that deregulation would have an adverse impact on companies which were managed inefficiently or which misjudged the market. We also knew that employees, no matter how innocent or hard working, would feel the effects of management error in a deregulated environment. In addition, deregulation of the industry made it easier for airlines to merge and consolidate.

This was another portion of the act, difficult negotiations among all the parties involved, and a very difficult bill to pass and very difficult to administer.

While we expected deregulation to result in some benefit to the airlines and to the flying public, we were careful to include provisions in the act designed to cushion employees from the job loss and turmoil that deregulation might create.

Unfortunately, the Department of Transportation has completely misinterpreted the message of the Deregulation Act. Not only has the Department failed to implement the act's employee protective provisions, it has taken the Deregulation Act as a license to abandon the traditional protection afforded airline employees in corporate mergers, acquisitions and similar transactions. For 30 years, the Civil Aeronautics Board required, as a condition of merger, that the seniority lists of the merging carriers be integrated in a fair and equitable manner and that some financial benefit be provided to offset the burden of lost jobs or reduced wages.

Since assuming authority over LPP's from the CAB in January of 1985, however, the Department of Transportation has never required the imposition of such protection. In fact, the LPP policy of the Department is so narrow that it ensures that protection for the employees will never be imposed.

The amendment that I am introducing today simply requires the continuation of an LPP policy that the CAB followed for many years and that Congress directed the Department of Transportation to continue.

It would be different if this had not been directed by the Congress but it had been. It was the law of the land. It was a specific direction.

This amendment also transfers the responsibility of administering this policy from the Department of Transportation to the Secretary of Labor. And there is a reason for that. Originally, the CAB had regulatory authority over not only rates, routes, and mergers, but also over labor protection provisions and, in effect, the entire scope of regulation of the airlines.

When this was transferred to the Department of Transportation, the CAB went out of existence—one of the few agencies that has been sunsetted. I applaud the fact that this was sunsetted. But as it transferred into the Department of Transportation—and I know the Department well—they had no expertise in labor matters. The CAB had developed expertise in this over 30 years. So we have now a Department administering this provision which is the law and was the law of the land, but did not put in any labor protections. So we have asked that this go to the Secretary of Labor where there is expertise.

The point, Mr. President, is simply this: this amendment does not break new ground, it does not create any new powers; instead it simply reaffirms the authority which Congress intended to be exercised when it passed the Airline Deregulation Act of 1978.

This amendment would require that in any case in which the Secretary of Labor determines that a merger or transaction between two air carriers would cause a reduction in employment, or adversely affect the working conditions of air carrier employees, labor protection provisions calculated to lessen such effect must be imposed as a condition of approval.

This legislation is drawn in a way that preserves a reasonable degree of discretion for the Secretary of Labor. Thus, while the bill requires that LPP's be considered when approving airline mergers, it does not dictate the precise nature of those protections.

To those that have spent years in the field I would say this is not Allegheny Mohawk, this is not New York DOT; this is a specific provision that requires the Secretary of Labor to apply labor protective provisions but gives him the right or her to examine each transaction on a case-by-case basis and determine the levels of LPP's to be applied based on the individual merits of each case.

This legislation also provides for the early sunset of the existing authority of the Secretary of Transportation over airline mergers.

The reason that airline mergers and labor protection provisions have remained in the Department of Transportation is because the original transfer of all CAB authority went to the Department of Transportation which was an appropriate thing to do at that point. All that is left now is merger authority which belongs elsewhere, and to be terminated, and used under the regular antitrust law, and labor protection to go to the Labor Department which has the expertise to do this.

Since deregulation, and particularly in the past 2 years, the Department of Transportation has approved a series of mergers that has led to a significant increase in concentration of the industry.

In my opinion, this concentration may well continue, and it is very significant particularly in long route carriers. These mergers were approved with little serious review by the Department, and even over the objections of the Department of Justice in several cases.

That concerns me greatly because this Department of Justice is not reknowned for its desire to prevent mergers.

This amendment therefore would transfer the review of antitrust issues involved in airline mergers to the Department of Justice. So they would not have to simply make objections in the existing case, but would be able to exercise the authority which they have held over the industries.

In closing, I would just like to reiterate the fact that labor protection provisions have historically provided a reasonable and workable means of reducing the hardships caused by mergers and similar transactions while at the same time promoting stability at the affected carriers. This bill will, once again, make these provisions a vital part of airline transactions.

The Commerce Committee held hearings on this bill and approved it by a substantial majority. Mr. President, the effect of this amendment would simply be to reaffirm our commitment to reasonable levels of labor protection in an industry which is still struggling to deal with the effects of deregulation. I urge its adoption.

Mr. President, I urge the adoption of this amendment, and I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Oklahoma.

Mr. NICKLES. I wonder if my good friend and colleague, the sponsor of the amendment, might respond to a couple of questions concerning his amendment. I wonder if the sponsor of the amendment might be willing to answer just a few questions.

Mr. ADAMS. I will be most happy to answer the Senator from Oklahoma.

Mr. NICKLES. The Senator has two amendments. He has a first-degree and a second-degree.

Mr. ADAMS. That is correct.

Mr. NICKLES. Is the second-degree amendment comparable or identical to the legislation which——

Mr. ADAMS. That is correct.

Mr. NICKLES. What was the Senate bill?

Mr. ADAMS. S. 724.

Mr. NICKLES. Is this identical legislation that was added to another bill in the Commerce Committee?

Mr. ADAMS. That is correct. It was to the so-called anti-merger bill. It is a part of that.

Mr. NICKLES. Is it comparable or identical to legislation which this body voted on and did not accept last year?

Mr. ADAMS. I will say to the Senator that there are certain modifications, particularly with regard to the case-by-case basis for applying LPP's. That is not exactly the same as the bill that was introduced last year.

Mr. NICKLES. Not exactly the same, but the others were labor protection agreements in the event of merger. These apply not only in mergers, but also in the sale of assets.

Mr. ADAMS. If that is treated as a merger transaction by the two parties, the answer is yes.

There is a body of case law applying to so-called 5(a) procedures that has gone on for many years that treats the sale of assets as a merger if it carries out the effect of a merger.

Mr. NICKLES. I appreciate the complicated answer. But if I owned an airline company and I had a significant inventory of airplanes and if I desired to sell 10 percent, would these labor protection provisions apply to the sale of 10 percent of my assets?

Mr. ADAMS. No. They never did. It has always been a major portion of the airlines that indicated the asset sale was being used as an alternative to a stock transfer, stock merger, or stock sale. Ten percent was a lesser amount.

In other words, if you owned an airline—the example you gave—and you wished to sell 10 percent of the planes, lease them or change them, these provisions would not apply to that kind of case.

Mr. NICKLES. If I wished to sell half of my planes, would that apply?

Mr. ADAMS. It might, if the assets were being used as an alternative to a merger or a stock sale.

Mr. NICKLES. I think the Senator is in a gray area, but it is an important area. One of my objections to the bill is that I understand it would apply to a significant sale or lease, or whatever, of an individual company's assets.

Mr. ADAMS. If an individual company is using the asset route as a method of merging out its airline, or the other company is using it as an acquisition measure, then this would apply.

As I say, there is a significant body of case law on when you go over the line and you are in a merger or an acquisition, as opposed to sale of a portion of your assets. Ten percent has never been considered as a sale; 50 percent, usually not; but it could, if it indicates that the airline is going out of business and is being acquired by another.

Mr. NICKLES. So if I were the owner of an airline and the airline was not making any money, and I decided to downscale the size of my company and I had a hundred airplanes and decided that I only needed 60 and was going to sell 40, these labor protection provisions would not apply in that case?

Mr. ADAMS. They would be a matter of discretion, as it is now, under section 408 of the Federal Aviation Act. In each case, downsizing has generally not been considered an acquisition or a merger. If it has been a sale and a part of the company moving out of business and becoming a merged or acquired company, then there has been discretion in DOT to apply LPP's. The same discretion would apply in the future. We have not changed the system.

Mr. NICKLES. I think there is a big distinction.

If I had a hundred planes and was going to sell 40 percent, the Senator is saying that the Department of Transportation or the Department of Labor would make that decision. That is a significant sale; and if there is a sale, there is a buyer. So you have, presumably, some other airplane company purchasing those 40 airplanes.

I think it is a very important distinction. I have had the impression that that would apply to labor protection agreements. I have not heard you say that it would or would not, and it is important to find out.

Mr. ADAMS. There is a discretionary authority, depending upon the nature of the transaction.

The reason I say that is that there has been a trend in the airline industry in recent years, ever since the Continental merger, the Continental acquisitions, and before, where the purchase of assets has been used to create an acquisition of a company, and whether the Department of Justice or the Secretary of Labor applies that with a reasonable test of discretion, and the courts have always looked at that depending on whether or not there has been a major complaint about that. But when you talk about the sale of less than a major portion of the assets, the general exercise of discretion, the case law says that has not been treated as a merger or an acquisition with LPP's applying.

The whole purpose and point of my answer to the Senator is that people have become more and more clever in the airline industry in recent years to determine ways of shifting assets, stock ownership, and holding companies. We have tried to carefully give discretion to the Secretary of Labor and the Attorney General so that they can apply LPP's and also that the merger authority be under the Department of Justice to determine whether or not this is a merger or an acquisition that requires approval—not approval, but whether or not the Department of Justice will approve it or file a court suit.

Mr. NICKLES. Will the Department of Labor make that determination?

Mr. ADAMS. It is subject to the Department of Justice determining whether or not it is a merger acquisition and the Department of Labor determining whether or not it is for application of the LPP's. It is an authority placed in each of the departments with an expertise.

Mr. NICKLES. If you have an airline merger or a significant sale of assets, does that not also have to go through the Department of Transportation?

Mr. ADAMS. It does, at the present time. It would not, after this, because the CAB authority—unless it is an international carrier, it does not carry that. Under the present law, it does.

Mr. NICKLES. Under the present law, they are required to receive approval from the Justice Department and from the Transportation Department, and now the Senator's amendment would say that they would have to go through the Labor Department as well?

Mr. ADAMS. No, it does not work that way. The Department of Transportation received the powers of the CAB under the act of 1978, so it has the power to approve mergers or to disapprove them, and the same with acquisitions. The Department of Justice can appear in those cases and can indicate whether it approves or disapproves of it, but the Department of Transportation does not have to follow their statement or recommendation; and in recent cases, the Department of Transportation has not done it.

The Department of Transportation also applies or does not apply the LPP's now. What my amendment does, or the bill does, is to send the LPP's to Labor and to send the merger authority to the Department of Justice, where all other merger authority is, so that the Department of Transportation's authority is sunsetted and transferred over to Justice to be handled as other antitrust transactions, and LPP's would go to Labor, to be handled under the Labor Department.

Mr. NICKLES. If the Senator will yield again, I might ask the Chair is this time being charged on my time?

Mr. ADAMS. How much time do we have?

The PRESIDING OFFICER. The Senator from Oklahoma is correct.

Mr. NICKLES. I might ask the Senator——

Mr. ADAMS. If the Senator will yield for a moment how much time, Mr. President, do each of us have and how is the time being charged?

The PRESIDING OFFICER. The Senator from Washington has 50 min-

utes 47 seconds. The Senator from Oklahoma has 50 minutes 2 seconds.

Mr. ADAMS. I thank the Chair.

Mr. NICKLES. Mr. President, I thank the Senator and my colleague. I appreciate his response.

I would like to find out what is in this legislation and then I will enter some arguments against it, but I think it is important to find out exactly what we have.

Mr. ADAMS. I am most pleased to answer the questions and will be as helpful as I can. This is an area that is one that has been of great concern to me for many years and I am hopeful that we will improve the whole situation by this amendment.

Mr. NICKLES. I might ask the Senator to look at page 3 of his amendment under the fourth paragraph, the top of the page. It says "In any case in which the Secretary" and I am assuming that is the Secretary of Labor; is that correct?

In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or adversely affect the wages and working conditions (including the seniority) of any air carrier employee, the Secretary shall impose labor protection provisions calculated to mitigate such adverse consequences, including procedures resulting in binding arbitration, if the Secretary considers such procedures to be necessary.

Can the Senator imagine any possible merger or significant acquisition in the airline industry which would not tend to cause a reduction of employment or adversely affect the wages or working conditions of any carrier employee?

Mr. ADAMS. Oh, certainly. Any time that you would have a merger of a strong carrier which is trying to absorb one of the other regional carriers and intends to expand its system, which happens quite often, you will have an increase in employment and you will have the whole merger operation being an expansion, not simply a contraction.

This is the way it always used to be until we got into the recent very bad effects of deregulation, which was hammering people down.

Mr. NICKLES. Let me try and make sure the Senator and I are on the same wavelength. His language basically would say that this provision would be triggered if any employee would be adversely affected, so he is talking about merging or compiling or maybe a larger carrier taking on part of a smaller carrier, and the Senator is saying that if any employee has an adverse effect whatsoever, then the Secretary of Labor is going to trigger this provision.

Mr. ADAMS. The Secretary of Labor is going to look at the provision at this point. That is what this is for.

Mr. NICKLES. No. The language says, "The Secretary shall impose labor provisions." It does not say "may." It says "shall."

Mr. ADAMS. Yes, calculated to mitigate such adverse consequences.

What the Senator is assuming is that there will always be a series of adverse consequences. The Senator asked me whether he or she would in every situation impose these. What I am saying to the Senator is that in times past mergers used to be something that was beneficial to both sides. And you do not assume an adverse set of consequences each time it happens.

I will certainly state to the Senator that in recent years the acquisitions and mergers that have taken place have had adverse consequences, not only to employees, but to communities, and there has been a destruction of great portions of the operating systems. That is why we get so many complaints about it and there are bills on the floor.

Therefore, in many of the ones that the Senator is envisioning the Secretary will do this. But very often the seniority lists merge, more employees are brought in, the employees are not adversely affected and you have to establish that they are.

Now, if you want to take a premise that they are then yes—they would be triggered, but all I am saying to the Senator is this does not automatically happen. It depends on the merging parties.

Mr. NICKLES. Did the Senator say in the majority of cases the mergers happen and there is not a loss? If that is the case, why is this legislation even called for?

Mr. ADAMS. Oh, no. What I said was that in the past, it used to be that mergers created expansion and they created new opportunities for people, and that seniority lists were merged and things went very well. In recent years, since deregulation, the hammering of the fares, the inability of people to maintain maintenance; the only place they have ever been able to turn after this is to lay off large numbers of employees and to have very adverse effects.

So in recent years, you have had a series of mergers adverse not only to small communities but people working in them, to everybody except the Wall Street junk bond dealers. That is why this is necessary, and I certainly did not say to the Senator that in recent years I think these mergers have been beneficial, certainly. I certainly did not say I thought they had not been adverse to employees. They had been adverse. That is the reason for the amendment.

Mr. NICKLES. Your amendment also states a little further down the page around 9 the next sentence, "The Secretary shall impose such provisions unless the Secretary finds that the projected costs of imposing such provisions would exceed the anticipated financial benefits of the transaction."

How in the world would the proponents of the merger know what the financial benefits of the transaction would be if they have no idea what the labor protection provisions might be imposed upon them?

Mr. ADAMS. It is very simple. You look at the projections that come out of the merger and they are all filed, because it is usually part of a transaction on a major exchange and they state "We are going to have revenues of this amount, and that is where we are going to fly, and this is what the load factors have been," and you simply run down the balance sheet and determine what those are, and then you turn over and you see the projections. "We anticipate not having these people fly any longer; we are going to get rid of these airplanes," and you look through, and I am using the aircraft industry as an example, you look through this and you see what the costs would be of applying labor protection provisions to it.

They always on a merger attempt to establish at the Wall Street level the benefits of the merger. So it is just like any cost-benefit ratio in any merger that goes forward. When you look at it you balance it off. Very simply it is all contained in their balance sheets and proposals. If it is any kind of major carrier it has to be filed with the SEC.

Mr. NICKLES. If the Senator will yield, let us try to calculate the labor protection provisions, how much per employee. I read in some places where labor protection provisions could equal $90,000 a year per employee or per a particular status or classification of employee.

Mr. ADAMS. That is precisely why I drafted this in the form that it is drafted, which is that in the past, there was a set of administrative regulations and of cases, the most famous one in the airline industry being Allegheny-Mohawk, which says this is what you give in mergers, and it went down the seniority list: pilots, machinists, and everyone else.

So in this case, the Secretary can calculate from the provisions that the Secretary is imposing precisely what the costs would be, and that is why we gave that flexibility. It is one of the key differences between this and the New York Dock in railroads or Allegheny-Mohawk in airlines. So he sets them, or she sets them.

Would the Secretary use Allegheny-Mohawk as a guide to determining the cost? It seems like the Senator has given under his last explanation a great deal of discretion to the Secretary. Would they not fall back on the precedent and would that not be Allegheny-Mohawk in this situation?

Mr. ADAMS. No, it would not be Allegheny-Mohawk. It would certainly probably look at the precedents, but that is precisely why the discretion was given here to do this in this fashion, because the Secretary can look at the merger, the size of the parties that are involved in the merger, and at the employees who would be affected and place at that point appropriate labor protections, and so they always can look at there being a net financial benefit.

What is happening now, I might say to the Senator from Oklahoma, and why I feel so strongly about this and why I have introduced it is that the people who get thrown away in these mergers are not the people selling the stock, not the people selling the bonds. They throw away the people who are the employees or they slash the wages in dramatic amounts.

That is what I meant in my opening statement about the employees are carrying the burden of the mergers. And that is not fair. That is all we are trying to do here. And the Secretary of Labor is given that power in this—this is really a limitation on the Secretary of Labor.

Mr. NICKLES. Let me ask the Senator another question. If given this discretion—and, Allegheny-Mohawk, if I remember, was a 5-year salary continuation at 60 percent of their existing salary; correct me if I am wrong—could the Secretary impose a term longer? Could he impose a percentage higher? How much discretion?

This is unbelievable to me that we are going to say, "Secretary, you determine what these labor protection provisions are going to be and how much they are going to cost." I am shocked.

Mr. ADAMS. That is what this provision that you just read is, it is certainly a cap on it, because it states that you cannot do this if the costs are going to exceed the benefits of the merger. And you have to, I hope, assume that a Secretary of Labor, as a Secretary of Transportation, would apply a standard in this so that the merger, as it finished, would be beneficial. You just are trying to prevent all the burden falling on the employees.

Mr. NICKLES. But the Secretary could impose labor protection provisions so expensive up to the amount equal to the entire net gain of the merger, thereby nullifying any advantage whatsoever of the merger.

Mr. ADAMS. A Secretary could do that, but a Secretary could not last very long doing that.

Mr. NICKLES. Correct me if I am wrong, but you are giving the Secretary the authority to increase or to set the labor protection provisions to an amount equal to the net economic gain that the proponents of merger were advocating.

Mr. ADAMS. If you want to say that somebody could be that unreasonable, they could do it. They could do it now. In other words, the Department of Transportation could do that at the present time.

Mr. NICKLES. If the Senator would yield, if the Department could do it now, why do we need this legislation?

Mr. ADAMS. Because the Department, as I said in my opening statement, has never applied a labor protection provision to any of these mergers. And we have merged everything from Continental Airlines, to Eastern Airlines, to TWA, to Ozark. You can run a list that goes down through every community in this country where we have wiped out airlines one after another, and they have never applied it. That is the reason for the amendment. If they had used some reasonable discretion as they went along and not thrown all the burden on the employees, I would not have offered the amendment.

Mr. NICKLES. Let me make sure I understand. The Secretary has the discretion presently under present law to impose these standards?

Mr. ADAMS. The Secretary of Transportation does.

Mr. NICKLES. But the Senator's amendment mandates that the Secretary of Labor will impose these standards.

Mr. ADAMS. If there is an adverse consequence.

Mr. NICKLES. On any employee; on one employee?

Mr. ADAMS. That is what it says. On any employee, if there is an adverse consequence.

Mr. NICKLES. Let me ask another question. If you are talking about a significant merger and if you are talking about thousands of employees, do you not think that this provision would kick in on every single potential merger or significant sale of assets? Because surely someone could say that they were adversely affected in a significant merger, so it seems to me that this provision would mandate the Secretary of Labor to instigate labor protection provisions on any and all mergers, period, within the airline industry.

Mr. ADAMS. Not at all. It goes right back to the point we made before. If the merger is fair, if it has not dumped on the employees the total burden—we are dealing someplace between zero for the employees and an amount that still makes the merger beneficial. I have to assume that you are going to have some reasonable people doing this. But I have drafted it very carefully so that they have the discretion once an employee is adversely affected.

Now, when you talk about how much they might give, remember, this is tied to those that are adversely affected. In most mergers, they are not. Or, in most mergers, you used to have agreement among the parties that these are the ways we would merge the list, these are the ways we would proceed. And if there were a few adversely affected employees, they got very little, I might state to the Senator from Oklahoma, but they got something. They were not just left.

Mr. NICKLES. If the Senator would answer maybe one more question. I am using a lot of my time and the Senator's time, as well. I appreciate his cooperation.

I have heard him make statements, "Well, we are trying to protect the employees," et cetera. This applies strictly to the airline industry. Does the Senator think possibly this should apply to all industries? The steel companies? We have had mergers in steel. We have had mergers in petroleum. We have had mergers, really, almost a financial revolution over the last several years in a lot of industries that have merged, bought and sold, divided, subdivided. If this is such a good deal, why should it just apply to the airline industry?

Mr. ADAMS. Whether or not it is such a good deal and whether other industries should have it, I will leave with the Senator for another day. But I will state why it is necessary in the transportation industry and why it has existed in the transportation industry.

We are dealing with a series of very highly skilled employees. Their skill is directed into a specific niche and they have devoted, many of them, most of their lives to that niche. In other words, if you are an airline pilot or a machinist skilled in jet engines, that is all you do and you keep the system alive. If you do not exist, the system would not work. It is a transportation system. You cannot drop a part out like a department store.

Mr. NICKLES. I understand.

Mr. ADAMS. So they have no place to go.

Mr. NICKLES. Has employment in the airline industry declined in the last several years?

Mr. ADAMS. Yes, it has, in a lot of categories. I would supply to the Senator the various categories that there have been a decline of employment.

Now, the problem that you have, in trying to determine what the exact amount of employment is, is that there are a lot of private jets flying, there are a lot of other kinds of airlines flying now. So you cannot say with complete accuracy whether everybody has gotten a job again or not. It is my understanding they have not. They have just been left.

Mr. NICKLES. I need to move a little quicker.

Mr. ADAMS. I understand.

Mr. NICKLES. I want to touch on a couple of other things. I will make some statements concerning the employment in the airline industry and will show it has expanded substantially. I will make that point in a moment.

Concerning the LPP's and how much it would cost, if you are an airline executive and you happen to be losing money and you do not like losing money, you wish you were not losing money, but these are tough times out there and times have changed, the airline industry has changed significantly, and you need to sell or you need to merge or you need to combine in order to survive and in order to save some jobs. Now, I can think of some companies, I will not mention any names, that have been in that kind of dilemma. Maybe they were overexpanded for this type of competitive market so they have to sell or have to sell in part. How long will it take them to learn from the Secretary of Labor the cost of these labor protection provisions so they would know whether or not they will be able to consummate a lifesaving or jobsaving provision? Maybe if they cannot do a merger, they may go bankrupt. So, instead of selling part of their equipment, they may end up shutting down the entire company because of the Senator's provision.

Mr. ADAMS. To answer, the Senator, 60 days.

Mr. NICKLES. You mandate that to the Secretary of Labor?

Mr. ADAMS. You asked me about how long this would take. If you have a 60-day cap, he could do it in 30. And if you are really in trouble and you have somebody down there doing a decent job in front of that agency, they probably could do it in less than 30. There never has been a hangup on how long these things take, unless they are hotly contested or hotly litigated. And in a good merger and with somebody who is trying to get the job done and has been fair enough to the people, it usually does not even take that long. You do it by an agreement just off the top.

Mr. NICKLES. Another quick question: If you have a possible merger between a unionized airline and one that is predominantly not unionized, are you imposing a particular financial burden on the nonunionized company in order to assume the labor protection provisions for the unionized company?

Mr. ADAMS. No, I do not think so. In other words, what we are trying to do is to move through into the system the trained people who fit into particular niches of the system. And whether they are in a union or not in a union—you know, there is nothing in here that says union employees are treated one way and nonunion another.

Mr. NICKLES. But the Senator's amendment would be mandating, for example——

Mr. ADAMS. That applies to everybody, right across the board.

Mr. NICKLES. Let us take, for example, though, if you have a nonunion airline and you have a union airline and they wish to do a merger but maybe that nonunion airline is in a situation that they need to reduce the work force in order to become competitive or they cannot afford the salaries, wages, and benefits that the unionized company has been paying. Maybe that is one of the reasons why the unionized company finds themselves in financial difficulty and so they wish to take some of those assets or some of those routes.

The Senator's amendment would impose upon them, would it not, that they would be required to maintain wages and benefits of a certain percentage for a certain number of years? Quite likely, if it followed the precedent of Allegheny-Mohawk, of 5 years and 60 percent as a bare minimum as a condition of the merger?

Mr. ADAMS. No. It does not require Allegheny-Mohawk; one.

Second, what it does require is that the merging parties not throw all of the burden on the employees of the benefit of the merger. That is all that it does.

If the company that is buying out can only pay a certain amount, you have got to assume that, under the provisions, that the Secretary is going to follow them and that the costs can outweigh the benefits.

What we are trying to do is a very fair and simple thing. You do not dump the whole burden on the people that are involved. If the merger is worthwhile, whether it is nonunion into union or union into nonunion, then make a fair proposition with your employees. If you do not, the Secretary of Labor can say: make a fair proposition. There is also an arbitration clause in here.

Mr. President, please put this on my time. I do not want to take the time of my colleague because he has things he wants to say.

What we are doing is we are dealing between zero help and all of it being dumped on the employees. What you are putting as a top limit—what are they going to grant them?—I have said in the bill the most they can grant them is they cannot take away the benefits of the merger. In between that there is discretion. That is what this amendment is all about. You can pick any number that you want in there as a percentage, to say: this is an outlandish case.

Outlandish Secretaries will make outlandish decisions. But, if we assume reasonable people, all we have tried to do in this amendment is say: have all the parties to this merger, which includes the workers, treated fairly and have a Secretary of Labor looking at whether or not it is fair so far as the employees are concerned and have the Justice Department look at it as to whether it is fair under the antitrust laws. That is all it is, straight out.

Mr. NICKLES. If the Senator would yield again, does the Senator believe in the collective-bargaining process? Does not the Senator believe that this would be better handled between the employers and employees and not having the Federal Government, the heavy hand of the Federal Government and Department of Labor, coming in and mandating these type of negotiations? Why not leave that to the employers and employees, to work out on their own regard without us coming up with a system where the Department of Labor is going to calculate what are called labor protection provisions that may well end up costing $50,000 or $100,000 or may for some employees $60,000 per year for 5 years?

These are pretty well-paid employees, by and large. Quite a lot higher than our national income by and large, I would say. Much, much higher. Why not allow them to work out these type of arrangements instead of imposing and interfering and mandating Government interference?

Mr. ADAMS. Collective-bargaining agreements have been held to expire when merger talks occur. I am very happy and I support collective bargaining in the units that are there. But employees are not at the table when mergers and acquisitions take place. They hear about them later. They have tried very hard to get in with ESOPS. They have tried to be present.

All we are saying is that the Government has a presence. For employees out of the Labor Department, from the Department of Justice, so far as competitiveness is concerned, to say to the merging partners: There are rules that you have to live by. That is what this country has done. And then, after the parties have merged or have an acquisition, they will have collective bargaining and even if they have not had it, or it expires, or the agreement runs out, they will bargain again.

All we are saying is that this is just like rules that protect stockholders, rules that protect consumers. Incidentally, I think this bill has to pass to protect the consumers, because I think the airline business is having a lot of trouble. What we are saying is: Do not lay that all off on the employees. I will take back my time now and let the Senator use his own.

Mr. NICKLES. I appreciate my colleague's combination.

Mr. President, I appreciate the sponsor's amendment and his remarks. Mr. President, I think that if the Senator is interested in passage of the underlying bill, he is doing exactly the wrong thing. I think for one thing, if this amendment is passed, he is guaranteeing a veto of the bill. So, if he is interested in the underlying bill, which has a lot of provisions that I am sure a lot

of our colleagues would be interested in, passage of this amendment in all likelihood, at least in the opinion of this Senator, would probably seal the fate of the bill and guarantee a veto.

We have had a letter, and I will introduce a letter by the Secretary of Transportation in opposition to this provision.

Mr. President, I hope our colleagues will look at this amendment. It is a complicated amendment. It is a long amendment. But it is not that difficult. Its labor protection provisions will be mandated for mergers and I will include in mergers, and/or significant asset transfers within the airline industry.

We do not have this in any other industry in the United States. We have mergers in all other industries in the United States. We merge coal companies, we merge oil companies, we merge agriculture concerns, we merge every type of industry in the United States. But in no other industry do we have Federal mandates coming down saying we are going to mandate that the Secretary of Labor has to impose labor protection provisions to guarantee the wages, conditions, seniority of a particular group.

Why is this amendment coming out? It is probably coming out because of some lobbyists who have been working hard. They want these type of provisions. I think it would be a serious mistake.

If people are concerned about the airline industry, it has probably been one of the most rapidly growing industries in our country for the last several years. Employment has grown. Wages have grown. Benefits have grown. Are we trying to protect a few in maybe an isolated case? Protect them from an industry that is growing probably faster than most any other industry?

I will give you a couple of statistics and these statistics were provided by the Air Transport Association.

In 1978 there were 329,300 employees. In 1981 there are 349,000—almost 350,000 employees.

In 1986 there were over 421,000 employees. So you can see, between 1978 and 1986, there is an increase of over 50 percent in the total number of employees in the airline industry.

These are all categories. It ranges everywhere from pilots down to reservation agents. I understand my colleague making the statement that, well, there are certain high-paid categories and some of these might be limited. A lot of these positions are very highly paid. The Senator from Kentucky follows the airline industry probably closer than most anybody in the Senate and he is well aware of the fact that you can have a captain flying a 747 making up to, I believe, $175,000 per year.

You know, just reading from the Eastern Falcon, in their January 1 edition, the earnings for 1986, it is said for pilots, and this is on the top end, the highest level of earnings for pilots was $140,000. These labor protection agreements, if it follows some of the precedents, and I understand my colleague said it would not have to but it probably would, in my opinion—labor protection provision would say, well, if you are going to purchase this aircraft or merge this aircraft we are going to give everyone associated with that aircraft their salary at 60 percent for a minimum of 5 years.

That is not half bad. That means if he was a pilot or something, you are talking about payments of $60,000, $70,000, or $80,000 for 5 years for doing nothing.

Why? Because that airline company happened to change names?

Then I will also tell you that the effect of this amendment, if it passes, is that you will deny a lot of potential mergers from going forth. Maybe they should not be, you might say. Well, we have the Justice Department to review that. If they determine it is anticompetitive, they can refuse it. But the Department of Transportation reviews it as well. Now, we are going to put in one other bureaucracy and say to the Department of Labor, "Now, you have to give your blessing on this proposal. You have to calculate the economic benefit of the merger."

The Department of Labor knows nothing about the economic benefit of a merger of two airlines, and I can tell you that the two companies involved do not have precise knowledge of what the value of the merger would be. They hope. Maybe they guess. But it is a calculation. It is a risk. They do not know. They also do not know about those labor protection provisions because we turn over to the Secretary of Labor——

Mr. ADAMS. Will the Senator yield?

Mr. NICKLES. I have a few more comments and then I will yield. How much time have I remaining?

The PRESIDING OFFICER (Mr. GRAHAM). Twenty-eight minutes and 20 seconds remaining.

Mr. NICKLES. They would have no idea whatsoever what the costs of these provisions would be. So when they are calculating and they say, "Wait a minute, we have been losing money; this is a difficult time, a changing time in the airline industry; we have had mergers; we have had an increase in flights," as a matter of fact, the airline industry in the number of passengers has increased and increased substantially because of deregulation.

In 1980, 275 million passengers; in 1981, 286 million passengers.

In 1986, 418 million passengers.

So you realize we went from less than 300 million to over 400 million in just the last 6 years. We have had a significant increase in passengers. People are taking advantage now. Maybe because of the mergers, maybe because of some of the competition which is really now in effect.

I think most of my colleagues are well aware that you can fly to a lot of places a lot cheaper today than what you could a few years ago, though that is not true in every case.

We have wrestled with that problem. Maybe that is one of the challenges of deregulation. But a lot of people are flying a lot cheaper than they ever have before.

Yet we are talking about imposing very punitive provisions on one industry. If this is such a good provision, why not do it on the steelworkers? They have had a very difficult time. We have had a couple of companies that are in bankruptcy right now, or may be wrestling with it. I know the Senator from Kentucky is aware of that.

Why not in coal? Why not in oil? Why not in other industries that are going through some difficult times?

Look at the wages, the benefits, the provisions and the costs. We might ask ourselves, "Who is going to pay these costs?"

If for some reason this makes the merger nonexistent because the cost of the labor protection equals the cost of the merger, and maybe the merger was marginal in the first place, it might have been as some people would say, that it is a gamble, that they could not make it individually but possibly putting the two companies together would permit one to survive.

"Yet we had the Secretary of Labor come up and determine the labor protection provisions and the costs negated almost all the costs of the merger, so why merge?"

So they do not merge.

Then you end up having two companies go bankrupt. What good does that do? That does not save anybody 60 percent of their salary for 5 years. That decreases employment. It decreases service. That makes it less competitive.

It is not just my thought, DON NICKLES saying, "I have looked at this amendment and think it is a bad amendment."

The United States Senate last year voted against this provision, or a provision that was very comparable. It was a close vote, 49-49. That is about as close as we come in the Senate.

I do not know what the outcome of the vote will be tomorrow. I can tell you that in this Senator's opinion that if this provision is part of this bill, I think there is a very strong likelihood that the President of the United States would veto the bill. I think there is certainly a strong likelihood that veto will be sustained.

A couple of other quick points.

We are interfering in the collective-bargaining process. I happen to be a believer in the collective-bargaining process. I happen to think that employers and employees are quite capable of negotiating things that are to their mutual benefit.

This industry, the airline industry, is not an independent industry that lacks sophistication. Its pilots, its employees, its machinists are probably as organized as most any other industry. They are probably as well paid as any other industry. They are probably as well represented at the bargaining table as any other industry.

I think the unions involved work very hard to advocate their members' positions on issues.

We do not need to be doing their negotiating and mandating binding arbitration in legislation on the floor of the Senate. They are big boys and girls. They can handle themselves. They have gone on strike to fight for provisions such as this. They have been successful, as Senators are well aware, in some companies in some cases, in getting labor protection provisions in their contracts. Why should we be mandating labor protection provisions for those companies and unions that did not get them? Why should we be interfering in the collective-bargaining process? That makes no sense. Why should we be telling airlines in a very difficult time, a trying time, when they are trying to make some changes to stay alive, why should we be mandating very expensive, very costly provisions to keep them from making or taking actions that may enable them to survive?

Why should we cast doubts of uncertainty, having the Secretary of Labor calculate and determine labor protection provisions?

The Secretary of Labor is going to say, "Yes, here are the labor protection provisions and how much they are going to cost."

I never did find out if it would be 60 percent for 5 years. I do not know if that is going to be it or not. If I do not know, certainly the companies who are proposing the merger will not know either.

If they do not know what the costs of these provisions are, how are they going to be able to make a judgment concerning whether they should go forward with a proposal to merge or make significant changes?

I hope my colleagues will look long and hard at this proposal.

I will just put into the RECORD for the information of my colleagues, and hopefully they will consider this when they look into this issue, a couple of articles. One is an article from the Wall Street Journal dated September 12, 1986. I will not read the entire article. I do ask unanimous consent to have the entire article printed in the RECORD.

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

[From the Wall Street Journal, Sept. 12, 1986]

SAVING AIRLINE JOBS

Consider the following hypothetical situation: Goosewing Airlines, hemorrhaging red ink, works out a merger with Juggernaut Air. The agreement maintains most of Goosewing's air routes and preserves the jobs of most of its employees. But some workers will be displaced, so federal aviation authorities overrule the deal. Juggernaut backs off, Goosewing is forced into bankruptcy, and all of its employees lose their jobs.

There is a very real prospect of this scenario playing out in the airline industry under a proposed amendment to the Federal Aviation Act that wended its way to the House floor Wednesday. This ill-conceived measure would empower the Department of Transportation to impose labor-protective provisions—so called "LPPs"—on airlines engaged in such transactions as mergers, acquisitions or sale of assets. The LPP could apply to deals that cause reduction of employment, or "adversely affect" wages, working conditions and seniority of carrier employees. More than 350,000 airline workers would be shielded by the regulation.

The airline unions behind this notion want to turn back the clock a decade, before deregulation, when they were protected from the vagaries of the labor market. In several major deals during the 1970s, the federal government stepped in on behalf of the unions, requiring that laid-off employees be paid 60% of their wages for up to five years. But Congress has not foisted LPPs on anyone since deregulation.

To do so would set an atrocious precedent. Apart from the free-market arguments that can be mustered against such a move, there are practical considerations. Most important, it would make financially strapped airlines much less desirable to potential buyers. Weaker airlines that otherwise might be absorbed by stronger lines would simply go out of business. Instead of some worker catching on with the new airline, all of them would lose their jobs.

A situation close to this recently played out in the near merger of Frontier and United Air Lines. The merger collapsed when the union representing pilots at United Airlines rejected the company's plan to bring lower-paid Frontier pilots up to United's pay scale over five years. Frontier suspended operations, and filed for Chapter 11 bankruptcy protection. For the sake of preserving the salary structure of United pilots, the pilots union forced 4,700 Frontier employees out of jobs.

A regulation that raises the cost of business in the airline industry is the last thing airline employees need. If it becomes unprofitable for stronger airlines to acquire floundering ones, bankruptcies will become more common and more jobs in the industry will be lost. Indeed, the airline industry has steadily increased employment levels and average salaries since 1978 mainly because it has been free from onerous regulation. It would be a shame if Congress bowed to the behest of the pilots union and started to re-regulate the industry.

Mr. NICKLES. I will read from one paragraph of this editorial piece.

A situation close to this recently played out in the near merger of Frontier and United Air Lines. The merger collapsed when the union representing pilots at United Airlines rejected the company's plan to bring lower-paid Frontier pilots up to United's pay scale over five years. Frontier suspended operations, and filed for Chapter 11 bankruptcy protection. For the sake of preserving the salary structure of United pilots, the pilots union forced 4,700 Frontier employees out of jobs.

A regulation that raises the cost of business in the airline industry is the last thing airline employees need. If it becomes unprofitable for stronger airlines to acquire floundering ones, bankruptcies will become more common and more jobs in the industry will be lost.

Mr. President, we do not need to say more. That is factual. That is not just my opinion but it is the opinion of others.

I have one other editorial from the New York Times dated August 4, 1986. Again, I ask unanimous consent to have this editorial as well as an editorial from the Journal of Commerce dated February 12, 1987, printed in the RECORD.

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

[From the New York Times, Aug. 4, 1986]

WHEN WAGES FLY HIGHER THAN AIRLINES

Do pilots, mechanics and flight attendants need special Government protection against layoffs or wage reductions when airlines merge? There's little economic justification for it. In fact, by making failing airlines less attractive as merger candidates, it might even cost jobs. But the airline unions have enlisted influential House members to press their case, including the chairmen of the Public Works Committee, James Howard, and the Aviation Subcommittee, Norman Mineta. If the issue is left to insiders to settle, Congress may go along.

Before the industry was deregulated in 1978, airlines were legally entitled to a fair return on their investment. Similarly, the unions contended that airline employees were entitled to special protection against loss of seniority or pay cuts.

Any analogy to the present time is fuzzy, at best. Under regulation, airlines gave up the right to set fares or change routes in exchange for assurance of a reasonable profit. But airline labor remained free to charge whatever the traffic would bear and the Civil Aeronautics Board bowed to prevailing political realities. In a series of postwar mergers it required airlines to maintain jobs and wage scales—or pay five years' pay as severance.

Under deregulation, the C.A.B. (and later the Department of Transportation) were given broad discretion to set conditions for airline mergers. The unions assumed that the labor-protection precedents would stand. Instead, the Government limited protection to cases in which labor strife might seriously disrupt air travel. No such cases have been found. So now organized labor asks Congress to impose the old policy.

It is hard to see why airline employees deserve such an assist. Dramatic change in the industry has not been accompanied by a loss of jobs, or even wages, as has been true of steel or trucking. In 1977, the last year before deregulation, scheduled carriers employed 325,000 workers. In 1985, their pay-

roll was up to 355,000. Their average pay was $42,000.

Employees of weaker airlines are at greater risk in a competitive environment. But typically, their employers are foundering because they are unable to lower labor costs. The proposed labor-protection measure would block one last route, short of bankruptcy, to such reduction. If, for example, the purchaser of deficit-ridden Eastern Airlines had been required to maintain wages or pay billions in severance, neither Texas Air nor anyone else would have saved the carrier from Chapter 11 bankruptcy.

That might serve the unions' broader interests of maintaining high wage scales in the industry. But it doesn't serve the workers whose jobs are at risk, or the public interest. Since a majority of members of the House Public Works Committee are co-sponsors, there is little chance of stopping the protection bill at committee level. We hope a majority in Congress will refuse to surrender to such favoritism.

Mr. NICKLES. One comment from the New York Times article says:

WHEN WAGES FLY HIGHER THAN AIRLINES

* * * *

It is hard to see why airline employees deserve such an assist. Dramatic change in the industry has not been accompanied by a loss of jobs, or even wages, as has been true of steel or trucking. In 1977, the last year before deregulation, scheduled carriers employed 325,000 workers. In 1985, their payroll was up to 355,000. Their average pay was $42,000.

Forty-two thousand dollars was their average pay in 1985 and yet we are on the floor of the Senate, at 7:40 in the evening, coming up with an amendment saying:

We are going to protect this group of employees. We are not going to protect any other group. We are going to say for this group that maybe has some particular political clout and that maybe makes significant political contributions that we are going to protect this group. We are going to provide them a guarantee that if anybody ever wants to come in and make a merger, we are going to guarantee that even if they did not have it in their collective-bargaining agreement we are going to put it in for them. We are going to do the negotiating on the floor of the Senate for this particular group.

I think that is a mistake. I have no objection if an airline and their employees negotiate a labor protection agreement. That is their opportunity. That is their wish. That is fine. It should not be the prerogative of the Senate to interfere. We should not oppose it. We should let them decide. Let us not mandate labor protection provisions on one single class. That would be a serious mistake.

Mr. President, I also have a letter from the U.S. Chamber of Commerce dated July 30, 1986, urging opposition to this provision. I ask unanimous consent that it be printed in the RECORD.

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

U.S. CHAMBER OF COMMERCE,
July 30, 1986.

Hon. NORMAN Y. MINETA,
Chairman, Subcommittee on Aviation, Committee on Public Works and Transportation, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The U.S. Chamber of Commerce, on behalf of its nearly 180,000 members, respectfully urges you to oppose H.R. 4838, a bill that would amend Section 408 of the Federal Aviation Act of 1958 to require labor protective provisions in mergers and other business transactions in the airline industry.

H.R. 4838 is contrary to the intent of airline deregulation, the principles of our free market system and the fundamentals of our collective bargaining system. Furthermore, H.R. 4838 ultimately would cost—not save—jobs in the airline industry by hindering financially troubled airlines in their efforts to revitalize through mergers, sales or acquisitions.

Labor protective provisions were implemented by the federal government when the airlines were a highly regulated and less competitive industry. Although costly and disruptive then, labor protective provisions are even more inappropriate and unnecessary for today's deregulated airline industry.

H.R. 4838 is bad public, economic and labor policy, which would harm substantially airlines, consumers and, ultimately, workers. The U.S. Chamber urges you to vote against H.R. 4838.

Sincerely,

ALBERT D. BOURLAND.

Mr. NICKLES. Mr. President, I also have a letter dated July 8, 1987, from the U.S. Chamber of Commerce and I ask unanimous consent that it be printed in the RECORD.

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

U.S. CHAMBER OF COMMERCE
July 8, 1987.

Hon. GORDON J. HUMPHREY,
U. S. Senate, Washington, DC.

DEAR SENATOR HUMPHREY: The U.S. Chamber of Commerce, on behalf of its more than 180,000 members, respectfully urges you to oppose S. 724, the Airline Merger Transfer Act of 1987, unless the requirement of labor protective provisions (LPPs) is struck from the bill.

S. 724 recently was reported by the Committee on Commerce, Science, and Transportation after adoption of an amendment by Senator Adams to impose labor protective provisions on employers and employees in the airline industry. The House of Representatives already has passed a similar requirement.

It is likely that an amendment to strike the LPPs section will be offered on the floor and that other amendments will be offered to improve and scale back this harmful and disruptive provision. The chamber urges you to support these efforts.

LPPs are contrary to the intent of airline deregulation, the principles of our free market system and the fundamentals of our collective bargaining system. Furthermore, LPPs ultimately would cost—not save—jobs in the airline industry by hindering financially troubled airlines in their efforts to revitalize through mergers, sales or acquisitions. LPPs were implemented by the federal government when the airlines were a highly regulated and less competitive industry. Although costly and disruptive then, LPPs are even more inappropriate and unnecessary for today's deregulated airline industry. Since 1978, when the airline industry was deregulated, total airline employment has increased from 325,000 to 355,000, and the average employee's annual earnings have increased from $27,000 to $42,500.

Legislation that would require LPPs, such as S. 724, would reverse these trends by (1) decreasing the opportunity for necessary sales, mergers and acquisitions and their attendant job preservation, (2) decreasing competition, (3) increasing airline costs, (4) increasing disruption of airline personnel practices, and (5) contradicting the precedents and purposes of collective bargaining and upsetting the current balance in labor-management relations.

The Chamber urges you to oppose S. 724—or any other bill—that would impose LPPs on the airline industy and to support efforts to delete this section from the Airline Merger Transfer Act of 1987.

Sincerely,

ALBERT D. BOURLAND.

Mr. NICKLES. Mr. President, I reserve the remainder of my time.

Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. ADAMS. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 47 minutes, 15 seconds.

Mr. ADAMS. I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator from Washington.

Mr. ADAMS. Mr. President, I think it is very important that I correct several impressions that may have been left by my distinguished friend and colleague from Oklahoma.

First, with regard to whether or not this may or may not be vetoed, this bill passed the House of Representatives overwhelmingly by a voice vote. I ask unanimous consent, Mr. President, to have printed in the RECORD a letter dated September 22, 1987, signed by JOHN PAUL HAMMERSCHMIDT, who is the ranking Republican member of the Committee on Public Works, and by NEWT GINGRICH, the ranking member on the Subcommittee on Aviation to the Honorable Ronald Reagan, President of the United States, urging that this be passed and that there be no veto; it just restores a policy of the past.

Mr. ADAMS. With regard to the Department of Transportation opposing this, I have had some little experience with the U.S. Department of Transportation. I know very well the people who are involved. They may oppose it because it is a jurisdictional fight. The Department of Labor has never opposed this. They have in fact had negotiations with the White House.

Mr. NICKLES. Will the Senator yield for a moment?

Mr. ADAMS. I will be happy to yield to the Senator.

Mr. NICKLES. It is my understanding that the Department of Labor does

oppose this provision. I wanted to so inform the Senator of that fact.

Mr. ADAMS. I would be happy to hear about it because I had not heard about it. I am certain that Secretary of Labor Brock in his prior existence did not. I know he has shifted his existence and that the new Secretary when he comes up will inform me, but let me continue on and then I would be happy to have the Senator comment.

As part of this debate, the Senator has raised the question of deregulation and the fact that many more people are flying and that this is a good thing. Now, this is a good thing. But let me tell the Senator that the quality of airline service in the United States has plummeted.

When I was Secretary of Transportation one of the things I wanted was labor protection so it did not all dump on the employees.

The second thing was that we did not turn around the subsidy in the airline industry from having the routes that were the high-density business routes traveled by wealthy people subsidized by the little towns because in the past the complaint was, well, the people who are traveling from New York to San Francisco or from New York to Chicago are subsidizing the people who are traveling from New York to Sioux Falls or New York to Butte or other places in the country.

We tried in this country to establish a system so that everybody could travel at a fair rate.

Let me tell you what is happening. We have turned that upside down. If you want to fly—and I notice that the Presiding Officer is the distinguished Senator from the State of Florida—if you want to fly from here to Jacksonville, FL, it will cost you $279 or more. You are going to go through Atlanta and it is going to take you 4 hours where it used to take you 1 hour 20 minutes. If you want to fly to Miami, you can fly in less time and you can fly a good part of the year for $99.

That is what we used to call in the industry "long haul-short haul." What it is is little towns—and not just little towns. The reason I mentioned Jacksonville is that it is an up and coming town in Florida. It has a lot of people in it. It has a lot of industries. It wants to have a fair chance to have other businesses. A company looks at it and says, "Well, maybe we ought to go to Miami or maybe we better be in New York or Chicago because we can fly our executives back and forth for about a third the price and with better scheduling than we can fly to any one of the Cincinnatis, the Clevelands, the Seattles." I will not mention the hometowns of the Senator from Oklahoma but I would have him check and I bet you pay more to fly to the hometowns in Oklahoma than you pay to go out to Los Angeles or San Francisco, and that has nothing to do with the cost of travel. It has to do with the ability of airlines to say we will charge the people in the areas that are smaller and do not have the clout and where we do not have to compete.

And I am going to talk to you in a minute about hubs because this is one business I know an awful lot about and what has happened to it.

Mr. NICKLES. If the Senator will allow me——

Mr. ADAMS. Just let me finish and I will be happy to yield. The impact of all this is to blank out for a competitive purpose whole sections of the country. The second thing—and this is another thing that we feared—is that they do not know how to price that airplane. You will sit on that airplane having to fly on a business trip or going to a funeral, which I recently had to do, where you cannot plan it 6 weeks in advance and most business people, most people in the Senate with the schedule that we have, most people who are working at a business have to go when they have to go and you are jammed into the same area and you are sitting across from somebody who is paying a third of the price. I have never felt that that was particularly fair.

Now, I am willing to let the market keep working and we are going to keep complaining about it, but it has not carried out the promise that was there.

Why are we concerned about this? I will tell you why we are concerned about it. Because this is one country where transportation is different. You give me control of the transportation net of this country in anyplace and I will run your businesses. It has always been true. The fortunes made in oil were not made from owning the oil fields. The fortunes made in oil and in coal and in every other basic resource were made by controlling the transportation.

That is why it was regulated by the Federal Government. We did not dream up regulation just because we wanted to regulate one industry. It is because this industry has a different impact than any other industry. You can control steel production. You can control coal production, oil production if you can control the transportation. And now we are moving into a new type of industry in this country, financial, service industry, insurance companies, banks. And what is happening to them? I do not think it is particularly healthy. It happens in my State; it happens elsewhere. Everything is crowded around one town. The financial institutions want to be where they can get back and forth to one another. Therefore, you have a concentration in a few spots. And trying to get in and out of those airports is not only dangerous but it is expensive; it is inconvenient.

I want to talk a minute about the hubs. The airlines were driven into hubs because they used the merger system to dominate a particular area. They wanted to have a monopoly in that area and the way you got it was to buy out the company that was there competing with you, but it was a small one.

And in all except the very biggest of our hubs in this country. That is what has happened. You have airlines dominating that area, and they can basically set the fares. And certainly they can set the fares going in and out of each of those areas to the immediate surrounding cities. These are not just always little cities. They are medium-size cities. They are cities that can run 500,000 to 1 million people.

So I am trying to explain why this industry has had labor protection, why it has had merger protections. The railroad industry is the same. It is not the only industry that has had labor protection provisions. The railroad industry did too because you have been dealing with basically monopoly power. What is concerning me about not only labor protection but the provision of putting this under the Antitrust Division because the Department of Transportation has focused too much on simply the system, the people that appear before them rather than what the system does to the other people and not just the travelers. It is bad enough for them—but the effect upon the cities that are involved, and the airports that are involved.

I want to compliment the manager of the bill, the distinguished Senator from Kentucky, for bringing up the consumer bill and for bringing up the improvement of the airport bill because every time you move into an area and establish a hub in an underutilized airport in order to exercise your monopoly power being acquired all the time through the mergers and acquisitions, at that point you then overload that airport. You overload the parking lot, you overload the services, you overload the runways, you overload the terminal facilities, and you put an enormous impact on the flow system of the FAA. We cannot manage any longer with the same number of air controllers. The reason we cannot is you are now having to manage hubs with tremendous flows, with the control of slots, in a number of places throughout the United States. When I was Secretary we had six airports we had to look at. Now you have to look at more than 15, and each one of these has been created by the circumstances of deregulation and by the effects of the labor protection provisions not being observed and mergers simply plowing ahead.

It is a specialized industry. Everybody recognizes it. It is specialized be-

cause of its impact on other industries and on the people that are involved in it. They spent their lives in it.

The Senator from Oklahoma has mentioned how bad Allegheny-Mohawk is. I have said we are not saying Allegheny-Mohawk. But you know how much you get if you have worked between 1 and 2 years? You get 6 months payment. If you are a flight attendant and you are given a pink slip on Friday and you get 6 months to try to figure out what else you can do, you are not getting very, very much. In 2 or 3 years you get 12 months. I am not saying this is what people are going to be paid, but all I am saying is that this country is made great by people having a sense of common decency about their employees, about people that are working, and about what they are doing as they go through mergers.

Frankly, Mr. President, I could look at the larger picture here. I am very tired of people being purchased up and thrown away by getting pink slips on Friday. It happens all over my State in all the resource industries, timber, aluminum, others. We have some good companies and they have done some wonderful things to tell people in advance. There are some who have not. I think that is part of what we are talking about.

This is a very major thing we are doing here, something that has passed the House of Representatives, something that has been in existence a long time, and what we are trying to do is get some fundamental fairness.

The final point I want to mention, and I will be happy to yield back my time and maybe the Senator from Oklahoma is willing to yield his back, is he has mentioned figures of expansion of the industry. Mr. President, if this industry has expanded to the degree that he states, and there has been expansion but it is irregular throughout the country, then there has been an increase in employment and there is going to be very little impact of labor protection provisions, and probably is not going to cost anybody anything but it is going to cost those that have tried to be very unfair. That is what this is all about, is a system of fundamental fairness.

An expansion in the industry that produces more jobs, everybody will be picked up and will be employed, and the example was given of Frontier. I will tell you what happened to Frontier. Frontier was purchased by Peoples. Then Peoples was purchased by Texas Air. So they have gone through a whole series of mergers. They were not just cast out because United Airlines' pilots complained. Incidentally, United Airlines has had its share of troubles since then and its share of troubles did not come from running the airline. It was because they took money out of the airline and began to put it into a lot of other businesses. It caused an enormous corporate shake-up because now they are trying to get rid of those businesses and get back into the airline business. That is part of the problem here; do not just suck things out of the company and put it on the backs of the employees, go someplace else, not be able to run it and have the whole company collapse.

I hope we will pass this. The House of Representatives has passed it. Maybe it was 49 to 49 the last time but there has been a slight change in the Senate. I would like to have another vote on this this time. I do not think the President is going to veto it with the House of Representatives saying and the Republican Members saying they wish to have this bill, which is now an amendment to the bill, made a part of the law of the land.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Washington has 32 minutes and 5 seconds.

Mr. ADAMS. I would say to the Senator from Oklahoma, I know of no others that wish to have time. I am willing to yield back my time if the Senator from Oklahoma is. I yield the floor at this point in deference to the Senator from Oklahoma.

Mr. NICKLES. I appreciate it. I have a couple of questions for the Senator if he would respond.

The PRESIDING OFFICER. Does the Senator from Washington yield for a question?

Mr. ADAMS. I am pleased to yield for a question.

Mr. NICKLES. The Senator mentioned the possibility that the Secretary of Labor would make this assessment on how much the labor protection provisions would cost. If a company involved disagreed strongly with that assessment, say they thought it was totally out of line, do they have an appeal process, or is this final?

Mr. ADAMS. There has always been an appeal process.

This is in the merger system and there has always been a way to appeal the first decision made by the department.

Mr. NICKLES. Let me talk for a second and give the Senator a chance to clear his throat. If I understand the procedure, the Secretary of Labor would make the decision, he would calculate the cost of the labor protection provisions, and they may well be very expensive to the tune of $40,000 or $50,000 per certain category or class of employees, maybe $80,000 for some of the higher paid employees and maybe for a term of 4 or 5 years. So we are talking about big money. We are talking about mandating those provisions without any work performed in some cases. We would talk about writing a check for no work and we can say an employee, if they told the Allegheny-Mohawk situation they may just be writing a very large check for work not even performed. I am not sure. If the firms involved disagreed with that decision, do they appeal it to the Secretary of Labor? Who do they make the appeal to?

Mr. ADAMS. Under section 1006 of the Federal Aviation Act they appeal to the district court.

Mr. NICKLES. To the district court?

Mr. ADAMS. That is correct.

Mr. NICKLES. In the process of this appeal, which I could see or I would imagine it would be contested possibly by the unions involved, would the Senator agree with me that that appeal could possibly take months and therefore be totally confused, with the uncertainty involved, make the proposed merger very less attractive, and possibly kill the merger altogether?

Mr. ADAMS. No. Traditionally these have gone up very quickly. The problems that they have had with mergers have been in other areas where they have had antitrust problems. I did want to correct the Senator's earlier statement. The Department of Justice does not at the present time pass on these. They simply make an appearance before the Department of Transportation which is ruling on whether or not the merger is acceptable.

The Department of Transportation in recent cases has ignored the Department of Justice. That is why I have sunsetted in this amendment. The Department of Transportation can send it to Justice. Under the amendment, Justice would pass on the antitrust laws. Under the Department of Labor, they go up, if there is a disagreement or there is a desire of appeal, to the district court. That is on an expedited and a short record.

Mr. FORD. I say to the distinguished Senator from Oklahoma that under the sunsetting of CAB, the merger jurisdiction will be transferred from the Department of Transportation to the Department of Justice, and I will offer an amendment to expedite that by a little better than a year, to turn that all over to the Department of Justice and take it out of the hands of the Department of Transportation.

Mr. NICKLES. What type of timetable would it usually take if you had two applicants desiring the merger? Time, I would think, is of the essence. If you are talking about merger, particularly talking about a failing company, a company that is in financial difficulty, time is of the essence. If that stretches out for months and goes through some type of appeal process, appealing through the courts, I would see this as being deadly to a potential merger.

Mr. FORD. I do not know that it is deadly, but I do not know what the timeframe would be.

Mr. NICKLES. Does the sponsor of the amendment know?

Mr. ADAMS. A 60-day period. That is the regulation in the Department of Transportation that would be carried over. That is the maximum. It goes up on a short record to the district court if they wish to appeal, and you can ask for expedited procedure.

Mr. NICKLES. But before a U.S. district court, would it not be conceivable that you could be talking about months before that court?

Mr. ADAMS. No, because it goes up on expedited procedure. It does not have to go on a jury trial. It goes up on administrative appeal.

Mr. NICKLES. So, on administrative appeal, say it was not to one party's satisfaction and they wished to appeal that to an appellate court.

Mr. ADAMS. If they can find basis for an appeal. But, traditionally, these have not had a basis, because they go up on a short record. This has not been a procedure in the past that has unduly delayed any of these. Their programs are generally that lengthy or longer in the antitrust aspect, if somebody looks at them. Now, somebody is not looking at them.

Mr. NICKLES. It has not been a problem because the labor protection provisions have not been implemented by the Department of Transportation.

Mr. ADAMS. It used to in the past. In the last few years, they have not done it. Under the CAB, they always ran this through; and in recent years—that is the reason for the amendment—they have not applied LPP's.

Mr. NICKLES. I understand that arbitration, under the Senator's amendment is up to the Secretary. But there is no standard for the Secretary to apply in determining whether or not to initiate arbitration. Is that correct?

Mr. ADAMS. No. What arbitration is used for in these cases, generally, is a conflict with repect to seniority. The standards of arbitration are used, I would say, as a matter of practice—the general standards of the American Association of Arbiters. It is applied here when the Secretary, in the Secretary's discretion, feels arbitration to be helpful in solving the problem.

Mr. NICKLES. Labor and managemen negotiated contracts, and in some of their contracts, I am sure, there is binding arbitration if they are unable to resolve a dispute. Is not the Senator's amendment again interjecting the Federal Government into the entire collective bargaining process, with the Secretary being able to mandate labor protection provisions, giving the Secretary the possibility of mandating arbitration, which, again labor and management had not agreed to?

Mr. ADAMS. No. What happens in these cases is that the merger agreement will terminate the collective bargaining agreements, just as has happened, as I am sure you are familiar, in the bankruptcy case in Continental Airlines. So the whole collective bargaining system is skewed and has been skewed by the merger process.

So what you are trying to do here is to help promote some labor peace by adding a set of rules, in effect. Otherwise, you create an enormous amount of dissension at that point in time, where there is a question of who flies and who pickets and that kind of thing. I believe in the collective bargaining system, but it is wiped out by the merger system. That is one reason for the amendment.

Mr. NICKLES. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Three minutes and forty-three seconds.

Mr. NICKLES. Mr. President, I wish to enter a couple of things in the RECORD. I do think that this is interference in the collective bargaining process.

Mr. President, I ask unanimous consent to have printed in the RECORD one page of an article by Capt. Henry A. Duffy.

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

EXCERPT

One consequence of industry growth is an increased demand for pilots. Airline expansion since 1984 has pushed pilot hiring to record levels.

In 1985, major, national, and regional jet airlines hired more than 7,800 pilots, a 43 percent increase from the previous year. In 1986, the market for pilots remained strong as more than 6,300 were hired.

I predict that the combination of a steady rate of aircraft deliveries and an escalation in the number of pilot retirements—expected to increase from less than 400 in 1987 to more than 1,000 in 1992—will require jet airlines to add between 4,000 and 6,000 pilots to the workforce per year through the early 1990s.

Industry expansion and increased demand for qualified personnel have benefited airline employees—in particular pilots—by reducing the disparity between A and B scales. At American alone, new-hire rates have increased by more than 50 percent in just four years.

As airlines continue to compete for qualified pilots, I expect new-hire rates, along with pilot pay at all airlines, to continue to increase at a very steady pace. Our goals are to eliminate all B scales and to bring all pilots up to the industry standard.

Toward these goals, ALPA plans to negotiate more agreements like the one between Pan Am and Pan Am Express. That agreement establishes a rate at which regional pilots can fill vacancies at the major airlines. (Prior to this, major airlines rarely hired pilots from regional airlines they owned or had close ties to.) I predict agreements like the Pan Am/Pan Am Express one will become more commonplace—developing a guaranteed pool of qualified pilots for major airlines and reducing turnover and training costs at the regionals.

Consolidation has redefined the industry. The number of certificated airlines—which rose from 36 to 123 in the first six years of deregulation—will decline to 73 after all the current mergers have been completed. If you exclude from that number the carriers that operate only within Alaska, Hawaii, and the Caribbean, the number of airlines remaining, which operate within the continental United States, declines to 37.

So we've gone from 123 down to 37 carriers.

I predict that industry concentration has been completed—for the most part. Any further consolidation will be focused on the acquisition of code-sharing regionals and, to a lesser degree, smaller national airlines.

Major airlines will continue to increase their financial ties to regionals to guarantee traffic feed into their hubs. Currently more than 80 percent of regional airline capacity is devoted to providing service to majors and nationals through code-sharing agreements.

I believe, given recent trends, that most regionals will eventually become partially or fully owned subsidiaries of the majors. The vertical airline—providing air service from Terre Haute to Tokyo via code sharing on consolidated ticketing—has become a reality.

Airline consolidation has benefited ALPA in terms of greater job stability, as well as improved compensation for its pilots. The majority of the airlines surviving this wave of mergers are those that have experienced financial success since deregulation, and whose employees have avoided the wage-reduction efforts prevalent at other airlines.

Moreover, the merging of operations will increase the pay of employees at the airlines being acquired. In six of the seven current airline combinations that involve a major airline and a merging of operations, pilots at the acquired airline will experience increases in pay at an average in excess of 30 percent.

Mr. NICKLES. I will read a couple of paragraphs. He says:

One consequence of industry growth is an increased demand for pilots. Airline expansion since 1984 has pushed pilot hiring to record levels.

In 1985, major, national, and regional jet airlines hired more than 7,800 pilots, a 43 percent increase from the previous year. In 1986, the market for pilots remained strong as more than 6,300 were hired.

Mr. President, there are two other paragraphs. I am running out of time.

Will the Senator give me 4 minutes of his time?

Mr. ADAMS. I yield 4 minutes to the Senator.

Mr. NICKLES. I thank the Senator.

Mr. Duffy goes on further in the article and says:

Airline consolidation has benefited ALPA in terms of greater job stability, as well as improved compensation for its pilots. The majority of the airlines surviving this wave of mergers are those that have experienced financial success since deregulation, and whose employees have avoided the wage-reduction efforts prevalent at other airlines.

Moreover, the merging of operations will increase the pay of employees at the airlines being acquired. In six of the seven current airline combinations that involve a major airline and a merging of operations, pilots at the acquired airline will experience increases in pay at an average in excess of 30 percent.

Mr. President, I also ask unanimous consent to have printed in the RECORD a letter from the Secretary of Trans-

portation, dated June 3, 1987. This is a letter from Secretary Dole to the chairman of the committee. I will not read the entire letter. It says:

In my view, it would be a mistake to entertain the suggestion by some that this occasion should be taken to impose statutorily for the first time "labor protective provisions" (LPP's) in the case of airline mergers.

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

THE SECRETARY OF TRANSPORTATION,
Washington, DC, June 3, 1987.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR FRITZ: I am pleased to hear that the Committee may act favorably at its next markup on Subcommittee Chairman Ford's bill S. 724, which would terminate the Department of Transportation's prior approval authority over airline mergers on the date of the bill's enactment. His hearings made it abundantly clear that this exception from Clayton Act procedures no longer serves either the airlines or the public well.

In my view, it would be a mistake to entertain the suggestion by some that this occasion should be taken to impose statutorily for the first time "labor protective provisions" (LPP's) in the case of airline mergers. The airline industry is fully mature and does not need or benefit from industry—specific standards imposed by the federal government that vary from most other industries. Mergers in the airline industry should not be subject to different merger standards, either in judging the effect of the proposed merger on competition or in the conditions for protection of affected employees.

As we understand the amendment, it would have a most arbitrary effect on potential mergers, depending on comparative financial and labor costs. Where the overall financial benefits of the merger or acquisition are marginal, such as saving a failing company, and the labor adjustment costs are significant, no protection would be available under the amendment. At the other end of the spectrum, it presumably would have little impact in cases where the monetary or seniority effects of the transaction on employees are small, but in this case it would hardly be needed. In between these two extremes in circumstances where substantial payments are required for highly paid personnel, the "Allegheny-Mohawk" standard relied on could result in compensation for not working that exceeds $90,000 annually for up to six years. Furthermore, experience has shown that airline labor protection provisions are extremely complex to administer, as illustrated by still outstanding aspects of the 8-year-old Pan American/National Airlines merger.

The proposed amendment should not be confused with the separate Employee Protection Program (EPP) provided under the Airline Deregulation Act of 1978, which is currently being administered by this Department and the Department of Labor. I would also note that organized labor has already gained one substantial advantage under the 1978 Act, namely the prohibition on "mutual aid pacts" common in the airline industry prior to that Act to assist managements in weathering strikes.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

With warmest regard,
Sincerely,

ELIZABETH HANFORD DOLE.

Mr. NICKLES. Mr. President, I also ask unanimous consent to have printed in the RECORD a letter from Senator PETE WILSON, enclosing a letter from Senator BROCK ADAMS, dated September 9, 1987.

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

U.S. SENATE,
Washington, DC, October 29, 1987.

Mr. PRESIDENT: I ask unanimous consent that a letter sent to me from Senator Adams on the subject of labor protection provisions be included in the CONGRESSIONAL RECORD at an appropriate place during this debate.

Sincerely,

PETE WILSON.

U.S. SENATE,
Washington, DC, September 9, 1987.

Senator PETE WILSON,
720 Hart Office Building, Washington, DC.

DEAR PETE: Thank you for your letter concerning the labor protection provisions of S. 724, the Airline Merger Transfer Act of 1987. Senator Ford has asked me to respond to the questions that you present regarding the implementation of these provisions. I share the concern you express for clear Congressional guidance to the Executive Branch on legislation enacted, and I hope that this letter will help explain the intent of the legislation to your satisfaction.

I believe that a brief description of the bill will answer many of the questions that you pose. The bill would reestablish the traditional and longstanding practice of imposing conditions to protect the interests of employees who may be adversely affected by an airline merger. The bill does not require the Secretary of Labor to impose any particular set of protections, however. Rather, the bill leaves to the discretion of the Secretary of Labor the determination of what protections are appropriate in any individual case. This determination can be a complex one and is a matter that is better left to the expertise of the Department of Labor. While clear standards and policy guidance are always necessary, Congress should be chary of enacting legislation that attempts to mandate the results of case by case proceedings.

Under the legislation, the LPP's should be calculated to mitigate adverse consequences of the transaction, such as a reduction in employment of an adverse effect on the wages and working conditions (including seniority) of air carrier employees, including procedures resulting in binding arbitration. Several of your questions refer to the LPP's imposed in the Allegheny-Mohawk Merger Case, 59 C.A.B. 19 (1972) and ask whether the Secretary of Labor would be required to impose these conditions or whether the Secretary would have discretion to impose conditions less generous or different from the Allegheny-Mohawk conditions. As I note above, the legislation gives the Secretary sufficient flexibility to tailor the protective conditions to the individual transaction. Thus, Allegheny-Mohawk LPP's are not mandatory. On the other hand, these protective conditions were developed over the course of thirty years of C.A.B. caselaw and represent a reasoned attempt to balance the interests of airline employees and the carriers involved in the transaction. I would expect that in implementing the bill, the Secretary would consider the opinions and principles developed by the C.A.B.

Many of your questions relate to the "cost/benefit test" established in the bill which would obviate employee protection where the "projected costs of imposing such provisions would exceed the anticipated financial benefits of the transaction." The burden of proving that the costs of the LPP's are greater than the financial benefits of the transaction is placed on the proponents of the transaction. The purpose of this provision is to assure that worthwhile mergers, some of which may result in little projected financial gain for the merging airlines, will not be jeopardized by the cost of protective provisions. Generally, however, I anticipate that air carriers entering into such transactions would have a reasonable estimate of the financial benefits of their investment and of the consequences of the merger on airline employees. I also expect that in most transactions the benefits will outweigh the costs of employee protection, as any reduction in employment would be accompanied by a corresponding savings in labor costs.

Under the legislation, it is the Secretary's responsibility to assess the costs of employee protection and the financial benefits of the transaction, based on the information and evidence submitted by the parties in the case. Generally, the financial benefits of a merger will include the elimination of redundant or unprofitable routes, labor savings, savings in administrative costs, increased load factor and proceeds from the sale of excess assets and equipment. The exact standards for defining these costs and benefits, however, are left to the discretion of the Secretary, as is common practice in legislation concerning administrative procedure and agency action.

I trust that the above discussion has addressed your concerns about the bill. Please let me know if I can provide you with any further information or answer any other questions.

Sincerely,

BROCK ADAMS.

Mr. NICKLES. Mr. President, I ask unanimous consent to have printed in the RECORD a letter dated July 13, 1987, from Pan Am Corp.

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

[Letter sent to all U.S. Senators.]

PAN AM,
Washington, DC, July 13, 1987.

Hon. BROCK ADAMS,
U.S. Senate, Washington, DC.

DEAR SENATOR ADAMS: In the near future you will be asked to vote on S. 724, a bill relating to airline mergers which was recently approved by the Senate Commerce Committee. The bill was amended to include labor protective provisions, which, on the surface, would appear to be a protective measure for employees, but in reality produce very negative results for them.

The proposal requires the Secretary of Labor to impose labor protective provisions which could include several extremely expensive benefits to be paid by the airlines, such as a dismissal allowance of up to 60 percent of an employee's salary for up to five years or a separation allowance of one year's pay. The possibilities of LPPs are endless. And, who do they benefit? Certain-

ly not the long-time, dedicated employee who has spent his working life with the company. No, if any employee is impacted, it is the most junior employee who generally is protected by union contract. The senior employee whose job is kept intact is left with a company whose chances of survival are greatly weakened by enormous LPPs it has been forced to pay out to the junior employees.

While certainly each employee is entitled to protection, this issue should be left to the collective bargaining process. LPPs restrict this process by automatically granting monetary benefits to an employee terminated as a result of a merger. This is almost unheard of in any other industry and certainly is counter to the deregulated industry which exists today.

Finally, the bill singles out the airline industry by requiring review of mergers by the Departments of Justice, Labor, and Transportation. Any other industry simply would have a proposed merger reviewed by the Department of Justice. Such an onerous obligation would make the airline merger process so complicated, lengthy and expensive as to possibly negate the transaction, thereby causing the unnecessary loss of many jobs.

When S. 724 comes to the Senate floor, we urge you to give serious thought to the real consequences of the bill. Your vote against this measure will help protect the vast majority of the airline employees in the long run.

Sincerely yours,

ROSEMARY GRIFFIN MURRAY,
System Director-Governmental Affairs.

Mr. NICKLES. Mr. President, to highlight, it says:

Finally, the bill singles out the airline industry by requiring review of mergers by the Departments of Justice, Labor, and Transportation. Any other industry simply would have a proposed merger reviewed by the Department of Justice. Such an onerous obligation would make the airline merger process so complicated, lengthy and expensive as to possibly negate the transaction, thereby causing the unnecessary loss of many jobs.

Mr. President, we will discuss this issue tomorrow.

I appreciate the indulgence of my friend and colleague.

I think this particular amendment will be a mistake. I also have a note from OMB that they will send over in opposition to the Senator's amendment.

Again I will reiterate my statement earlier. It is my belief that if this amendment is adopted it will provoke a Presidential veto.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Oklahoma has yielded the remainder of his time. Who yields time?

The Senator from Washington.

Mr. ADAMS. Mr. President, I just want to correct the last statement. We terminate the Department of Transportation. It would be no review by them. It all goes to the Department of Justice.

Mr. DANFORTH. Mr. President, I would like to direct a question to the sponsor of this amendment. Mr. President, I wonder if the Senator from Washington could clarify whether this amendment would require that the Allegheny-Mohawk labor protective provisions be applied in every airline merger case.

Mr. ADAMS. Mr. President, in answer to the inquiry from the Senator from Missouri, no, the amendment does not require application of Allegheny-Mohawk labor protective provisions to all airline mergers. It would be up to the Secretary of Labor to decide whether the statutory standard for labor protective provisions have been met and to decide the appropriate scope of labor protective provisions.

Mr. DANFORTH. Mr. President, I thank the Senator from Washington.

Based on that description, I have no objection to the amendment.

Mr. ADAMS. Mr. President, unless the distinguished Senator from Kentucky wishes some time I am going to yield back the remainder of my time.

Mr. FORD. Mr. President, I say to my distinguished friend from Washington, I have no time unless he gives me some time. I would like to make a few unanimous-consent agreements if he does not mind.

Mr. ADAMS. Whatever the Senator from Kentucky would like to do, I yield him such time as he may consume, and I yield back the remainder of time after the Senator from Kentucky completes the statement.

Mr. FORD. Mr. President, I ask unanimous consent that the Senator from Vermont, Mr. LEAHY, and the Senator from Ohio, Mr. METZENBAUM, be added as cosponsors of the bill, S. 1485.

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

Mr. FORD. Mr. President, I understand that the pilots are well compensated. I do not want someone with inexperience in the nose of that airplane when I am flying.

Early on, or after World War II, many, many pilots went from the Air Force into the airline industry. It was a recruiting era. It seemed like they went from there into the industry.

Today, we have or are having a difficult time in securing well-trained pilots.

It seems that an incentive is important to have well-qualified pilots.

Most airlines—and I do not know of any airline that does not—will have a more rigid standard than the minimum qualifications for pilots who fly their airplanes.

It makes a significant difference when you begin to look at what is required of a pilot to understand and to know all the safety and operating procedures. I am not too unhappy with the kind of salary some of them make, based on what our athletes are making today. Why, some of our athletes during their strike lost more per week than the pilot makes all year.

So I am not very unhappy or hold it against any pilot who makes good money, and the airlines uses that incentive to get qualified pilots.

I worry about the total industry, as it relates to pilots, because those pilots with some experience in commuter airlines are being hired to fly larger planes.

Mr. President, I do not want to go further, but I just think that what we are doing here is not only what might be called labor protection, but I think it is safety. I think the underlying issue here is the safety of the airlines, qualified pilots, no friction as it relates between the pilot and the copilots and the employees after a merged airline.

I might say to my good friend that the Department of Justice recommended against four recent airline mergers and the Department of Transportation approved all four of them. Then they recommended the last merger be approved. The Department of Transportation adminstrative law judge turned it down.

So I am not sure what you are coming on. The Department of Justice probably is getting this authority too late. But under the amendment of the distinguished Senator from Washington the decision is taken out of the Department of Transportation's arena and given to the Department of Justice.

Mr. President, I yield back the time that was given to me by the distinguished Senator from Washington.

The PRESIDING OFFICER. The Senator from Kentucky has yielded back the remainder of his time.

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

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

A NEED FOR SAFE TRAVEL AMERICA

Mr. DANFORTH. Mr. President, Congress has made great strides in improving transportation safety. However, there are a number of very significant problems that still must be addressed.

On October 7, Congress was visited by over 600 members of a new grassroots lobbying group called Safe Travel America. The members of this group—families and friends of the victims of the January Chase, MD, train wreck—told their tragic story in every congressional office. They reminded me of another compelling and persuasive group organized in living rooms and around dining-room tables—the Mothers Against Drunk Driving.

Like the members of groups such as MADD, Safe Travel America has brought home to every Member of Congress the human tragedy resulting from that needless collision last January between an Amtrak train and a Conrail train. Sixteen people were killed in that wreck, most of them young people. I urge my colleagues to read the following two articles: one by Roger and Susan Horn, who lost their 16-year-old daughter, and another that appears in the November issues of both Washingtonian and Baltimore magazines. Mr. President, I ask unanimous consent that both articles be printed in the RECORD immediately following these remarks.

Mr. President, there are two bills pending in the U.S. Senate that could help prevent future accidents like the one at Chase, MD.

S. 1539 would allow the Federal Railroad Administration to penalize individuals for violations of rail safety laws, would provide access to the driving records of prospective railroad employees, and would require establishment of qualifications for engineers.

S. 1041 is designed to ensure drug- and alcohol-free bus drivers, airline pilots and mechanics, and railroad engineers and brakemen. The bill provides for testing, including random testing, for substance abuse by those in safety sensitive positions.

Both bills, overwhelmingly approved by the Senate Commerce Committee, represent a bipartisan effort to address very important and urgent safety concerns.

Mr. President, there are many problems in this world that we in Congress cannot solve. Transportation safety is not one of them. The time for action has come.

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

[From the Evening Sun, Oct. 13, 1987]

A NEED FOR TRAVEL SAFETY

(By Roger A. and Susan D. Horn)

(Notice to passengers.—The engineer operating your train has been convicted 11 times for automobile speeding, and he will be speeding while operating your train today. Other personnel operating trains over the track used by your train are alcoholics, drunk drivers and drug abusers with high levels of drugs in their bodies today. Critical safety devices in their locomotives are deliberately disabled. None of your operating personnel has ever passed a federal or state licensing test.)

Truth in packaging is required for cereal and toothpaste, but if it were required for public transportation, this notice would have been posted on the doors of the Amtrak Colonial, whose Jan. 4 collision near Chase with a Conrail train took 16 lives, most of them children and young people. One of them was our 16-year-old daughter, Ceres, who was returning from the Christmas holidays to her first-term final exams at Princeton University. Similar notices would have to be posted on every passenger train departing today, for nothing has been done since January to alter slipshod safety practices that are common in the rail industry.

After reading such a notice, would you put your children on the train? Would you get on yourself?

On March 24 there was a near-tragedy in North Philadelphia in which a Conrail engineer ran his freight train through a stop signal and almost got out onto the main line in front of a southbound Amtrak passenger train (the Colonial again). Subsequent tests showed that the engineer had high levels of marijuana in his body—more than four times as much as the Conrail engineer in the January crash.

In mid-September a Conrail freight conductor operating out of Baltimore appeared in Dundalk District Court on drunk driving charges. His Maryland automobile record lists 24 previous convictions for drunk driving and other charges, but he is still operating trains. No state or federal law or company rule prevents him from doing so.

Recently, Maryland state police responded to a call to take an intoxicated engineer off a train. However, they found that there was no Maryland statute under which he could be charged.

The Conrail engineer allegedly responsible for the January crash has been indicted only for manslaughter, a misdemeanor; despite the appalling death toll and tens of millions of dollars of damages, no other federal or state statute applies. His brakeman, who was found to have PCP in addition to marijuana in his body, has been charged with nothing; no state or federal laws apply in his case.

Clearly something is wrong and it needs to be set right.

The common assumption that government regulators ensure adherence to commonsense safety practices in interstate transportation is sadly mistaken. Most people are shocked to learn that no license is required to operate a train. They find it hard to believe that major interstate transportation companies make no effort to use publicly available records to determine whether safety-critical employees have conviction records for automobile speeding or drunk driving.

Responding to citizen demands in recent months, the U.S. Senate Commerce Committee has overwhelmingly approved two excellent transportation safety bills: S. 1041 on drug and alcohol testing and rehabilitation for safety-critical rail, airline, bus and trucking employees, and S. 1539 on rail safety. The drug testing bill (S. 1041) provides for pre-employment, periodic, post-incident, probable cause and random testing. It also mandates rehabilitation programs, confidentiality of test data and certification of testing laboratories. Because S. 1041 includes careful safeguards for individual rights and privacy, respected legal authorities believe that it will pass careful scrutiny for constitutionality by the courts.

Mandatory random testing is a key element of this bill, and it ensures that every safety-critical employee has an equal probability (and certainty) of being selected for testing; neither management nor labor has any discretion over who is tested. The objective is, of course, to encourage troubled employees to enroll in rehabilitation programs and, as a last defense, to detect recalcitrant drug abusers who refuse to stop.

Last year, Congress failed to pass any rail safety bill because special interests demanded too many self-serving amendments. This year's rail safety bill (S. 1539) is both clean and short, and it contains a historic provision to give the Federal Railroad Administration (FRA) authority over individual employees and managers when they violate safety rules. This authority, which the Federal Aviation Administration has always had over pilots and other airline personnel, would give FRA inspectors the power to remove from the cab an engineer who has disabled key safety devices, a power that, incredibly, they never had before.

Although further legislation will be needed to finish the job, these two bills are a good start toward restoring the confidence of the traveling public. They are however, opposed by powerful special interests whose representatives are in Washington every day, tirelessly lobbying for their selfish objectives. Having failed to stop these bills in committee, these special interests are now lobbying in the back rooms of Congress to keep them from coming to the floor of the Senate or House for debate.

To counter the special interests, thousands of citizens from every state have written their senators and representatives to urge them to support new safety legislation. In addition, over 500 citizens, mostly young people, went to Washington last Wednesday for a special legislative action day. Organized by families of victims of the January crash, they held a prayer breakfast and press conference on Capital Hill. More important, they visited every single member of Congress to urge active support of new strong transportation safety legislation right now. Local students for McDonogh School (Ceres' alma mater), Roland Park Country School and Friends School formed the majority of the group visiting Congress; through students came from as far away as Princeton, Smith College and Shippensburg State University.

Others who wish to help ensure safer transportation may do so by writing their U.S. senators and representatives. Urge them to ask the Senate and House leadership to bring S. 1041 and S. 1539 to the floor for debate now, and them to support these and other bills for traveler safety. Maryland residents have special reason to send this message to Sen. Paul Sarbanes, who has not yet taken a position on travel safety. Sen. Barbara Mikulski and Rep. Helen Bentley, R-2nd, already have pledged their full support for these two bills.

Action is needed *now*. Every day's delay increases the chance of another massive tragedy and more loss of life. Act now to demand safe travel in America.

[From the Washingtonian, November 1987]

LIFE AND DEATH ON THE FAST TRACK

(By Ramsey Flynn and Steven D. Kaye)

(On the first Sunday of 1987, moms and dads are sending kids back to college, football fans are tuning in the Giants-49ers playoff game, and at 12:35 pm.

(Amtrak's Colonial 94 is leaving Washington's Union Station. Just north of Baltimore, the train rounds a curve at 120 MPH and the engineer sees three blue Conrail locomotives dead ahead.

(Here is how five lives intersected at that terrible, avoidable point of impact.)

The images flicker in his mind, sometimes when he's driving, sometimes when he's trying to sleep. He finds himself aboard the train in the moments surrounding the crash. He sees the impact in slow motion, hears the roar, feels the grip of steel twisting around him.

Months after the fiery wreck of the Colonial, Dr. Roger Horn still imagines it is a dozen times a day.

In a hot and crowded congressional hearing room in July, he finds space to sit cross-legged on the floor, balancing a heavy briefcase on his lap to take notes. He has testified many times since that Sunday afternoon in January when sixteen people died in the collision of the Amtrak passenger train and three Conrail locomotives near Baltimore. Now he waits his turn to take his private anguish public once again.

A big man, the mathematics professor stretches his back and shifts uncomfortably. He will not testify for hours. Across the room, a high-ranking staff member of the Federal Railroad Administration turns to an assistant. "That's Dr. Horn," he whispers. "His daughter was killed."

At 7 o'clock on Sunday morning, January 4, it is clear and dry, 27 degrees and still dark outside the pretty, blue Victorian home at 13 Maple Avenue in the Overlea neighborhood of Baltimore.

Denise Evans is in the kitchen. She can hear her husband rustling in the hallway with two-year-old Joshua, and she knows what's coming. "C'mon," she hears Jerry whisper. "Let's go get Mommy." He picks up their son and carries him like a football into the kitchen for breakfast.

At the table they snatch bacon from each other when Denise isn't looking and Joshua giggles at their mischief. Jerry gets up several hours before work each morning just to be with him.

This morning father and son splash in the bathtub together before Jerry departs at 9 am. At the front porch, the lanky, 35-year-old Amtrak engineer presses his lips to a spot on the door where he and Denise kiss each other through the glass. Joshua giggles again.

This day Jerry will operate Amtrak's Colonial 94, scheduled to depart Washington's Union Station at 12:30 pm, bound for Boston. He winks and gives Joshua a father's exaggerated wave and promises to be home by 11 pm.

On a small farm in Potomac, Maryland, twenty-year-old Christy Johnson is trying to administer a shot to one of her family's horses. The animal bucks and turns, knocking the syringe from her hands. It disappears into the straw on the barn floor.

Christy was hoping to catch a morning train so she could spend the day with her sister in New York before flying back to Stanford University. But she's running late, and now it looks as if she'll have to catch the 12:40 at New Carrollton.

Christy's parents, Arthur and Ann Johnson, say good-bye and go off to Georgetown Presbyterian Church. They are feeling good about their daughter, who five years ago had started to abuse drugs. Christy had gone to her parents, sought counseling, and within a year was off drugs and helping other kids with the same problem.

Now, as she approaches graduation from Stanford, she is weighing a career in psychology or health care.

On their way to church, her parents pass Rebecca Hyman, one of Christy's closest friends from high school. Rebecca is on her way to pick up Christy and drive her to the train station. Another old friend joins Christy and Rebecca at the house, and they make smalltalk over coffee in the kitchen.

Christy runs up to her bedroom to finish packing, and Rebecca follows as they try to squeeze in a few more minutes together.

They head out the Beltway to New Carrollton, reaching 70 miles an hour as Christy keeps nagging: "We're going to miss this train."

At the station Rebecca helps Christy with her luggage and they quickly hug. "I love you," says Christy.

In the Pennsylvania town of Shipensburg, eighteen-year-old T.C. Colley is ending a long stay with his father and stepmother. He's going back to Baltimore, where his mother lives and where some letters from his new girlfriend await him. Then he'll take the train up to Providence, where he's a freshman in photography at the Rhode Island School of Design. He's determined to be the next Ansel Adams.

T.C. and his father had a heart-to-heart talk last night about growing up. It seemed that T.C. was testing out his latest personal style, a penchant for frankness, and his father wanted to rein him in a bit. "Just be sweet," added his stepmother, Susan. "Just be you."

Tom Colley drives his son to the usual rendezvous point near York, Pennsylvania, and watches him throw his coat in the back of his mother's car before T.C. heads off for Baltimore.

In the wooded hills of northern Baltimore County, sixteen-year-old Ceres Horn is canvassing her family's home for belongings before returning to Princeton, where she's a freshman honors student two years younger than most of her classmates. She doesn't want to forget the heavy wool sweater she bought for her boyfriend back at school.

Her father, Roger Horn, a Johns Hopkins University professor, is in Israel lecturing on mathematics. Ceres and the rest of the family stayed up later than usual last night as her mother, brother, and sister gathered around her bed and listened to her describe how she's cramming sports and theater into her heavy academic schedule. Her goal is to become an astronaut, and she's going to try for a summer job in the astrophysics department at Johns Hopkins.

But this is Sunday morning, January 4, time to get back to school. Ceres, her mother, and her nine-year-old brother, Howie, drive to Penn Station in downtown Baltimore, where engineer Jerry Evans, at the controls of the Amtrak Colonial, is about to pull into Track 3, Gate C. He left Washington at 12:35 p.m., five minues late, stopped briefly at New Carrollton, and now is almost on time.

The Colonial is one of the modern Amtrak trains bought by the federal government to keep the country's passenger-train system alive. Since the early 1950s, trains had lost more and more riders to airliners and cars, and by the late 1960s, when it became clear that no private railroad could afford to keep them going, Congress decided to create Amtrak as a national railroad. Amtrak lost millions of dollars every year, but taxpayers kept the trains running.

Today Evans's train includes two big General Motors electric locomotives and twelve passenger cars. About 400 passengers are already aboard. Christy Johnson has moved far to the front of the train, to passenger car 21236, just behind an empty café car and the two locomotives.

On the platform, T.C. Colley's stepfather, Cal Walker, a physics professor at Johns Hopkins, recognizes Ceres Horn's mother. They introduce the two teenagers.

T.C. is loaded down with luggage. His mother, Ann, notices the wide stance he has adopted since taking up karate. He's gotten so tall and broad in the last year, and he slouches, as if uncomfortable with his height. He's dressed in the dark, heavy clothes that say *artiste*, with a new woolen scarf from his stepmother swooping around his shoulders. He wears a silver chain around his neck and an earring she recently gave him.

The Colonial pulls in, bringing with it a rush of cool air and flurry of goodbyes. "I love you," Ann tells T.C. "I'm very proud of you, and I think you're wonderful."

"So do I," says T.C.

"Good. We agree on it, then."

She puts him on the third car from the end of the train. "Try going toward the back," she says. "It looks like there are more seats back there." But T.C. goes forward, as young people often do in crowded trains, walking through seven cars until he finds one with a lot of room—passenger car 21236, the same car Ceres Horn and Christy Johnson are in. About 175 passengers board the train in Baltimore. There are now almost 600 passengers, along with 12 crew members, aboard the Colonial.

An Amtrak conductor barks over the radio to Jerry Evans, "Nine-oh-three, Jerry, 94, okay to proceed."

"Okay," says Evans, "94 on the move."

Susan Horn and young Howie are already out of the station when she remembers to mail Ceres's letter to Johns Hopkins astrophysics professor Arthur Davidsen. She walks back and drops it into a mailbox. "I'm very excited about the prospect of working for the Center for Astrophysical Sciences this summer," Ceres has written. "It will give me a better understanding of what an astrophysicist actually does and enable me to decide if majoring in physics at Princeton is for me.

The Bayview freight yard on Baltimore's east side has the old-fashioned look of most of the yards on the railroad system's busy northeast corridor: rows of parallel tracks, a squat control tower, a few cinder-block buildings, and trailers painted in dull green and gray.

The buildings are plastered with safety posters, a different one each month. On a roundhouse wall there used to be a mirror etched: "Accidents only happen to the other guy. Meet the other guy."

Today engineer Ricky Lynn Gates and brakeman Ed (Butch) Cromwell are scheduled to move three diesel locomotives 110 miles north and west for use in the Enola Yard outside Harrisburg.

Railmen love this kind of duty—they call it "light engines"—because with no freight cars to pull, the locomotives have quicker acceleration and easier handling. It's an easy run that comes maybe one time in a hundred. Gates won't have to worry about moving a long, heavy freight train, with the buffeting and bumping of boxcars and tank cars on hills and curves. Cromwell won't have to worry about brake-hose trouble or busted couplers. Just a short scoot up to Perryville, Maryland, then west to the Enola Yard. They'll make it in three hours, and they'll ride a bus back home.

Gates's fee for the job is $121.06 each way, Cromwell's $96.50. Lack of seniority has meant too much furlough time for both of them, and they feel lucky to get the work. January 4 is still considered holiday time by many of their coworkers, who have taken the day off.

The two enter the terminal building for the paperwork. Gates registers and signs the safety sheet, which posts safety rules. The paperwork tells him he should expect a delay twelve miles up the line at "Gunpow," the first switch, half a mile south of the Gunpowder River Bridge, where the

wooden-tied freight line merges with the newer, concrete-tied, high-speed line of the northeast corridor. He'll probably have to wait there a few minutes for the passing of a priority Amtrak passenger train, Jerry Evans's train, which is running one minute behind schedule.

Gates looks the freight engines over, checks in with the trainmaster, George Mince, and tells him the lead engine doesn't have a working two-way radio. It's a common problem, and they agree that he can use one of the shorter-range, hand-held models that brakemen use in walking the brake lines.

The trainmaster observes the two-man crews while they talk. Supervisors used to look just for signs of drinking when crews checked in. Today, as his drug-detection training has taught him, Mince also looks for other signs. He has been around the rails for 36 years, long enough to know how tough spotting a drug user can be.

At 32, Gates is a seasoned veteran of both alcohol and marijuana use. Cromwell, 33, prefers marijuana and sometimes other drugs. Gates is discreet about the illegal stuff, but some of his friends know about it. Most of them figure he stays in control on the job.

The alcohol problem did become a public matter late one night in December. A cop caught him weaving down the road in his car. Gates couldn't recite the alphabet, and he foolishly presented his open wallet with a $20 bill and a $5 bill over his driver's license, but the cop wouldn't go for it. The details would emerge in a county courtroom some three months later, when there would be considerable interest in the habits of Ricky Lynn Gates.

But today Mince doesn't notice anything unusual about this crew. They look fit and ready to run 400 tons of diesel locomotives the 110 miles up to Enola, and he sends them on their way.

The national rail system is in the best physical condition it has been in in the last 25 years. The equipment is the best ever. . . . But if 8,000-ton trains are entrusted to impaired crew members, disaster will not be avoided. —Secretary of Transportation Elizabeth Dole, in a 1984 Senate hearing.

The railroad industry has waged war with alcohol for more than a century, and even today something of the traditional image of America's trailblazing railroaders persists: hard-working, hard-drinking, rough, loud, and grimy.

A few visits to the workplaces and homes of today's railmen dispel much of that image. Trailblazing has been supplanted by mortgages, tuition, and car payments. But many railroaders still drink on the job, and some use drugs.

Until 21 months ago, there was no federal law saying they couldn't.

Freight and passenger lines do prohibit crew members from using alcohol or drugs or being impaired on the job. Rule G, as it's known industry-wide, has been around since 1897. The railroads designed Rule G to weed the abusers out of the working ranks, and violators traditionally have been fired.

But Rule G doesn't work. That was made clear in a 1979 Department of Transportation study of 234,000 railroad workers. It found that 23 percent of operating employees, including engineers and conductors, were problem drinkers, and that 5 percent of all employees came to work very drunk or got very drunk while on duty at least once during the year-long study.

With little faith left in Rule G, the industry has been trying other ways to get substance abusers out of safety-sensitive positions. Some railroads and unions have formed Rule G by-pass agreements that offer treatment as an alternative to termination. It can be voluntary, or workers can be referred to an evaluation-and-rehabilitation program by a "prevention team"—two or more coworkers—or by a union official Those who complete treatment can return to duty.

Although the railroad unions have historically underplayed the extent of drug problems among workers, it is the unions that now are pushing hardest for such peer-prevention programs. While concerned about safety, they also would like to head off increased federal involvement. The unions and the railroads have long claimed that they can police themselves against drugs and alcohol.

The Federal Railroad Administration, part of the Department of Transportation, regulates all aspects of the industry, including rail safety. Between 1975 and 1984, the FRA investigated 48 accidents it says were caused by drug or alcohol impairment, accidents that caused 37 deaths and $35 million in property damage. The accidents included three head-on collisions, a derailment at 68 miles per hour on 25-mile-per-hour curve, and the wreck of a 100-car freight train carrying hazardous materials that forced the evacuation of a Louisiana town. In that wreck, both the engineer and the head brakeman were drunk and asleep.

Something more than self-policing seemed necessary.

Beginning in 1983, a group of FRA staff members under administrator John Riley, a Reagan appointee, spent about three years writing a set of regulations they hoped would control the use of alcohol and drugs in the industry. FRA regulations have the force of law.

For the first time, railroad operating employees would be prohibited by federeal law from alcohol or drug use or impairment while on duty. Pre-employment urine tests would be mandatory. Railroad companies would be required to conduct, and crews to submit to, toxicological testing after certain types of accidents. Accident reports from the railroads, which the FRA depends on for most of its data, would include inquiries into the possible involvement of drugs and alcohol, even when no such involvement was obvious. Railroads would have to establish voluntary drug-referral policies and Rule G by-pass agreements.

Finally, railroads would have the right to require any operating employee to submit to breath and urine tests on the basis of "reasonable cause," even when no accident had occured. The unions fought that provision in court and lost.

In the context of the old railroad industry, the FRA's new set of rules seemed drastic when they went into effect early in 1986.

For engineer Ricky Gates, they didn't make much difference.

Gates pulls his engines up to the signal-testing bay to check out the cab's safety devices. From the engineer's seat on the right side of the cab, he looks at the incab signal rack mounted on the window to his upper left.

The vertical signal looks like a down-sized traffic light with four aspects, all a light shade of amber, with patterns of dots telling the engineer when we go, when to slow, when to prepare to stop, when to stop. It is activated electronically by switchers who sit in trackside towers along the route. It duplicates the larger, remote-controlled signals mounted over the tracks or on the wayside. Engineers bet their lives on these signals.

Some engineers will tell you that they've seen signals malfunction, but that they usually "fail down," telling crewmen to go slower than they should rather than faster. Signals telling them to go when they should stop—"false proceeds"—are rare. There have been nineteen in the northeast corridor in the last four years, none causing an accident.

A signal bulb in Gates' cab is missing. It's part of the signal telling him to slow down and prepare to stop. He doesn't worry about it. Engineers who linger too long over the little things are not popular in a business where time is so closely linked to money.

Gates checks the alerter whistle, mounted on the floor behind his controlling console. It looks something like a flute and sounds like a shrill pennywhistle. It screeches every time the train passes any signal that doesn't say "go," just to keep the crew paying attention.

Most engineers hate the whistle. Not only is it painfully loud, it's also insulting. It's a safety device, but to them it questions their professionalism. Some engineers muffle the whistle with a few inches of duct tape. More often it's taped by a brakeman, riding overnight in the cab of a second or third locomotive and trying to catch a few winks on a gently rocking freight train.

Gates tests his alerter whistle and hears nothing—or, at most, a faint hiss. He didn't put the tape there. It is probably from an earlier trip. Gates has a reputation as a sticker for the rules, and normally he would remove the tape.

But today Gates and Cromwell are in a holiday mood. Corridor traffic is low. They're running light engines. Cromwell has along his personal radio. They might be able to listen to the San Francisco 49ers-New York Giants playoff game.

And one of them is packing a couple of marijuana joints.

At 1:13 p.m. the engineer and his brakeman get the go-ahead from the Bayview tower to proceed, and at 1:16 they pull out of the yard, onto a freight track adjacent to the high-speed main line.

In order to keep a freight train moving, an engineer is supposed to keep his left foot on the dead-man's pedal, a simple, floor-mounted safety device that has been around for a long time. If the engineer becomes incapacitated and his foot leaves the pedal, the train stops.

Many engineers consider the dead-man's pedal a nuisance. It's uncomfortable to keep your foot on the same spot, sometimes for more than twelve hours at a stretch. You get leg cramps. You can't get up from your seat, even to use the cab bathroom, without stopping the train.

The dead-man's pedal is probably the safety device that's most commonly disabled on a freight train, and any engineer will tell you it's the easiest thing to do. All he has to do is put a wrench on top of it.

Rick Gate's engine has a disabled dead-man's pedal, the throttle is set for acceleration, and no one has to steer a freight train. For the time being, this train doesn't need him anymore.

Gates and Cromwell are not a regular team; the crews are always rotating. But they've spent enough time together to know they have something in common. They both like to get high.

And so they light up a joint.

They make small talk. Cromwell is soft-spoken, when he speaks at all. Some of his

past crewmates say it's possible to spend twelve hours in the cab with him and never exchange a word. Off duty, he's always available for a pickup softball game, and he wields a pretty good bat. Most people who know him like him.

Gates is a rock-music lover and a *Star Trek* fan, and is more outgoing. He's been running the rails for fourteen years, and in a job that is often boring, conversation helps keep him alert. He smokes four packs of cigarettes a day. He sometimes brings home-cooked meals to work to share with his crewmate.

Mixing a demanding work schedule with a growing affection for alcohol didn't help his marriage, and he and his wife, Mary, split up a few years ago. She kept custody of their two daughters.

After the separation, Gates moved into a small apartment in Essex, Maryland, and threw himself into railroading. It seemed to define everything about him. He plunged into the rules and regulation, scoring high marks on his proficiency tests. He scored 100 percent on his last one.

Gates is proud of his knowledge and chides other engineers when they do something that's not by the book. He cites the rule book from memory.

He has been disciplined by Conrail for insubordination, and sometimes he plays his harmonica over the nighttime radio waves, which is not allowed by the rules. Driving his car, he has racked up nineteen citations in fifteen years—mostly for speeding—and twice has had his driver's license revoked. But his record on the rails is good, and most of his colleagues are happy to have him as a crewmate.

The consensus among those who know him in the railroad fraternity is that Gates has the right stuff. But in early afternoon of January 4, at the controls of Conrail train ENS-121, Ricky Lynn Gates is not altogether in character.

A marijuana high often distorts one's sense of time—half an hour can feel like five minutes, or five minutes can feel like an hour.

In the past year Gates has taken a train through the Gunpow switch 99 times, usually from Bayview. As with any familiar routine, he has developed a certain feeling, an internal clock, that tells him how much time should elapse from step to step. Gates is used to moving long, heavy freight trains that can take ten miles to get up to speed. He is used to a fifteen- or twenty-minute lull between Bayview and the Gunpow "distant signal," two miles before the switch at the interlocking of the freight and passenger tracks.

But today Gates is running light engines, and he has fooled with the delicate workings of that internal clock.

Once out of Bayview, his three-engine train picks up speed much more quickly than the seasoned engineer is accustomed to. Twenty-four steel wheels race along the rails, clacking from joint to joint. The big engines whine as they suck up diesel fuel. The scenery rushes past: houses, trees, the main lines on Gates's left. Conrail train ENS-121 has hit 60 miles an hour less than a mile out of the yard, tens of thousands of feet sooner than would a train weighed down by freight.

Fifteen miles to the north, Edgewood Tower switching operator Richard Hafer is expecting the Conrail. But first he's expecting a crowded Amtrak passenger train, streaking along at more than 100 miles an hour.

The dispatchers keep the radio chatter going: "Got a hot move coming for ya," says John Atkins at Perryville.

"Aaah, what are ya gonna wake me up this time of day for?" Hafer says, "It's almost quittin' time."

"Fifteen will be coming [on track] three, eighty-one will be on four and, oh, I think we" double-barrel them."

"And let the engines sit at Gunpow?"

"Sure."

"All right," says Hafer, "we can handle that."

Jerry Evans put his love for his work into a poem in 1981:

I ride my magic carpet
On ribbons made of steel
And my heart keeps pace
To the tapping of the wheels

Over mountains and through valleys
I glide on shiny rail
As the boxcars float behind me
Like the wind through a stallion's tail

I am the mind, my hands are the nerves
As I pilot my carpet by the sea and around curves

The power is addictive, feelings immense
But now my ride is over
Mommy, can I have ten more cents?

At 1:23 pm on January 4, Evans has just crossed the city line out of Baltimore. He lets the Amtrak train's speed build to about 120 miles an hour. It's suposed to be capped off at 105, because the Colonial today includes one of the older Heritage passenger cars, built in the 1950s and not designed for the highest speeds. Amtrak's express Metroliners, the fastest passenger trains in the country, routinely operate at 125 miles per hour. But the Colonial is not a Metroliner.

Like nearly all Amtrak engineers, Evans used to work for Conrail, where the trains are slower, noisier, dirtier. Freight engineers are out of the public eye, they don't haul human cargo, and they admit to being more casual about their work.

Some engineers stay away from passenger trains, because they can't stand the mandate for high speed. Not Jerry Evans: He likes to go fast, just like any other engineer drawn to the high-speed Amtrak engines. In his auto, he's earned eleven speeding tickets since 1969, though nothing alcohol-related, no reckless driving, just speeding.

Evans and his Amtrak colleagues are proud of their work and consider themselves no less professional than airline pilots. Their railroad competes successfully for passengers with the airlines in the Northeast, claiming a 32 percent market share of the commuter traffic between Washington and New York, more than any one airline. But to maintain that share, speed is of the essence.

At the controls of the Colonial, Evans presses on. He didn't have to work today, but took the extra duty for the $140 that will go to fixing up the house in Overlea. He's missing the christening of his best friend's little girl today and doesn't feel good about that. But Denise will stand in for him at the church.

Inside car 21236, the passengers have settled in comfortably. They have plenty of leg room and head room, open luggage racks overhead, no seat belts, a smooth ride, and the confidence that they're using what they've been told is one of America's safest ways to travel.

Conductor Donald Keasey comes through the car.

He takes a $29.50 ticket from a sixteen-year-old girl who wants to be an astronaut, an ambition that became unsettling to her mother after the space shuttle Challenger exploded.

When Ceres Horn arrived home after school that day, Susan Horn's eyes fixed on her daughter's and the two rushed into a hug. "Precious," her mother said, "I don't want you to become an astronaut. I just couldn't live with you coming into that kind of danger."

But Ceres pulled away. "Mommy," she said, "I can't think of a better way to get to God than to be blown up to him."

The conductor steadies himself from seat to seat as the train races on. He comes to Christy Johnson, who has unfinished business in California, where she's helping a Palo Alto probation officer counsel a teenage drug abuser. Christy hands Keasey her $41 ticket.

He comes to T.C. Colley, who paid $58 for this ride after leaving a note on a dormitory buddy's door in Providence—"I'm coming back. Are you?"

Amtrak's Colonial 94 rounds the sweeping curve that will bring into view the Gunpow switch.

Chase, Maryland, is a small town on a peninsula near the Chesapeake Bay. It is populated by working-class residents whose well-kept homes front the brackish waters of the Gunpowder River.

On the afternoon of January 4, many residents of Chase are at home watching the NFL playoff game on TV. A few minutes before 1:30 PM, the Giants have punted into the 49ers' end zone and there is a pause for a commercial. The Giants are ahead, 7-3.

At 1:27, Gates and Cromwell pass Gunpow's "distant signal." They are two miles from the switch into the main line, and the signal is telling them to slow down. The in-cab alerter whistle tries to sound but has been stifled.

The Conrail engines go past the signal at 60 miles an hour without slowing.

In front of the brakeman's seat on the left side of the freight cab is a bright-red emergency brake valve. The rule book recognizes the brakeman as a back-up to the engineer. He must call out the positions of the signals he sees, confirm the engineer's answer, and respond to the signals if the engineer fails to do so.

Today, Ed Cromwell does none of those things.

There is a safety device designed for just such an occasion. It is called automatic train control, or ATC, and although all Amtrak trains on the northeast corridor have it, most other trains do not. If an ATC-equipped train passes a signal that says slow down, and the train doesn't, ATC kicks in, the brakes are applied, and the train slows down.

ATC would start braking Ricky Gates's train now—if Ricky Gates's train had ATC.

The Conrail engines race up to another signal, less than a mile from the Gunpow switch, telling the crewmen to go even slower and to get ready to stop. They fly past as if it isn't there.

Moments later, at 1:29 p.m. Gates spots the "home" signal up ahead, 350 feet from the main line. Even through his oil-smeared windshield, the bleak winter sunlight paling the signal's amber dots, he can make out what it says: "stop". That means the switch is closed, and that means something is probably coming on the other track—the high-speed passenger track.

The experienced engineer in Gates snaps to. Now, 1,500 feet from where track meets track, he only wants to stop.

The throttle is cut and the emergency brakes are slammed on. The three engines jerk as the wheels lock and slide along the rails, squealing and spewing sparks. Gates and Cromwell are suddenly at war with 400 tons of machine going 60 miles an hour.

They can't stop in time. The engines go through the closed switch, throwing it open and breaking into the main line. When they stop, Gates and Cromwell find themselves sitting on the high-speed track, with part of their rearmost engine straddling the switch behind them.

Gates is breathing hard.

He and Cromwell know they're in a bad situation. They can't turn right, can't turn left. If something is coming behind them, they probably can't outrun it. They might be able to back up, to go back over the switch. The engineer throws the engine into reverse.

Cromwell looks back down the mainline track. He sees the powerful headlight of a train as it rounds the curve. He shouts over the din of the diesel engine:

"There's something coming! Jump!"

Cromwell sprints away.

Alone in the cab of Colonial 94, Jerry Evans is doing what engineers normally do when the visibility is clear—focusing on the horizon, as far ahead as he can see, where the rails meet the sky. Highspeed trains need a lot of room to stop.

The horror stories of veteran engineers spill out in taverns near the railroad yards: kids who stand with their bicycles on the tracks until they can get the engineer to blow the horn; older kids who suspend manhold covers from overhead passes just to see what happens; teenagers in a car waving beer cans and pulling away a few seconds before the train comes by; one too many drivers trying to beat the train at a crossing. Engine-makers have given the cabs bulletproof windows, across which birds sometimes explode like balloons filled with red paint.

At night the engineers see a locomotive headlight in the distance and they're not always sure it's not on their own track. They can feel their hearts beating.

Despite the dangers, engineers don't often get hurt. But railmen still talk when the companies cut back on maintenance and safety employees, and some worry about the drunks and drug users, too. There has been a general feeling for some time that the rent is past due.

As for Jerry Evans, he's a family man, and he takes no chances. He lost his mother last fall, and it made him think about the fragility of his own life on the job. He wrote out a will and discussed his feelings with Denise in November. At first she didn't want to hear about it, but Jerry said it was best to be safe, to worry about herself more than him in the event of an accident.

Then he told her, "If anything ever happens to me out there, don't settle."

In the cab of Colonial 94, Evans scans ahead as the Gunpow switch comes into sight around the curve, 54 miles out of Washington's Union Station. A patch of Conrail blue occupies the place 1,500 feet ahead where his train is going.

He throws the Colonial into emergency at 1:30 pm. The braking will last fourteen seconds.

The passengers in car 21236 lurch slightly. Conductor Keasey has just finished collecting tickets in the first three cars and thinks to himself, "I wonder what Jerry's doing up there."

Harold Bergin, a chef from New York heading home after the holidays, looks up from a magazine story about how to make risotto. He's got his Walkman on and can't hear the pair of skis rattling in an overhead rack. His wife, Kyra, continues reading a New York magazine.

In the locomotive, Jerry Evans is going through the moments that his wife will later be unable to shut out of her mind. She will feel his terror, and she will wish that somehow she could have held him.

Evans does not jump from the cab; it probably wouldn't have mattered. The physical pain is gone in milliseconds. The poet with the boyish passion for trains will be eulogized as the "the best darn engineer."

Northeast-corridor radio traffic, 1:31 pm, January 4:

"Just talkin' about somebody in emergency here. Just a minute."

"Ya hear that, power director?"

"1SL, 2SL Perryville?"

"Yeah, what is it?"

"Transmission."

"We just lost power."

"He lost the transmission line."

"Oh, shit."

"What happened?"

"Those engines went through the signal at Gunpow. They said that and, ah, 94 got into them. We need ambulances at Gunpow. Right here at the interlocking, evidently."

"He hit 'em."

"He sure did."

A fireball mushrooms at the point of impact. Harold Bergin is thrown forward and sees a bright-orange light filling his window. He shouts to Kyra; "Hold on!"

The Colonial has slammed into the side of the rearmost Conrail engine straddling the switch and the main track. The lead Amtrak engine disintegrates, and the Conrail locomotive explodes into countless pieces, the largest a chunk of scorched metal the size of a motorcycle. Thousands of gallons of diesel fuel are ignited.

Almost a quarter-mile south of the switch, the Colonial's rear cars continue forward, shoving those ahead off the tracks in a zigzag chain reaction. For ten seconds the entire crumpling mass slides forward along the tracks.

Cromwell is running for his life, cringing under a canopy of shrapnel flying all around him. One piece fractures his lower leg and drops him to the ground. He gets up and keeps running.

The empty café car behind the Amtrak engines is heaved on its side and slams to the ground, scraping along the rails. The next car, 21236, also flips sideways. Bergin watches the ground passing by the window as thunder envelops everything, muffling the screams. Seats break free and tumble everywhere. Luggage and people fly. Bergin is hurled forward more than ten feet into the aisle, stopping when his head hits the back of a seat.

The front of the care corkscrews, its thin aluminum skin ripping into huge, jagged blades. It cracks and buckles as the mass of burning wreckage slows and finally stops.

The first thing Bergin can't figure out is why he can't hear screaming and crying. He doesn't know that half the people who have shared his car are dying and others are unconscious.

"Harold?" It's his wife calling.

"Kyra?"

They can't see each other because of the gathering black smoke of the diesel fuel and the twisted heap of luggage and chairs. He has lost his glasses, and she has blood dripping into her eyes.

"Find your way out," says Harold. "I'll find my way out. Just get out."

Kyra gets out through a window and drops shoeless to the cold, sharp gravel. She sees how the network of overhead wires is tangled around the wreck—a huge, battered insect in a broken web.

Harold is in one end of the car and doesn't see many signs of life. He climbs back and forth, desperately looking for an excape. His only route is partially blocked by a man who is pinned to the floor, alive and conscious. Harold has an injured left shoulder and cannot free him. The thought of just climbing over the man and leaving him is sickening, but there's no other way to go. Harold apologizes as he clambers over the man to safety.

The Bergins try to get their bearings. Other passengers are already milling around, some moving purposelessly in shock. As the Bergins huddle together and the cold air tightens the blood on their faces, they look across a drainage ditch to see the gathering people of Chase looking back at them—each side staring in stunned disbelief.

Some of the Chase residents are crying. Finally one woman shouts, "Does anybody want to use my telephone to call their families?"

Reality comes to Rick Gates in pieces, an escalating image of catastrophe that his mind tries its best to deny. At first he clings to the hope that no one was killed. He's worried about Butch, because he didn't see where he went. He has no idea what happened to the Amtrak engineer—who he will later learn was someone he'd passed many hours with when they both worked for Conrail.

As black smoke billows from the heart of the wreckage, Gates runs back to the largely intact Conrail lead engine, which was pushed 900 feet up the tracks, away from the wreck. He grabs the fire extinguisher and shouts "Emergency, emergency, emergency!" into the portable radio. He keeps shouting but can't raise an answer from any of the area towers.

He runs back to where some of the cars have piled up onto the back of an Amtrak engine, which is crushed into the track bed with one care elbowed over it, and there Rick Gates is confronted with his first casualty. A man pinned between the engine and the top car is moving his head and moaning as the fire creeps toward him. Gates chips away at the flames with the fire extinguisher as emergency workers show up. The man is rescued, but he will die a few hours later.

Gates races back and forth around the wreckage. People who know him begin arriving, members of railroading's extended family who happen to live nearby. Former Contrail engineer Pat Kelly finds him pumping the radio for help. Gates gives him the radio and Kelly asks what happended. "I blew a red," says Gates. "I got through a switch and I couldn't get back."

Gates goes looking for Butch, who by now is calling his girlfriend, who also lives nearby. Cromwell tells her he's okay and adds, "I think I'm going to lose my job."

A Conrail conductor and his wife walk onto the scene at about 1:45, the wife thinking to herself, "This can't be real. Whoever did the special effects in this movie is going to win an Oscar." As George and Harriett Telljohn come upon their friend Rick Gates, he is pacing around frantically in his oversized brown leather flight jacket, holding on to the receding hope that no one has died.

The Telljohns assume that Gates has also just arrived. "Rick, what are you doing

here?" asks George, who will remain Gate's close friend right through the worst of what is to come. "How'd you get here so fast?"

"I was the engineer," says Gates. "Butch was with me. Go find Butch." Telljohn goes looking for Cromwell. Harriett Telljohn and Gates remain talking as rescue workers walk by with a stretcher bearing a lifeless human form beneath a white sheet. It passes two feet from the engineer, who shudders. He then overhears a fireman's orders to another rescue worker. "There's another one over there in the bushes. Go get it."

"Oh my God," says Gates, falling into Harriett's arms and sobbing.

At a little past 1:30, paramedic John Waskevitz and his wife are going shopping. They heard an explosion a few minutes ago, but it sounded like an artillery test at the Aberdeen Proving Ground on the other side of the river.

Waskevitz notices a column of dark smoke to the north. The firehouse alarm sounds. He heads for the smoke. At the tracks he sees people removing suitcases from some of the rear cars. Waskevitz, the first emergency worker on the scene, makes his way to the wreckage through clusters of dazed survivors.

He climbs onto the mangled car perched unsteadily at the top of the wreckage. It is passenger car 21236. He looks into the smoke-filled car and sees a mass of seats broken loose. He wriggles inside through a broken window. One victim is buried under the seats. Waskevitz checks for a pulse in her neck and feels none. He digs further, snaking along on his hands and knees, or on his stomach, stashing debris behind him like a mole. He comes to another victim, her neck apparently broken. She too is dead.

He hears cries for help and comes upon a woman in her thirties, pinned to the floor of the car by a seat. He tries to free the seat but it's pressured in. In moments he will be joined by the first two police officers on the scene. They will finally free the woman after about an hour, when the accident scene will have grown into a complex emergency operation.

A total of 507 firefighters from 23 engine companies have responded, in addition to 509 county police, 185 state police, and 60 Amtrak police; 200 Red Cross workers and hundreds of other volunteers and medical personnel; and more that 600 residents of Chase. Over the next few hours, the rescue forces set up command posts, aid stations, and staging areas for transporting the injured.

The first ambulances to arrive are raided by panic-stricken survivors who loot them of tape, gauze, first-aid kits, anything they can reach. In all, 175 passengers will be listed as injured.

The people of Chase respond in a hundred ways. Two boys are the first of more than 30 local volunteers who go into the cars and carry out the injured. Seventeen-year-old Michael Booker is unnerved by the limp body of an infant in his arms. He later will learn that the child survived.

Neighbors bring out blankets and first-aid supplies. One man works his backyard garden hose on a spreading brush fire. Two young men place lawn chairs on the roof of a nearby garage and eat dinner while they watch.

Still others whose houses are clustered along the tracks bring survivors inside, offering blankets, coffee, telephones. Their homes are transformed into communications centers, first-aid centers, bases for reporters and photographers. Some houses end up with bloodstained floors and carpets thick with mud. The county will later solicit requests for reimbursement.

On the other side of car 21236 from where Waskevitz is still working, rescue and trauma workers are struggling to save three people trapped in the maze of steel. At least two other people are also trapped and still alive there.

Dr. Ameen Ramzy of University Hospital's Shock Trauma Unit in Baltimore is accustomed to seeing seriously injured people hanging at the edge of their mortality, and he has brought many of them back. He worked in a Beirut war zone a few years ago. But nothing has prepared him for this daylong succession of disappointments. Of the fifteen passengers of the Colonial who are killed, thirteen are aboard car 21236.

The trapped victims are really trapped, by tons of steel and other debris. If the doctor can get some of them intubated with fluids, he can increase their chances of survival. But some of them are nearly impossible to reach.

Paramedic Kathy Smith is tending to a small boy and his grandmother in one end of the car. Seven-year-old Adam Moore, of Neptune, New Jersey, is pinned by his grandmother's crushed legs, a buckled seat back, and a wall.

"Let me out of here," Adam says. "Why don't you help me?"

"Hush, baby," his grandmother says weakly. "They're trying to help."

"I want to go home."

"We're going to have you out," the paramedic says. "It won't be too much longer and you'll be headed home."

"Do I have to go by train?" Adam asks.

A cold stream of fire-suppression foam pours into the car, pooling around him. Now Smith has to worry about hypothermia. She urges doctor to consider amputating 52-year-old Peggy Moore's legs as a last-ditch effort to save both victims. The doctors aren't sure it would work.

As doctors run intravenous lines to them and firefighters struggle with the immovable steel, the boy and his grandmother grow weaker and drift in and out of consciousness. Each time he opens his eyes, Adam asks how long it will be. He dies about three hours after the crash, within minutes of his grandmother.

A paramedic who labored over him for hours pleads, "Doc, are you *sure?*"

Nearby, a woman is extricated alive and flown to the trauma unit, where her legs are amputated. She lingers for eight days before dying.

Outside the top car, a doctor is stopped by a man with a slight injury to his face. He says he would like to leave the scene, but would the doctor mind certifying his injury? "I'm sure my lawyer will be mad at me later if I don't get one now," he says.

Maryland National Guard troops erect a large canvas tent—a morgue.

By nightfall, county police chief Cornelius Behan turns to a police major and says, "Keep in mind that this could turn into a criminal investigation." Police then seal off the area around the Conrail engines up the track. But by this time a number of people, including Rick Gates, have been in and out of the cab. The cab is now clean. Gate's and Cromwell's belongings are soon returned to them unexamined by police.

As rescue efforts continue, federal investigators clamber through the wreckage. Some of what they find will lead them back to the cab of the Conrail locomotive at rest up the track, and some will lead them far beyond.

Susan Horn hears of the wreck over the car radio on her way home from Penn Station and immediately starts talking to God: "Please don't let that be her train." Her nine-year-old boy remains unwaveringly optimistic. "Mommy," says Howie, "I know she's all right."

At home, they guard the telephones and monitor the television. Early in the evening, Susan calls her husband in Haifa, Israel: "Roger, it's bad news. There's been a train crash with Cere's train. It's been hours and we haven't heard a word. We have to assume that at best she's been very seriously hurt." Roger Horn is given an immediate "compassionate case" seat to New York by El Al. He will spend the thirteen-hour flight trying to assume the best, his stomach twisted into a knot.

The Horns hear nothing until after dawn, when a family friend goes to the morgue at the crash site and locates Cere's body.

Susan, Corinne, and Howard huddle together for strength on Monday. Roger calls from Kennedy Airport in New York that evening. "I love you," he tells them. "There's a lot of love in our family and it will get us all through this."

In Potomac, Arthur and Ann Johnson spend the early hours calling for information, the silence giving them no comfort. They call their daughter Joy in New York, who reminds them of Christy's paramedical training. "She's probably just busy treating people at the scene."

By 4:30 am Monday, they have joined other relatives of Colonial passengers at a Holiday Inn about twenty miles from the wreck. All they are told is to "stand by."

Ann Johnson is reading the Psalms in her Bible—the 23rd, the 51st, the 88th—"O Lord, my God, I call for help by day; I cry out in the night before thee"—and she hears them as if at a funeral.

An Episcopal minister approaches them at mid-morning, accompanied by a couple of police detectives, a Red Cross worker, and an Amtrak claims agent. Gently they confirm the worst.

One of them thinks to warn the Johnsons of the cluster of media people waiting in the lobby. Arthur turns away and says, "Somebody find me a back door."

In Pennsylvania, Tom and Susan Colley have kept vigil throughout the night, anxious about using the phone for fear they'd block their son's incoming call. They've been through this routine before. A year ago, T.C. was in an Amtrak train that hit a truck south of Chicago. Lots of cars were knocked off the track, but nobody was seriously hurt. That always comforted them when T.C. took a train rather than a plane; fewer passengers would have survived an airplane crash.

At the time, the Red Cross got T.C. to a phone to call his parents in the middle of the night. As time went on, whatever trauma he had experienced was transformed into a remembered adventure.

So the Colleys figure T.C. might just be unimpressed with such familiar territory and might have caught one of the buses provided by Amtrak.

Then an incoming phone call puts an end to that hope, and Tom Colley finds himself notifying other relatives that the only heir to the family name is gone.

Gates and Cromwell soon re-establish contact. Aware of the mounting search for guilty parties, they decide to lie.

The first rumors from the investigation by the National Transportation Safety Board hint at switcher error. But as investigators

talk with people who talked with Gates just after the crash, one quotes him as saying, "It's pretty obvious what happened. I got through a red and couldn't get back."

At 1 pm on Wednesday, as workers continue to clear debris from the site of the wreck, Gates is sitting in a lawyer's office in Baltimore, surrounded by lawyers, federal investigators, and a few union men. He is telling what happened after Bayview:

". . . from there we continued north, received a clear indication on the home signal at North Point, a clear signal on the home signal at River. . . . We received a clear signal on the 836 signal at Bengies and then at the 816 signal. At that time, Mr. Cromwell was fixing his lunch and cutting open some water bottles that we could put our Cokes into.

"And I saw the 'approach limited" signal flashing—had to get right close to see it, but it was flashing. And upon going under it I called the 'approach medium' signal to Mr. Cromwell. He turned around, and I don't know whether he saw it or not, but he saw the 'appoach medium' in the cab. I acknowledged as we went under it and started to slow down a little bit. Mr. Cromwell and myself were talking, and as he fixed his lunch we were basically complaining about the engines.

"And after that—I don't remember how close I was to the stop signal, but as soon as I saw it I immediately dumped the air, plugged the engines by putting reverse in reverse and pulling back on the throttle again. I grabbed the portable radio and started yelling the emergency. And after that we—that's when the accident happened."

They ask him about the alerter whistle, "I acknowledged it so fast it didn't have a chance to go off," he says. They ask him if he was on drugs the day of the crash. He tells them no. They ask if he is a user of alcohol or drugs. After an interruption from his lawyer, he says, "Upon advice of my counsel, I will not answer that."

Then it's the brakeman turn. Cromwell says he helped Gates monitor a steady succession of clear signals on the way to Gunpow, when he took a break to prepare a sandwich and some drinks. He says he never heard an alerter whistle, and that he wasn't looking when the train approached the home signal at Gunpow:

"The next thing I remember is I was still in the process of getting my sandwich—everything all set after we went by the Chase signal—it's the 816—and I don't know how long after that, but I heard the engine jump. The engines jumped. I didn't know if Rick did it, or it was some kind of failure or derailing or what. So I looked out the fireman's side windows, and I seen the headlight in back of me. I didn't know if the headlight was stopped, moving, or, you know, what it was doing."

After the crash, an ambulance took him to Johns Hopkins Hospital for his broken leg, and later Sunday he gave blood and urine specimens. He goes on to say that he hadn't used drugs that day.

Two federal drug labs, however, will find in his blood and urine evidence of drug use—marijuana and PCP, a powerful drug sold as an animal tranquilizer.

Evidence of marijuana use will also be found in blood and urine samples taken from Gates the evening of the crash.

Gates's and Cromwell's statements are the last they will make publicly before a shroud of silence descends over their actions in the cab.

Both hide from the press. Gates resorts to waiting in the laundry room of his apartment building until the TV cameramen have left his door. He spends days and sleepless nights alternating between guilt and denial. One night in February his friend George Telljohn finds him sitting on his couch with a pile of mail, mostly hate mail, on the coffee table. Gates hands one letter to Telljohn, not lifting his gaze from the floor. A snapshot of Ceres Horn flutters to the table. The letter reads:

Dear Mr. Gates,

You don't even know me, but your life has had such a significant impact upon mine. I am Corinne Horn, sister of Ceres Horn, victim of the Amtrak crash.

I don't know if you read the newspaper articles on my sister, but if you did, you would know that she was a sixteen-year-old freshman at Princeton who was ranked second in her senior class, and graduated magna cum laude from McDonogh School . . . .

She was absolutely the best person, besides my parents, to ever set foot on this earth. . . . Resse was my better half. When I was flirting, she was studying or doing something constructive. Reese was going to be an astronaut, her childhood fantasy. And then you shot her down.

Mr. Gates, I bet you never dreamed of the consequences when you started puffing away on January 4, 1987. What could possibly have possessed you to smoke it on the job? I would understand if it was in the privacy of your own home, but not on the job.

I used to hate you for killing the only person who ever fully understood me, who could identify with me. But not anymore. Now I only pity you, because you will have to live every day for the rest of your life with the knowledge that you took sixteen lives, sixteen beautiful lives. . . .

I truly pity you, Mr. Gates, and hope that you are strong enough to face the days ahead, because I know I wouldn't be. . . . Please write back to me. You owe me at least that much.

Telljohn asks Gates if he'll write back. Gates says his lawyers won't let him.

He goes to a psychiatric hospital for drug and alcohol treatment. He attends Alcoholics Anonymous meetings. He preaches about the perils of substance abuse to his friends. Some of whom find his self-accusation unsettling. "If Rick's an alcoholic," says one of his drinking buddies from the yard, "then I'm an alcoholic. And I'm not an alcoholic."

While maintaining his claim that bad signals and equipment are to blame for the accident, Gates also tells at least one friend of his growing desire to become a substance-abuse counselor.

Already, the credibility of Gates and Cromwell—the two key witnesses to the crash—is diminishing. The evidence of their drug use and word of the taped whistle come to light. The Conrail engine's speed recorder shows that it hadn't slowed to the 40 miles an hour required by the signal that Gates had acknowledged seeing. A re-enactment shows that if Gates had obeyed that signal, he could have stopped in time.

In the last ten years the American railway labor force has been reduced almost by half. Some in the rank and file blame this for fostering an attitude of rebellion against company policies and for reinforcing the traditional spirit of "us versus them."

Amtrak's worst crash is not the first to be used as ammunition by the bitterly feuding factions of the rail industry. The tragedy briefly held the promise of uniting them in common cause, but that promise is quickly lost in a round of familiar accusations.

As the FRA and the NTSB begin closing in on a conclusion of human error, some union men continue backing up Gates' story. "I don't have any reason not to believe him," says United Transportation Union Representative Bill Packer in June. By July, Packer stops responding to inquiries.

After discovery of the taped whistle in Gates's cab, FRA administrator John Riley announces a dragnet of the five major rail yards on the northeast corridor. Despite the advance notice, federal inspectors discover six locomotives with identically taped whistles just two weeks after the crash. Later they will find 70 more across the country. Riley calls each one an accident waiting to happen. The unions ask where the inspectors were before the accident.

"I think all of us heard stories at one time or another about engineers disabling whistles," says Riley from his office on the eighth floor of the Department of Transportation building in Washington. "I don't think we reacted to it seriously, because we hadn't had one of these as the major cause in an accident. The perception was that you couldn't ever catch it because it was so easy to cover up. You not only have to find somebody who is reckless; you also have to find somebody who is stupid."

When inspectors found cabs without working whistles, he says, "we weren't calling them 'tampering.' They showed up as 'inoperative whistle'—just like any other mechanical defect."

Amtrak president W. Graham Claytor Jr. points out that the federal government is not responsible for the detailed inspection and maintenance of privately owned locomotives. "The [Contrail] management are the ones who were supposed to have caught that, not the FRA," he says.

Labor leaders call Riley a front man for the railroad companies and tell him to stay off their turf and to levy heavier fines on management violations. They say most safety problems stem from management's squeezing every dime: deferring maintenance, pushing schedules, overloading freight cars. Riley calls railroad workers honest and hard working but calls their union leaders "featherbedders." In any case, he says, "I've offended everybody—which is as it should be."

Riley wants the FRA to have the same authority over railroad engineers—who are not required to be licensed—as the Federal Aviation Administration has over airline pilots. He has no enforcement power over individual railroad employees. It is against federal law for an engineer to drink on duty, but even if Riley personally found one with a sixpack in the cab of an engine, he couldn't fine or fire him.

Meanwhile, the credibility of the railroads' new self-policing and drug-amnesty programs is in trouble. From almost every sector of the industry comes a call for mandatory random drug testing. But the unions insist that such testing is not constitutional.

Proponents say that train operators should be held to a higher standard than others, and that only drug abusers have anything to fear. Labor counters that management could use the tests to harass employees. Proponents say computer-generated random selection would prevent that. But union officials respond to their constituencies by trying to shout down random testing at hearing after hearing.

In public they lash out at the companies and the regulators before more gently censuring some of their own, even as a few pri-

vately admit that nothing else has prevented on-the-job drug abuse.

Riley accuses the unions of sacrificing safety by using the random-testing issue as a bargaining chip. "They could help us a lot on safety, but the price of cooperation is always 'alcohol and drugs,'" he says. "It ain't gonna happen."

In the months after the crash, many of the railmen's taverns on the northeast corridor note a drop in business. Predictions are that it will bounce back.

In March a Conrail freight train overruns a "stop" signal just before a track junction near Philadelphia, with an Amtrak Colonial following behind. Automatic signals warn the Amtrak engineer, and he is able to stop his train well before the switch. The Conrail engineer is drug-tested and found to have marijuana metabolites in his blood and urine. Amtrak bars him from its tracks.

In September a Conrail brakeman in the Bayview Yard—one place where it would seem self-policing would be working well—faces his fourth charge of driving while impaired by alcohol. He has 26 prior traffic convictions and 6 license suspensions or revocations. His drinking habit is no secret in the yard. He is still working on the railroad.

Amtrak comes out in support of random drug testing, but Conrail opposes it, saying that its program of "reasonable cause" testing is good enough.

Several months after the crash, legal maneuvers leave Rick Gates more isolated than ever. He and Cromwell have been forced to resign, and Conrail stops paying for their legal defense.

Baltimore County state's attorneys find a statute that would allow an engineer to be charged with manslaughter if the state can prove gross negligence. They subpoena Ed Cromwell, the brakeman who has made himself scarce even among fellow railroaders.

In a meeting, they convince Cromwell and his lawyer that under state law any crewman in the cab can be indicted and convicted of manslaughter.

The defense attorney and his client decide to make a deal if state and federal prosecutors promise immunity from prosecution, in writing. The deal is made. Cromwell will tesify in secret before a grand jury, and he will tell of the marijuana, the missed signals, the cover story—everything.

The manslaughter indictment of Rick Gates arrives on May 4. The accused appears in public for the first time since the crash wearing mirrored sunglasses as his lawyer denies charges that his client killed sixteen people with a runaway train. Gates is in court for preliminary motions twice during the summer, each time sitting stiffly, with a thousand-yard stare, as his team of public defenders whisper among themselves, rarely turning to their client.

Roger Horn is there, wrestling with his feelings of pity for the accused and bitterness over the loss of the daughter he called his "best friend." Susan Horn stays home, declaring her sympathy for Gates and Cromwell but adding that part of their punishment should be to have to live with a victim's family for a week.

In considered moments, most of the victims' families say that they know the crewmen never meant to harm anyone, and that they must be suffering, too.

Railmen at the Bayview Yard take up a collection for Gates, in part to help him make his child-support payments. Thirteen friends have pitched in to make his $5,000 bail. There is no serious discussion of helping out Cromwell. They know he is working with the state.

Gates asks a friend how Butch is doing.

"Why should you care about Butch?"

"I pray for him every day," says Gates, startling the friend, who thought he was an agnostic.

"Even though he supplied the drugs and then worked for the state so he could get off scot-free?"

"All the more reason to pray for him," says Gates.

(Stated in its most basic form, the cause of the accident was the failure of Amtrak Number 94 to stop before striking Conrail ENS-121.—Conrail's "proposed probable case," submitted to the NTSB.)

At the congressional rail-safety hearing on that hot Thursday in July, Tom Luken, chairman of a House transportation subcommittee, is grilling the FRA's John Riley about safety in the wake of the Amtrak-Conrail crash.

Riley sips his water as he parries the Ohio Democrat's pointed questioning. He produces charts and graphs of what he calls improved safety statistics.

"Now, these figures are impressive," responds Luken, "but are they possibly misleading?"

A union man cannot stifle a guffaw. Labor leaders sit on one side of the room, enjoying Riley's discomfiture.

It's said that some Conrail officials are here, too. Their company moves more freight than any other in the region, but since January 4 its public presence has been almost invisible.

Amtrak's Graham Claytor testifies that there's no need to increase the fines for management safety violations because citations are insult enough. Anyway, he points out, in fining the heavily subsidized Amtrak, the federal government would be, in effect, fining itself.

All the while, Roger Horn the parent sits on the floor in the lee of the half-wall separating the constituents from the politicians.

Sometimes he asks himself, "Why am I doing this? Why is it up to the wounded citizen to do what these people are paid to do?" He thought he could protect his family from a dangerous world. Safety was the first priority. He never allowed his children in cars driven by teenagers. They held an alcohol-free party for Ceres' senior prom. Now, he says, he feels "stripped of my manhood" by forces beyond his control.

By 4:30 pm, there are fewer than half a dozen spectators left in the once-jammed hearing room. It's time for Roger Horn and Tom Colley and Arthur Johnson to testify. They gather at the witness table.

Johnson is a former administrator at the National Oceanic and Atmospheric Administration and a veteran of congressional hearings. His daughter Christy was crushed and suffocated in Colonial 94. "On several occasions," he says, "I have listened in amazement and disgust to representatives of labor and other lobbying bodies as they consistently resist efforts to strengthen the law, even though their own members would be the first to benefit."

Chairman Luken leaves, explaining that he must catch a plane back home. Now only one congressman is left.

Colley testifies in the nearly empty room. The bearded professor of theater from Shippensburg University speaks in a calm but impassioned voice about how his eighteen-year-old son, T.C., was burned before dying of smoke inhalation. T.C. was his only child, the fourth Colley to be named Thomas, the one who promised to name his own son Thomas.

Now it is Roger Horn's turn. Traces of emotion slip into his otherwise academic delivery. Before reading a statement, he brings up the idea of jail time fo railroad executives whose employees are found to be negligent. "That will get their attention," he says.

He urges Congress to pass a tough rail-safety bill. "We have learned to our horror," he adds, "that neither the railroad companies nor the railroad unions will voluntarily enforce appropriate levels of operating safety, not even those railway companies that are actually creatures of the federal government."

The victims' families linger in the hallway after the hearing. They share their frustrations, their disgust at what they see as a daylong display of self-preservation.

They've watched as each party used the tragedy for its own purposes. The actions of the two Conrail crewmen made it the perfect case for we-told-you-so's from company management and the FRA. Equipment problems like the lack of automatic train control and untested safety whistles served the same purpose for labor. "Watch out," said a labor lawyer in passing. "There are more crashes coming."

The families are angered by Conrail's absence from the public process. They give Amtrak's Claytor credit for facing the heat, even if they aren't happy with many of his answers.

Some progress has been made. The FRA proposed phasing in automatic train control on every train in the northeast corridor over two years. Amtrak agreed to install luggage-restraint systems in four cars and to equip the rest of the fleet if they work. Amtrak and Conrail already agreed to reduce freight-train presence on high-speed tracks.

Horn and the Colleys are car-pooling north toward home in Washington's rush-hour traffic, wondering aloud how to assign blame.

They've heard about how the operators of the errant Conrail engine had used drugs; how federal inspectors had failed to monitor the problem of disabled safety devices; how the FRA and the NTSB had for a time pursued the case for automatic train control; and how labor continues to fight against federal licensing and random drug testing of crewmen.

Roger Horn falls silent for a time, until the traffic comes to a standstill. "There's enough blood to go around for everybody," he says.

ARMENIAN ASSEMBLY HONORS CALIFORNIA GOVERNOR GEORGE DEUKMEJIAN

Mr. PRESSLER. Mr. President, earlier this month, on October 10 in Boston, the Armenian Assembly of America hosted a dinner to honor California Governor George Deukmejian for his outstanding contributions to his State and our Nation. I very much appreciate having been invited to this gala event by Mr. Hirair Hovnanian, chairman of the board of trustees of the Armenian Assembly. Mr. Chuck Haitaian and Ross Vartian, who know how I came to be interested in Armenian issues through my position as the former chairman and cur-

rent ranking member of the Senate Foreign Relations Subcommittee on European Affairs, also have my gratitude for their assistance to me.

I was privileged to attend this salute to Governor Deukmejian and to meet so many leaders of the Armenian community here in the United States. It was an honor to be included in the distinguished company of our colleagues—Senator BOB DOLE, Senator TED KENNEDY, Vice President George Bush, as well as several of our colleagues from the House of Representatives. Senator DOLE, Senator KENNEDY and Vice President Bush made stirring speeches about Governor Deukmejian and the nearly 250,000 Americans of Armenian descent.

Mr. President, I ask unanimous consent that the text of their remarks, as well as those of Governor Deukmejian, as printed in the October 22, 1987 edition of the California Courier appear in the RECORD following my remarks. In addition, I ask that an article on this event from the October 15, 1987 edition of the Armenian Reporter also be included in the RECORD.

Nearly 1,000 people attended the dinner honoring Governor Deukmejian. It was held in conjunction with the Armenian Assembly's National Conference. Again this year, one of the highlights of the conference was a discussion of congressional resolution recognizing a "National Day of Remembrance for the Victims of the Armenian Genocide" in the Ottoman Empire earlier this century.

The conference participants, as well as the speakers at the dinner, expressed serious disappointment over a defeat of the resolution on a procedural motion in the House of Representatives last August.

Mr. President, the Senate has not yet acted on the companion resolution, Senate Joint Resolution 43. We have an opportunity to move on this measure yet this year, and I encourage all of our distinguished colleagues and their staffs to look at it very carefully. It is a simple reaffirmation of this Nation's traditional recognition of the terrible suffering inflicted on 1.5 million people of Armenian ancestry who were victims of the genocidal policies of the Ottoman Empire from 1915 to 1923.

Some have argued that we dare not pass such a resolution on the grounds that it would offend our allies in Turkey and threaten continued Turkish participation in the NATO Alliance. Mr. President, that argument is nonsense. The genocide against Armenians resulted from policies of the Ottoman Empire, before the current Republic of Turkey came into existence. it would strengthen, rather than weaken, our vital alliance with Turkey if Turkish leaders would stop lobbying against the "National Day of Remembrance for the Victims of the Armenian Genocide" resolution. As I have said before on this floor, Turkey should permit the historians and other scholars of the world to examine the archives of the Ottoman Empire period for evidence that would resolve this genocide issue. We have thousands of eyewitness accounts from survivors of the Armenian Genocide, as well as from American and other diplomats who served in Turkey during the period in question. One or both Houses of Congress have approved resolutions recognizing the Armenian Genocide on four occasions. Ten U.S. Presidents have recognized the Genocide.

Mr. President, the Senate should act soon to reaffirm these previous condemnations of the Ottoman Empire's efforts to annihilate the Armenian ethnic group.

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

[From the Armenian Reporter, Oct. 15, 1987]

"GOVERNOR DEUKMEJIAN, SENATOR DOLE IN BOSTON INTERVIEWS EXPLAIN POSITIONS; COMMENT ON FUTURE, AND DISCUSS ARMENIAN POLITICAL ASPIRATIONS, GOALS"

(By Florence Avakian)

BOSTON, MASS.—In a pride-packed weekend in Boston, the Armenian Assembly officially came of age on the American political scene. Forums were held with congressmen, academicians and journalists: press conferences took place with high public officials, and presidential candidates including the Vice President of the United States, addressed the Armenian community in person. And the catalyst for all this was California Governor George Deukmejian whose 25 years in public service was celebrated with much fanfare.

To provide food for thought during the festivities, two panel discussions were held with experts. Entitled "Challenges for the Nineties." this panel, closed to all (including the press) except Armenian Assembly officials and trustees, examined challenges that the Assembly will face in the fields of government, international relations, media and academia. It featured Kenneth Kachigian, former speechwriter for Presidents Nixon and Reagan; Edward Djerejian, Chief Deputy Assistant Secretary of State for Near Eastern and South Asian Affairs; Tamar Manjikian, a copy editor at the Los Angeles Herald Examiner; and Khachig Tololyan, Associate Professor of English at Wesleyan University.

Another panel analyzed the role that the media, polls, party conventions and political action committees will play in "Campaign '88". Participants were Congressmen Robert K. Dornan (R-CA) and Sam Gejdenson (D-CT); syndicated political columnist and TV commentator Mark Shields; and two-time Pulitzer Prize-winning journalist Steve Kurkjian. This session became an entertaining contest of clever, rapid-fire political jabs, each speaker vying for the most laughs.

In a serious presentation, Kurkjian, chief of the Boston Globe's Washington Bureau, emphasized the role of the press in informing the public "so they can make intelligent decisions." For Armenians, he stressed, this means getting their message through in an "articulate, clear and consistent fashion according to the American way," so journalists can convey it to the American people.

DEUKMEJIAN PRESS CONFERENCES

This theme of information and education was the main focus of press conferences on Saturday afternoon, October 10, held by Governor George Deukmejian and Senator Robert Dole (R-KA).

In two separate meetings—one with the general press and another with the ethnic Armenian press attended by a large contingent of Armenian print, radio and TV representatives, the California Governor again and again pointed to the need for educating and informing the public, Congress, Administration and presidential candidates with respect to the history and recognition of the "Genocide against the Armenian people. Unfortunately, the representatives of Turkey have tried for some time now to distort the historical record." However, he said, he did not favor a litmus test for candidates. "You don't gain anything from making a demand and requiring a commitment. Most public officials respond better to first receiving the facts, weighing them and then making a judgment."

Concerning the recently defeated HR resolution designating a Day of Remembrance for the Armenian martyrs, he "regretted" that it went down on a procedural vote and not on its merits. "We Armenians have a reputation for persistence and survivability which will keep the issue on the front burner." he stated.

To a question by this writer concerning the value of the resolution, and what new strategies could be used by the Armenian community to insure the resolution's success the next time around, he answered that "it places the world's greatest power on record in recognizing the wrongs committed against the Armenian people. It is a reminder to the world that we must be vigilant so that this sort of atrocity is not repeated," he stated forcefully.

In terms of community action, he urged Armenians and "their friends from other ethnic communities who have suffered considerable oppression" to pressure their elected representatives while at the same time informing the public through letters to the editor, opinion articles, etc. "We have to recognize that the Turkish government is spending large sums of money to influence American public opinion against us. Since the Armenians don't have a government or government funds, we have to be more vigorous, more effective in our grassroots efforts."

EXPAND EFFORTS TO INFORM PEOPLE

In a followup question, I asked why the American people should be excited about this question when they are not generally concerned about current foreign policy questions, and how the Armenians could educate them. The Governor agreed that though the American public "on the whole" is not well informed, efforts must be expanded to inform them better. He pointed out that there are more Armenians than Turks in this country which translates into votes. "The Turkish government," he said, "is having its success not so much with the American public, but with the government in Washington, using the alliance and the bases as their leverage." By continually raising the issue, he predicted that "hopefully the conscience of this country and Administration in standing up for human rights will get through."

To a question raised by this paper's editor on the implications of the military relationship between the United States and Turkey, the Governor answered there was "nothing whatsoever inconsistent with Turkey remaining a military ally and at the same time acknowledging the Genocide." He pointed out that Japan and Germany were U.S. enemies, but today "we are good friends and trading partners and their governments have acknowledged their wrongs."

Pressed to comment on a letter sent by Secretary of State George Shultz to Mr. Alex Manoogian which stated that President Reagan opposed the Remembrance resolution, the Governor expressed surprise and characterized it as "wrong" if true. The President, he said, was well aware of what occurred in 1915. "His mother would talk about the plight of the Armenians. And when Reagan was governor, he spoke of it, and wrote statements acknowledging the Genocide."

Pointing out the positions of the European Common Market and Amnesty International with regards to Turkey's denial of human rights, Deukmejian said Turkey would "stand taller" before the world if they spoke the truth. But the Governor also acknowledged in response to another question that the U.S. in "bargaining away human rights for narrow temporary gains makes American foreign policy less effective."

WHO WOULD REPRESENT THE ARMENIANS

Asked whether the U.S. could play a role in bringing about reconciliation between the Turks and Armenians, he emphatically answered yes. "If they wanted to. It would be a marvelous thing." He then added, that "our government might ask why not have a dialogue between Armenians and Turks, and then the question would be who would represent the Armenians." This remark drew a laugh from all present.

In such a dialogue, he said, issues could be opened up such as "freedom to live in an area that was our homeland or throughout Turkey. Given that opportunity, Armenians will make marvelous contributions. Armenians did that when a greater number were allowed to work there. Too bad the Turkish government and people don't see the advantage to their own country of Armenian capability."

Finally Governor Deukmejian concluded the hour-long press conferences by restating that he will not seek the 1988 Republican presidential nomination. Rumored to be a supporter of Vice President Bush, he also said that he will not endorse any candidate prior to the convening of the Republican Convention next summer.

DOER, NOT TALKER

During the hour-long press conference, this writer was impressed with George Deukmejian's sincerity, concern and dedication. He's not your typical joking, back-slapping, baby-kissing politician. Shy, laid back, he seems to be someone much more comfortable out of camera range, tackling the affairs of state.

Not a glib speaker, he carefully phrases each thought, often accompanying it with a warm smile. It is obvious that he prefers to be doing rather than talking. In the rough-and-tumble—and many times clawing—world of politics, it is almost remarkable that this quiet worker has made it to the top in a state used to leaders with bizarre behavior or macho theatrics.

U.S. MUST RECOGNIZE GENOCIDE

Senator Robert Dole, an announced presidential candidate for 1988, in a 15-minute press conference, stated to a large contingent of American print and broadcast media that he was in Boston to honor Governor George Deukmejian whom he's "known for a long time and who has done an outstanding job. He has set the pace for Republicans of large states. And he has a political future," he stated.

Turning to the Remembrance resolution, the Senator said he would not favor a litmus test for presidential candidates, but that it was "about time we recognized the Genocide against the Armenians." He said he had not discussed the issue with the President in answer to a question by this writer, but he pointed out that when the Genocide Convention was passed in 1985 by the Senate "under my leadership", he had spoken about the Armenian Genocide.

Dole again recounted to the press his long-standing relationship with the late Dr. Hampar Kelikian who repaired his shattered right arm following extensive injuries in World War II. "He treated me many times over a 37-month period," the Senator said emotionally, "and never took a dime. Through him I learned about the injustices of the Turks."

Following both the Dole and Deukmejian press conferences, this writer listened in as the United Nations correspondent for the Turkish daily Hurrylet, went up to both officials and asked them to comment on Turkey. Both Deukmejian and Dole acknowledged the validity of the military alliance between the U.S. and Turkey, but they also emphatically stated without hesitation that Turkey must admit its past wrongs with regard to the "Genocide of the Armenians."

[From the California Courier, Oct. 22, 1987]

REMARKS OF GOV. GEORGE DEUKMEJIAN

I want to express on behalf of Gloria and myself how much we appreciate the outstanding role that the Armenian Assembly is playing on behalf of the entire Armenian community throughout the world, and to thank the organizers and members of the board of trustees and the very active members for the support that they have extended to this outstanding organization and to thank all of you who have come here this evening from throughout the United States, in fact, there are some here who have come from outside the United States, to join with all of us in this effort to demonstrate to the American people, to our representatives in our American government, the role that Armenians play in their communities and in our great nation.

As it's been said tonight, I think this dinner with the outstanding government leaders who are present with us this evening, demonstrates that the Armenians throughout this country are involved in government, want to participate in this great country and make further significant contributions in the years ahead.

I am also most honored that you would set up a fund in my name for the purpose of encouraging young people, and middle aged people and perhaps some old people to encourage them to get more involved in public service. So having participated now for 25 years myself, I can tell you there is indeed great satisfaction that comes from being an active participant and being able to see the fruits of your labor as you help to resolve and to solve issues that are of concern to people from day to day.

And so this fund, I know, will have impact and will be very beneficial to bringing into government and into public service, a greater number of Armenians. And let me tell you, as governor, I've had an opportunity to appoint many people. I've appointed over 1,000 women. I've appointed in excess of 500 people of Hispanic ancestry, I've appointed probably 300-400 people from the black community, and of course, I've appointed some 2,000 Armenian to positions in state government.

Now I've exaggerated that a little bit, but only a little bit. But the point I wanted to really make is that the Californians that I've appointed who are of Armenian ancestry have helped me do my job, they were qualified for the position to which they were appointed, and they have made all of us very proud because they have done an outstanding job in their respective positions. I am confident that with the help of this fund, and this program, that there will be many others that will follow throughout the entire country.

Now we've been highly honored this evening by the presence of Senator Edward Kennedy. I had not had the opportunity before this evening to personally meet the Senator and I am delighted that he would take the time to come and to be with our Armenian community this evening and to hear his strong words of his activities and his support. I am also very, very honored to have with us Senator Pressler, Chip Pashayan, Congressman Bob Dornan, Speaker of the Massachusetts Legislature George Keverian, and also of course, my good friend, Senator Bob Dole and Vice President George Bush.

I think that we owe them a great, great debt of gratitude for their presence and in the way in which they have honored the Armenian community. In the coming year, it is expected that at least two of our distinguished leaders who are here tonight will be facing off against each other in the American way, going to the voters and asking for their support for the opportunity to serve this nation as its President. And let me tell you that no matter which one comes out on top. I can assure you that America will be the winner and Armenians will be the winners.

I'm sorry that my friend Gov. Dukakis wasn't able to personally be here, but I was so pleased that he took the time to make the video to express his very generous comments. When he was in Sacramento earlier this year, he had a chance to visit in my office and he told me that when he was a small boy growing up, his brother who is a bit taller than he is, was always called Big Duke and Gov. Dukakis was always called Little Duke. Well, in California the press calls me the Iron Duke.

Now it's too bad that he's not in the same party that I am in. Wouldn't that be quite a ticket—Deukmejian and Dukakis—our campaign slogan would be "More than just a pretty name."

This really is a very proud moment for me and Gloria. I tell you that it's been a fond hope of mine to have an opportunity to say thank you to all of you. When I started out 25 years ago in the first campaign that I had running for the State Assembly, there weren't very many Armenian people in our city of Long Beach, there weren't many that were involved in those early campaigns. But as I began to move towards higher office, expanding the areas within the districts that I was running in, more and more mem-

bers of the Armenian community came forward to support us.

What I like about this fund that you've established is that you're going to be helping others. I can tell you that anyone in public life, and I speak now from first-hand experience, needs a lot of help and a lot of support. And along the way, as I moved from Assemblyman to Senator, to Attorney General, to Governor, that support increased at each level despite the fact that in every election that I ran for statewide office. I was always the underdog. The polls had me down against my opposition, but the only reason I was successful was because the Armenian community was there with its support early and that's what made it possible for us to go on to victory.

Now if you're happy about the fact that I have been elected Governor let me tell you that my friends, especially my friends from the Armenian community in California made it possible. And there are a number of Californians here tonight and I'd like them to stand up and be recognized.

So there are people along with many others who have been a tremendous help and I just wanted to use this chance to tell you how much I appreciated that.

America has proven that when individuals are free and when they are given opportunities to get a good education and to fully participate in our private enterprise economy, there is no limit to what they can accomplish.

From its beginning, our great nation has been a land of freedom, hope and opportunity for so many, regardless of their ethnic backgrounds or religious convictions. President Theodore Roosevelt expressed it very well many decades ago when he said, "America is not a matter of birthplace or creed or line of descent. It is a question of principle, of idealism, of character."

So many of us had parents or grandparents who came to this great country to take full advantage of the opportunities America offered, and to build a better future for their families. They came with a fierce conviction to preserving their ideals, their values, and their culture. And through their determination and foresight, they helped to shape the America that we know today.

Just a few days ago, I had the opportunity to visit my boyhood area in nearby Albany, N.Y. Once again I was reminded of what a great country this is. America offers endless opportunities to those who are willing to work hard.

As the Vice President said, "Where else but in America could the son of immigrant parents—who came to this country without any money, without any contacts, without knowing the culture, without knowing the language—how could it be that under those circumstances that within one generation their son would be the governor of the most populous state in the nation?

A state which is a nation state. We have the sixth largest economy in the entire world. Just ahead of us are the United States of America, the Soviet Union, Japan, West Germany, France, and we are even ahead of Great Britain.

Now the beautiful thing about this country is, that it just doesn't happen for me, it's happened for other, inluding the Governor of the State of Massachusetts. So it is a dream that repeats and will continue to repeat itself because the opportunities are there.

This is America's proudest legacy: that the dreams of even the most humble child can come true. It doesn't matter how much money your parents had, or what neighborhood you grow up in, or whether your family has lived in this country ten weeks or ten generations. The door for success, opportunity and achievement is open to all.

We acknowledge our nation is not perfect. We still have biases and prejudice. Amid our general prosperity there are deep pockets of distress. But we are getting better every day because our principles are sound, and our people have the strength and the conviction to continually make our nation a stronger and a better place.

For so many of us here tonight, America has become the free and the prosperous land that our parents, grandparents, and our brothers and sisters dreamed of. Each one of us is living proof of the promise of America. We are the keepers of the flame of liberty and we have a duty to preserve it on behalf of all people throughout the world.

There is tremendous power in this flame. It has built our nation into a mighty engine of progress and opportunity.

America has always been a bright, bold beacon of hope and freedom. That's why I can't understand why our federal government won't stand up and designate a National Day of Remembrance in honor of our families and ancestors. It's time to do what is right. It is time to speak the truth clearly and courageously. It is time to stand up and be counted on the side of freedom and human rights.

Our nation is devoted to man's highest ideals. We must constantly strive to ensure that our great country will never cease to be a proud guardian of human rights.

Whatever our country's imperfections, we are a nation of hope and opportunity, of tolerance and respect, of concern and compassion for the weak as well as for the strong. And I truly believe that the bright light of these ideals is powerful enough to overcome any challenges we will face in the years ahead.

We must continue to strive for a brighter future and make ours a society where the dreams of every citizen are most likely to come true. With your active involvement, we can preserve this golden legacy for ourselves, for our families and for future generations.

The confidence and tremendous support that so many of you have given to me has been a source of great inspiration and pride. I deeply appreciate all that you have done and I want to assure you that I'll do my best to never to let you down.

[From the California Courier, Oct. 22, 1987]

MESSAGE OF SENATOR ROBERT DOLE

I am very honored to be here. I certainly want to commend the Assembly for your outstanding work.

I came tonight because I heard there was going to be a very special announcement. Of course, the Governor is the late speaker and I'm a little nervous about what he might say.

So I'm going to hang around until he finishes. You could have a winning ticket up here somewhere. I'm not certain where it might be.

Well, we're all very proud of Governor Deukmejian, who represents a state larger than many countries, and who has demonstrated that he's a hands-on no nonsense legislator, someone who works with the legislature against great odds because they're a Democratic legislature. I have no quarrel with Democrats, as long as they're not in the majority, and they are in the State of California.

But Duke has done an outstanding job, and we've all reviewed his record and we're all very proud of him.

My relationship with the Armenian community goes back, wayback to about 1947 or '48 or '46. I was wounded late in the war in April of 1945, and many of the good physicians left the Army. So I went around searching for a miracle, not knowing at that young age there wasn't one out there. I went all over the country, trying to find some miracle man who could make it all well again. And I met a man named Dr. Kelikian who had served in WWII who loved this country and had a great respect for those who had served this country in WWII. It almost became a father-son relationship. He gave me a lot of good advice. He told me to grow up. It's not bad advice. That he could do the best he could. I remember when I first went to his office, you would have thought I was the only patient he'd ever had. He met me halfway down the steps. That was Dr. Kelikian. I don't know how many times he was good to me. I remember my mother came to visit me at Wessley Hospital and he said: "You've got vericose veins. I'll take care of that." So she was operated on. And he wasn't just beginning, you know, he wasn't practicing. I remember my father went down to pay him and he was insulted. He wouldn't take a dime, not one cent could I pay Dr. Kelikian for all that he had done for me, not just with his little scalpel and all those other things, but what he had done for me as a person. The most generous man I ever knew. And I'm very proud tonight in this audience I can find Mrs. Kelikian and Alice and Virginia, two of Dr. Kelikian's daughters.

Dr. Kelikian never asked for much. Like I said, he was a very generous man. But he did tell me a lot about what had happened to his family, and when it happened and how it happened. And I guess over the years, because of the impact he had on my life. I've tried to somehow repay him in some small way. There's a lot that needs to be done, as Ted Kennedy said. Systematic discrimination against the Armenian population of Turkey and the USSR; the false and malicious equation of justice for Armenians with support for terrorism, and, of course, the matter of genocide.

Eighteen months ago, I stood on the floor of the Senate making a final argument for passage of the genocide convention which had been hanging around the United States for 30 some years, waiting for someone to come along and get it done.

We finally and forever declared the atrocity of genocide a crime against humanity. In those comments, in the final comments before the vote I noted: "The treaty has enormous value as a worldwide statement of outrage and condemnation of very real horrors as real as the Armenian Genocide."

The genocide is part of world history. But for each of you I know it is much more. It is also a part of your personal heritage. A terrible wound that has not yet been healed. And a wound that can never heal; it can't be denied; nor can its existence be covered up.

We cannot tolerate ignorance or indifference or lies about the genocide any longer. Not in this country, not if we actually live by the same principles of truth and justice that we so often expouse. It is time for the Congress of the United States to acknowledge the Armenian Genocide, to expose it to the world and to let the process of healing and forgiveness at last and at long, long last begin.

Armenian-Americans, in fact, Armenians around the world, have paid their dues. You have struggled and you have suffered and you have persevered. Yes, you've paid your dues. You're all due all the accomplishments and awards which come to you. No doubt about it, the Armenian-Americans and where they are today and they've achieved what they've achieved today the old-fashioned way, they earned it.

I wonder how many professions are represented here tonight. How many advanced degrees, how many business, and artistic and academic successes. Suffice it to say there is more talent here tonight than has probably ever been assembled in New England, and that includes when all the Presidential candidates happened to be in New Hampshire on the same day, so you're making progress.

So along with the Vice President and my colleagues, Cong. Chip Pashayan, Senator Larry Pressler and Cong. Bob Dornan and others, we're very proud to be here. America is not perfect but compared to what. I've said many times in all the years I've been in Congress I've yet to receive my first letter from anybody in my state saying Bob get me out of America. But I've had a lot of tearful letters from a lot of people saying how can I get my son, or my mother, or my father to America. And I remember case after case that Dr. Kelikian would bring to me. So that's what America is all about. It's above politics, it's above party. We're proud of Armenian-Americans, we're proud of our heritage. You're proud of your heritage, and we're only just beginning.

[From the California Courier, Oct. 22, 1987]

MESSAGE BY SENATOR EDWARD KENNEDY

I am honored to join with so many distinguished leaders and members and friends of the Armenian community and I'm also honored to be here to commend the Armenian Assembly of America for its superb accomplishments over the past 15 years. The Assembly has come of age as a leading force in the Armenian-American community and across the nation. We're proud to acknowledge your achievements and your leadership.

I want to join in welcoming two distinguished visitors who are with us this evening, Vice President Bush and my colleague Senator Robert Dole. It seems like everyone here is running for President except me. And I also want to mention another person here, a man who's not running for president because he already holds higher office—the Speaker of the Massachusetts House of Representatives, "Mr. Armenia" of Massachusetts—George Keverian.

I had an idea—why don't we just spare everybody a lot of trouble and settle those Republican primaries here and now. Everyone for George Bush stand up on the right and everyone for Bob Dole stand up on the far right. Or is it the other way around?

But seriously, it is also a privilege to be here with another of my Senator colleagues—Larry Pressler—and to be part of this very significant tribute to Governor Deukmejian by the Armenian Assembly of America. In a sense, it's a pity that Gov. Deukmejian isn't running for president, too. What a shootout that would be. The Massachusetts Duke (Dukakis) against the California Duke. As my nephew Joe was telling me the other day, now I know what your problem is, Teddy. You should have been named Marmaduke, and then that way you could have run for president and called yourself the Irish Duke.

I want to pay tribute to one of your great founders and greatest benefactors, a great friend of mine and a great dreamer of the Armenian dream. How very proud Steve Mugar would have been to attend this gathering to see his dream come true. He was especially proud of your achievements in Massachusetts and even prouder of your eminent role as the leading voice of America for the Armenian cause. And it is an honor for me to join in this tribute to the manifold contributions of the Armenian community to our commonwealth and our country.

Here in Massachusetts we are especially proud that Worcester is the site of the first Armenian settlement in America. And we are equally proud of the sons and daughters and grandchildren of those early immigrants who have made an enduring mark in the world of business, scholarship and the arts in our commonwealth.

Tonight we honor the extraordinary contributions of the Armenian heritage to America, especially your enduring faith and commitment to hard work and dedication to family. These values are the essence of America, they have brought eminence to Armenian-Americans in many fields, and they have enriched every state in our American community. A short distance from this hotel you can see the lion and the unicorn, the work of an Armenian artist, atop of the old City Hall. In this city, and throughout New England you can see the monuments to Steve Mugar and learn how a tiny grocery store in Boston grew under his genius to the incredible supermarket chain of Star Markets. Across the Charles River is the endowed chair in Armenian studies at Harvard University.

From Worcester and Watertown in Massachusetts to Fresno in California, wherever the sons and daughters of Armenia have gone, you have touched, you have made America better than you found it and we are grateful for your accomplishments. Now you have also come of age in public life. Governor Deukmejian, Speaker Keverian and the other Armenian-American leaders here tonight have brought well-deserved national recognition for your community.

As generations to come enter public service, they will be ready to help America face the complex challenges tht lie ahead, enriching the entire nation through the ability and dedication that have always made Armenians a proud and strong people.

In honoring the contributions of your heritage, we also remember the darker chapters in your history. None of us can ignore the savage cruelty that Armenians have suffered across the centuries. Few peoples in the history of the earth have endured so much murderous persecution for their faith and bore their enormous tragedy with such extraordinary courage. I am proud to be a sponsor in the United States Senate of the Armenian Genocide Resolution and that Resolution should have passed the House of Representatives last August. With a little more help from the Reagan Administration, it would have passed. With the vast majority of Americans we say again tonight that we shall never forget the cruel truth of Armenian suffering. We shall never forget the millions of men, women and children who perished in their homeland at the beginning of this century, in that nightmare of the soul that became one of the worst crimes against humanity in all recorded history. As the great writer, H.G. Wells observed, "human history beomes more and more a race between education and catastrophe."

That is why the Armenian Resolution in Congress is so important. Unless America speaks the truth, unless the world comes to terms in the present with the horrors of the past, we may well stand condemned to repeat those horrors in the future. We must not let that happen.

Reminding ourselves relentlessly of man's inhumanity to man is our best hope to prevent atrocities in the future and to avoid the ultimate atrocity for all humanity—the atrocity of nuclear catastrophe.

Republican and Democrat, liberal and conservative, Irish and Armenian, we stand together as Americans for the great goals of liberty and justice, tolerance and compassion, human rights and human dignity for all our citizens and for all our peoples everywhere. We shall never stand silent or turn our eyes away in the face of cruelty and suffering, the bigotry and repression that still infects so much of our planet, and that casts such a deep shadow over the dream we share of peace on earth. Often those who have known darkness the most can lead us most surely to the light. With your help and your leadership we shall work even harder together in the years ahead for the great goals that join us here. I am grateful to all of you for inviting me to be a part of this assembly. For each of you and for our country and for all the causes we share, may the best be yet to come.

[From the California Courier, Oct. 22, 1987]

REMARKS OF VICE PRESIDENT GEORGE BUSH

Tonight we come to the East Coast to honor a guy from the West Coast. As Barry (Zorthian) said, I asked George Deukmejian to place my name in nomination in the 1984 Republican Convention. The years before that and since our friendship, both personal and professional, has grown. I give you a lot of credit for having both George Deukmejian and me here at the same time. Most audiences wouldn't be able to stand this much charisma all at once.

In a recent article, George was described as "a governor who wants to govern." I can't think of a better way to describe his strength, integrity and common sense that has characterized his outstanding leadership as Governor of California. He is tough on crime, advocate of public safety and public service, right out in front as a champion of excellence in education, and, of course, has long ago shown his good common political sense by being a Republican. When George took office, he inherited a billion dollar deficit and he turned it into a billion dollar surplus.

I know all of you are here tonight to honor the Duke, an outstanding American of Armenian descent. But he measures up to any test of excellence, not only good for Armenians; good for the state of California, and good for America. The people of California are lucky to have him as their Governor. With all respect. I'd say to the people of this, my native state, our Duke is better than your Duke (Dukakis).

A special interest, of course, is George's sensitivity to his own ethnic heritage. He's never forgotten his roots, and he's been a leader in drawing attention to the tragic events that befell the Armenian people in the end of the last century, the beginning of this one, climaxing in the horrors that began in 1915. He pursues his goal not out of any desire for revenge or retribution decades after the fact, but because of the lesson we can all learn from these historical events, and the lesson is simple and yet powerful and profound. If the civilized world

continues to be silent, this cycle of horror could one day repeat itself.

We must never let that happen. The United States has a stake in acknowledging the history of the Armenian people. After all, American diplomats and missionaries had a large hand in writing it. In our free and open society, history cannot and must not be changed for the convenience of the moment. We cannot and must not deny the testimony of survivors and scholars alike.

Earlier this month, I was in Poland and I met there with the leaders of Soldarity, Lech Walesa, in public right out there in the open, talked about it openly on public, national TV, the first time an American had been permitted this in Poland. They're looking to the future. Then I visited the concentration camps at Auschwitz and I saw those three by three prison cells where four human beings were made to stand day after day until they dropped dead in place; the gas chambers, the crematory where the flames engulfed the corpses of entire families.

I thought to myself, what would the world be like if we didn't teach our children what happened. What if Poland plowed these death camps into the earth and people were allowed to forget or never learn about the atrocities that were committed. There's a slogan that I wrote into the book there, written by, I believe, a French Jew, and it said, "in remembrance lies the secret of redemption." I put that in that memory book at the Berkenow death camp and I wrote those words because I believe in the affirmation of history—facing history honestly is morally and ethically the right thing to do. As one of our founding fathers Patrick Henry once said, "I know of no other way of judging the future but by the past."

If the past has taught us anything about the Armenian people, it's that you're survivors. Your enemies have buried Armenian bodies but they've never and will never bury your spirits.

And tonight as I look out at three generations, met some earlier, three generations of Armenians, I am proud that you've chosen to live in the United States of America, the freest, the fairest, most generous nation on the face of the earth. Together we'll stand for America and lead her into the future. America is the land of opportunity and you've made the most of yours.

Recently, Hirair (Hovnanian) said, "Armenians are not here in America because the economy is good (although it is), we're here because we're free, we have the freedom to be what we want to be."

This is no time for blame. I ran on the Republican platform that addresses this issue squarely and I'm going to be proud to carry the Republican banner on that platform in the future. That is the way I deal with this question we're talking about here tonight.

Great times to be living in America. Our economy is strong. The respect around the world—I've been to 76 countries as your Vice President—respect around the world is strong, even in those countries with which we have the greatest difficulties.

In the months ahead, I am confident we are going to sign an arms control agreement, one that is verifiable, one that actually reduces the numbers of nuclear weapons for the first time in the nuclear age. So we're using our strength to make the world safe for children, our children, and our children's children.

Can we face difficult challenges? Challenge is just another word for opportunity. The character is the same halfway around the world.

If we seize these opportunities, we make the most, we can lead America into a new era of peace and prosperity. So each of you here tonight is living proof of the fullness of the American dream and where else but in America could the son of the Armenian grow up and lead as our honoree here tonight has led, become governor of the most populous state in the greatest country on the face of the earth.

George, this is your night. Barbara and I are thrilled to be at your side, you and Gloria, to honor you in this well-deserved tribute to you, to what you've accomplished in the past, and what you're bound to accomplish in the future. Thank you. God bless America and God bless George Deukmejian.

THE NOMINATION OF DOUGLAS HOWARD GINSBURG TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. KENNEDY. Mr. President, Judge Ginsburg's nomination comes to the Senate with far less known about his views than was the case with Judge Bork. What is most ominous about the nomination at this stage is the suggestion that Ed Meese prevailed upon the President, with little consideration, to name an ideological clone of Judge Bork—a Judge Bork without a paper trail—instead of a real conservative who would have broad support in the Senate.

This troubling implication is supported by the fact that Judge Ginsburg is one of the least experienced nominees ever submitted by any President to the Supreme Court.

The lesson of the Senate's rejection of Robert Bork is that President Reagan is not entitled to tilt the Supreme Court to the far right, far beyond the end of his term as President.

If Judge Ginsburg's philosophy about the constitutional rights and liberties of the American people is as extreme as Judge Bork's, I will do all I can to see that this nomination is not confirmed.

At the very least, because the position of Supreme Court Justice is so important, the Senate Judiciary Committee will need adequate time to assess whether Judge Ginsburg's brief career, and his views on fundamental constitutional issues, qualify him for service on the Nation's highest Court. The Senate has the responsibility under the Constitution to give its advice and consent, not serve as a rubber stamp.

SENATOR WARNER RECEIVES L. MENDEL RIVERS AWARD

Mr. BYRD. Mr. President, last evening the senior Senator from Virginia, JOHN WARNER, was honored at a reception where he received the 1987 L. Mendel Rivers Award.

This award is presented annually to the legislator whom the Non-Commissioned Officers Association deems to be most deserving for his or her action on prodefense issues.

The distinguished chairman of the Armed Services Committee, Senator SAM NUNN, presented the award to Senator WARNER.

JOHN WARNER is an excellent choice for this year's award. He is a gentleman, a patriot, a former Secretary of the Navy. He serves in this body with distinction, consistently displaying the admirable quality of reasonableness.

I have had the distinct pleasure of working with him over the years and I have always admired the quality of his character. He is a man who is able to rise above the heat of the moment and above politics. JOHN WARNER is a man who puts his country first.

I extend my congratulations to Senator WARNER on the important recognition he received last evening. I look forward to working with him on the many vital defense issues which face our country in the years ahead.

ED ORTIZ: A GREAT ASSET FOR NEVADA

Mr. HECHT. Mr. President, I rise today to honor a truly special Nevadan, Mr. Edward F. Ortiz.

Ortiz, who resides in Las Vegas, is the manager of the procurement department of Reynolds Electrical & Engineering Co., Inc. Although he has held that position for 28 years, his relationship with the company exceeds 30 years. Mr. Ortiz is a graduate of Louisiana State University and is a lifetime certified purchasing manager.

One of the many reasons Ed is so very special to all of us is his longtime commitment to minority and small businesses. If you have a question about procurement, you call Ed Ortiz. If you have a question about the legal aspects of a business deal, you call Ed Ortiz. If you have a question about just what in the devil is going on in the business community, you call Ed Ortiz.

Mr. President, over the years as Ed was contributing to the growth and development of the Las Vegas business community, he was more concerned about getting the job done, than receiving recognition for his efforts. Nonetheless, when you are fair, honest, and hard working, recognition seeks you out. Such is the case with Ed Ortiz. Mr. President, I would like to take a moment to shine the limelight on Ed and list a few of his many accomplishments.

Ed is founder and present chairperson of the Nevada Minority Purchasing Council.

He is chairman of the National Minority Supplier Development Council regional chairperson's committee.

He is a member of the Small Business Administration Advisory Council.

He is the founding chairman, and former president and active member of the Purchasing Management Association of Southern Nevada.

He is a member of the Southern California Small Business Economic Utilization Council.

He is a member of the active corps of executives, sponsored by the Small Business Administration.

He was a delegate to the White House Conference for Small Business, with continuing followup activity as a member of the minority caucus.

Ed received the Small Business Advocate of the Year Award in 1986 from the Small Business Administration.

And on August 25, 1986, Ed received a proclamation from the State of Nevada declaring Edward Ortiz Day in recognition of his many years of leadership in the development of small and disadvantaged business.

Mr. President, on November 5, 1987, I am sponsoring my third Nevada Conference on Small Business. I am pleased and honored to have Ed as the honorary chairman of this important event. Because of Ed's efforts, many of those who are in attendance at the conference will have a much easier path in their efforts to obtain Government contracts.

Ed, I thank you, and all of Nevada thank you for your many years of dedicated service to the Las Vegas business community.

BICENTENNIAL MINUTE

OCTOBER 29, 1929: STATE FUNERAL FOR A SENATOR

Mr. DOLE. Mr. President, 58 years ago today, on October 29, 1929, the Senate met for 3 minutes and adjourned out of respect to the memory of Senator Theodore Burton, who had died the previous day. On the following day, the Senate Chamber was filled to capacity for Burton's memorial service, the first to be held here in 15 years. Among the attendees were President Hoover, who had been Burton's close friend, the Chief Justice of the United States, Members of both Houses, and representatives of the diplomatic corps.

Burton is the only man in American history who has had the distinction of serving first in the U.S. House of Representatives, then in the Senate, returning to the House, and again moving back to the Senate. Beyond this footnote to history, the Ohio Republican Senator, acquainted with 12 Presidents from Cleveland to Hoover, was respected as a brilliant and independent legislator who had written extensively on governmental finance. He was best remembered as a leader in the cause of international peace.

Theodore Burton first came to the Senate in 1909, following 16 years of service in the House. He decided not to seek reelection in 1914, the first direct popular election of Senators under the 14th amendment, partly because he feared he might lose. He also believed that service in the House offered more flexibility and that the Senate had become populated with men who "said one thing in the Cloakroom and voted another way on the floor." Burton was succeeded in the Senate by Warren Harding, who used his Senate seat as a springboard to the White House. Burton later regretted his decision to leave the Senate, believing that if he had remained he might have been the Republican party's logical presidential nominee in 1916. He returned to the House in 1921 and in 1928, at the age of 76, he was elected to the Senate by a record-breaking majority. Within weeks, the pressures of Senate service began to take their toll and he died within a year.

PRODUCT LIABILITY AND CHILD CAR SEATS

Mr. DANFORTH. Mr. President, October 15 was National Safety Belt Use Day—a day to commemorate and promote the use of safety belts and child car safety seats. Unfortunately, the gains recognized on that day may, in part, be undermined by the product liability problems facing manufacturers of child car seats. The problems confronting this industry illustrate the unacceptable burdens imposed by the current product liability system.

In the last 10 years, State after State has mandated the use of child car seats for young children. The Federal Government played a key role in encouraging the States to act. In 1984 legislation was enacted which mandated that at least 8 percent of Federal highway safety funds secured by the Safety Administration Program be devoted to promoting the proper use of child car seats. As a result of such efforts, child car seat use improved from 23 percent in 1981 to 72 percent in 1986.

But, while government at all levels along with the private and nonprofits sectors have encouraged the use of child car seats for their proven safety benefits, our failure to address the confused and costly product liability system is posing a threat to the car seat industry. At a time when the market for child car seats should be expanding, companies are leaving the industry because it is becoming increasingly difficult to meet rising liability costs while producing seats at a price the public can afford.

Mr. President, representatives of the child car seat industry have testified before the Senate and House committees with jurisdiction over product liability reform. In the interest of better informing my colleagues about the problems facing this industry, I want to bring to their attention the testimony of Mr. Jon Reynolds, corporate attorney for Cosco, Inc., of Columbus, IN, who appeared on behalf of car seat manufacturers. While I do not endorse all of Mr. Reynolds' recommendations, there is no doubt that the problems he presents needs to be addressed.

Mr. President, I ask that the statement of Mr. Jon Reynolds appear in the RECORD.

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

TESTIMONY

I am Jonathan Reynolds, Corporate Attorney for Cosco, a manufacturer of housewares and juvenile products. Prior to coming to Cosco, I was a partner in Russ and Reynolds, a California law firm involved primarily in the defense of product liability and personal injury cases.

Cosco is a 50 year old company headquartered in Columbus, Indiana that manufacturers housewares and juvenile products.

This is a critical issue for Cosco. Quite honestly, the very existence of our company and our jobs are on the line. With me are other members of Cosco's management group and the President of our Union. John Moeller, our Chairman, could not be with us due to a prior business commitment. He is however vitally interested in tort reform and is currently serving as the Chairman of the Coalition for Uniform Product Liability Law, one of the major tort reform coalitions in the country.

Our emphasis today will be on child car seats, our company's most serious product liability problem.

We seek justice, no more and no less. Like all Americans, we have learned quickly to sense when we are being "ripped off." We are simply not being treated justly by our present tort system. Jobs, companies, products and even tax revenues could ultimately be lost if these injustices are not corrected. The future development, and possibly the availability of domestically produced child car seats are at stake. In the current environment, valuable resources and effort that should be going into the development of this product are being diverted into defending lawsuits.

Child car seats are widely recognized as being very effective in saving lives and preventing injuries. They are mandated for use in all 50 states and the District of Columbia and are credited with saving hundreds of lives and thousands of serious injuries annually.

Child car seats have been designed, tested and manufactured to a standard issued and enforced by the U.S. Department of Transportation since 1968. The current standard, which was implemented in 1980 requires sophisticated dynamic testing. It was developed over an eight year period through the joint efforts of the U.S. Department of Transportation, the University of Michigan and Cornell and other universities, numerous consumer safety groups, the medical community, academics, testing laboratories, and the child car seat manufacturers. Over the years, in addition to meeting this standard the manufacturers have worked very hard to improve upon their basic designs to make the products easier to use and to discourage misuse.

The products produced under this standard are performing very effectively in the real world. Chuck Hurley, Executive Direc-

tor of the National Safety Council, has described them as "performing beyond all expectations." Department of Transportation studies also support the conclusion that child car seats are highly effective when used properly.

Unfortunately, misuse of child car seats is a major problem. U.S. Department of Transportation studies show that a great many child car seats are not being used properly and that very often the misuse is intentional despite manufacturers instructions and warnings. For example, 70% of those who faced infants improperly forward and 95% of those who did not use the harness properly did so knowingly. The manufacturers, in addition to making their products easier to use properly have been working with the American Academy of Pediatrics, the National Passenger Safety Association, the National Safety Council, other safety groups, and the National Highway Traffic Safety Administration to combat consumer misuse.

While child car seats are performing very effectively in the real world when used properly, they cannot save every life nor can they prevent every injury, and that is the hub of the problem.

Product liability is an enormous problem for the manufacturers. During 1986, the number of child car seat manufacturers decreased from twelve to nine. All of the companies who have made child car seats for a period of time are being sued for amounts exceeding the net worth of their companies or divisions. The manufacturers are not able to purchase adequate insurance coverage and many are uninsured for most claims. The viability of this industry is genuinely threatened, and ultimately the availability and affordability of this needed product is at risk.

It is wrong to assume that these products are inherently ineffective. When compared with the millions of seats sold each year and the hundreds of thousands that are in accidents, only a relative handful of claims are made, and almost all of these involve products that have been misused. These claims, however, because of their nature, the seriousness of the injuries, the current tort environment, etc. threaten the viability of this relatively small industry.

Unfortunately when confronted with product liability suits the child car seat manufacturers believe they have little choice but to settle out of court rather than attempt to take the case to a jury under the current tort environment. There are many reasons for this.

First, it is common knowledge among experienced trial attorneys that juries want to find in favor of injured children who are themselves faultless. It is also common knowledge that juries tend to view manufacturers as "rich" and very able to pay.

Second, in almost every case, the driver or drivers who caused the accident and the parents or caretakers who may have misused the child car seat do not have adequate insurance coverage. The child car seat manufacturer is often the only "deep pocket" defendant, who under joint and several liability rules, may be required to pay all damages if found as little as 1% liable for the injury. There is no true balancing of comparative fault. This has caused my company to settle suits where we truly believed we were not at fault.

Third, the pendulum has swung so far in favor of the plaintiff in the courtroom that manufacturers usually only risk a jury decision in cases where a defense verdict is virtually certain or the plaintiff's demand for settlement is grossly excessive. Under the current tort system, the manufacturer has virtually no practical defenses:

Meeting government standards is not a defense regardless of how effective or how much in the public interest those standards are.

In reality misuse is normally not a practical defense. It is only viable where the misuser has a significant amount of insurance or personal assets, or can be proven 100% at fault. Further, 20/20 hindsight unfairly extends the manufacturers responsibility for the "foreseeable" consequences resulting from a product's use. This places on the manufacturer an unreasonable responsibility for all of the attendant hazards of every accident no matter how unusual or severe, and for almost any misuse no matter how unusual or reckless.

State-of-the-art defense is often not a practical defense. State laws vary greatly. From the viewpoint of a nationwide marketer, it is only a truly solid defense where it is impossible to technically design and manufacture a better product, regardless of cost and market price.

Fourth, the entire judicial system is geared toward forcing settlements which has resulted in expanded pre-trial discovery and increased litigation costs. Costs of defense are massive. The child car seat manufacturer can now expect to spend $200,000 to $300,000 in the defense of a major case.

Fifth, the pressure on the defendant to settle is enormous. "Surely you will settle for the cost of defense" is heard repeatedly from judges. I have personally heard this admonition in countless cases I have defended. When presented with the option of spending large amounts of money to further defend the case, coupled with the very real possibility of a large verdict, most manufacturers and insurance companies reluctantly accept settlement.

The net result is to force the child car seat manufacturers into settling suits in which the manufacturer's product was truly not responsible for the injuries. This is an intolerable situation and cannot long endure.

What tort reforms are needed? From the perspective of the child car seat manufacturer we offer the following:

First, establish a fair system of comparative fault that assesses the contribution of each actor in a situation, including persons who have acted on behalf of the plaintiff, with damages assessed only according to degree of fault. Eliminate joint and several liability. (At a minimum, eliminate joint and several liability for those that have played a relatively minor role. At a minimum we urge the adoption of the 25 percent threshold before a defendant could be jointly and severally liable, that was part of an approved resolution by the American Bar Association House of Delegates in their report earlier this year.

Second, provide a strong misuse defense under which a defendant would not be liable if the product has been altered or modified, or if the product has been used in violation of, or contrary to, the manufacturer's express written instructions and warnings.

Third, the clarity of instructions and warnings should be judged on the basis of reasonableness, i.e. are the instructions and warnings clear to an ordinarily prudent person exercising reasonable care in the use of the product.

Fourth, a government standards defense, granting immunity from suit based on design defect providing the child car seat meets FMVSS 213, should be implemented. FMVSS 213 has proven to be a very effective standard in the real world. It is our impression that the child car seat manufacturers would support and comply with the concept of pre-market testing if necessary.

Finally, trials must be conducted on a bifurcated basis. Payments from collateral sources should reduce judgments, and all settlements and judgments should provide for periodic payments of future damages.

VALUABLE RESOURCES

We know of no other products, with the possible exception of vaccines, that has such a direct impact on the health and safety of our nation's children, yet faces such enormous liability risks. The experience and expertise of these manufacturers represent a valuable national resources that the country cannot afford to dissipate. The tort reforms outlined above are fair and just. The time for their implementation is long past due.

REPORT ON DEFERRAL OF CERTAIN BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT—PM-80

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which, pursuant to the order of January 30, 1975, was referred jointly to the Committee on Appropriations, the Committee on the Budget, the Committee on Labor and Human Resources, the Committee on Energy and Natural Resources, and the Committee on the Judiciary:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report six deferrals of budget authority totaling $96,285,288.

The deferrals affect programs in the Departments of Energy, Health and Human Services, and Justice.

The details of these deferrals are contained in the attached report.

RONALD REAGAN.

THE WHITE HOUSE, *October 29, 1987.*

ANNUAL REPORT ON THE STATE OF SMALL BUSINESS—MESSAGE FROM THE PRESIDENT—PM-81

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Small Business:

To the Congress of the United States:

I am pleased to submit to the Congress my sixth annual report on the state of small business. This report confirms that the small business economy was healthier at the end of 1986 than at the start of the year, reflecting growth in both new firms and new employment. Our Nation's small businesses fare best with stable prices, low

interest rates, and steady growth, all of which were present in 1986.

A healthy small business sector is more than a reflection of the national well-being; it is an active force for change. America's entrepreneurs are continually experimenting with new products, new technologies, and new channels of distribution. Half of all major innovations in the past 30 years were generated in small companies.

The result of all this innovative activity is new companies and more employment for our workers. The great industrial and commercial concerns of our Nation were built by innovators like Henry Ford and Alexander Graham Bell, whose small businesses grew to help shape a new economy. Today, many of America's great corporations rely on small firms as suppliers, manufacturers, distributors, and customers.

A broader spectrum of Americans than ever before is starting businesses. In the past 10 years, the number of businesses owned by women has increased three times as fast as businesses owned by men. Minority-owned businesses have also increased; American minorities are more likely than ever before to be business owners in 1987.

It is critical to listen to the people whose small enterprises comprise such a vital part of our economy. Consequently, in May 1984, I signed into law a bill providing for the 1986 White House Conference on Small Business. This Conference, held in Washington, DC, in 1986, brought together 1,800 small business delegates from the 50 States, Puerto Rico, and the District of Columbia. The delegates debated and voted on a myriad of small business issues.

In the end, they made 60 recommendations to the Federal Government, ranging from reducing the deficit, to easing the terribly expensive burden of liability insurance, to continuing our efforts to enlist small firms in important national research efforts. This last recommendation—to reauthorize the Small Business Innovation Research Act—has been signed into law, as have several other bills addressing the delegates' concerns. I can assure the small business delegates that their message will continue to be heard during the 100th Congress.

What benefits the economy also benefits small business. On October 22, 1986, I signed into law the most comprehensive tax reform legislation since the enactment of the Internal Revenue Code in 1954. Culminating 2 years of bipartisan effort, this law cuts tax rates significantly for corporations and individuals alike, and limits or eliminates many special tax advantages. The law is designed to help remove tax considerations from business decisions, which are best made in a free, competitive marketplace.

For the future, I have a very simple goal, which I believe all Americans share. Call it competitiveness or a quest for excellence. The quest for excellence that I envision is not just a legislative package, although legislation will play a part. It is not just another government program, although government will have a role. Rather, it is a great national undertaking that challenges all Americans.

To help achieve this goal, I have submitted to the Congress a major competitiveness proposal to assure that the Federal Government does everything possible to make our businesses and workers preeminent in the 21st century. Enactment of my proposal will allow American workers and businesses to meet world competition head-on. This six-part program is aimed at increasing investment in human and intellectual capital, promoting the development of science and technology, protecting intellectual property, enacting essential legal and regulatory reforms, meeting the challenges of international markets, and reducing the Federal deficit.

Promoting flexible job skills and more challenging work for a better work force are important to the competitiveness of American industry. This new program will help workers displaced by adverse economic conditions, technological changes, or increased imports. Small firms—major employers of first-time job holders, recently unemployed workers, and workers in need of training—will play a very important part in this program.

This administration is interested in exploring with the Congress and industry representatives measures that will provide more incentives for American business to advance in research and technological development. To help transfer technology from Federal laboratories to the marketplace, I have signed Executive Order No. 12591 creating incentives for the development and transfer of federally supported innovation. To protect business confidentiality, I am also proposing to broaden legislatively the Freedom of Information Act definitions of trade secrets and confidential commercial information. In addition, I have signed an Executive Order giving businesses an opportunity to object to the government's release of commercial information if disclosure would harm commercial competitive interests.

To maintain the incentives for continued innovation and the protection of intellectual property envisioned by the signers of our Constitution, I have proposed legislation to the Congress that would: protect processes for manufacturing products, restore the time lost by inventors due to government-mandated testing of products, and reduce the incentives for unnecessary litigation.

Regulations and excessive paperwork place small businesses at a disadvantage in an increasingly competitive world marketplace. Over the past decade, small firms have benefited from the more competitive milieu in the deregulated financial and transportation industries. This Administration supports continued deregulation and other reforms to eliminate regulatory obstacles to open competition. I have also proposed statutory reforms to curtail the costly product liability spiral and to amend our antitrust laws to reflect the dynamics of world trade.

U.S. trade laws have been effective instruments for opening foreign markets and defending American industries against unfair practices by our competitors. I have proposed improving those laws that enhance our ability to meet the challenges from abroad without enacting protectionist barriers at home. Our proposals will emphasize opening markets through multilateral negotiations, encouraging adjustment while providing relief to industries injured by import competition, and tightening our laws to deal more effectively with unfair competition.

Finally, improving our national competitiveness means eliminating the Federal budget deficit. Controlling Federal spending remains an essential goal. I have proposed a budget that achieves the Gramm-Rudman-Hollings target by reducing spending, not by raising taxes.

The quest for America's business is to make products more efficiently, to embrace new ideas, and to develop better methods of management and new technologies. In that quest, this Administration will continue to listen to the concerns of small business owners and to press for legislation that will enhance small business' ability to compete. In the final analysis, though, it is the individual decisions and innovative efforts of our Nation's business owners and workers that will forge a new American competitivenss.

RONALD REAGAN.

THE WHITE HOUSE, *October 29, 1987.*

PROHIBITION AGAINST IMPORTS FROM IRAN—MESSAGE FROM THE PRESIDENT—PM 82

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on Finance:

To the Congress of the United States:

Pursuant to section 505 of the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa-9), I hereby report to the Congress that I have exercised my constitutional and statutory authority to prohibit the importation into the

United States of all goods and services of Iranian origin.

I am enclosing a copy of the Executive Order that I have issued exercising this authority. I have delegated to the Secretary of the Treasury the power, in consultation with the Secretary of State, to carry out the provisions of the Order.

I have authorized these steps in response to the actions and policies of the Government of Iran in support of terrorism and in the conduct of aggressive and unlawful military action against U.S.-flag vessels and merchant vessels of other non-belligerent nations engaged in lawful and peaceful commerce in international waters of the Persian Gulf and territorial waters of non-belligerent nations of that region. These Iranian actions and policies have been supported in part by revenue earned from the sale of products imported into the United States. The measures taken pursuant to this Order are in response to such hostile Iranian actions occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to such action.

Since Iran was officially designated under U.S. law in 1984 as a country that has repeatedly supported acts of international terrorism, the United States has taken a number of limited economic measures in response to hostile Iranian actions. These measures have included export controls on items that would contribute to Iran's military potential and its ability to support international terrorism.

Iran, however, not only has continued but has escalated its aggressive acts against the United States. Iranian actions in the Persian Gulf have not only directly threatened U.S.-flag merchant vessels and U.S. forces but those of our allies and other friendly states as well. These policies of the Government of Iran have necessitated the further economic measures I have announced today.

The United States calls upon the Government of Iran to cease its support of terrorism and acts of aggression directed at the United States and other nations both in the Persian Gulf and elsewhere. The United States calls upon other nations to join us by taking similar measures. We must demonstrate by firm political, economic, and other steps that the international community considers the actions and policies of the Government of Iran unlawful and intolerable.

RONALD REAGAN.

THE WHITE HOUSE, *October 29, 1987.*

MESSAGES FROM THE HOUSE

At 1:30 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 307. An act to designate the Federal Building and United States Post Office located at 315 West Allegan Street in Lansing, Michigan, as the "Charles E. Chamberlain Federal Building and United States Post Office"; and

S.J. Res. 171. Joint resolution designating the week beginning November 8, 1987, as "National Women Veterans Recognition Week."

The enrolled bill and joint resolution were subsequently signed by the Acting President pro tempore (Mr. WIRTH).

At 5:36 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2818. An act providing exemption from certain Federal and State laws for solar small power production facilities;

H.R. 3457. An act to amend the Packers and Stockyards Act, 1921, to provide financial protection to poultry growers and sellers, and to clarify Federal jurisdiction under such Act; and

H.R. 3483. An act to amend title 18, United States Code, to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes.

ENROLLED JOINT RESOLUTION SIGNED

At 8:18 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 309. Joint resolution providing support for the Civic Achievement Award Program in Honor of the Office of the Speaker of the House of Representatives.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 2818. An act providing exemption from certain Federal and State laws for solar small power production facilities; to the Committee on Energy and Natural Resources.

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, October 29, 1987, he had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 171. Joint resolution designating the week beginning November 8, 1987, as "National Women Veterans Recognition Week."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary, without amendment and with a preamble:

H.J. Res. 97. Joint resolution to recognize the Disabled American Veterans Vietnam Veterans National Memorial as a memorial of national significance.

H.J. Res. 130. Joint resolution to designate the week beginning November 22, 1987, as "National Family Caregivers Week."

S. Res. 246. Resolution to honor Irving Berlin for the pleasure he has given to the American people through almost a century of his music.

S. Res. 267. Resolution to express the sense of the Senate that Rachel Carson is recognized on the 25th anniversary of her book "Silent Spring", for her outstanding contributions to public awareness and understanding of environmental issues.

S. Res. 303. Resolution to comment the efforts and commitment of the organizers and participants of "Justice For All Day," November 17, 1987.

S.J. Res. 35. Joint resolution relating to the commemoration of January 28, 1988, as a "National Day of Excellence."

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S.J. Res. 66. Joint resolution to designate the week of November 22 through November 28, 1987, as "National Family Week".

Mr. BIDEN, from the Committee on the Judiciary, without amendment and with a preamble:

S.J. Res. 97. Joint resolution to designate the week beginning November 22, 1987, as "National Adoption Week".

S.J. Res. 98. Joint resolution to designate the week of November 29, 1987, through December 5, 1987, as "National Home Health Care Week".

S.J. Res. 105. Joint resolution to designate December 7, 1987, as "National Pearl Harbor Remembrance Day" on the occasion of the anniversary of the attack on Pearl Harbor.

S.J. Res. 125. Joint resolution to designate the period commencing on May 9, 1988, and ending on May 15, 1988, as "National Stuttering Awareness Week".

S.J. Res. 126. Joint resolution to designate March 16, 1988, as "Freedom of Information Day".

S.J. Res. 134. Joint resolution to designate the week commencing on the third Sunday in May, 1988, as "National Tourism Week".

S.J. Res. 136. Joint resolution to designate the week of December 13, 1987, through December 19, 1987, as "National Drunk and Drugged Driving Awareness Week".

S.J. Res. 146. Joint resolution to designate January 8, 1988, as "National Skiing Day".

S.J. Res. 174. Joint resolution to designate the week beginning November 15, 1987, as "African American Education Week".

S.J. Res. 185. Joint resolution to designate the period commencing on May 2, 1988, and ending on May 8, 1988, as "National Drinking Water Week".

S.J. Res. 201. Joint resolution to designate January 28, 1988, as "National Challenger Center Day" to honor the crew of the space shuttle *Challenger.*

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary:

Frank L. McNamara, Jr., of Massachusetts, to be United States Attorney for the District of Massachusetts for the term of 4 years.

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. SANFORD (for himself, Mr. SPECTER, Mr. LUGAR, Ms. MIKULSKI, and Mr. PRESSLER):

S. 1830. A bill to amend title II of the Social Security Act to provide for a more gradual period of transition (and a new alternative formula with respect to such transition) to the changes in benefit computation rules enacted in the Social Security Amendments of 1977 as they apply to workers born in years after 1916 and before 1930 (and related beneficiaries) and to provide for increases on their benefits accordingly, and for other purposes; to the Committee on Finance.

By Mr. HEINZ:

S. 1831. A bill entitled the "Economic Stabilization and Recovery Act of 1987"; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DURENBERGER:

S. 1832. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts withdrawn from Individual Retirement plans for payment of long-term care insurance premiums; 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. BYRD (for himself, Mr. STEVENS, and Mr. PRYOR):

S. Res. 308. A resolution to limit time on the motion to proceed; placed on the calendar.

By Mr. BYRD (for himself, Mr. STEVENS, and Mr. PRYOR):

S. Res. 309. A resolution to limit time on the motion to proceed; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SANFORD (for himself, Mr. SPECTER, Mr. LUGAR, Ms. MIKULSKI, and Mr. PRESSLER):

S. 1830. A bill to amend title II of the Social Security Act to provide for a more gradual period of transition—and a new alternative formula with respect to such transition—to the changes in benefit computation rules enacted in the Social Security Amendments of 1977 as they apply to workers born in years after 1916 and before 1930—and related beneficiaries—and to provide for increases on their benefits accordingly, and for other purposes; to the Committee on Finance.

(The remarks of Mr. SANFORD and the text of the legislation appear in today's RECORD.)

By Mr. HEINZ:

S. 1831. A bill entitled the "Economic Stabilization and Recovery Act of 1987"; to the Committee on Banking, Housing, and Urban Affairs.

ECONOMIC STABILIZATION AND RECOVERY ACT

Mr. HEINZ. Mr. President, today I am introducing a bill which is cited as the Economic Stabilization and Recovery Act of 1987. The purpose of this bill is to recognize that we face some economic problems which, if left unattended to, could make our economy very sick indeed.

What this legislation does in twofold, and I will explain the reasons for it in a moment, but what this legislation does is very simple. It directs the Federal Reserve Board, no later than 7 days from today, to reduce the discount rate, which currently stands at 6 percent, to 5 percent or less. It further directs the Secretary of the Treasury, working in conjunction with the Board and its chairman, to make every reasonable effort to achieve a coordinated, simultaneous multilateral interest rate reduction in an amount comparable to that effected by the Federal Reserve Board among the major industrialized nations known as the G-5.

Mr. President, I have never ever introduced a bill on the Federal Reserve, before let alone one directing specific action by the Federal Reserve Board in my 17 years of service in the House of Representatives and Senate.

I have generally viewed the introduction of bills telling the Federal Reserve to do one thing or anther as dangerous congressional meddling in the affairs of an independent agency.

I take this step today because it is my view that the time has come for us to have a serious debate not only about fiscal policy but about monetary policy. It is my view that important as fiscal policy is, important as the deficit reduction talks between the President and the Congress are, no matter how good the agreement and how lasting the agreement they achieve, fiscal policy by itself, given where we have come to, will not be nearly enough to avoid a crisis of consumer confidence. If left unattended, this could plunge us into a recession.

I do not think that we are necessarily condemned to have a recession, but I do think we have very little time in order to avoid it. We have very little time for the Congress and the President to reach an agreement to a deficit reduction package. And we have very little time for the Federal Reserve Board to accelerate its accommodating policy which it started just a week ago in order to make it clear that the Federal Reserve is going to be an active player in reassuring both the average American, the consumer, and the world that we will not stand idly by while our economy becomes sick and ill and develops an economic syndrome that could be serious indeed.

Let me say that, despite the unprecedented plunge of the stock market a week ago Monday that was worse than anything we felt in 1929, the good news is that the world and our economy are very different today than in 1929. I do not think that, even under the worst scenario, we face a depression. We have, notwithstanding the tremendous drop of last week, shown that our financial markets can handle the biggest drop in history. We will not return to the scenes of long bread lines that we all remember from the depression. But we can invite great difficulty, including unemployment and inflation, if we do not take additional action now within the next few days.

There are things that need to be done and should be done. I think it is important to note that the action that the Federal Reserve Board has taken so far in accommodating to the difficulties of last week has been helpful. On Tuesday of last week, the Federal Reserve Board, in a very short announcement, indicated that it would supply the necessary liquidity to keep the system going. And that liquidity has been helpful.

It has been helpful, however, somewhat selectively. It has principally taken the form of money being made available to the finance intermediaries, the banks, the major lenders. And while there has been some reflection of that, and only some, in the general level of interest rates, it has not been reflected meaningfully in ways that will help or reassure the consumer. It has not been reflected in home mortgages or auto loans or home improvement loans.

Indeed, what the Fed has done so far has been reasonably helpful to the big guys but not particularly helpful, at least as yet, to the little guys. And what is needed, therefore, is action by the Federal Reserve that will have significant consequences, not to the big banks but to the average American. A discount rate cut which is visible, and which under this proposal would go from 6 to 5 percent, will set the stage for the reduction of consumer interest rates and restore the kind of confidence on the part of the consumer that I believe we so badly need.

We also need to ensure that this interest rate cut is implemented in a way that causes our trading partners to go along. We need them to go along with an interest rate cut to stimulate their economy and to stimulate the world economy. And we also need it to prevent an unwarranted fall in the dollar.

Mr. President, as I said, I find my introduction of this legislation an unprecedented step. But I think it is an absolutely necessary step. If all we do is enact a $23 billion or a $33 billion or even a $43 billion deficit reduction package, we will have fooled ourselves into believing that in a $4 trillion economy—notwithstanding the need to show that we know how to lead and how to act—that a $23 to $43 billion improvement in the Federal fiscal def-

91-059 O-89-35 (Pt. 21)

icit is something more than a modest drop in the bucket.

If we are really going to help the average person, we need to restore confidence to the consumer who is postponing an auto purchase or postponing a home purchase or postponing the purchase of a refrigerator, because they do not know what is going to happen. The single most important act that this country can take, and it can only be taken by the Federal Reserve Board, is to cut that discount rate. The Fed should cut it today or tomorrow or next Monday, but not later than sometime in the middle of next week.

Let me discuss one or two technical issues:

As of yesterday, the Treasury bill rate stood nearly a full percentage point below the discount rate. The T-bill rate was at 5.06 percent compared to the 6-percent discount rate. This is nearly a point below the discount rate.

The Federal funds rate, the overnight lending rate, is down to 6.67 percent, just two-thirds of a point above the discount rate.

The inflation rate, as we measure it, has been running in the third quarter at 2.4 percent, as measured by the GNP deflator; 2.7 percent on the fixed rate index.

While most people think that those understate the underlying rate of inflation—and maybe it is above 3 percent—all the experts, including those of the Fed and the Treasury, agree that the rate of inflation has been decelerating, not accelerating.

And so anybody who believes that other interest rates are not in line with the need for a discount rate cut or that a discount rate cut would be adding fuel to some fire of inflation, let me tell you, the fire is not just there, the ashes are cold and dead.

I am worried, Mr. President, that unless the Federal Reserve acts the economy is going to go dead. And that is something that we cannot afford.

Let me say one last word about that. We face this year a $175 billion budget deficit. If there is agreement between the President and the Congress on a $23 or $25 billion budget deficit reduction package, we will lower the deficit to $150 billion for fiscal 1988. If there is a recession, the budget deficit will start at $150 billion. By the time we count up the cost of unemployment, the revenues foregone, the increased outlays in income transfer payments for people who are in need, on unemployment or food stamps, or what have you, the deficit, according to best estimates, even if we said what we were going to is not going to be $150 billion, but will be more like $300 or $350 billion.

Mr. President, I do not know what a recession would be like with a $350 billion dificit, which would absorb, according to every estimate I have seen, well in excess of 100 percent of savings.

I do not know what the consequences will be. That is off the economic map. It is off the ends of the Earth.

I will tell you one other thing. I do not want to see this country or any of us go into that unexplored territory. We journey there at our peril and that is why, Mr. President, I believe that we need action at once.

By Mr. DURENBERGER:

S. 1832. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts withdrawn from individual retirement plans for payment of long-term care insurance premiums; to the Committee on Finance.

EXCLUSION FROM GROSS INCOME OF WITHDRAWALS FROM INDIVIDUAL RETIREMENT PLANS FOR PAYMENT OF LONG-TERM CARE INSURANCE PREMIUMS

● Mr. DURENBERGER. Mr. President, the bill I am introducing today will allow retired individuals to use some of their tax deferred savings to pay for long-term care insurance without suffering any tax penalty. Under this proposal, a citizen over age 59½ would be permitted to withdraw up to $2,000 per year from his or her individual retirement account [IRA] to purchase long-term care insurance. Such withdrawals would not be subject to Federal income tax. This bill, in combination with others I am developing, will help expand options for the elderly to protect themselves in case they need long-term health care. In turn, this will reduce future pressures on public programs, such as Medicaid, that pay for the care of most nursing home residents. Many of them are people who at one time had resources but "spent down" to Medicaid eligiblity. This bill will encourage people to save their assets for possible future health needs.

Last year, we made significant changes in the rules governing individual retirement accounts. As a result of these rules, most individuals who are currently covered by employer-provided retirement plans were permitted to continue contributing to IRA's, but only on an after-tax basis.

Some commentators have suggested that the rules we adopted last year will not provide sufficient incentives for most individuals to contribute to an IRA. The bill I am offering today would provide an incentive for individuals to continue to contribute to their IRA's, even if their contributions are from after-tax dollars.

In addition, individuals who are not covered by employer-provided pension plans would be encouraged to continue contributing pretax earnings to their IRA, and then have the option to withdraw money tax-free to pay for long-term care insurance.

Mr. President, for an individual who is not covered by an employer-provided pension plan, the only retirement nest egg available is his or her IRA. By contrast, the individual whose employer has provided a retirement plan has the security of knowing that his or her retirement living expenses can be covered by pension payouts, and that if long-term care becomes necessary, he is more likely to be able to afford the insurance premiums.

My bill tries to equalize the financial burden facing those who have company-sponsored pension plans and those individuals who do not have such plans. It allows pretax funding for long-term care, without tax penalty, for individuals not covered by company pension plans, and permits after-tax funding for long-term care, for those who are covered by pension plans.

Mr. President, the goal of my bill is to encourage individuals to purchase private long-term health care protection, without creating the problems and budget deficits caused by governmental programs. The need for such coverage is going to become much greater in the next 15 years. If we encourage our citizens to set up accounts now that will permit them the security of a financial nest egg in case of the need for long-term care, I believe we will have taken a necessary step to avoiding the day when the long-term care problem becomes a problem that the public will expect Government to resolve.

I ask unanimous consent that a copy of the bill be printed at this point in the RECORD.

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

S. 1832

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

EXCLUSION FROM GROSS INCOME FOR AMOUNTS WITHDRAWN FROM INDIVIDUAL RETIREMENT PLANS FOR LONG-TERM CARE INSURANCE PREMIUMS

(a) IN GENERAL.—Subsection (d) of section 408 of the Internal Revenue Code of 1986 (relating to tax treatment of distributions from individual retirement plans) is amended by adding at the end thereof the following new paragraph:

"(7) DISTRIBUTIONS FOR QUALIFIED LONG-TERM CARE INSURANCE PREMIUMS.—

"(A) IN GENERAL.—No amount (which but for this paragraph would be includible in the gross income of the payee or distributee under paragraph (1)) shall be included in gross income during the taxable year if—

"(i) the payee or distributee has attained age 59½ on or before the date of the distribution, and

"(ii) the distribution is used during such year to pay premiums for any qualified long-term care insurance policy for the benefit of the payee or distributee or the spouse of the payee or distributee if such spouse has attained age 59½ on or before the date of the distribution.

"(B) DOLLAR LIMITATION.—

"(i) IN GENERAL.—The amount excluded from gross income under subparagraph (A) shall not exceed $2,000 ($1,000 in the case of a separate return by a married individual).

"(ii) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the dollar amounts under clause (i) for taxable years beginning in calendar years after 1988 in the same manner as under section 1(f), except that only increases in the medical component of the Consumer Price Index shall be taken into account.

"(C) QUALIFIED LONG-TERM CARE INSURANCE POLICY.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—Subject to clause (ii), the term 'qualified long-term care insurance policy' means an insurance policy or rider, issued by a qualified issuer, and certified by the Secretary of Health and Human Services (in accordance with procedures similar to the procedures prescribed in section 1882 of the Social Security Act (42 U.S.C. 1384ss) used in the certification of medicare supplemental policies (as defined in subsection (g)(1) of such section)) to be advertised, marketed, offered, or designed to provide coverage—

"(I) for not less than 12 consecutive months for each covered person,

"(II) on an expense incurred, indemnity, or prepaid basis,

"(III) for 1 or more medically necessary, diagnostic services, preventive services, therapeutic services, rehabilitation services, maintenance services, or personal care services, and

"(IV) provided in a setting other than an acute care unit of a hospital.

"(ii) COVERAGE SPECIFICALLY EXCLUDED.—Such term does not include any insurance policy or rider which is offered primarily to provide any combination of the following kinds of coverage:

"(I) Basic Medicare supplement coverage.

"(II) Basic hospital expense coverage.

"(III) Basic medical-surgical expense coverage.

"(IV) Hospital confinement indemnity coverage.

"(V) Major medical expense coverage.

"(VI) Disability income protection coverage.

"(VII) Accident only coverage.

"(VIII) Specified disease coverage.

"(IX) Specified accident coverage.

"(X) Limited benefit health coverage.

"(D) QUALIFIED ISSUER.—For purposes of subparagraph (A), the term 'qualified issuer' means any of the following:

"(i) Private insurance company.

"(ii) Fraternal benefit society.

"(iii) Nonprofit health corporation.

"(iv) Nonprofit hospital corporation.

"(v) Nonprofit medical service corporation.

"(vi) Prepaid health plan."

(b) EFFECTIVE DATE.—The amendment made by this Act shall apply to taxable years beginning after December 31, 1987.●

ADDITIONAL COSPONSORS

S. 629

At the request of Mr. BINGAMAN, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 629, a bill to establish literacy programs for individuals of limited English proficiency.

S. 1006

At the request of Mr. HECHT, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 1006, a bill entitled the "Geothermal Steam Act Amendments of 1987."

S. 1009

At the request of Mr. MCCONNELL, his name was withdrawn as a cosponsor of S. 1009, a bill to accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Interment of Civilians.

S. 1081

At the request of Mr. BINGAMAN, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1081, a bill to establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the U.S. population and the nutritional quality of the U.S. food supply, with provision for the conduct of scientific research and development in support of such program and plan.

S. 1389

At the request of Mr. MITCHELL, the names of the Senator from Tennessee [Mr. GORE], and the Senator from Delaware [Mr. ROTH] were added as cosponsors of S. 1389, a bill to amend the National Fish and Wildlife Foundation Establishment Act with respect to management requisition, and disposition of real property, reauthorization, and participation of foreign governments.

S. 1485

At the request of Mr. ROCKEFELLER, his name was added as a cosponsor of S. 1485, a bill to amend the Federal Aviation Act of 1958 to provide various protections for passengers traveling by aircraft, and for other purposes.

At the request of Mr. WILSON, his name was added as a cosponsor of S. 1485, supra.

At the request of Mr. FORD, the names of the Senator from Vermont [Mr. Leahy] and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of the bill S. 1485, supra.

S. 1586

At the request of Mr. KERRY, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 1586, a bill to provide financial assistance under the Education of the Handicapped Act to assist severely handicapped infants, children, and youth to improve their educational opportunities through the use of assistive device resource centers, and for other purposes.

S. 1601

At the request of Mr. MCCAIN, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 1601, a bill to permit the immigration of Vietnamese Amerasians to the United States.

S. 1774

At the request of Mr. PRYOR, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 1774, a bill to promote and protect taxpayer rights, and for other purposes.

S. 1790

At the request of Mr. GARN, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 1790, a bill to authorize the expansion of the National Air and Space Museum at Washington Dulles International Airport.

S. 1811

At the request of Mr. HEINZ, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 1811, a bill to provide a transitional funding method to ensure continued pension payments to steel industry retirees and to assure the viability of the private pension system, and for other purposes.

S. 1814

At the request of Mr. MELCHER, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 1814, a bill to provide clarification regarding the royalty payments owed under certain Federal onshore and Indian oil and gas leases, and for other purposes.

SENATE JOINT RESOLUTION 172

At the request of Mr. BRADLEY, the names of the Senator from Delaware [Mr. ROTH], the Senator from Vermont [Mr. STAFFORD], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of Senate Joint Resolution 172, a joint resolution to designate the period commencing February 21, 1988, and ending February 27, 1988, as "National Visiting Nurse Association Week."

SENATE JOINT RESOLUTION 174

At the request of Mr. SIMON, the names of the Senator from Utah [Mr. GARN], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of Senate Joint Resolution 174, a joint resolution designating the week beginning November 15, 1987, as "African American Education Week."

SENATE JOINT RESOLUTION 181

At the request of Mr. WILSON, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of Senate Joint Resolution 181, a joint resolution designating the week beginning February 1, 1988, as "National VITA Week."

SENATE JOINT RESOLUTION 196

At the request of Mr. PACKWOOD, the names of the Senator from Florida [Mr. CHILES], the Senator from Mississippi [Mr. STENNIS], the Senator from South Dakota [Mr. PRESSLER], the

Senator from Virginia [Mr. TRIBLE], and the Senator from Maine [Mr. MITCHELL] were added as cosponsors of Senate Joint Resolution 196, a joint resolution to designate February 4, 1988, as "National Women in Sports Day."

SENATE JOINT RESOLUTION 201

At the request of Mr. GARN, the names of the Senator from Wyoming [Mr. SIMPSON] and the Senator from Vermont [Mr. STAFFORD] were added as cosponsors of Senate Joint Resolution 201, a joint resolution to designate January 28, 1988, as "National Challenger Center Day" to honor the crew of the space shuttle *Challenger*.

SENATE RESOLUTION 303

At the request of Mr. KENNEDY, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Tennessee [Mr. GORE], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Oregon [Mr. PACKWOOD], the Senator from California [Mr. WILSON], the Senator from Arizona [Mr. MCCAIN], the Senator from Nevada [Mr. REID], the Senator from Wisconsin [Mr. KASTEN], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Alaska [Mr. STEVENS], the Senator from Nebraska [Mr. KARNES], the Senator from Colorado [Mr. WIRTH], the Senator from Oregon [Mr. HATFIELD], and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of Senate Resolution 303, a resolution to commend the efforts and commitment of the organizers and participants of "Justice For All Day," November 17, 1987.

SENATE RESOLUTION 308—TO LIMIT TIME ON THE MOTION TO PROCEED

Mr. BYRD (for himself, Mr. STEVENS, and Mr. PRYOR) submitted the following resolution; which was placed on the calendar:

S. RES. 308

Resolved, That rule VIII of the Standing Rules of the Senate is amended by inserting at the end thereof the following new paragraph:

"3. Debate on any motion to proceed to the consideration of any matter, other than an amendment to the Standing Rules of the Senate, made by the Majority Leader or the Minority Leader at any time other than the morning hour shall be limited to two hours, to be equally divided between and controlled by the Majority Leader and Minority Leader or their designees, at the conclusion of which, without any intervening action, the Senate shall proceed to vote in relation to the motion.".

SENATE RESOLUTION 309—TO LIMIT TIME ON THE MOTION TO PROCEED

Mr. BYRD (for himself, Mr. STEVENS, and Mr. PRYOR) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 309

Resolved, That rule VIII of the Standing Rules of the Senate is amended by inserting at the end thereof the following new paragraph:

"3. Dabate on any motion to proceed to the consideration of any matter, other than an amendment to the Standing Rules of the Senate, made by the Majority Leader or the Minority Leader at any time other than the morning hour shall be limited to two hours, to be equally divided between and controlled by the Majority Leader and Minority Leader or their designees, at the conclusion of which, without any intervening action, the Senate shall proceed to vote in relation to the motion.".

AMENDMENTS SUBMITTED

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATION, FISCAL YEAR 1988

LAUTENBERG (AND GRAHAM) AMENDMENT NO. 1098

Mr. LAUTENBERG (for himself and Mr. GRAHAM) proposed an amendment, which was subsequently modified, to the bill (H.R. 2890) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1988, and for other purposes; as follows:

In amendment numbered 1098, strike all after the word "After" and insert the following: "the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 24 months and one day thereafter, except that subsections (a) and (b) shall be null and void upon the date of enactment, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 90 minutes or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulation as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000."

LAUTENBERG AMENDMENT NO. 1099

Mr. LAUTENBERG proposed an amendment to amendment No. 1098 proposed by him to the bill (H.R. 2890) supra; as follows:

In amendment numbered 1098, strike all after the word "After" and insert the following: "the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 36 months and one day thereafter, except that subsections (a) and (b) shall be null and void upon the date of enactment, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 2 hours or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulations as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000."

CONRAD AMENDMENT NO. 1100

Mr. CONRAD proposed an amendment to the bill (H.R. 2890) supra; as follows:

On page 12, line 16, immediately before the period, insert a comma and the following: "but in no event shall an applicant for an airway science grant be denied such grant, in whole or in part, on the basis that the applicant had previously received funds under the airway science programs".

MURKOWSKI (AND STEVENS) AMENDMENTS NOS. 1101 AND 1102

Mr. MURKOWSKI (for himself and Mr. STEVENS) proposed two amendments to the bill (H.R. 2890) supra; as follows:

AMENDMENT NO. 1101

At the end of the bill, add the following:

SEC. . DENIAL OF FUNDS FOR PROJECTS USING CERTAIN SERVICES OF FOREIGN COUNTRIES THAT DENY FAIR MARKET OPPORTUNITIES

(a) IN GENERAL.—

(1) None of the funds appropriated by this Act may be used to carry out within the United States, or within any territory or possession of the United States, any transportation project which uses any service of a foreign country during any period in which such foreign country is listed by the United States Trade Representative under subsection (c).

(2) Paragraph (1) shall not apply with respect to the use of a service in a project if the Secretary of Transportation determines that—

(A) the application of paragraph (1) to such service would not be in the national interest,

(B) services offered in the United States, or in any foreign country that is not listed under subsection (c), of the same class or kind as such service are insufficient or are not of a satisfactory quality, or

(C) exclusion of such service from the project would increase the cost of the overall project by more than 20 percent.

(b) DETERMINATIONS.—

(1) By no later than the date that is 30 days after the date on which each report is submitted to the Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C.

2241(b)), the United States Trade Representative shall make a determination with respect to each foreign country of whether such foreign country—

(A) denies fair and equitable market opportunities for services of the United States in procurement, or

(B) fair and equitable market opportunities for services of the United States in bidding,

for construction projects that cost more than $500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled by such foreign country.

(2) In making determinations under paragraph (1), the United States Trade Representative shall take into account information obtained in preparing the report submitted under section 181(b) of the Trade Act of 1974 and such other information as the United States Trade Representative considers to be relevant.

(c) LISTING OF FOREIGN COUNTRIES.—

(1) The United States Trade Representative shall maintain a list of each foreign country with respect to which an affirmative determination is made under subsection (b).

(2) Any foreign country that is added to the list maintained under paragraph (1) shall remain on the list until the United States Trade Representative determines that such foreign country does permit the fair and equitable market opportunities described in subparagraphs (A) and (B) of subsection (b)(1).

(3) The United States Trade Representative shall annually publish in the Federal Register the entire list required under paragraph (1) and shall publish in the Federal Register any modifications to such list that are made between annual publications of the entire list.

(d) DEFINITIONS.—For purposes of this section—

(1) The term "service" means any engineering, architectural, or construction service.

(2) Each foreign instrumentality, and each territory or possession of a foreign country, that is administered separately for customs purposes shall be treated as a separate foreign country.

(3) Any service provided by a person that is a national of a foreign country, or is controlled by nationals of a foreign country, shall be considered to be a service of such foreign country.

AMENDMENT No. 1102

On page 59, line 6, strike out "either".

On page 59, line 9, strike out "or".

On page 59, line 14, strike out the period and insert in lieu thereof "; or ".

On page 59, between lines 14 and 15, insert the following:

(3) constructed to the geometric and construction standards adequate for current and probable future traffic demands and for the needs of the locality and is designated by the Secretary of Transportation as part of the Interstate System in accordance with section 139(c) of title 23, United States Code.

SYMMS AMENDMENT NO. 1103

Mr. D'AMATO (for Mr. SYMMS) proposed an amendment to the bill (H.R. 2890) supra; as follows:

Strike Sec. 332 (page 60) and insert in lieu thereof the following:

"Sec. 332. Section 149(b) (82) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 is amended to read as follows: "(82) subsections (a) (82) and (a) (83) $2,300,000;". Section 149(b) (83) of such Act is repealed, and succeeding paragraphs are renumbered accordingly."

LAUTENBERG AMENDMENT NO. 1104

Mr. LAUTENBERG proposed an amendment to the bill (H.R. 2890) supra; as follows:

On page 56 after line 6, strike all through "$2000" on the last line of the agreed to Lautenberg amendment, as modified, and insert in lieu thereof the following:

"SEC. 327 after the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 24 months thereafter, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 90 minutes or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulations as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty inaccordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000."

AIR PASSENGER PROTECTION ACT

DANFORTH (AND OTHERS) AMENDMENT NO. 1105

Mr. DANFORTH (for himself, Mr. HOLLINGS, Ms. MIKULSKI, Mr. DOLE, Mr. WILSON, Mr. MCCAIN, Mr. CHAFEE, Mr. STEVENS, Mr. DECONCINI, Mr. HELMS, and Mr. EXON) proposed an amendment to the bill (S. 1485) to amend the Federal Aviation Act of 1958 to provide various protections for passengers traveling by aircraft, and for other purposes; as follows:

At the end of the bill, add the following:

SEC. . (a) The Congress finds that—

(1) alcohol and drug abuse poses significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, railroads, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the operation of aircraft, railroads, trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) the testing of uniformed personnel of the armed forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

(b)(1) Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"ALCOHOL AND CONTROLLED SUBSTANCES TESTING

"TESTING PROGRAM

"SEC. 613. (a)(1) The Administrator shall, in the interest of aviation safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires air carriers and foreign air carriers to conduct pre-employment, periodic recurring, random and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(2) The Administrator shall establish a program applicable to employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions. Such program shall provide for pre-employment, periodic recurring, random and post-accident testing, and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(3) In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to such an individual, or the disqualification or dismissal of any such individual, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such individual has used, without lawful authorization, alcohol or a controlled substance.

"PROHIBITION ON SERVICE

"(b)(1) No person may use, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section and serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(2) No individual who is determined to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section shall serve as an airman, crewmember, airport security screening contract personnel, air carrier em-

ployee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(3) Any such individual determined by the Administrator to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section who (A) refuses to undertake, (B) fails to complete a rehabilitation program described in subsection (c) of this section, (C) has previously undertaken or completed such a rehabilitation program, or (D) has been determined by the Administrator to have served as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions while impaired by or under the influence of alcohol or a controlled substance, shall not be permitted to perform the duties relating to air transportation which such individual performed prior to the date of such determination.

"PROGRAM FOR REHABILITATION

"(c)(1) Each air carrier and foreign air carrier shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of employees referred to in subsection (b) of this section in need of assistance in resolving problems with the use, without lawful authorization, of alcohol or controlled substances. Each air carrier and foreign air carrier is encouraged to make such program available to all of its employees other than employees referred to in subsection (b) of this section. Nothing in this subsection shall preclude any air carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier or foreign air carrier.

"(2) The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

"PROCEDURES

"(d) In establishing the program required under subsection (a) of this section, the Administrator shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"EFFECT ON OTHER LAWS AND REGULATIONS

"(e) (1) No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to employees of an air carrier or foreign air carrier, or to the general public.

"(2) Nothing in this section shall preclude the Administrator from adopting or continuing in effect other regulations intended to protect persons or property on the ground or in the air from the hazards to safety associated with the potential use of alcohol or controlled substances by airmen, crewmembers, airport security screening contract personnel, air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), or employees of the Federal Aviation Administration) with responsibility for safety-sensitive functions.

"DEFINITION

"(f) For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Administrator has determined poses a risk to transportation safety.".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end thereof the following:

"Sec. 613. Alcohol and controlled substances testing.

"(a) Testing program.

"(b) Prohibition on service.

"(c) Program for rehabilitation.

"(d) Procedures.

"(e) Effect on other regulations.

"(f) Definition.".

(c) Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following:

"(l)(1) The Secretary shall, within one year after the date of enactment of this subsection, review existing rules, regulations, standards, and orders governing alcohol and drug use in railroad operations for the purpose of determining whether they are adequate to ensure safety. In conducting such review, the Secretary shall specifically—

"(A) require that all railroad employees responsible for safety-sensitive functions (as determined by the Secretary) be subject to testing on a random basis for the use, without lawful authorization, of alcohol or a controlled substance;

"(B) consider application of existing rules, regulations, orders, and standards to other categories of employees, including employees responsible for the safety of passengers, railroad rolling stock, or track and related structures;

"(C) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(D) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, standards or orders issued under this Act.

Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, standards and orders governing alcohol and drug use in railroad operations issued before the date of enactment of this subsection.

"(2) In carrying out the provisions of this subsection, the Secretary shall develop requirements which shall—

"(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(B) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(i) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(ii) specify the drugs for which individuals may be tested; and

"(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(C) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any employee shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(D) require that all laboratories involved in the testing of any employee under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(E) provide for the confidentiality of test results and medical information (other than

information relating to alcohol or a controlled substance) of employees, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(F) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(3) For the purposes of this subsection, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary has determined poses a risk to transportation safety.".

(d)(i) The Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end the following:

"SEC. 12020. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) REGULATIONS.—The Secretary shall, in the interest of commercial motor vehicle safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires motor carriers to conduct pre-employment, periodic recurring, random and post-accident testing of the operators of commercial motor vehicles, and testing upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(b) TESTING.—(1) In promulgating such regulations, the Secretary shall require that post-accident testing of the operator of a commercial motor vehicle be conducted in the case of any accident involving a commercial motor vehicle in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

"(2) Nothing in subsection (a) of this section shall preclude the Secretary from providing in such regulations that such testing be conducted as part of the medical examination required by subpart E of part 391 of title 49, Code of Federal Regulations, with respect to those operators of commercial motor vehicles to whom such part is applicable.

"(c) PROGRAM FOR REHABILITATION.—The Secretary shall promulgate regulations setting forth requirements for a rehabilitation program for the identification and opportunity for treatment of operators of commercial motor vehicles who are determined to have used, without lawful authorization, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such operators shall be required to participate in such program. Nothing in this subsection shall preclude a motor carrier from establishing a program under this subsection in cooperation with any other motor carrier.

(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a) of this section, the Secretary shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) for employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to commercial motor vehicle employees, or to the general public.

"(f) APPLICATION OF PENALTIES.—(1) Nothing in this section shall be construed to supersede any penalty applicable to the operator of a commercial motor vehicle under this Act or any other provision of law.

"(2) The Secretary shall determine appropriate sanctions for commercial motor vehicle operators who are determined, as a result of tests conducted and confirmed under this section, to have used, without lawful authorization, alcohol or a controlled substance but are not under the influence of alcohol or a controlled substance, as provided in this title.

"(g) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary had determined poses a risk to transportation safety.".

(d)(2) The table of contents of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end thereof the following:

"Sec. 12020. Alcohol and controlled substances testing.".

(e)(1) The Secretary shall design, within nine months after the date of enactment of this section, and implement, within fifteen months after the date of enactment of this section, a pilot test program for the purpose of testing the operators of commercial motor vehicles on a random basis to determine whether an operator has used, without lawful authorization, alcohol or a controlled substance.

(2) The Secretary shall solicit the participation of States which are interested in participating in such program and shall select four States to participate in the program.

(3) The Secretary shall ensure that the selection made pursuant to this section is representative of varying geographical and population characteristics of the Nation, and takes into consideration the historical geographical incidence of commercial motor vehicle accidents involving loss of human life.

(4) The pilot program authorized by this section shall continue for a period of one year. The Secretary shall consider alternative methodologies for implementing a system of random testing of operators of commercial motor vehicles.

(5) Not later than thirty months after the date of enactment of this section, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the results of the pilot program conducted under this section. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for the random testing of operators of commercial motor vehicles.

(6) For purposes of carrying out this subsection, there shall be available to the Secretary $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for fiscal year 1988.

(7) For purposes of this subsection, the term—

(1) "commercial motor vehicle" shall have the meaning given to such term in section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5241); and

(2) "Secretary" means the Secretary of Transportation.

ADAMS AMENDMENT NO. 1106

Mr. ADAMS proposed an amendment to the bill S. 1485, supra; as follows:

Insert at the appropriate place:

That (a) section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) is amended by adding at the end the following:

"FAIR TREATMENT OF EMPLOYEES

"(g) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to adversely affect the wages and working conditions, including the seniority, of any air carrier employees, labor protective provisions calculated to mitigate such adverse consequences, including procedures culminating in binding arbitration, if necessary, shall be imposed by the Secretary as a condition of approval, unless the Secretary finds that the projected costs of protection would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving there will be no adverse employment consequences or that projected costs of protection would be excessive.".

(b) The item relating to section 408 in the table of contents of the Federal Aviation Act of 1958 is amended by adding at the end the following:

ADAMS AMENDMENT NO. 1107

Mr. ADAMS proposed an amendment to amendment No. 1106 proposed by him to the bill S. 1485, supra; as follows:

Strike all of the language proposed in amendment No. and insert the following:

SEC. 2. Section 1601(a)(7) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1551(a)(7)) is amended by striking all after "in effect on" and inserting in lieu thereof the following: "the date of enactment of the Airline Merger Transfer Act of 1987, except to the extent any such sections relate to labor protection provisions; *Provided*, That rights, duties, and obligations arising (1) in proceedings commenced before the Department of Transportation prior to April 1, 1987, or (2) pursuant to final orders adopted by the Secretary of Transportation or the Board under sections 408 and 409 and section 414 (relating to such sections 408 and 409) prior to the effective date of termination shall be administered and, as necessary, adjudicated, as if such sections were not terminated.".

SEC. 3. (a) Section 7 of the Clayton Act (15 U.S.C. 18) is amended—

(1) in the first and second paragraphs, by inserting ", nor any air carrier or foreign air carrier subject to the Federal Aviation Act of 1958, person controlling such air carrier or foreign air carrier, other common carrier, or person substantially engaged in the business of aeronautics," immediately after "Federal Trade Commission" wherever it appears; and

(2) in the last paragraph, by striking "Secretary of Transportation,".

(b) Section 11 of the Clayton Act (15 U.S.C. 21) is amended—

(1) in subsection (a), by (A) striking "in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958;", and (B) inserting ", except air carriers and foreign air carriers subject to the Federal Aviation Act of 1958," immediately after "other character of commerce"; and

(2) in subsections (b) through (l), by striking "Commission, Board, or Secretary" and "commission, board, or Secretary" wherever they appear and inserting in lieu thereof "commission or board".

SEC. 4. (a) Section 408(b) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378(b)) is amended by adding at the end the following:

"(4) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to affect adversely the wages and working conditions (including the seniority) of any air carrier employee, the Secretary shall impose labor protection provisions calculated to mitigate such adverse consequences, including procedures resulting in binding arbitration, if the Secretary considers such procedures to be necessary. The Secretary shall impose such provisions unless the Secretary finds that the projected costs of imposing such provisions would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving that there will be no adverse employment consequences or that the projected costs of the imposition of such protection would be excessive.".

(b)(1) Section 1601 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1551) is amended by adding at the end the following:

"LABOR PROTECTION PROVISIONS

"(f) The authority of the Department of Transportation in section 408 relating to labor protection provisions, the authority in section 204 relating to the exercise and performance of powers and duties under section 408, and the authority to make exemptions in section 416 relating to the requirements of section 408, are transferred to the Department of Labor.".

(2) The item in the table of contents of the Federal Aviation Act of 1958 relating to section 1601 is amended by adding at the end the following:

"(F) LABOR PROTECTION PROVISIONS.".

(c) All rules and regulations issued by any agency or official of any agency in the performance of any duty transferred by subsection (b) of this section shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the Secretary of Labor, a court of competent jurisdiction, or by operation of law.

SEC. 5. (a) The Secretary of Transportation shall compile, on a quarterly basis, information regarding the fares charged and frequency of service offered by air carriers during the previous quarter for scheduled airline service to or from the fifty United States airports with the greatest number of annual enplanements, as determined by the Secretary, at which any one air carrier provides more than 50 percent of the total number of flights offered to or from such airport.

(b) The Secretary of Transportation shall retain any information compiled under subsection (a) of this section of a period of five years after the date of its transmittal.

(c) As used in this Act, the term "air carrier" has the meaning given to such term in section 101(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(3)).

NOTICES OF HEARINGS

SELECT ON COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding the following:

On Friday, October 30, 1987, beginning at 9 a.m. in Senate Russell 485, a markup on S. 1703, amendments to the Indian Self-Determination and Education Act; S. 795, San Luis Rey Water Rights Settlement Act; and, further discussion of the Special Committee on Investigations;

On Thursday, November 5, 1987, beginning at 2 p.m., in Senate Russell 485, hearings on the Implementation of the Omnibus Drug Act (Public Law 99-570, title IV, part C) and, on S. 1684, Florida Seminole Water Claims Settlement; and

On Tuesday, November 10, 1987, beginning at 9 a.m., in Senate Russell 485, an oversight hearing on the Implementation of the Indian Child Welfare.

Those wishing additional information should contact the committee at 224-2251.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for the public that a nomination hearing has been scheduled before the full Committee on Energy and Natural Resources.

The committee will hear testimony on the nomination of Earl E. Gjelde for the position of Under Secretary of the Interior and Henry M. Ventura for the position of Assistant Secretary of the Interior for Policy, Budget, and Administration.

The hearing will take place Friday, November 13, 1987, 9:30 a.m. in room SD-366 of the Senate Dirksen Office Building in Washington, DC.

Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of a hearing before the Committee on Energy and Natural Resources to receive testimony regarding S. 1567 and H.R. 2858, bills to provide for refunds pursuant to rate decreases under the Federal Power Act.

The hearing is scheduled for November 18, 1987 beginning at 2 p.m. in room 366 of the Dirksen Senate Office Building.

For further information regarding the hearing you may wish to contact Bill Conway, senior counsel for the committee, telephone (202) 224-7149. Those wishing to testify or who wish to submit a written statement for the hearing record should write to the Committee on Energy and Natural Resources, room SD-364, Dirksen Senate Office Building, Washington, DC 20510.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests.

The hearing will take place November 12, 1987, at 2 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following measures currently pending before the subcommittee.

H.R. 2416, a bill to establish the Jimmy Carter National Historic Site and Preservation District in the State of Georgia, and for other purposes; and

H.R. 2325, a bill to authorize the acceptance of a donation of land for addition to Big Bend National Park, in the State of Texas.

Those wishing information about testifying at the hearing or submitting written statements should write to the Subcommittee on Public Lands, National Parks and Forests, U.S. Senate,

room SD-364, Dirksen Senate Office Building, Washington, DC. 20510. For further information, please contact Tom Williams at 224-7145 or Beth Norcross at 224-7933.

Mr. BUMPERS. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests.

The hearing will take place November 17, 1987, at 2 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following measure currently pending before the Subcommittee.

S. 1544, a bill to amend the National Trails System Act to provide for cooperation with State and local governments for the improved management of certain Federal lands, and for other purposes.

Those wishing information about testifying at the hearing or submitting written statements should write to the subcommittee on Public Lands, National Parks and Forests, U.S. Senate, room SD-364, Dirksen Senate Office Building, Washington, DC 20510.

For further information, please contact Tom Williams at 224-7145 or Beth Norcross at 224-7933.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, October 29, 1987, to continuation of hearings to receive testimony on the status of the Department of Energy's efforts to address issues concerning the defense materials production reactors located in the United States.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Thursday, October 29, to hold hearings on the nomination of Frank Nebeker, to be director of the Office of Government Ethics.

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

SUBCOMMITTEE ON NUCLEAR REGULATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Nuclear Regulation, Committee of Environment and Public Works, be authorized to meet during the session of the Senate on Thursday, October 29, beginning to conduct a hearing on legislative reorganization proposals for the Nuclear Regulatory Commission.

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

SUBCOMMITTEE ON ANTITRUST, MONOPOLIES, AND BUSINESS RIGHTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Antitrust, Monopolies, and Business Rights of the Committee on the Judiciary, be authorized to meet during the session of the Senate on October 29, 1987 to hold a hearing on S. 1523, Racketeering Influence and Corruption Organization Act.

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

COMMITTEE ON THE JUDICIARY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, October 29, 1987.

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

ADDITIONAL STATEMENTS

HONORING CAPTAIN JOHN HUNT

● Ms. MIKULSKI. Mr. President, much attention has been focused lately on the involvement of U.S. Armed Forces in the escalating conflict in the Persian Gulf. But in debating the War Powers Act and the mission of our forces in the region, scant attention has been given to the heroism of those men and women of the merchant marine currently serving in that part of the world.

The sailors and captains of the Merchant Marine are as dedicated to the freedom of international waters as our armed naval forces.

They willingly risk the dangers of fanatic terrorism.

They bravely maneuver their vessels through the world's most troubled waters.

They courageously keep the shipping lanes open, and they do so on commercial vessels that are utterly defenseless to the surprise attacks of terroist mines and missiles.

Mr. President, one particular member of the merchant marine deserves special commendation. His name is Captain John Hunt, whose U.S.-flag oil tanker, the *Sea Isle City*, was torn apart without warning by the impact of an Iranian silkworm missile. Captain Hunt is a long standing member of the International Association of Masters Mates and Pilots whose headquarters is in Linthicum, MD. He was on the bridge of the *Sea Isle City* when the missile sped out of the horizon exploding in a shower of glass molten metal 25 feet below him. As the American flag floated over the smoking deck, Captain Hunt lay burned, bleeding, and blinded. He is now lying in an Egyptian hospital bed, and it is uncertain if he will ever recover his sight.

As we continue to confront the menace of Iranian terrorism in the gulf, let us remember, along with our Armed Forces in the region, those men and women of the Merchant Marine who, like Captain Hunt, are willing to take on the dangers facing the free world even when the price is their own lives. Mr. President, Captain Hunt is an example of courage to all of us. I hope and pray that he will fully recover from his wounds and return to active duty.

Mr. President, I would ask that the Washington Post article of Monday, October 19, 1987 concerning the resilient spirit of the American Captain be inserted in the RECORD.

The article follows:

[From the Washington Post, Oct. 19, 1987]

BLINDED U.S. CAPTAIN RECOVERS AFTER ATTACK—GLASS SPRAYED HEAD WHEN MISSILE STRUCK

(By Patrick E. Tyler)

KUWAIT, Oct. 18.—John Hunt, the American captain whose U.S.-flag oil tanker, the Sea Isle City, was mauled by an Iranian Silkworm missile Friday, awoke today in an intentive-care unit here after 54 hours of unconsciousness, his face bandaged to cover his blinded eyes and his upper body swollen under a black-thread latticework of stitches.

As physicians tended lacerated crew members at a hospital near Kuwait's oil port, shipyard workers poured over the twisted superstructure of the Sea Isle City as it sat motionless against a concrete pier in Kuwait's downtown harbor.

An American flag fluttered over its fire-blackened bridge tower, raised just before reporters were allowed on board as Washington was deciding to retaliate against Iran for the missile strike against a U.S. flag-ship in Kuwait waters.

At Kuwait's Addan Hospital, the 60-year-old American captain was sleeping when four reporters were escorted to his bedside by an Egyptian medical team.

The physicians said Hunt was fully conscious at 2 p.m., when they weaned him off drugs used while an artificial respirator controlled his breathing during two days of recovery from marathon surgical sessions Friday.

Hunt was in "very high spirits," according to the hospital's chief of intensive care, Jalai Ghouhary, and even showed a sense of humor when he told the physician that he did not want to go back on the respirator. "Look, doctor, don't make me a zombie again," Hunt said.

But medical sources said Hunt had not yet been told that the spray of jagged glass fragments that shredded his head and torso when the powerful Silkworm warhead exploded 25 feet below the bridge had irreparably damaged his eyes.

Cotton gauze was taped over his eyes. His reddish blond hair, gray at the temples, rested against the green sheet of the hospital bed.

Hunt's left arm, in a plaster cast from the elbow down, was in traction. His right hand and forearm also were bandaged.

The hospital's chief of surgery, Mohammed Mehrez, said Hunt was in serious but stable condition and would require at least another two weeks of hospitalization.

The doctor said that when Hunt was rushed from the burning ship to the hospital by hellicopter Friday morning, he was conscious and called out, "Where am I?" and "I can't see," and asked to be sedated for his pain.

In an initial five hours of surgery, the medical team dug dozens of pieces of glass out of Hunt that showed up on X-rays because of the lead in the heavy marine plate.

"The captain lost a hell of a lot of blood," Mehrez said, and it took more than 60 sutures to stitch dozens of lacerations from his waist up.

Hunt underwent surgery to dig glass fragments out of his abdominal wall and three more hours of surgery on his eyes, hospital officials said.

In a room down the corridor from Hunt, Italian Filippo Tucci, 53, captain of the Sea Isle City before it was reregistered under the U.S. flag in August, also was recovering from serious cuts and damage to his left eye.

Tucci's nurse handed him a plastic container with three large glass fragments, one of them the size of a marble, that had been removed from his eye. Medical sources said it was uncertain whether he would recover sight in that eye.

In a halting voice, Tucci told reporters, that he and Hunt had been standing side-by-side on the bridge looking through the large windows. Two miles ahead was the offshore "sea island" loading terminal, about nine miles from Shuaiba Port.

The 81,283-ton tanker was moving toward the oil-laden terminal at about three miles per hour when Tucci spotted the missile right before impact.

"All we could say was, 'My God, there's a missile,' and then it hit," Tucci said. "We received a tremendous shock."

Stunned and bleeding profusely, Tucci said, "I saw Capt. Hunt was on the floor and I called to him."

Hunt replied, "Yes, Capt. Tucci, I can't see anything."

Tucci said he realized the ship was still bearing down on the oil terminal and he dragged himself to where he could shout to an engineer to turn the ship, cut power and drop anchor.

"I could imagine what kind of disaster there would be if we struck the sea island," Tucci said.

In addition to the officers, 10 crewmen were hospitalized. Three Filipino crewmen and a British engineer, the only crew member who suffered burns, remain there.

At Kuwait's downtown harbor, engineers from Kuwait Oil Tanker Co., which owns the Sea Isle City through a U.S. subsidiary, said repairs will take more than a month.

Company officials showed reporters hundreds of what they said were fragments from the Silkworm strewn over the decks and throughout the wrecked bridge tower on the stern. The fragments included pieces of twisted sheet metal from the skin of the missile, but also heavy steel fragments of the propulsion system that controlled its flight path, according to the engineers.

Some of the fragments were etched with five-digit numerals and others still bore wiring and copper coils that one engineer speculated were to ignite the warhead.

The damage inside the ship left no doubt of the missile's explosive power. The missile hit a ventilating tower on the deck just in front of the bridge, causing the warhead to detonate just before it hit the superstructure of the bridge.

The force of the blast blew out the bridge windows 35 feet above the impact point, and the warhead still had enough power to rip through steel bulkheads in the superstructure. Engineers said the shrapnel tore through 10 steel barriers before the last chunk of hot metal dug into a steel wall in the rear of the upper boiler room.●

GETTING THE BOMBS OUT

● Mr. HATFIELD. Mr. President, the voices of those who preach strength through peace are all too often drowned out by the violence of a world which worships strength through peace. But they are there, Mr. President—the voices of those who preach strength through peace are there and Colman McCarthy believes they ought to be heard.

In the autumn edition of the University of Portland magazine, McCarthy asks a simple question: "If peace is what every government says it seeks, and peace is the yearning of every heart, why aren't we studying it and teaching it in schools?" It is a valid question, and I ask that "Getting the Bombs Out" be printed in the RECORD.

GETTING THE BOMBS OUT

(By Colman McCarthy)

A question settled in my mind a few years ago and refused to leave until I not only answered it but also acted on the answer. The question: if peace is what every government says it seeks, and peace is the yearning of every heart, why aren't we studying it and teaching it in schools? Governments and citizens aren't proclaiming that mathematics, languages or science are their goals. Yet students are required to take those and other courses as if the future of the species depended on them. At commencements, graduates are told to go into the world as peacemakers. Yet in most schools, peace is so unimportant that no place is found for it in the curriculum.

Rather than whine about this, which is what too many in the syndicated column trade are content to do most of the time, I decided to go into the schools myself. Four years ago I began teaching courses in alternatives to violence. After being with some 800 students in three universities and one high school, I can give the preliminary report that, contrary to what some might say, with opened minds and receptive hearts, peace can be taught and learned.

I use the qualification "preliminary" because peace, like love, is a cheapened word. Nuclear missiles are now called "peacekeepers," and are presumably equipped with multiple peaceheads. We are told repeatedly that the way to ensure peace is to be ready for war. Nearly all world governments, with an annual global arms budget of $900 billion, preach peace through strength rather than strength through peace.

It isn't enough to condemn the militarists or the latest Pharoah. They do what they are trained to do: deal with conflicts through fists, guns, armies or nukes. They believe wholeheartedly—and deserve credit for the intensity of their beliefs—that violence is the way to stop violence. It is obvious that history proves that approach wrong—if war was effective all our problems would have been resolved thousands of years ago. But the obviousness would be embraced by more citizens if the alternatives to fists, guns, armies and nukes were taught and learned. If the alternatives aren't made available, how can they be applied?

As a pacifist, I am uneasy with the term "peace studies." It will do for now but exactness will eventually be needed. What I have been teaching is peace through nonviolence. That, too, is somewhat imprecise. The sharpest phrase is peace through soul force, or to rely on Gandhi's favorite word, satyagraha. Nonviolence isn't just about ending wars. It's about creating peace in our own hearts, often the last place many people ever find it. Between 1950 and 1978, the suicide rate among teenagers in the United States rose by more than 170 percent. Some 20,000 murders are committed annually in the United States. Violent sports like football, boxing, and hockey are glorified. Child abuse and spouse abuse are rising. About 25 million abortions are performed in the world every year, 1.5 million in the United States alone.

Studying peace through nonviolence is as much about getting the bombs out of our hearts as it is about getting them out of the Pentagon budget. Every problem we have, every conflict, whether among our family or friends, or internationally among governments, will be addressed either through violent force or nonviolent force. No third option exists. I teach my classes because I believe in nonviolent force—the force of justice, the force of love, the force of sharing wealth, the force of ideas, the force of organized resistance to corrupt power. Fighting with those kinds of forces is the essence of nonviolence. The first class of every semester I teach I ask my students, "Is anyone here armed?" No one has ever raised a hand. "You are all armed," I reply. "You're armed with ideas and you're in school to become armed with more ideas."

Occasionally a student will come back with the charge that I asked a trick question. Of course I did. Nonviolence is a tricky subject. The beauty and sanity of it doesn't get into our heads easily or automatically. It takes years and years of study. Why do we dismiss nonviolence so quickly by saying that it's a wonderful theory but unreal, yet we are willing to go slowly with other complex subjects?

After I ask the question about arms, I pose a second one by listing 10 names to be identified: U.S. Grant, Robert E. Lee, Dwight Eisenhower, George Patton, William Westmoreland, Jane Addams, Jeannette Rankin, A.J. Muste, Adin Ballou, and Dorothy Day. Everyone can routinely identify the first five. All are generals. It is rare that anyone knows the second five: all believers or practitioners of nonviolence. A few take a guess that the last person was an actress and singer, as in Doris Day.

The students aren't to blame for knowing only the first five names. In grammar school and high school, and continuing through college, they are taught the history of America's seven declared wars and a fair portion of the 137 undeclared wars. Violence is taught as lore—the Alamo, Custer's Last Stand, the ride of Paul Revere, Lexington and Concord, Gettysburg. If SAT scores were based on high schoolers' knowledge of bloodshed and militarism, we would have a nation of young geniuses.

To teach peace through nonviolence is to give the young a chance to develop a philosophy of force. It's to expose them to the history, techniques, and practitioners of nonviolence. I often think that college is too late. Courses on nonviolence should begin in kindergarten and first grade, and continue through grammar school, junior high and

senior high school. To choose to live by a philosophy of nonviolent force is to choose Jesus over Caesar, Vincent de Paul over Napoleon, William Penn over George Washington, Jeannette Rankin over Franklin Roosevelt, Tolstoy over Lenin, Dorothy Day over Lyndon Johnson, Daniel Berrigan over Ronald Reagan.

Students, or at least the wary ones, often say they are glad former flower children like me occasionally turn up on college faculties, but in the real world nonviolence won't work and hasn't worked. Look what happened, they say, to Jesus, Gandhi, King and a lot of other pacifists who were killed. I answer with the only honest reply available. Nonviolence is a risky philosophy to live by. It is no guarantee of safety. It's a failure. All that can be said of it is that it's less of a failure than violence.

Those who prefer violent force, I tell my students, as when a government sends its army to change the behavior of another government that has an army of its own to say that its behavior needs no changing, must justify the deaths of this century's 78 million war victims. (The number is a 500 percent increase over the last century.) Those who choose the handgun as the most effective way to control or persuade the next person need to talk to the 10,000 people who will be killed and shot in the next year. Those who prefer violent force must explain the more than 40 wars or conflicts raging in the world today, killing an estimated 41,000 people a month—most of them poor boys slaughtered by other poor boys. Those who believe that nothing is tastier than a juicy sirloin must explain where America's flesh eaters get the right to impose death every day on 15 million mammals, fowl and fish. Those who believe America is a generous nation must account for the 38,000 children who die in the Third World every day from diseases that could be prevented by vaccinations that cost $10 per child. The Congressional Research Office reports that since 1977, U.S. development and food aid to Third World nations has decreased by 16 percent while military aid has increased 53 percent.

This school year I am serving as adjunct professor at two universities. I will teach a three credit course at each. Shelves of books are available, but I have never been much for loading students with required books. If I am effective as a teacher—if my love for the subject is contagious—students will want to read on their own, perhaps for a lifetime, after the course is over. The best education is self-education. A teacher serves the student merely by showing why a subject is worth loving and how the soul is uplifted by studying it and applying it. And nothing is more applicable to life than nonviolence.

I recommend books, but for each class I supply readings and base each class on them. We discuss, debate, and analyze. For about 20 minutes at the end, I pose a question and set the students to writing down their views. In-class writing is essential. Few students write enough as it is, and fewer still are asked by their teachers merely to express their opinions. These in-class papers aren't graded; I give them back with my comments. If trust is established, students will relish the chance to mix it up intellectually with their teacher.

This current semester, my course, "Alternatives to Nonviolence," is based on 14 classes. I'm expecting it to go like this:

Class one. Readings: Gandhi. In-class writing assignment: If Gandhi were alive and came to campus to give a lecture, what do you think he would say? What would the students—and faculty—think of his message?

Class two. Readings: Dorothy Day. In-class writing assignment: On your way home tonight, you are approached by a homeless person who asks for a place to spend the night. This person is smelly, unkempt and looks decidedly unappreciative of any largess you might offer. What do you say and do?

Class three. Readings: Gene Sharp, on instances where nonviolence has worked. In-class writing assignment: Are the techniques of the Danish resistance to the Nazis applicable today, say, if the Soviets were to invade the United States or the United States were to invade Nicaragua?

Class four. Readings: Carol Ascher. In-class writing assignment: Comment on Ascher's belief, "The problem for women who want to take a nonviolent stance in this extremely violent world is, in fact, rather like the problem for men who decide to become pacifists while on the battlefield. They must invent tactics, strategies, and states of mind which take them out of real-world and internalized vicitimization. Insofar as it is possible to get off the battlefield, they must do so. But men can shoot their guns in the air, volunteer to drive an ambulance, or go AWOL. Women in their homes and in the cities today have a more difficult time discovering their demarcations of the battlefield."

Class five. Readings: Joan Baez. In-class reading assignment: Give your views on Baez's commitment to nonviolence, especially her summary of how most people look at it. "You take nonviolent warfare somewhere in the world and people go at it through strikes or boycotts for a two-week period. At the end of two weeks, if five people get killed, the reaction is, 'I told you it wouldn't work.' But if you take armed struggle—where you feel as though your're defending yourself because you have those conventional weapons—and you fight in the streets for two weeks, and at the end of the two weeks 20,000 people are dead, nobody says, 'I told you it wouldn't work.' They say, 'That's war.'"

Class six. Readings: Paul Hanley Furfey and Sidney Len. In-class writing assignment: Compose an editorial on Secretary of State George Shultz's refusal in August 1985 to meet with a visiting delegation of Japanese A-bomb survivors, while agreeing on the same day to pose for promotional photographs with Japanese sumo wrestlers.

Class seven. Readings: Thomas Merton. In-class writing assignment: Do you think Merton would have been more effective as a peacemaker outside his monastery than in it?

Class eight. Readings: Philip Halle. In-class writing assignment: Was Le Chambon, the French village that practiced non-violence when the Nazis marched in, merely a fluke of history, or could its methods be applied elsewhere?

Class nine. Readings: Leo Tolstoy. In-class writing assignment: Do you agree or disagree with Tolstoy that patriotism is dangerous and useless?

Class ten. Readings: Vic Sussman, Isaac Bashevis Singer, Scott Nearing, and Dick Gregory. In-class writing assignment: Do you agree or disagree that eating animal corpses is unethical, unhealthy, and economically wasteful?

Class eleven. Readings: Martin Luther King, Jr. In-class writing assignment: Offer your thoughts on King's belief that "a nation that continues year after year to spend more on military defense than on programs of social uplift is approaching spiritual death."

Class twelve. Readings: Pope John XXIII. In-class writing assignment: Comment on Pope John's statement, "The Russian people are a wonderful people. We must not condemn them because we do not like their political system. They have a deep spiritual inheritance which they have not lost. We can talk with them. We must always try to speak to the goodness that is in people. Nothing is lost in the attempt. Everything may be lost if people do not find a way to work together to save peace."

Class thirteen. Readings: Merle Shain. In-class writing assignment: compose a marriage contract for yourself that shows how we can exist lovingly with the person next to us.

Class fourteen. Readings: Milton Mayer. In-class writing assignment: Mayer gave a commencement address in which he told the graduates that "the world will change you faster, more easily, and more durably than you will change it. If you undertake only to keep the world from changing you, you will have your hands full." Agree or disagree?

As broad as this course may seem, it really is not much more than a skimming of what's available. I have taught two other courses, "The Politics of Nonviolence" and "The Peace and World Order," and never was short of material. Courses on nonviolence are easily designed. What isn't easy is shifting people's thinking. More than 1200 U.S. campuses allow the Pentagon in their classrooms with ROTC programs, with some 108,000 students enrolled. At the same time, there are only 50 colleges that offer a degree in peace studies, though there are others who offer concentrations, like the University of Portland's Certificate Program.

Only rarely though does a school promote itself for its peace program. How often do college presidents tell prospective students, "Come to my school because we have an excellent program in nonviolent studies." Instead, they recruit students by talking of the new computer center, or the business school, or the new gym.

The militarists aren't to blame. I'm to blame for not doing more to get peace courses into the schools. The peace movement is to blame for the same reason. Liberal arts professors have to answer for their laziness in not fighting for courses in nonviolence.

But in the end, it is students themselves who must supply the moral pressure to get those courses. It's their tuition, their world, and their future. Peter Kropotkin, the Russian pacifist and communitarian advised the young: "Think about the kind of world you want to live and work in. What do you need to build that world? Demand that your teachers teach you that?" It's advice that students—and their teachers—should take to heart.●

AMERICAN EX-POW'S OF GARFIELD

● Mr. LAUTENBERG. Mr. President, I want to recognize a recent accomplishment of the American Ex-Prisoners of War of Garfield, NJ. The group dedicated a new building. The State commander of American Ex-Prisoners

of War, Walter Furca, led the dedication. I am informed that this is the first building in the United States solely dedicated to the purpose of housing events surrounding American Ex-Prisoners of War.

Chapter 3 of the American Ex-Prisoners of War includes 200 members in the Garden State area. It is proud of its new established home. The building will be used for meetings, installations, fundraisers, dinners, and dances.

Recently, I joined my colleagues in a resolution supporting the negotiations which were to take place between General Vessey and officials from Vietnam. The purpose of this mission was to determine the fate of those who are POW/MIA's. The result of Vessey's expedition was a reestablishment of the commitment to find the POW's and MIA's.

The building in Garfield symbolizes a commitment here at home to recognize and to assist prisoners of war. We, as a nation, are obligated to do our best to find these men and to bring them home.

I would like to commend the men in chapter 3 as well as the 28,000 other ex-prisoners of war in our country. The building in Garfield is an excellent representation of the continued recognition of their dedication to our country.●

SMALL BUSINESS ANSWER DESK 5TH ANNIVERSARY

● Mr. WEICKER. Mr. President, it is my distinct pleasure to wish "happy birthday" to the small business answer desk on the occasion of its fifth anniversary of service to America's small business community. As chairman of the Small Business Committee, I wrote to the Administrator of the Small Business Administration [SBA] urging him to institute a toll-free telephone information/referral service in early 1982. On October 14, 1982, the small business answer desk hotline was established by the Office of Advocacy at SBA and I am pleased to report that it has responded to nearly one-quarter of a million calls. By calling this 800 number, small business owners are directed to the correct source for a definitive answer to small business questions on Government regulations, Federal, State, and private source business assistance.

The answer desk focuses on Federal Government programs and regulations, but also provides information about State, municipal, and private sector agencies. The answer desk averages approximately 275 calls each business day—over 54,000 in fiscal year 1987. Callers may obtain information ranging from how to start a new business to export opportunities for their product. People from every region of the country utilize the answer desk; over the last 5-year period, constituents from my own State of Connecticut alone placed nearly 6,000 calls.

The answer desk is open Monday through Friday from 9 a.m. to 5 p.m. EST. The phone number is 1-800-368-5855 or 653-7561 for the Washington, DC, area. The small business answer desk is a unique and valuable resource for this Nation's small business and it is to be commended on a job well done.●

MONTANA TECH IS TOPS

● Mr. BAUCUS. Montana is fortunate to have an excellent higher education system. Our facilities offer a wide range of programs and degrees to match the interests of today's students. One of these facilities, Montana College of Mineral Science and Technology, was recently named the top school in science and technology for its size by U.S. News & World Report.

Montana Tech is located in Butte, MT, and features an excellent program in minerals engineering. U.S. efforts to become more competitive in the world market must include a solid educational foundation for our children. I believe Montana Tech can give students the training they need to enhance American competitiveness.

I would like to congratulate the students, staff, and administration of Montana Tech for receiving the recognition they have long deserved. I am confident that Montana Tech's tradition of quality will continue and that Montana and the rest of the country will continue to benefit from their efforts.

I ask that a copy of the article be inserted in the RECORD.

[From U.S. News & World Report, Oct. 26, 1987]

ROCKS AND ROCKETS

It has a name that would be hard to fit even on an oversized college sweatshirt, but Montana College of Mineral Science and Technology in Butte achieved a "first" in the *U.S. News* survey for being on a list of schools selected for special mention because of particular strengths in either the sciences or the humanities. In most cases, winners in these specialties were already highly rated in terms of their overall undergraduate education. However, when presidents of the smaller comprehensive colleges were asked to name top schools in the area of science and technology, Montana Tech was their first choice largely because of a superb program in minerals engineering.

SPACE CONNECTION

Similarly, among comprehensive schools in the South, the University of Alabama in Huntsville, which had failed to make the overall listings, was named the top school in science-and-technology education. Many college presidents noted how well it had integrated its programs with the nearby George C. Marshall Space Flight Center.

The rest of the colleges that rated No. 1 in science and technology (see table) also placed in the top tier of their categories according to the overall quality of their undergraduate programs. However, 19 otherwise unranked schools gained recognition in these fields, winning what one educator called "the microchip wreath." In the national liberal-arts category, Bucknell University and Lafayette College, both Pennsylvania schools with engineering programs, made the list. Franklin and Marshall College, also in Pennsylvania, and Hope College in western Michigan were cited for strong chemistry departments.

Among the national universities, four well-known but otherwise unranked schools—Carnegie Mellon in Pittsburgh, Georgia Institute of Technology in Atlanta, Rensselaer Polytechnic Institute in Troy, N.Y., and Purdue in West Lafayette, Ind., made the list of high-tech picks.

"Microchip wreaths" also went to three smaller Eastern comprehensive schools: The Philadelphia College of Textiles and Science, an independent institution in suburban Germantown, Pa., Manhattan College, a Roman Catholic college in Riverdale, N.Y., and the University of Lowell, a state-supported school outside Boston. Presidents of Southern comprehensive colleges cited the University of Central Florida in Orlando, Texas A&I University in Kingsville and Alabama's Tuskegee University for excellence in the sciences. Among comprehensive schools in the West, the U.S. News survey gave similar recognition to three otherwise unranked state-supported schools: California State Polytechnic University in Pomona, Michigan Technological University in Houghton and California's San Diego State University. Geneva College, a Presbyterian school in Beaver Falls, Pa., and Tri-State University in Angola, Ind., were singled out for having top-notch science programs among regional liberal-arts schools in the East and West.

Top-ranked humanities programs—Colleges with most votes for undergraduate humanities programs.

National Universities, Harvard Univ. (Mass.); National Liberal-Arts Colleges, Amherst College (Mass); Smaller Comprehensive, Berea College (Ky.); Southern Comprehensive, Trinity University (Tex); Eastern Comprehensive, Villanova University (Pa); Western Comprehensive, Santa Clara University (Calif); Western Liberal Arts, Alverno College (Wis); Southern Liberal Arts, Wofford College (S.C.); Eastern Liberal Arts, Bradford College (Mass).

Top-ranked science programs—Colleges with most votes for undergraduate science programs.

National Universities, Massachusetts Institute of Technology; National Liberal Arts, Oberlin College (Ohio); Smaller Comprehensive, Montana College of Mineral Science and Technology; Southern Comprehensive, Univ. of Alabama in Hunstville; Eastern Comprehensive, Rochester Inst. of Technology (N.Y.); Western Comprehensive, Calif. Poly St. Univ., San Luis Obispo; Western Liberal Arts, Alma College (Mich); Southern Liberal Arts, Virginia Military Inst.; Eastern Liberal Arts, Saint Joseph College (Conn.)

FOUR FOR HUMANITIES

When it came to colleges with highly regarded specialties in the humanities curricula, the survey found some evidence to support the notion that college adminstrators tend to equate strength in these subjects with overall academic quality. That is shown by the fact that while 21 unranked schools were cited for excellence in the sciences, only four colleges—all of them religiously affiliated—that were cited for excel-

ling in the humanities did not make the overall listings.

Three of the schools, La Salle University in Philadelphia; Rosemont College, a women's school in that city's Main Line suburbs, and Canisius College in Buffalo, are Roman Catholic institutions. The fourth, Kenyon College, an Episcopal school in Gambier, Ohio, did not make the top 25 in the national liberal-arts category, but boasts an English department that has long drawn praise from its academic peers.●

FORMAL NOTIFICATION

PROPOSED ARMS SALE

● Mr. PELL. Mr. President, the administration today gave formal notification to the Congress of its intent to sell major defense equipment to Saudi Arabia. The proposed sales include Multi-Stage Improvement Program retrofit kits for F-15 aircraft, 12 F-15C/D attrition/replacement aircraft, and 150 modification kits for M60A1 tanks.

I am pleased that the administration agreed not to ask for the transfer of Maverick missiles to Saudi Arabia. The proposal made today follows a period of consultation with the Congress.

Section 36(b)(1) of the Arms Export Control Act requires that Congress receive formal notification of proposed arms sales under the act in excess of $50 million, or, in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is available to the full Senate, I ask to have printed in the RECORD at this point the notifications I have received. The classified annexes referred to in the notifications are available to Senators at the Foreign Relations Committee.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC, October 29, 1987.
In reply refer to I-15242/87ct.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith transmittal No. 88-01 and under separate cover the classified annex thereto. This transmittal concerns the Department of the Air Force's proposed letter(s) of offer to Saudi Arabia for defense articles and services estimated to cost $375 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this transmittal.

Sincerely,

CHARLES W. BROWN,
Director.

[Transmittal No. 88-01]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER. PURSUANT TO SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT [1]

(i) Prospective purchaser: Saudi Arabia.

(ii) Total estimated value:

	Million
Major defense equipment	$0
Other	375
Total	375

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of articles or services offered: Multi-Stage Improvement Program (MSIP) retrofit kits for F-15 aircraft, support equipment, spares, simulators, and training equipment modification.

(iv) Military department: Air Force (YNA).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date report delivered to Congress: October 29, 1987.

POLICY JUSTIFICATION

SAUDI ARABIA—RETROFIT KITS FOR F-15 AIRCRAFT

The Government of Saudi Arabia has requested the purchase of Multi-Stage Improvement Program (MSIP) retrofit kits for F-15 aircraft, support equipment, spares, simulators, and training equipment modification. The estimated cost is $375 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. In a regional context, continuing support of the defense capabilities of Saudi Arabia will also contribute to overall Middle East security.

The MSIP program involves a series of modifications that incorporate current technology and enhance the supportability of the F-15 aircraft. Saudi Arabian participation in this program is required for continuing cost-effective support of Saudi Arabian F-15s. This support is predicated on commonality between the export version of the F-15 and the U.S. Air Force version. As modifications are currently underway to the U.S. Air Force configuration, where appropriate, similar modifications must be made to the Saudi Arabian configuration. Modifications to the Saudi Arabian configuration will not include some of the upgrades planned for the U.S. Air Force, such as the state-of-the-art AN/APG-70 radar. The upgrade technology provided by the MSIP modification results in modest improvements in operational capability.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the McDonnell-Douglas Corporation of St. Louis, Missouri.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel; however, 80 contractor representatives may be required in Saudi Arabia for three years.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC, October 29, 1987.
In reply refer to: I-02586/87ct.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith transmittal No. 88-02 and under separate cover the classified annex thereto. This transmittal concerns the Department of the Air Force's proposed letter(s) of offer to Saudi Arabia for defense articles and services estimated to cost $502 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portions of this Transmittal.

Sincerely,

CHARLES W. BROWN,
Director.

[Transmittal No. 88-02]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT [1]

(i) Prospective purchaser: Saudi Arabia.

(ii) Total estimated value:

	Million
Major defense equipment	$480
Other	22
Total	502

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of articles or services offered: Twelve F-15C/D attrition/replacement aircraft in the Multi-Stage Improvement (MSIP) configuration.

(iv) Military department: Air Force (SKC).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See Annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date report delivered to Congress: October 29, 1987.

POLICY JUSTIFICATION

SAUDI ARABIA—F-15C/D ATTRITION/REPLACEMENT AIRCRAFT

The Government of Saudi Arabia has requested the purchase of 12 F-15C/D attrition/replacement aircraft in the Multi-Stage Improvement (MSIP) configuration. The estimated cost is $502 million.

This sale is consistent with the stated U.S. policy of assisting friendly naitons to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. In a regional context, continuing support of the defensive capabilities of Saudi Arabia will also contribute to overall Middle East security.

These 12 attrition/replacement aircraft are required to sustain the Saudi Arabian F-15 program at the force level validated by Congress in 1978 (60 aircraft). The required quantity is based on standard U.S. Air Force computational models using actual Saudi Arabian losses to date. All 12 attrition/replacement aircraft are being procured now, rather than incrementally, because the F-15C/D production line is scheduled to close in early 1988. Aircraft in excess of the 60 aircraft force level will be retained in the U.S. at Saudi Arabia's expense. As the number of operational aircraft will not exceed validated program levels, the pro-

posed sale will not materially increase Saudi Arabia's military capability. Saudi Arabia will have no difficuluty absorbing these aircraft into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the McDonnell Aircraft Company of St. Louis, Missouri.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives in Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC, October 29, 1987

In reply refer to: I-02606/87ct.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith transmittal No. 88-03 and under separate cover the classified annex thereto. This transmittal concerns the Department of the Army's proposed letter(s) of offer to Saudi Arabia for defense articles and services estimated to cost $120 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portions of this Transmittal.

Sincerely,

CHARLES W. BROWN,
Director.

[Transmittal No. 88-03]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER, PURSUANT TO SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Saudi Arabia.

(ii) Total estimated value:

	Million
Major defense equipment [1]	$0
Other	120
Total	120

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of articles or services offered: One hundred fifty conversion kits to modify 150 M60A1 tanks to the M60A3 Tank thermal Sight configuration and contractor services to install the kits in Saudi Arabia.

(iv) Military department: Army (VIX).

(v) Sales commission, fee, etc., paid offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date report delivered to Congress: October 29, 1987.

POLICY JUSTIFICATION

SAUDI ARABIA—TANK CONVERSION KITS

The Government of Saudi Arabia has requested the purchase of 150 conversion kits to modify 150 M60A1 tanks to the M60A3 Tank Thermal Sight configuration and contractor services to install the kits in Saudi Arabia. The estimated cost is $120 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. In a regional context, continuing support of the defensive capabilities of Saudi Arabia will also contribute to overall Middle East security.

Saudi Arabia needs these tank conversion kits to standardize its U.S. origin armor force which currently includes M60 tanks in both the A1 and A3 configurations. The lack of standardization causes training and logistical poblems which conversion will help to alleviate. Saudi Arabia will have no difficulty absorbing these tank conversion kits into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be General Dynamics Services Company of Sterling Heights, Michigan.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel; however, 27 contractor representatives will be required in Saudi Arabia for two years.

There will be no adverse impact on U.S. defense readiness as a result of this sale.●

FEDERAL AND LOCAL GOVERNMENTS TAKE LONG AWAITED ACTION ON CHILD CARE

● Mr. RIEGLE. Mr. President, I am pleased to have this opportunity to commend the General Services Administration [GSA] for taking the long awaited and badly needed step of appointing the first high-level Federal official responsible for creating more child care facilities at Government agencies. As the Nation's largest employer, the Federal Government should serve as an inspiration and a model for the private sector in meeting the needs of its employees for adequate day care. That is why I have introduced a bill, S. 1071, to create a public-private partnership that encourages the provision of child care.

The Federal Government must demonstrate the sincerity of its commitment to promoting access to child care for all American workers by addressing the crying need in its own offices. Congress has demonstrated its support for onsite child care by authorizing the GSA to develop such facilities. Yet, a report by the House of Representatives Committee on Government Operations cites "the failure" of GSA to respond to that congressional mandate.

The availability of child care at the workplace, assisted by the employer, not only helps workers, but has returns for the employer as well. It can improve productivity, retention, and recruitment. Without adequate child care, employees understandably may miss work or be distracted on the job. This is the bottom line for business; for the Nation, the bottom line is to demonstrate healthy respect for the needs of families, and particularly for our children.

I would like to congratulate the new appointee, Barbara M. Leonard. With high fees and long waiting lists plaguing existing facilities, she has her work cut out for her. The Federal Government has let this problem languish for too long. On behalf of the dedicated Federal workers who are in need of day care for their children, I offer my support of her efforts. I hope that she will succeed in making day care more available and more affordable for Federal workers.

Another commendable effort at providing day care facilities for Government workers' children is being made by Fairfax County. The county's decision to open a day care center soon for its employees should serve as an example for local governments across the Nation.

I ask that two articles from today's Washington Post concerning this issue be printed in the RECORD.

The articles follow:

[From the Washington Post, Oct. 29, 1987]

GSA NAMES FIRST FEDERAL OFFICIAL TO CREATE DAY CARE CENTERS

(By Sandra Evans)

The General Services Administration announced the appointment yesterday of the first high-level federal official responsible for creating more child care facilities at government agencies.

The appointment was one of a series of actions that GSA Administrator Terence C. Golden had promised to take to promote on-site centers for federal workers here and in other parts of the country.

Barbara M. Leonard, a former Rhode Island manufacturer and 1984 Republican senatorial candidate who has been GSA's regional administrator for New England, was named to the position and will report directly to Golden on child care issues.

"GSA is assuming responsibility for getting child care centers in government," Golden said yesterday, adding that the project has the agency's "total commitment." He said GSA would help agencies survey employes about their child care needs and help start centers.

Rep. Cardiss Collins (D-Ill.), who has critized GSA for not doing more for child care in the federal government, hailed Golden yesterday for having "taken up the gauntlet."

"We know that our federal government is out front," Collins said at a news conference and official opening of the GSA's new on-site child care center at its headquarters at 18th and F streets NW.

There are 12 child care centers in GSA-controlled buildings throughout the country, including seven in the Washington area, according to GSA. Other child care centers serve federal employes in buildings not controlled by GSA, such as one at the Federal Home Loan Bank Board at 17th and G streets NW and one for the House of Representatives at 501 First St. SE.

High fees and long waiting lists for spaces for infants are problems confronting several of the centers.

At the GSA center, there is a year's waiting list for its 11 infant slots, but there are vacancies for toddlers and preschoolers.

The House center, which opened in September, will open a second infant care service Monday with 10 slots in addition to the eight spaces they have now, said Natalie Gitelman, the center's director.

Fees at the House center range up to $130 a week for infants, the highest among the on-site federal facilities in this area, and

some Hill workers have complained that this put the center out of the reach of lower-paid employes. Gitelman said the center had tried to make the center available for all employes by starting a scholarship program that helps 30 percent of the children enrolled.

The weekly fees at the new GSA center are $87.50 for preschoolers and $115 for infants. Golden acknowledged that making care affordable for lower-income employes is "a major issue" at such facilities.

Another program, this one a privately financed effort aimed at dealing with latchkey children, was announced yesterday at the Department of Health and Human Services. Whirlpool Corp. and the American Home Economics Association are starting a pilot project, with the District of Columbia as one of five test sites, to advise communities on how to start after-school programs.

One of the goals would also be to teach safety measures to latchkey children.

Officials with the program cited statistics showing that 2 million to 6 million children aged 6 to 13 take care of themselves for part of the day. Some 6,000 children a year die in accidents and fires at home and "in nearly every instance there is no adult present," they said.

[From The Washington Post, Oct. 29, 1987]

FAIRFAX TO PROVIDE EMPLOYES WITH DAY CARE

(By John Bohn)

Fairfax County officials are opening a day care center soon for county workers' children, a move they hope will show private employers that the county's promotion of work site centers is sincere and at the same time meet the needs of their own employes.

"It's sort of trying to set the good example for other employers throughout the county," said Board of Supervisors Chairman John F. Herrity. "We can't encourage you to do something we're not doing."

The center, scheduled to open early next year at the former Fairfax City elementary school on Main Street near the Massey Building, will be the first time the county will provide day care services or benefits for its employes.

About 75 children, ranging in age from six weeks to five years, will be able to participate in the five-day-a-week, 10½-hour-a-day program. Fees are expected to be $115 a week for infants and toddlers, $100 a week for 2-year-olds, and $85 a week for children 3 and older, according to Ellen Tuyahov of the County Office for Children.

Parents earning less than the county's median income could pay less on a sliding scale, she said. Fees are to cover all operating expenses, excluding rent, which the county will cover.

Parents using private day care centers in Fairfax might expect to pay $110 to $120 a week for infants and $75 to $80 a week for preschoolers, or about $65 a week for home day care, according to Charlotte Hughes, director of the county's Employer Childcare Development Council.

Officials expect high demand for the employe day care program, especially for the 12 available positions for infants. State standards require a ratio of one day care worker for every four children under 16 months old, so few centers offer care for them.

"Our gut feeling is this won't meet the need," said Patti Rounsevell, chairwoman of a child care advisory group for the County Office for Children.

Officials have not surveyed all county employes, but Hughes said most employers find that 25 percent of their employes have preschool-age children, and one-tenth of those enroll them in newly opened employer-sponsored day care programs.

At that rate, 225 of the county government's 9,000 employes would wish to enroll children. About 60 employes attended an informational meeting last week.

Officials expect to hold a lottery in January or February to choose participants from among general county employes, including part-time workers eligible for other benefits.

Officials said school system employes probably would not be eligible because they are in a separate pay system.

The county plans to move its training program for home and private center day care workers to the center, and students will be able to observe day care and possibly practice teaching.

At present, two employer-sponsored day care systems operate in the county, according to Hughes: one at Mount Vernon Hospital and a center opened this week by a consortium of 22 businesses in Tysons Corner.

Hughes' group is encouraging other businesses to join together to start day care centers. Businesses and community groups in Reston are working on child care programs that would take care of children of local employes and residents. She said the Springfield Industrial Park and Newington might have enough businesses to support a joint day care center, and there might be enough demand for a second one in Tysons Corner.

In general, she said, an employer must have at least 3,000 employes and more often must have 7,000 to make it practical to start its own day care center. Smaller firms can form consortiums, purchase slots in private centers or allow employes to have an amount deducted from their pay to cover day care expenses. Since employes pay no taxes on such a deduction, this creates a tax subsidy for day care.

The county plans to start such a program for its employes next year, but it may be delayed by a requirement that it get state permission to do so.

Fairfax County has one of the highest ratios of working women in the country, and has 28,900 children under age 5. About 13,390 slots exist for children in the county's 111 licensed day care centers, but these are almost all filled, according to Hughes. Many of the rest get home day care, but there is still a tremendous need.

"We get 1,000 calls a month asking for day care information," she said. "That's 1,000 parents looking for care a month."

A TAX ON GASOLINE

● Mr. WEICKER. Mr. President, I would like to bring to the attention of my colleagues an editorial in today's Washington Post. It forcefully makes the case for a tax on gasoline, a position I have long held and have sought to write into law.

The Post article makes plain the need for decisive action to reduce the Federal budget deficit and to curb U.S. oil consumption. A gas tax would accomplish both goals.

The need for new revenues is all too clear. So is the upward spiral of oil imports. Our Nation's economy and security is again at risk because of increased dependence on oil imports and the complete absence of a comprehensive energy policy.

Studies have shown that a tax on gasoline could be easily implemented and would serve as an important incentive to conserve energy, without having any adverse effects on our economy as a whole.

Mr. President, I ask that the Washington Post editorial of October 29 be printed in the RECORD.

The editorial follows:

[From the Washington Post, Oct. 29, 1987]

TIME FOR THE GAS TAX

If President Reagan and Congress can't cut the budget deficit by more than the $23 billion already assured, that will be a spectacular confession of political incompetence. People in the financial markets will certainly read it that way, and an incompetent government is not a reassuring sight to investors already badly shaken by the drop in stock prices. But the job of managing the budget is not as hard as the negotiators have been making it.

The deficit has to come down, but that's not all. Throughout the economy Americans are consuming more than they can afford and saving too little. It's time to raise consumption taxes, and not just on beer.

The case for a gasoline tax is stronger than ever. It would not only raise the revenues that the government desperately needs. It would also put a useful restraint on the rate at which this country is burning oil. Oil imports have been rising steadily for two years. With the world's chief source of imported oil threatened by an unending war in the Persian Gulf, it's mindless simply to let the country's dependence keep drifting upward.

Each penny per gallon added to the gas tax would raise $1 billion a year. How about a 30-cent tax, phased in over three years? It would do wonders for the deficit. It would also do wonders for the atmosphere in the stock market. People there fear that even if the White House and Congress manage to produce a reduction in this year's deficit, it will be a patched-up list of one-shot gimmicks and nifties like asset sales and accounting changes that promise only the most illusory improvement. A gasoline tax scheduled to rise over time would, in contrast, be a solid promise of real and permanent progress.

As you would expect, the antitax theorists and supply-siders have begun to remind a nervous Congress that attempts to balance the budget in the early 1930s made the Depression much worse. There are a couple of night-and-day differences between circumstances then and now. The American economy, and the world's, was already several months into a recession when the stock market crashed in 1929. Now, in contrast, the economy is expanding rapidly. In the 1930s, the Federal Reserve mistakenly tightened the money supply and raised interest rates. Currently, one crucial benefit of a lower deficit would be to provide the Federal Reserve greater latitude to lower interest rates. That will do more to avoid a recession than trying to persuade Wall Street that big deficits are good for it. The gas tax is too effective a remedy to ignore.●

INFORMED CONSENT: VIRGINIA

● Mr. HUMPHREY. Mr. President, it is widely accepted in medical protocol

that a doctor does not make a decision for a patient, but rather simply provides information, alternatives, and recommendations about appropriate medical treatment. It is then up to the patient to decide. It is also widely accepted that choices involving medical care aren't truly choices if any facts have been withheld from the patient. That's why the second opinion plays such an important role in today's health care.

Unfortunately, when it comes to abortion, there often is a lack of information provided to the patient, and oftentimes the lack is purposeful. In a strange twist of logic, some abortion proponents contend that providing women with all the facts about the effects, risks, and alternatives to abortion limits their choice. Obviously, this cannot be true.

Nevertheless, across the country women are consenting to abortion without the full facts, which is not only against medical protocol, but is an outright injustice toward women who must decide on a procedure that cannot be undone. I ask my colleagues to end this injustice by supporting informed consent legislation, S. 272 and S. 273.

I also ask that a letter from the Commonwealth of Virginia in support of informed consent be entered into the RECORD.

The letter follows:

JULY 1, 1986.

DEAR SENATOR HUMPHREY: Statistics show that 4,000 preborn children die in the United States each day at the hands of abortionists. I believe that this number would be reduced greatly if women and girls were informed of ALL the possible ramifications of such a decision prior to the "procedure."

I know of women who were lied to about the growth and development of their preborn child by abortionists. The "counselor" who counseled me prior to my abortion spoke only of the "products of conception" and "pregnancy tissue" that would be removed from my uterus. She did not offer to show me a fetal model of my fully formed child that they were going to tear apart limb from limb. I acknowledge that at the time of my abortion in 1973, fetology and/or neonatology were not as advanced as they are today. That is not a sufficient excuse. The abortionists and their assistants saw what collected in the jar at the end of that vacuum aspiration tube and it was considerably more than a "mass of pregnancy tissue." It included the pieces of what was, only a few minutes prior, a fully formed preborn baby.

They take your money, kill your baby, offer you birth control (sometimes) and send you home. Perhaps they will mention that, as with any medical procedure, there are always risks. But, they add, no more than having your tonsils removed or going to the dentist. I have met women who will strongly disagree with the risks involved. Women who now, following their abortions, are unable to conceive for no accountable medical reason.

I have met, as well as read testimonies of, women whose uteri were perforated, or who suffered hemorrhaging following their abortions. In addition there are several emotional and psychological complications that will follow an abortion when a woman recognizes that she has been part and parcel in having her offspring, her child, horribly killed.

In light of the fact that abortions will continue, informed consent MUST be a part of this "procedure" as with other more legitimate medical procedures. Women who are told the truth are more likely to choose life—I pray.

Sincerely,

SUSAN L. WIMMER,
Virginia.●

MORITZ VON BOMHARD

● Mr. McCONNELL. Mr. President, on October 21, I alerted my colleagues to a New York Times article about the Louisville Orchestra's Sound Celebration Festival. At that time, I commented on the remarkable cultural accomplishments of the city of Louisville and its residents. I would now like to submit another article that corroborates last week's statement. The article appears in Insight, a publication for University of Louisville alumni and faculty, and details the life and achievements of an extraordinary man, Maestro Moritz von Bomhard.

Maestro Bomhard studied at the Julliard School of Music and Columbia University and taught at Princeton University. He has composed symphonies and concertos and has served as arranger and composer for the Philharmonic Piano Quartet.

One of his most notable contributions to the arts occurred in 1952, when he founded the Kentucky Opera in Louisville. In the opera's early years, he performed all the major nonperforming functions himself—casting, building and designing sets, auditioning, and fundraising. The article mentions that he was offered a permanent position in Europe but decided to return to Louisville. It does not mention that he was persuaded to return by a cable sent by his Kentucky colleagues pleading him to return because he was so indispensable to the Kentucky Opera. One of his colleagues said, "His opera company was his calling; providing an opera company for Louisville was the thing he had to do."

To solidify his commitment to improving the quality of the arts in Kentucky, Maestro Bomhard has created a bequest that will endow a chair at the University of Louisville School of Music. This chair, by providing students with advanced training in music theater, will ensure that the legacy of Moritz von Bomhard will endure for years to come.

It is my hope that by seeing this article, Senators can confirm the statements I made last week. Maestro von Bomhard's actions further contribute to the cultural excellence of Kentucky of which I am so proud.

The article follows:

MORITZ VON BOMHARD TO ENDOW CHAIR AT SCHOOL OF MUSIC

Moritz von Bomhard, who founded the Kentucky Opera Association and served as its artistic director for thirty years, has created a bequest that will endow a chair of music theatre at the University of Louisville School of Music. The chair is designed to provide instruction to upper level students in all aspects of music theatre, including opera, cabarets, musical festivals and Broadway musicals.

It is the ambition of Maestro Bomhard to offer select students specialized courses that will lead to a proficiency in rehearsal and performance techniques, an ability to read and play piano reductions and orchestral scores, an ability to pronounce and sing original texts, and a knowledge of vocal performance traditions embracing cadenzas, tempo changes and dynamics. Students will also be expected to achieve expertise in the various aspects of stagecraft, such as stage direction, scene and costume design and changes, lighting techniques, etc. The program will be all-encompassing and its ultimate objective will be to develop the skills necessary to produce various forms of music theatre.

The chair, which is the first of its kind in the United States, will draw international attention and recognition to the School of Music. In the words of Jerry Ball, Dean of the School of Music, "Moritz von Bomhard has always been an innovator. His legacy to the School of Music will benefit young professionals in a manner that cannot be duplicated at other institutions of higher learning. There is no question in my mind that this program should produce leaders and directors of music theatre who will be prepared to compete with the best in this country."

Maestro Bomhard studied at the Julliard School of Music and subsequently taught at Princeton University. While teaching at Princeton, Maestro resided in New York and devoted much of his time to composing. During this time he wrote three symphonies, piano pieces, chamber music and a concerto for strings. Several of these compositions were performed by the Columbia Broadcasting System orchestra.

In the years following World War II, Maestro Bomhard earned a Master's Degree at Columbia University. During this time he founded the New Lyric Stage Opera Company and also served as arranger and composer for the Philharmonic Piano Quartet (Columbia Recordings). Following several guest engagements with U of L's School of Music, where he produced and conducted operas, Maestro left New York and settled in Louisville. In 1952 he founded the Kentucky Opera.

Because of a shortage of funds, he served as his own director, scenic director, scenic artist and music director for the Kentucky Opera. To demonstrate its support for the fledgling opera association, the U of L School of Music appointed him to its faculty.

Between 1954 and 1962 Maestro went abroad in the summer months to make tapes with radio symphony orchestras in Hamburg, Zurich and Munich and to conduct symphony concerts in major German cities. At the request of the Ford Foundation, he established a cultural program in Berlin. Though offered a permanent position in prestigious Hamburg, Maestro decided to return to Louisville to nurture and guide his new opera company. Since its

founding, the Kentucky Opera has performed 66 operas (including six new works) and staged 124 productions. One of his career highlights was conducting Verdi's "Othello" for the opening of the Norton Center at Centre College in Danville, Kentucky.

During his thirty years as artistic director of the Kentucky Opera Association prior to his retirement in 1981, Maestro worked as a part-time faculty member of the U of L School of Music. He has given lecture series, conducted opera workshops, coached singers, held seminars and produced operas.

The numerous awards he has received include the Downtown Salute to the Arts Man of the Year Award in 1966, an honorary Doctor of Letters from Ursuline College and the Giovanni Martini Award from Bellarmine College. Maestro has been a member of the Louisville Orchestra Board and has served as a regular judge of the Metropolitan Opera Auditions throughout the country.●

STATEMENT/CATASTROPHIC HEALTH CARE LEGISLATION

● Mr. MELCHER. Mr. President, this past Tuesday was a historic day. The U.S. Senate took an important step toward assuring the protection of our elderly from the ravages of catastrophic health care costs. I know the chairman of the Finance Committee, Senator BENTSEN, has worked long and hard in developing a package that is both humane and fiscally sound. I commend him for producing S. 1127, the Medicare Catastrophic Loss Prevention Act of 1987.

AGING COMMITTEE INVOLVEMENT

During the past year, the Special Committee on Aging has documented the shortcomings of the Medicare Program's coverage of catastrophic health care costs and has worked to find ways to address these shortcomings. As chairman of the Aging Committee, I have been privileged to receive testimony at four different hearings from witnesses interested in the costs of catastrophic health care. The Aging Committee has heard from elderly persons who have been victimized by catastrophic health care costs, from the Secretary of Health and Human Services and other Administration witnesses, as well as representatives of the insurance industry, aging advocacy groups, doctors, drug manufacturers and distributors and academics.

On January 26 of this year, three impressive women testified before the Senate Aging Committee about their experiences with a loved one needing extended and costly medical care. Their stories cut across this country, to the core of what makes America great—independence and pride. We heard these hard-working, honest Americans talk about their day-to-day struggles to make ends meet. These people found themselves victims of catastrophic health care expenses not because they didn't plan for the future or because they didn't pay their fair share, but only because they ran into the double burden of poor health and costly care.

On April 16, Senator SHELBY chaired a field hearing on catastrophic health care costs and on July 20 I held another hearing to examine the more specific burden of prescription drug costs. It became increasingly obvious during the course of these hearings—and in ensuing discussions with older Americans and their advocates—that older Americans not only need the expanded benefits included in S. 1127, but also require assistance to help pay for the burdensome costs of prescription drugs and long-term care.

SUMMARY OF S. 1127

S. 1127 makes important and needed improvements in the Medicare Program that address some of the many problems that were outlined at Aging Committee hearings. I am particularly gratified that the elderly no longer would have to fear being bankrupted by a long-term stay in a hospital. Under this bill, the elderly would not have to pay more than one hospital deductible each year and would be eligible for 365 days of hospital care annually. By eliminating terminology like "spell of illness" and "lifetime reserve days," the catastrophic bill simplifies the Medicare Program and makes it easier for all of us to understand.

S. 1127 builds on and strengthens the administration's original proposal in a number of ways. It caps out-of-pocket expenses for acute-care services covered under Medicare at $1,850 and provides that beneficiaries would be liable for only one inpatient hospital deductible each calendar year. As in the President's proposal, Medicare's hospital coinsurance, which is now required if a patient stays in the hospital longer than 60 days, would be altogether eliminated.

I believe that one of the most significant improvements in this package is a provision which requires the Secretary of Health and Human Services to notify Medicare beneficiaries what the program will and will not cover. This notice will be developed by aging advocates and insurers and should help reduce the great confusion which surrounds the Medicare Program.

Because expansion of Medicare benefits will produce some savings for the Medicaid Program, S. 1127 requires States to reinvest these savings in further health care protection for the elderly and disabled. The bill directs the HHS Secretary to estimate the savings to each State's Medicaid Program and States then would use these funds to either "buy-in" the Medicare part B catastrophic premium for larger numbers of low-income elderly or to provide protection against spousal impoverishment for those individuals whose spouse has been institutionalized.

Unlike the President's catastrophic health care proposal, S. 1127 takes some small but important steps toward expanding long-term care protection under the Medicare Program. Under this bill, coverage of nursing home, home health and hospice care is expanded and a study of long-term financing options is required. Expansions include:

Dropping the very restrictive 3-day prior hospitalization requirement for nursing home care;

Expanding skilled nursing home coverage from its current 100 days to 150 days;

Increasing the number of days (from 21 to 45) that patients discharged from a hospital or nursing home would be entitled to daily home health care;

Clarifying the "homebound" requirement which historically has caused many of the inconsistent reimbursement practices which troubled the delivery of needed home health care services; and

Eliminating the current limit of 210 days of hospice care and making it an open-ended benefit.

The benefits included in S. 1127 are therefore significant and I strongly support them. However, a General Accounting Office report I released in August outlines a number of shortcomings that we must yet address.

GAO REPORT

The General Accounting Office [GAO] report I released outlines the coverage that the Senate and House catastrophic plans provide. It states that although both legislative proposals would increase protection for enrollees, the protection is largely against costly hospital stays. Major gaps would remain in Medicare in the limited coverage of part B physicians' charges and in the complete absence from coverage of certain very important items such as long-term care.

This report goes on to say that CBO estimates that 5.5 million beneficiaries—17 percent of part B enrollees—spend more than $500 annually for their prescription drugs, and, therefore, would benefit from the out-patient prescription drug coverage the House bill provides. However, GAO points out that the $500 deductible would keep this provision from helping some of the elderly who need it the most—the poor, near poor, and those who do not have private supplemental insurance. Therefore, the drug benefit we passed Tuesday (which has a $600 deductible and will not be fully implemented until 1993) is even more susceptible to GAO's finding.

The GAO report concludes that although the catastrophic health care bill we passed provides for significantly improved protection, it will not plug many of the gaps in coverage for long-term care, prescription drugs, in-home custodial services and respite services for relatives caring at home for the

chronically ill and disabled. Because of the timeliness of this report, I ask that the report's "Principal Findings" be printed in the RECORD at this point.

The "Principal Findings" follow:

PRINCIPAL FINDINGS

PROGRAM EVALUATION AND METHODOLOGY DIVISION,
U.S. GENERAL ACCOUNTING OFFICE,
Washington, DC, July 31, 1987.

B-227664

Hon. JOHN MELCHER,
Chairman Special Committee on Aging, U.S. Senate.

DEAR MR. CHAIRMAN: On January 20, 1987, you asked us to provide you with information about legislative proposals to protect Medicare enrollees from the financial hardships that often accompany catastrophic illness.

Initially, our review focused on six legislative proposals introduced into the first session of the 100th Congress. During the course of our review, the House Ways and Means Committee and the Senate Finance Committee approved H.R. 2470 and S. 1127. It is generally believed that these will form the basic structure for the Medicare coverage that the full Congress will eventually consider.

Therefore, with the concurrence of the committee staff, we focused on H.R. 2470, as approved by the House Ways and Means Committee on May 19, 1987, and S. 1127, as approved by the Senate Finance Committee on May 29, 1987. We also looked at the aspects of long-term care in S. 454, introduced by James R. Sasser.

In response to your request, we developed the following material:

1. a statement of our objectives, scope, and methodology;

2. a review and comparison of H.R. 2470 and S. 1127 against the current Medicare program with respect to benefits to enrollees, their costs, and the program's financing mechanisms;

3. a discussion of important issues that may still need attention; and

4. a synthesis of the lessons learned from the operation of state-financed insurance programs for catastrophic illness that the Congress might consider in the development of a federal program.

In 1950, just over 8 percent of the population was 65 years old and older, but in 1980 this percentage was over 11 percent. One of the most important issues of the late 1980's is how to protect the elderly and their families against the catastrophic expenses they may face when they have acute medical problems or when they need long-term care because of chronic illness and disabling conditions such as stroke and Alzheimer's disease.

Despite benefits from Medicare and private supplements to that program, out-of-pocket expenditures for medical care substantially burden them. This is especially true for nursing home care, for which more than one half of all costs are paid for by patients or their relatives.

Both bills are designed to expand Medicare coverage for acute care. Both are intended to be "budget neutral." That is, the cost of the expanded benefits would be paid for through higher Medicare premiums.

The provisions of the two proposals would significantly increase protection for the enrollees. For example, the bills would increase the number of covered hospital days and alter or eliminate deductibles and coinsurance payments. However, even if one of the current proposals or others similar to them are adopted, some gaps will remain.

The gaps in the Medicare program as they would be modified by H.R. 2470 or S. 1127 would be not in hospital services but in the incomplete coverage of physicians' charges and limited coverage of long-term care at home and in nursing homes. Therefore, it seems clear that the expanded Medicare benefits in either proposal would only partially protect the elderly from catastrophic expenses.

Issues that may require additional consideration are the definition of catastrophic expense, the specific health-care needs of the elderly, prescription drugs, and out-of-pocket expenses for services both covered and not covered by Medicare. We discuss these briefly below.

"Catastrophic expense" can be defined either in absolute terms or relative to income or wealth. Both bills define it absolutely, in the sense that they would limit how much an enrollee would have to pay for specific expenses without regard for individual income. The limit, called the "copayment cap," sets the maximum amount an individual would have to pay, either as deductibles or as coinsurance payments, for a spell of illness.

The lower copayment cap being proposed is $1,043. Approximately 91 percent of the Medicare beneficiaries have historically had copayment expenses totaling less than $1,000 for services covered by Medicare. This means that under the proposed legislation, 91 percent of the enrollees who apply for benefits would not exceed the $1,043 cap (if past trends were to continue) and, therefore, would not be eligible for benefits.

Both Medicare and private insurance (called "Medigap" policies) are designed to deal largely with the cost of acute-care needs and do not cover the typical needs of patients in long-term care, who by and large do not require the services of a physician or a skilled nurse but, rather, need help in dressing, eating, toileting, moving from one place to another, and supervision. While both H.R. 2470 and S. 1127 would extend the number of days covered in a skilled nursing facility, neither bill addresses the long-term services mentioned above.

The Medicaid program does pay for the most expensive long-term service—nursing home care—but it is so structured that a condition of eligibility for it is the impoverishment of the beneficiaries and their spouses. To obtain Medicaid benefits, a person must be either poor or reduced to poverty in the process of trying to pay for care.

Another issue is out-of-pocket expenses. Although H.R. 2470 and S. 1127 differ slightly, the combined expenses for services partially covered and services not covered by Medicare (excluding expenses associated with long-term care) would leave some elderly persons burdened with out-of-pocket expenses quite large in relation to their income. This would be particularly a problem for the elderly "near-poor" who do not qualify for Medicaid.

Many other important issues are addressed in the version of H.R. 2470 approved by the House Energy and Commerce Committee. They include prescription drugs, protecting the sick person or the spouse from impoverishment, and providing for personal care in the home and respite care. However, your need for an immediate analysis of the basic proposal precluded a full analysis of the amended version of the bill at this moment.

The experience of five states in trying to implement catastrophic illness programs may be relevant to some aspects of the federal proposals. New Hampshire and Rhode Island currently operate state-financed catastrophic illness insurance programs; Alaska, Maine, and Minnesota have operated one at some time since the mid-1970's. We derived several lessons from our review of their programs.

First, some of the states included assets as a factor in eligibility determinations. If assets are not included in determining whether an elderly person should receive the program's benefits, then an illness may be defined as catastrophic and covered by the program when the elderly person may in fact have enough wealth in the form of assets to finance care without serious financial effect on the family. The decision to include assets must be carefully considered also because large out-of-pocket expenses an elderly person pays by selling assets could lead to the impoverishment of the sick person or the spouse.

Second, high costs and rapid cost growth generally characterized the states' programs. Hospital benefits produced the main expense for the programs, from 71 percent of total expenditures in Alaska to 86 percent in Maine.

The states tried to contain the rapid growth in program costs with three basic cost-sharing mechanisms: deductibles, coinsurance, and limits to coverage. Rhode Island also created explicit incentives to the elderly to take private insurance coverage. It based a varying deductible on the quality of an applicant's insurance coverage: the more extensive the insurance coverage, the lower the deductible. This is a unique feature of Rhode Island's program, the only program that has been able to maintain hospital benefits. Providing expanded hospital benefits cost the state programs more than providing any other benefit.

The experience of the states indicates the need for continual attention to the ways in which current administrative structures could be used to implement a program and to identify and limit its costs. Administrative costs seem to be reduced to the extent that a program employs existing agencies and resources. Probably the most important lesson from the states' experiences is that the states often had to reassess the relative costs and revenues of their programs.

SUMMARY

Overall, our review indicates that H.R. 2470 and S. 1127 would certainly add to the benefits available to the elderly. However, some of the elderly would still be at risk for substantial out-of-pocket health-care expenses, especially for long-term care, even if these bills are enacted.

For further information, please call me or Carl Wisler at (202-275-1854).

Sincerely,

ELEANOR CHELIMSKY,
Director.

Mr. MELCHER. To begin to address the gaps in prescription drug and long-term care coverage that were outlined in the GAO report, I offered a number of amendments that were included in the Senate-passed version of the catastrophic health care bill and I intend to continue making these high priority issues for the Senate Special Committee on Aging.

PRESCRIPTION DRUG COVERAGE

With regard to the prescription drug provision we included in S. 1127, we must continue our efforts to find ways to reduce the deductible so that more older Americans can qualify for this greatly needed benefit. Because I believe we were going in the wrong direction with the drug benefit, I offered—and was pleased to have accepted—an amendment that gives the Secretary of Health and Human Services the authority to reduce, as well as increase, the deductible if sufficient revenue is available. However, we can and must do more to expand this drug benefit.

Under S. 1127's prescription drug benefit, there will be far too many elderly who will remain unprotected against drug costs that represent truly catastrophic expenses to them. I strongly believe that until and unless we provide a drug benefit that provides assistance to more than 17 percent of our elderly, we will continue to hear from too many of our constituents who are forced to make the unacceptable decision of buying either needed medications or paying for such essentials as groceries and heat.

LONG-TERM CARE

We must make a similar commitment in the area of financing long-term care. This is truly the most catastrophic of all health expenses. For those elderly spending more than $2,000 annually on out-of-pocket medical expenses, the cost of nursing home care absorbs more than 80 percent of every dollar spent over and above $2,000. Unfortunately, because the majority of elderly persons requiring home or nursing home care require custodial rather than skilled nursing care, S. 1127's expansion of skilled long-term care benefits does not offer any additional assistance to the largest segment of the elderly population needing long-term care.

In the upcoming months and years, we all must work together to fight for the coverage of long-term health care. There is no question that it will be difficult to find the funding we need to pay for long-term care for both the elderly and nonelderly who are chronically ill and desperately need assistance. However, to me, it is nothing but a matter of priorities. If all of us do our jobs to bring to the attention of the American public the need for long-term care coverage, it will become a priority—for the public, the rest of the Congress, and the administration. Our elderly need and deserve nothing less.

As a first step, I offered two amendments and joined in offering another that would provide information on the need for and availability of long-term care coverage and on ways to finance it. These amendments, which were accepted, would:

First, expand the scope of an institute of medicine study on long-term care to include the review of the long-term needs of Americans of all ages; a review of the sources of financing and the coverage of long-term care in other developed nations and the implications of these findings on the development of similar policies in the United States, and a review of the impact that various approaches to financing long-term care would have on the access to those services by various groups, such as minorities, women and children;

Second, require the Secretary of Health and Human Services to evaluate and report to Congress on the various adult day care services being provided throughout the United States, including information on the scope and availability of day care center services, the health care settings in which the services are provided, and the advisability of having a Medicare benefit for adult day care; and

Third, establish a bipartisan commission on health care which would provide specific recommendations on Federal programs, policies, and financing to assure availability of comprehensive long-term care for the elderly and disabled.

In addition, I have directed that the entire volume III of the Aging Committee's annual publication, "Developments in Aging," be dedicated to the issue of long-term care. This report chronicles legislative and administrative actions pertaining to Federal programs serving our ever-increasing aging population.

The information contained in volume III will be a compilation of the most recent demographic and statistical data pertaining to long-term care. It will include, but not be limited to data and background information on the following:

The long-term care population: who they are—including emphasis on those who are most at risk—why they need long-term care, what they need, projections for the future.

Long-term care services currently available: home health care, family caregiving, institutional care.

Financing: who pays for long-term care services—with special emphasis on the burden that long-term care places on families.

CONCLUSION

I believe it is essential that we keep in mind that passage of the Medicare Catastrophic Loss Prevention Act of 1987 is but a first step in protecting older Americans against all catastrophic health care costs. Providing coverage for long-term nursing and home care and expanding the prescription drug benefit should be at the top of our list. Until we can assure the elderly of this Nation that they never will have to choose between eating or paying the rent and getting needed health care, can we truly call it "catastrophic protection."

FRAUD OF THE DAY—PART II

● Mr. HEINZ. Mr. President, today's fraud involves the apparel industry, a popular target for fraudulent activity since much of it is subject to quantitative restraints.

On July 21, 1986, Eagle Eye, Ltd., which happens to be a Pennsylvania company, in case anyone thinks I have been biased in my presentations, and its Hong Kong affiliate pled guilty to four counts each of 18 U.S.C. 542, the fraud statute, and 19 U.S.C. 1304(e), relating to marking. These counts involved the illegal importation of sweaters produced in Hong Kong and the People's Republic of China through Japan in order to avoid quota restrictions. The country of origin of the sweaters was changed from Hong Kong or China to Japan. The companies paid criminal fines totaling $40,000, and each firm received 5 years probation for the marking violations. The companies have also collectively agreed to pay $280,000 in civil penalties. The Customs Service was fortunate in this case since it was also able to recover $160,000 from the sale of forfeited merchandise seized in connection with the violations.

This fraud does not involve multimillion dollar fines or awesome quantities of merchandise. It is admittedly pedestrian when compared to the Mitsui steel fraud or the multinational coffee fraud I discussed last week, but it is these small cases which add up and do the real damage to our economy, particularly in sectors like apparel, which are filled with small businesses. A multimillion dollar manufacturer could probably cope with the lost sales caused by this fraudulent act, but a small manufacturer could not.

It is because of this damage that I have been stressing the need for a private right of action so strenuously over the last few weeks. Fortunately, this fight is not without important allies. I recently received a letter from the Trade Reform Action Coalition supporting the Senate provision creating a private right of action in customs fraud cases. This coalition, known as TRAC, is made up of many disparate groups, ranging from the National Cotton Council of America to the American Iron and Steel Institute to the International Ladies' Garment Workers Union. The diversity of the groups making up the coalition clearly shows the wide range of support which a private right of action provision enjoys.

The arguments that the coalition makes in its letter are quite similar to those I have presented during my "frauds of the day." The letter mentions the valuable deterrent action of a private right of action, as well as the fact that present fines and penalties are seldom commensurate with the

magnitude of the illegal act committed.

The TRAC letter also refutes a popular argument against the pending amendment—the overcrowding of the courts. As I have mentioned on an earlier occasion, the Court of International Trade can easily handle a significant increase in the number of cases it processes. Overall, this letter clearly sums up many of my arguments in favor of a private right of action for customs fraud violations. Mr. President, I ask that this letter be printed in the RECORD.

The letter follows:

TRADE REFORM ACTION COALITION,
August 11, 1987.

Mr. ALAN F. HOLMER,
General Counsel, Office of U.S. Trade Representative, Washington, DC.

DEAR ALAN: On behalf of members of the Trade Reform Action Coalition (TRAC membership attached), we are writing to express our strong support for Section 939 of the Senate's omnibus trade bill, which creates a private enforcement action against customs fraud.

TRAC's 1987 legislative agenda has, as one component, passage of a private right of action to recover damages that result from customs fraud and violations. Section 939 of the Senate trade bill, co-sponsored by Senators Heinz, Danforth, Specter and Hollings, would enable U.S. companies that have been injured by customs fraud or gross customs negligence to pursue civil actions in the Court of International Trade (CIT) to recover damages that result from these illegal and harmful activities.

The arguments for this amendment are, in our view, overwhelming.

First and foremost, there is currently very little deterrent to foreign exporters and U.S. importers who engage in customs fraud. Due to inadequate U.S. Customs Service staff and other resources, most fraud goes undetected. Moreover, in those limited number of Customs Service fraud actions that are brought (e.g., Korean polyester filament through Japan and the Thyssen and Mitsui steel cases), there is usually a delay of several years between the time fraud occurs and the government finally decides to act.

Second, in those cases where settlements are reached between the government and guilty parties, the fines that are levied often bear little resemblance to the economic damage that results from fraud. Those who knowingly and willingly engage in customs fraud know that the "gains" from fraud will in all likelihood outweigh the sanctions if they are caught and, as a result, there is currently no real deterrent to this criminal activity. In addition, those who are directly harmed by customs fraud schemes are not compensated at all for the damage that is done to their businesses.

Third, Section 939 will assist U.S. Customs Service enforcement efforts, precisely because it will have a strong deterrent effect. The principle here is no different from what it is when people violate U.S. antitrust and securities laws, which also allow for private recovery of damages. Foreign exporters and U.S. importers who engage in customs fraud will henceforth know that they will be held potentially liable for damages that result from fraud, and this alone will discourage such schemes.

There are no strong arguments, in our view, against passage of Section 939.

Some make the point that Section 939 will lead to "trade harassment" and the filing of frivolous suits. This argument makes no sense, because Rule 11 of the Federal Rules of Civil Procedure already provides clear authority to impose sanctions on parties that file lawsuits for purposes of harassment—and, if there are still any doubts, TRAC members would support inclusion of specific language in Section 939 that would (1) require parties filing actions to believe their allegations are well-grounded, (2) prohibit civil actions that harass any person and (3) clarify the authority of the Court of International Trade to impose sanctions on parties that file harassment suits.

Another empty argument against passage of Section 939 is that it will create a logjam at the Court of International Trade. This is contrary to what CIT officials themselves say, and comparative caseload statistics make clear that the CIT could take an additional workload without great difficulty. For example, the number of civil actions filed in the CIT decreased by 98 from 1985 to 1986 and, while the average number of civil actions filed per federal district judge in 1986 was 444, the average for judges on the CIT was only 183.

During Senate debate on Section 939, Senators Bentsen and Packwood recognized that the amendment in question will assist Customs Service enforcement efforts and deter customs fraud and will not in any way interfere with legitimate trade activities. Both therefore agreed to support the concept of a private right of action to recover damages for customs fraud. Members of TRAC hope that USTR, and the Administration as a whole, will also support this amendment in the upcoming Conference on the trade bill.

Sincerely,

FRANK FENTON,
Co-Chairman.
JIM CONNER,
Co-Chairman.

TRADE REFORM ACTION COALITION [TRAC]

Alliance of Metalworking Industries.
Amalgamated Clothing and Textile Workers Union.
American Apparel Manufacturers Association.
American Brush Manufacturers Association.
American Chain Association.
American Cutlery Manufacturers Association.
American Die Casting Institute.
American Federation of Fisherman.
American Fiber, Textile, Apparel Coalition.
American Furniture Manufacturers Association.
American Gear Manufacturers Association.
American Institute of Steel Construction, Inc.
American Iron and Steel Institute.
American Metal Stamping Association (Washer Division).
American Mushroom Institute.
American Pipe Fittings Association.
American Textile Machinery Association.
American Textile Manufacturers Institute.
American Wire Products Association.
American Yarn Spinners Association.
Anti-Friction Bearing Manufacturers Association.
Automotive Service Industry Association.
Association of Die Shops International.
Association of Steel Distributors.
Association of Synthetic Yarn Manufacturers.
Bicycle Manufacturers Association of America, Inc.
Brass and Bronze Ingot Institute.
Carpets and Rug Institute.
Cast Iron Soil Pipe Institute.
Cast Metals Association.
Clothing Manufacturers Association of America.
Committee of Pipe and Tube Imports
Copper and Brass Fabricators Council, Inc.
Cutting Tool Manufacturers Association.
Expanded Metal Manufacturers Association.
Footwear Industries of America, Inc.
Forging Industry Association.
Group of 33.
Hand Tools Institute.
Industrial Fasteners Institute.
Industrial Perforators Association, Inc.
Industrial Unions Department, AFL-CIO.
International Ladies' Garment Workers Union.
International Leather Goods, Plastics and Novelty Workers Union.
Investment Casting Institute.
Iron Castings Society.
Knitted Textile Association.
Lead-Zinc Producers Committee.
Luggage and Leather Goods Manufacturers of America, Inc.
Man-Made Fiber Producers Association, Inc.
Metal Cutting Tool Institute.
Metal Treating Institute.
Metalworking Trade Coalition.
National Association of Chain Manufacturers.
National Association of Hosiery Manufacturers.
National Association of Pattern Manufacturers.
National Association of Uniform Manufacturers.
National Cotton Council of America.
National Foundry Association.
National Knitwear Manufacturers Association.
National Knitwear and Sportwear Association.
National Tooling and Machining Association.
National Wool Growers Association.
Neckwear Association of America.
Non-Ferrous Founders' Society.
Northern Textile Association.
Outdoor Power Equiment Institute.
Plumbing Manufacturers Institute.
Scale Manufacturers Association, Inc.
Steel Founders' Society.
Steel Plate Fabricators Association, Inc.
Steel Service Center Institute.
Synthetic Organic Chemical Manufacturers Association.
Textile Distributors Association, Inc.
Tool and Die Institute.
U.S. Battery Trade Council.
U.S. Fastener Manufacturers Group.
Valve Manufacturers Association.
Welded Steel Tube Institute.
Work Glove Manufacturers Association.●

NAUM MEIMAN

● Mr. SIMON. Mr. President, the Soviets argue that "all Jews who wanted to leave the Soviet Union have left. Family reunification has been completed. The decline in emigration in recent years is simply due to the

fewer number of persons requesting exist visas."

I am troubled by this statement. I have been involved and concerned with the Naum Meiman case for quite a few years. I know Naum. He is a Soviet refusenik who has repeatedly applied for an exit visa to leave Russia. He tried to get the best medical treatment for his wife when she had cancer; when she was allowed to leave the country for treatment, he was not allowed to join her. When she died he was not granted permission to attend her funeral. Again, I must question the Soviet's statement.

It is time that we do away with the term "refusenik." It is time that the Soviets begin to live up to the standards that they have set.●

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. FORD. Mr. President, I move that the Senate stand in recess subject to the call of the Chair.

The motion was agreed to, and at 8:22 p.m., the Senate recessed subject to the call of the Chair.

The Senate reassembled at 8:53 p.m., when called to order by the Presiding Officer (Mr. GRAHAM).

ORDERS FOR FRIDAY

RECESS UNTIL 8:30 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 8:30 a.m. tomorrow.

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

RESERVATION OF LEADERSHIP TIME

Mr. BYRD. Mr. President, I ask unanimous consent that the time of the two leaders on tomorrow be reserved for their use later in the day.

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

RECOGNITION OF CERTAIN SENATORS

Mr. BYRD. I ask unanimous consent that upon the completion of the prayer, the following Senators be recognized each for the time stated: Mr. PROXMIRE, 5 minutes; Mr. ROCKEFELLER, 13 minutes; Mr. HEFLIN, 5 minutes; and Mr. BOREN, 10 minutes.

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

PROGRAM

Mr. BYRD. I believe the order is already entered for a return to the consideration of the Adams amendments at 9 o'clock a.m. Am I correct?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. There is a 30-minute time agreement on the Adams amendments divided between Senators ADAMS and KASSEBAUM. At 9:30 a.m., there will be a vote in relation to the Adams amendments. That will be a 30-minute rollcall vote, and the call for the regular order is automatic.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD. Mr. President, I ask unanimous consent that the majority leader, after consultation with the Republican leader, may call up any time the House FHA temporary extension legislation; that when the bill is called up, it be considered under the following the time limitation:

Provided, that there be 10 minutes on the bill to be equally divided between Senators CRANSTON and D'AMATO:

Provided, further, that the only amendment in order be an Armstrong amendment concerning a permanent extension of FHA programs on which there be 30 minutes to be equally divided;

That no motion to commit or recommit be in order;

And, ordered, further, that immediately upon disposition of the Armstrong amendment the Senate proceed to third reading, and without further debate or action of any kind;

And, that the Senate then proceed without further debate or motion or action of any kind to final passage of the bill;

Provided, further, that the agreement be in the usual form.

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

The agreement is as follows:

Ordered, That the Majority Leader, after consultation with the Minority Leader, is authorized at any time to proceed to the consideration of House Joint Resolution 393, the FHA temporary extension, and that the only amendment in order be an Armstrong amendment dealing with a permanent extension of FHA programs, on which there shall be 30 minutes debate, to be equally divided and controlled.

Ordered further, That there be 10 minutes debate on the joint resolution, to be equally divided and controlled by the Senator from California (Mr. Cranston) and the Senator from New York (Mr. D'Amato).

Ordered further, That no motions to recommit be in order.

Ordered further, That immediately upon disposition of the Armstrong amendment, the Senate proceed to third reading and final passage of the bill.

Ordered further, That the agreement be in the usual form.

RECESS UNTIL 8:30 A.M. TOMORROW

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 8:30 a.m. tomorrow.

The motion was agreed to, and at 8:57 p.m., the Senate recessed until tomorrow, Friday, October 30, 1987, at 8:30 a.m.