SENATE—*Friday, November 13, 1987*

(Legislative day of Thursday, November 12, 1987)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable JOHN BREAUX, a Senator from the State of Louisiana.

The PRESIDING OFFICER. The prayer this morning will be offered by Father Vicente Lcpez, Associate Director for the Secretariat for Hispanic Affairs of the U.S. Catholic Conference.

PRAYER

The Reverend Father Vicente Lopez, Associate Director for the Secretariat for Hispanic Affairs, U.S. Catholic Conference, Washington, DC, offered the following prayer:

Let us pray:

May God's spirit come upon us in full measure.

May God's own spirit of wisdom described in the Book of Wisdom be upon this assembly.

For He is the guide for Wisdom and the director of the wise. For both we and our words are in His hand, as well as all prudence and knowledge of crafts. For He gives sound knowledge of existing things, that we might know the organization of the universe and the force of its elements. The beginning and the end and the midpoint of times, the changes in the sun's course, and the variations of the seasons.

Cycles of years, positions of the stars, natures of animals, tempers of beasts, powers of the winds and thoughts of men, uses of plants and virtues of roots—such things as are hidden we learn and such as are plain, for wisdom, the artifices of all, teaches all.—Book of Wisdom, chapter 7, verses 15-22.

God's self-same spirit made manifest in Jesus calls us forth today.

The spirit of the Lord is upon me, therefore He has annointed me. He has sent me to bring glad tidings to the poor, to proclaim liberty to captives. Recovery of sight to the blind and release to prisoners. To announce a year of favor from the Lord.—Luke, chapter 4, verses 18-19.

May the power and the spirit of wisdom spoken of in the Scriptures visit and dwell upon us, on our families, our communities and our Nation. 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 legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 13, 1987.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN BREAUX, a Senator from the State of Louisiana, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

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

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the Chair will recognize the acting majority leader, Senator PROXMIRE.

RESERVATION OF LEADERSHIP TIME

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the time of the majority and minority leaders be reserved for their use later in the day.

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to exceed the hour of 9:15 a.m., with Senators permitted to speak therein.

WHEN SENATORS SHOULD CONTRADICT PUBLIC OPINION

Mr. PROXMIRE. Mr. President, one of the delightful things to do when you have decided you are never again going to run for office is to take a critical look at public opinion polls. Sometimes Senators vote their conscience, regardless of public opinion polls. This is exactly what Senators should always do. Sometimes the public is right. Sometimes the public is wrong. The voice of the people is not the voice of God. But it merits our careful attention and concern. When this Senator finds his position on a crucial issue is out of step with public opinion, he reconsiders that position, not change it. Reconsider it. He asks himself, when he disagrees with public opinion: "Are the people right? Or am I right?" He also asks, "What have I missed? And what if anything have the people missed?"

With that in mind, this Senator recently reviewed a poll conducted for Time magazine by a respected polling organization Yankelovich Clancy Shulman. This Senator found himself in sharp disagreement with a majority of the people in this country over the crucial issue right now before the Congress. The issue: Should we cut Government spending or should we increase Government spending? The Time survey listed 12 Federal programs. On 8 of the 12 a solid majority favored increasing Federal Government spending. On the remaining four programs the balance between increasing and decreasing spending was roughly equal in each case. About one-third wanted to increase Federal spending. Roughly one-third wanted to reduce Federal spending. And about a third wanted to keep the program at the same level. In general, the public favored spending more on social programs. They were divided about equally on space and military spending. Only star wars found more people favoring decreasing spending than increasing it.

Does this mean that most Americans favor increasing spending on social programs but keeping military spending about the same? That conflicts with a poll conducted by another respected and expert surveyor of public opinion, the Cambridge Reports. These experts asked a "scientifically selected" panel of 1,500 Americans the following question:

> Here is a list of some issues that face the country today. Please tell me which issue you think is the most important one facing the country.

The No. 1 issue by a large margin was "reducing the Federal budget deficit." So the American public is telling us in the Congress: "Cut that deficit" but increase spending for health, for the environment, for housing, and for education. And decrease spending for nothing. Even star wars, which rated as the least popular spending program listed by Time magazine, had only about a third—35 percent—of the public calling for an actual cut. Twenty-six percent wanted to keep star wars spending at about its current level and 23 percent actually wanted to increase it. Sixteen percent had no opinion.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Another 1987 poll, this one by the well-known Gallup organization, got similar answers although it asked the question of 2,132 persons nationwide with a special tax spin on it. Here is the Gallup question:

I'd like your views on how each level of government—Federal, State, and local—uses the tax money it raises. First, I will read a list of some areas where the Federal Government is spending your tax money. For each, tell me if you feel the Federal Government should spend more for this purpose, less for this purpose, or if you feel the amount now being spent is about right.

The reference to taxes might be expected to secure a more anti-Federal spending response. It didn't. In the Gallup case respondents were questioned about Federal spending in eight areas. In four of the eight a solid majority favored more spending. A small minority favored less spending. The rest favored keeping spending at its present level. In two of the other four areas a plurality favored more spending. Only in national defense and foreign aid did more respondents opt for less spending than more spending. And in the national defense area the division was 24 percent favoring more spending, 40 percent favoring less spending and 33 percent calling the level of national defense spending about right.

So our bosses—the American people—seem to be telling us in general, to keep national defense spending about where it is and increase spending on social programs. How can we reconcile that with the high priority our countrymen put on cutting the deficit? One answer is that the American people are for a tax increase. After all, in spite of the noble effort by the Gallup organization to focus the respondent's attention on taxes by referring to "Government spending your tax money," the response came through loud and clear on most social programs—spend more money anyway. But our constituents' top priority is to reduce the deficit.

There is only one logical way we can meet these conflicting views to increase Federal spending and at the same time cut the deficit. That is to increase taxes. Undoubtedly, some Americans would agree that this is what our boss, the electorate, really wants. This Senator does not believe it. It is a minority, and a small minority, that is calling on us for a tax increase. The problem is that the American people simply have not reconciled their desire for deficit reduction with the grim but essential companions of cutting spending and increasing taxes. They would try to have it both ways. They would act like Congress—vote for the social programs, vote against any reduction in military programs, and then vote to hold down spending by an across-the-board Gramm-Rudman sequestration. This is a copout. Our constituents do not serve in office. We do. That means we should decide our priorities. We should advance programs that have the highest priorities. We should cut programs that have lower priorities. We should aim for a substantial overall spending and deficit reduction. If we fail in making the cuts big enough we should increase taxes to make up the difference. That is what we should do. But it is oh so much easier politically to vote for every spending program, showing each and every interest group and our public constituency that we agree with their specific spending priorities. Then we administer the political "coup de grace." We let the Gramm-Rudman sequester make the across-the-board cut that shows we support deficit reduction. That may be smart politics. It is not leadership.

Mr. President, I yield the floor.

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

The Senator from South Carolina, Mr. THURMOND, is recognized.

Mr. THURMOND. Mr. President, on account of these charts, I ask unanimous consent that I may speak from this particular desk.

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

NATIONAL CONFERENCE ON ALCOHOL ABUSE

Mr. THURMOND. Mr. President, the National Conference on Alcohol Abuse and Alcoholism is meeting in Washington this week. The chairman of the conference is the Honorable Otis R. Bowen, M.D., the Secretary of Health and Human Services [HHS].

During his tenure at HHS, Dr. Bowen has given high priority to issues concerning alcohol and alcoholism, and should be commended for his efforts. The purpose of this conference, in Dr. Bowen's words:

Is to focus public attention on alcohol abuse and the disease of alcoholism as major health issues, major economic issues, and as major human issues.

The honorary chairperson of the conference is former First Lady, Mrs. Betty Ford. She has made outstanding contributions to increasing public awareness of these important issues. I welcome the participants of the national conference to Washington. I will be especially interested in the recommendations that are made during the portion of the conference dealing with public policy and possible legislation.

Last year, President Reagan signed into law the vitally important omnibus drug bill. This was a comprehensive Federal effort to combat the use and distribution of drugs in our society. Much of that bill dealt with the criminal justice system and was written in the Senate Judiciary Committee. As chairman of that committee last year, I was proud of our work on that legislation. However, we all know that drug smugglers and drug dealers are easy political targets. There is no one in Congress who seeks to protect their interests.

I have said this on several occasions and I repeat it today: There is no stronger lobby in this Nation than the alcohol beverage lobby. However, today alcohol is the No. 1 drug of abuse in our country.

To illustrate the extent of alcohol abuse, here are a few relevant examples:

First, the National Institute on Alcohol Abuse and Alcoholism (NIAAA) says that alcohol costs the American economy nearly $120 billion per year in increased medical expenses and decreased productivity.

Second, the NIAAA estimated that 18.3 million Americans are "heavy drinkers" which is defined as consuming more than 14 drinks per week.

Third, in 1985, over 12 million American adults had one or more symptoms of alcoholism. This represents an increase of 8.2 percent over 1980.

Fourth, since 1981, the Surgeon General has officially advised women to abstain from drinking during pregnancy. Despite this warning, fetal alcoholism syndrome is the third leading cause of birth defects with accompanying mental retardation. It is the only preventable birth defect among the top three. However, a 1985 Government survey revealed that only 57 percent of Americans had even heard of fetal alcohol syndrome.

Fifth, a 1987 HHS report to Congress entitled "Alcohol and Health" cites that nearly one-half of all accidental deaths, suicides, and homicides are alcohol-related. Nearly half of the convicted jail inmates were under the influence of alcohol when they committed the crime.

Sixth, alcohol-related traffic accidents claim over 18,000 lives each year in the United States.

Seventh, among teenagers, alcohol abuse has reached epidemic proportions. According to the 1987 report, an estimated 30 percent, or 4.6 million adolescents, experience negative consequences of alcohol use—such as poor school performance, trouble with parents, or trouble with the law.

Eighth, in 1986, alcohol remained the most widely used drug among American youth.

In the past I have advocated the placement of health warning labels on alcoholic beverages. Each time I introduce this legislation, the full power of the alcohol beverage industry is exerted against it.

In a so-called "factsheet" on last year's health warning label bill, the Distilled Spirits Council of the United States basically concluded that such warning labels were misleading, unnecessary,

and that voluntary educational programs between the alcoholic beverage industry and the public sector was the best way to deal with this problem. The final sentence of the "factsheet" states:

The alcohol beverage industry recognizes its unique responsibilities and has been carrying out those tasks in conjunction with government, the Licensed Beverage Information Council, and through individual company efforts which totally alleviates the need for health warning labels.

Mr. President, that statement is ridiculous. There has been no responsibility demonstrated on behalf of the alcoholic beverage industry to educate the youth of our Nation as to the hazards of alcoholism. To the contrary, advertisements glamorize the use of alcohol. Recent campaigns target youthful drinkers, many of whom are under the legal age.

Many States have raised the legal drinking age from 18 to 21. Therefore, until the senior year in college, many college students are prohibited from purchasing alcoholic beverages.

Mr. President, at this time I would like to introduce to you "Spuds MacKenzie." This bull terrier is the popular chief spokesman for Bud Light beer. Spuds, who is called the "original party animal," is seen on a variety of television ads in recreational settings which link drinking beer with a good time on campus. His popularity on television has led Anheuser-Busch to license a variety of Spuds products including children's toys, T-shirts, and posters.

And here we see these posters that tend to glamorize Spuds MacKenzie, "Dean of Partyology," and "Homecoming, a Toast to Spuds MacKenzie."

The National Council on Alcoholism, the American Council on Alcohol Problems, the Alcohol and Drug Problems Association of North America, the National Association of State Alcohol and Drug Abuse Directors, and the Center for Science in the Public Interest have all called for Anheuser-Busch to discontinue Spuds MacKenzie promotions, claiming that the massive advertising and promotion campaign encourages youth to drink.

In spite of these protests, Anheuser-Busch has no intention of curtailing the marketing of Spuds MacKenzie products. Toy manufacturers have been gearing up for what they expect to be record sales during the Christmas season.

Mr. President, I hold here a toy for children, and what does this toy say? This toy has attached to it this message:

Spuds MacKenzie. When you are stepping out or stepping up, it is party time with the Bud Light original party animal. Spuds MacKenzie, as senior party consultant for Bud Light, Spuds traveled the globe seeking out new and different ways to be the life of the party. Spuds MacKenzie, the original party animal.

Mr. President, this is a very attractive toy. It is known all over the country. And when advertising such as this is used, it encourages the youth, it encourages the children to start feeling it is all right to drink alcohol. And also attached to this is "Spuds MacKenzie, Bud Light," encouraging children to drink more of Spuds' beer.

Mr. President, we think that is improper. We think to have these toys advertising beer on them for little children to be sold in the stores is absolutely unnecessary, inadvisable, and against the public interest.

Michael Roarty, Anheuser-Busch executive vice president, responded to criticism by explaining that the Spuds MacKenzie character was created and used to promote Bud Light beer only for those "old enough to drink."

The stuffed animals, children's toys, and T-shirts small enough to fit 12-year-olds indicate the real purpose of the campaign is to entice young people to drink.

Is this the kind of responsibility which we can expect from the alcohol beverage industry in the future? If so, I think we in Congress should get to work on some major policy changes. I am fully cognizant of the free speech rights of the alcohol beverage industry. However, what is the cost to society of this freedom to advocate unlawful teenage drinking?

I think it is appropriate here to quote directly from the 1987 HHS report to Congress called Alcohol and Health.

Research on alcoholic beverage advertising indicates it is second only to peer pressure as a correlate of teenage alcohol consumption, particularly of beer and wine. Also, a nationwide survey of 1,200 respondents indicated that advertising contributes to certain forms of problem drinking. There is a widespread belief that favorable portrayals of alcohol consumption in the entertainment media can cause increased consumption by viewers.

Additional evidence demonstrating the alcohol beverage industry's lack of responsibility to the youth of our Nation involves wine coolers, which are a blend of wine and carbonated fruit juice containing 5 to 6 percent alcohol. This is 1 to 2 percentage points more than beer.

The current advertising gives the impression that wine coolers are a soft drink. The National Council on Alcoholism notes that the ads imply wine coolers will make you healthy. They show people enjoying them after a jog or aerobics. Coolers are often found in the soft drink section of the supermarket.

The impact of such marketing is clearly illustrated in a 1987 My Weekly Reader survey of over 500,000 elementary and high school students. Among fourth graders, 26 percent said "many" of their peers had tried coolers. Just 24 percent thought coolers were drugs; 50 percent said beer, wine, and liquor were drugs. By age 12, 40 percent of American children will try wine coolers. Two-thirds of those surveyed here used beer, wine or distilled spirits in the past year.

Mr. President, I ask unanimous consent to have printed at the conclusion of my remarks an editorial by William Raspberry concerning wine cooler advertising which appeared in the October 19, 1987, edition of the Washington Post.

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

(See exhibit 1.)

Mr. THURMOND. Mr. President, unfortunately, I am not confident in the voluntary efforts of the alcohol beverage industry to increase public awareness of the hazards of alcohol abuse. With 12-year-olds drinking wine coolers and wearing Spuds MacKenzie T-shirts, there is no basis for such confidence.

During the National Conference on Alcohol Abuse and Alcoholism, issues regarding excise taxes, health warning labels, and advertising practices will be discussed. As ranking member of the Subcommittee on Children, Drugs, and Alcoholism, I am keenly interested in these issues.

Accordingly, I will be watching the alcohol beverage industry to determine whether they will in the future demonstrate real responsibility in their marketing or merely pay lip service to that goal.

Once again, I welcome the participants at the National Conference on Alcohol Abuse and Alcoholism to Washington. While you are here, I hope that you will exercise your rights of free speech by telling your elected representatives just how you feel about these issues.

Mr. President, we have no greater resource than our children. When our children are sold little toys like this, which advertise beer, it causes them to grow up and believe it is perfectly all right to use alcohol. Now we know that those under 21 are not supposed to use alcohol.

Again, I call attention to these posters. I hope Senators today will look at them and see just what is taking place in this country, because we must not take any step that is going to harm our young people and cause them to feel that it is all right to use alcohol.

Alcohol causes more automobile wrecks, causes more deaths, causes more tragic trouble in the home, causes more divorces, causes more suicides, causes more murders than any other single item, and I think it is time the American people should have this called to their attention.

91-059 O-89-50 (Pt. 22)

EXHIBIT 1

[From the Washington Post, Oct. 19, 1987]

CHILDREN AND WINE COOLERS

(By William Raspberry)

Just in case worried parents needed something else to worry about . . .

Two-thirds of all American children have used beer, wine or hard liquor in the past year, and a third of them are current drinkers. More than 91 percent of high school seniors have used alcohol at some time in their lives (only 67 percent have smoked by then), and more than 65 percent of seniors have consumed alcohol within the past month.

Your children aren't teen-agers yet? Then try this: Two of every five American youths have drunk wine coolers before their 13th birthdays.

The findings are from a survey conducted last January by The Weekly Reader in association with the National Council on Alcoholism. The report was released last Friday in the October-December issue of Metropolitan Life's Statistical Bulletin.

How serious a problem is this youthful alcohol abuse? Deadly serious, says Metropolitan.

"The National Council on Alcoholism reminds us that alcohol is the major cause of all fatal and nonfatal teen-age traffic accidents and is implicated in thousands of drownings, suicides, violent injuries, homicides and burns among adolescents.

"Alcohol abusing teenagers are more likely to be engaged in other 'problem behaviors,' to make lower grades in school, to be more involved in heavy marijuana use and to be less involved in religious activities than nonalcohol abusing youth. In addition, early use of alcohol is considered a predictor of later alcohol abuse and a 'gateway behavior' for illicit drug use and other deviant behaviors."

One reason for the startling figures, health officials suspect, is the recent heavy marketing of wine coolers.

Many wine coolers are portrayed like fruit juice or soft drinks," the NCA's Lora Friedman said. "They are in the supermarkets right next to the soft-drink section. For kids, it becomes a fuzzy distinction."

Bum rap, says the industry, noting that it is illegal to sell wine coolers to minors. "They are obviously getting it from their parents" Joe Gegg, a spokesman for the Wine and Spirits Wholesalers of America, told United Press International. "Nobody would be naive enough to think fourth and sixth graders are walking into grocery stores and buying wine coolers."

Whatever the source, and whatever the problems with the survey, it seems clear that the pressure to use alcohol is increasing among the very young. The Weekly Reader did not directly ask its 500,000 respondents whether *they* had personally used alcohol but rather whether their friends had. "These were children, and they were handing [their responses] in to a teacher," a magazine official explained.

Still, 42 percent of sixth graders said their friends have tried wine coolers. Two-thirds of the seniors said all or most of their friends get drunk at least once a week.

Perhaps more disturbing than the prevalence of use among teen-agers is the youngsters' attitude toward alcohol. Only four of 10 seniors thought heavy weekend drinkers were at "great risk" of harming themselves; two-thirds thought there was "great risk" only from having four or five drinks every day.

Moreover, the respondents reported heavy peer pressure to drink wine coolers as early as sixth grade.

The survey did not specify the culprits, but surely they include both the alcohol industry and lackadaisical parents who refuse to believe that a few sips of cooler can lead to serious alcohol abuse problems. For some parents, at least, wine coolers are a relatively harmless introduction to adult sophistication—like a training bra.

Well, maybe this latest survey, along with the campaigns of organizations such as Mothers Against Drunk Driving, will help to wake us up. I know it goes against the modern trend, but parents need to learn to give unambiguous "don't do it" signals to their children.

And industry officials would do well to rethink their advertising schemes, particularly the use of cartoon characters in their wine cooler ads. Like the rustic pair in the wine cooler commercials, we'd be prepared to thank them for their support.

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the conference report on S. 825, which the clerk will report.

The legislative clerk read as follows:

The conference report on S. 825, an act to amend and extend certain laws relating to housing, and for other purposes.

The Senate resumed consideration of the conference report.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. ARMSTRONG. Mr. President, maybe we should take a moment to check signals and see where we are.

My recollection of the parliamentary situation is that the Senate has ordered a vote in connection with an expected point of order and that that vote will occur at 10 o'clock; that the time will be divided, basically, between the Senator from California and myself—I think, also, the time granted to other Senators.

Will the Chair state what the time agreement was?

The ACTING PRESIDENT pro tempore. The time is divided in the following fashion: The Senator from Colorado was to have 30 minutes; the Senator from Utah [Mr. GARN], the Senator from Texas [Mr. GRAMM] and the Senator from California [Mr. CRANSTON] were each to control 5 minutes. All of that time will be reduced proportionately.

Mr. ARMSTRONG. I thank the Chair for the explanation.

To expedite matters, I do now make the point of the order that the conference report violates section 311 of the Budget Act, for the reasons I previously stated and which were discussed last night.

Mr. CRANSTON. Mr. President, I move, pursuant to section 904(b) of the Congressional Budget Act of 1974, that the Budget Act be waived with respect to consideration of the conference report on S. 825 at the levels of budget authority reported by the conference committee.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. ARMSTRONG. Mr. President, the symbol of America is the eagle. That is our national emblem. The symbol of America is not the ostrich; but, by gosh, if we vote for this conference report, it should be the ostrich.

I know that the easiest thing for Senators to do is to come to the floor and say: "Well, the fix is in. It is all done. The train is leaving. The boat is about to sail. There is a bipartisan agreement here. The managers have been working on this a long time. What can I do? I am only one. Why should I vote against it, if it is going to pass anyway? It's not my fault responsibility."

Well, it is our responsibility. It is our responsibility, one Senator at a time. To us has been entrusted the decision of how we will vote. It does matter whether this passes or not, whether the President vetoes it or not, whether his veto is sustained or not. It does matter. This is not a free vote.

Psychologists have known for a long time that one of the most enduring features of human nature is a reluctance—indeed, an intransigent unwillingness—to look at unpleasant facts. But I think we should look at them.

I think it has been clearly established, not only in the debate last night but also over a long period of time, that this legislation is harmful to our country. It is harmful to the budget deficit. It is harmful to the markets that are looking to Congress for some reassurance about the future of the economy. It is harmful to local housing authorities which are calling for reform of these programs. It is harmful to those who have objected to certain new amendments which were included in this conference report, included without the benefit of hearings.

In the course of the debate last night, I think we established four or five points quite clearly. Whether or not Senators will want to look at them is up to each Senator. The facts are there—they are on the public record.

The first fact is that there is no convincing showing of need for this program. We have about 5 million units of subsidized housing in this country. I do not think there is any showing that it is an insufficient number.

I do not deny that there are people who need help with housing who cannot get it. The problem is that most of this housing—and I use the word "most" advisedly—has been made available to people who are not poor, who are either wealthy or near wealthy or in the middle class. At a time when we have housingpoor

people, people who are housing indigents, who cannot get support, we have people who are much better off who are occupying the vast majority of the subsidized units. About 600,000 of these units become available every year; and if we started reallocating those systematically to those truly in need, we would not have to authorize additional new units.

Second, I think we have clearly established that this bill is not timely. We are trying to find some ways to reduce deficits.

The headlines in this morning's paper trumpet the fact that the negotiators have hit a roadblock and are unable to find ways to make savings necessary to get the budget package in preference to the sequester which is in prospect.

All of the negotiators expressed the idea that they hoped they would be able to do so; they were going to try to get back together, but it was very clear from the news this morning, as it has been on television and in the news media as well as in private conversations for the last 3 or 4 weeks, that at last the idea of balancing the budget or at least putting us on a track over a period of time for a balanced budget is a majority national priority.

This bill goes in an opposite direction. This bill contributes in an important and substantial way to a problem. It is not a part of the solution.

The response of the proponents of this legislation is, by gosh, it is not fair to blame housing legislation for the national budget crisis, but, of course, nobody was doing that. There is not any Senator who has come to the floor and said that the reason that we got this astronomical problem is because of housing legislation. What we have said is that the cumulated extravagance of the housing legislation is part of the problem. And it just so happens it is the part of it we are addressing today. This is the part that today we have a chance to do something about.

Nor can we be unmindful of the fact that over and above the actual contributions to the securitized public debt there is a quarter of a trillion dollars, $250 billion of unfunded liabilities for which no provisions have been made right now.

If we never adopt another housing authorization or appropriation bill we are going to have to pay off over $250 billion to which we are already committed. That is in addition to the stated explicit national debt of something in excess of $2 trillion.

Mr. President, we have shown and I think conclusively that the figures which are used by the proponents to support this are at the very best, under the most charitable characterization open to serious doubt. They say it is $15 billion in authorization. The OMB believes it is $18.7 billion. And so you can take your choice of who you really believe. Whether you think $15 billion is an accurate number, it is hard for me to say. I do not see how anybody could really think that in view of the facts laid out, those parts of the bill funded at levels such sums as may be appropriated, those parts of the bill for which no authorization dollar amounts have been scored and which clearly have a cost—I am thinking of lead-based paint; I am thinking of the antidisplacement program.

The sum and substance of it according to OMB, this bill is $18.7 billion for fiscal 1988. That is almost $4 billion above the Senate level. It is in round figures $6.8 billion above the President's budget request for 1 year and about $14.6 billion in the 2-year authorization period.

Mr. President, we have shown again, I think convincingly and without any real attempt at rebuttal by the proponents of this legislation, that this bill lacks reforms; indeed, it undoes some of the reforms in public housing that have been previously agreed to, the reforms that attempted to target the benefits of subsidized housing to the needy, to the poor, the people who deserve it the most.

Mr. President, I have already pointed out, and I do not need to dwell upon the fact, that this bill introduces new concepts which have not had a hearing, which have enormous cost implications and for which, absent some legislative history, the cost burden is unclear. We do not know for sure who is going to have to pay for this new antidisplacement program. You cannot tell from the conference report who will have to pay for it.

I accept the assurances of the Senator from New York, Mr. D'AMATO, that it is intended by the managers of the bill that these costs will be paid for out of the CDBG and UDAG grants. That is not plain from the legislation. But if that is the case, it certainly emphasizes it will be additional unfunded cost at the Federal level and additional pressure for supplemental and continuing appropriations.

Mr. President, finally, let me say that the point of order which I have offered is not, as has been characterized, some technicality, it is not something that is sort of an arcane or mysterious point of order, something that is just parliamentary slight of hand or smoke and mirrors.

We amend the law to require that we not consider and not adopt authorizations which contain spending in excess of the budget. And that is what this is. We are already above the budget. We were above the budget before this bill came to the floor. I am not talking about the President's budget. I am talking about the congressionally approved resolution which establishes the budget for fiscal 1988. It was a budget which in the opinion of many of us was far too high.

A lot of Members of the Senate did not vote for the budget because they thought it was too high. But even at the inflated level, well above what many of us thought were justified, we are already above those figures, and so the $47 million direct spending included in this authorization bill further violates the budget targets, and for that reason it is subject to a point of order and we were advised by the Chair last night that that point of order will be sustained.

The motion which is pending and we will vote on in a few minutes is whether or not to waive the point of order, a very symbolic issue.

The $47 million is not the big end of the bill. It is not the largest dollar implication of the bill, but it is the part that frames the issues neatly. Do we want at this moment, when the whole world is waiting to see whether we have the guts to get spending under control, to take still another step which says no, we do not, that we are going to violate the budget ceilings which we have established, that we are just going to go on with business as usual and waive the point of order against this direct spending?

Mr. President, there is not any big, powerful lobby against this bill. There is a big powerful lobby, a couple of them, as a matter of fact, of people who are running around urging Senators to vote for the conference report, to ignore what the Senators themselves have said about the need for budgetary restraint. There is a lobby running around that is playing hardball. I do not know exactly how that is affecting Senators. I did report last night on one Senator who was contacted and said: "Forget it. My vote is not for sale."

After I said that, I was greeted by some other Members of the body who came up and told me that they have had similar experiences. So I judged that there is a lot of pretty tough talk that has been occurring in the corridors and cloakrooms of the Senate and a lot of phone calls going around, and it is pretty clear, at least in some quarters, that if you vote for the conference report, you can expect support from some big interests and if you do not, by gosh, you better not count on that kind of support.

I do not know how that is going to play out. For my part, it seems to me that that kind of lobbying steps over the line between what is responsible and what is thoughtful and what contributes to the better traditions of this body and to the long-term future of this country, and that which is destructive and that which in effect is corrupting, but that is for each Senator to make up his mind.

I am convinced that this is bad legislation, that it should be vetoed by the President. The indication we have is that it will be vetoed. They have sent their coded message over from the administration to the effect that the President's senior advisers are opposed to this legislation and will recommend a veto, My hope is we will be able to show this morning enough strength to sustain such a veto if the President is inclined to veto the bill.

Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. CRANSTON. Mr. President, since I only have about 4 minutes remaining, I wonder if others who want to speak against it could speak first such as the Senator from Texas.

The ACTING PRESIDENT pro tempore. The Senator from Texas, Mr. GRAMM, has 4 minutes.

Mr. GRAMM. Mr. President, I guess there is not a Member of this body—if there is one, I had not heard him—who has run around for the last 3 weeks, and said raising the deficit is a good thing. Since we had the collapse in stock prices, where the market fell by over 500 points, no one in this body has spoken favorably about deficit spending. I have not heard a single person say that.

In fact, based on those that I have been privileged to hear on this subject, it is as if an evangelist has come to Washington and held a series of tent meetings and now there are a lot of born again fiscal conservatives. In fact, I have not heard one person cuss Gramm-Rudman since the stock market collapsed. Everybody is talking about reducing the deficit. Democrats and Republicans alike are trumpeting the fact that we have been meeting. They trumpet the fact that there has been a summit aimed at reducing the deficit, to try to steady the nerves of Wall Street, and to try to assure that a recovery that put 13.5 million people to work continues.

Now, after all these professions of faith, we are about to get a test, a real, live, honest-to-God test about who is serious and who is not serious about doing something about the deficit.

Now the test is a budget point of order under 311 of the Budget Act. This is a so-called Gramm-Rudman point of order. Under it the Senate has to have 60 votes, or three-fifths of those Senators duly sworn, in order to override this point of order. The point of order occurs because the bill we are considering raises the deficit by $47 million, in direct expenditures.

We are going to have a clear test on this vote as to who is serious about deficit reduction and who is a phony.

Those who are serious about deficit reduction and about the future of the economy are not going to vote to waive this budget point of order on the first budget point of order since everybody was saved and became born again fiscal conservatives—the first point of order out of the chute. Those who are phony fiscal conservatives, those who want people back home to think they are serious about the deficit but who are not serious about it, are going to vote to waive this budget point of order.

So I submit that after this morning we will not have to speculate about who has truly been saved. We will know. Those who vote to sustain the budget point of order, those who refuse to waive the Budget Act to raise the deficit by $47 million, are the people who are serious about deficit reduction.

There are a lot of reasons that this bill ought not to become law in its current form. First, it creates a whole bunch of new programs that do not provide housing for the poor. They provide subsidized housing for the nonpoor, for the developer, for the builder, for all the people who do not need and who do not deserve these subsidies.

Second, they mandate a lot of costs that do not make sense under any circumstances, but certainly do not make sense today. Why should we today commit ourselves to $914 million of cost——

The ACTING PRESIDENT pro tempore. The time of the Senator from Texas has expired.

Mr. ARMSTRONG. Mr. President, how much time do I have left?

The ACTING PRESIDENT pro tempore. The Senator from Colorado has 11 minutes left.

Mr. ARMSTRONG. I will be happy to yield 2 additional minutes to the Senator from Texas.

Mr. GRAMM. I thank the Senator from Colorado for yielding.

Why now, of all times, should we commit ourselves to $914 million worth of cost to go around and strip lead-based paint off of HUD-subsidized projects in public housing when there are cheaper and better alternatives? Why now, of all times, should we be lowering rents in our subsidized housing units so that the nonworking poor of America pay a smaller percentage of their income in rents than the working poor pay?

Quite aside from the question of whether people riding in the wagon ought to be treated better than those pulling it, is this the time that we ought to be lowering rents? I say no.

Finally, it is absurd that we are going to include salaries of former CETA workers, remembering that we wisely eliminated the CETA program in 1981. This would include the salaries of former CETA workers as eligible costs for public housing operating subsidies. That does not make any sense under any circumstances. Why should we commit 281 million dollars' worth of additional costs for that purpose?

Finally, despite all the rhetoric that this is a $15 billion bill and it does not bust the budget, first, we are voting on a budget point of order, so it clearly does bust the budget.

Second, when you add up the costs of all these programs where the bill simply says "We authorize such sums as may be appropriated," and add them to the specified sums in the bill in reality those sums, given the programs contemplated, add up to about $19 billion.

So the question is fiscal responsibility. The question is: Are you serious about the deficit? If you are, you will vote no on the motion to waive the budget.

The ACTING PRESIDENT pro tempore. The time of the Senator from Texas, Senator GRAMM, has expired.

Who yields time?

Mr. CRANSTON. Mr. President, I yield myself the remaining time.

The ACTING PRESIDENT pro tempore. The Senator from California is recognized.

Mr. CRANSTON. Mr. President, I am sure that the great majority of Senators want to consider this bill on its merits. They do not want to be diverted by procedural hurdles. This housing bill is prudent, is sound, is needed, and should be enacted without further delay.

Housing legislation has had its opponents in the House in recent years, as well, in the other body. But the conference report we are now considering passed the House by a remarkable vote of 391 to 1. This conference report won the support of Members of every political philosophy, every region of the country, representing very different constituencies. It was supported by the majority and minority leaders, the majority whip and the minority whip, the chairman and ranking Republican member of the Banking Committee and the chairman and ranking member of the Housing Subcommittee. They all supported the conference report because even those who are very wary of Federal domestic programs know this is a very good bill and it is needed now.

They supported it because it embodies many compromises, among them $600 million in terms of reduction in cost, and elimination of the controversial Davis-Bacon provision. It is unfortunate that the Senators still opposing the report do not know the meaning of compromise.

OMB has sought to discredit this bill with material shot through with falsehoods and deliberate misstatements of the facts.

Let us look at the facts. First, this conference report is important "housekeeping" legislation that meets three tests Senate conferees established at

the beginning. It's lean. It is limited to provisions that need to be enacted this year. It's a consensus bill, with broad support within Congress and across the country among those who care about affordable housing and sound community development. And it's a package the President should sign into law. Negotiations on every provision were directed toward that end.

It is fiscally responsible—$600 million lower than both current funding levels and the levels that passed the Senate several months ago. It's below the House-passed level by about $900 million.

These funding levels are substantially below what most conferees believe are justified. Housing and community development programs have already been reduced more than 70 percent since 1980 while the need for low-income housing has intensified. To go lower simply would not be responsible.

Despite OMB's disinformation, CBO has analyzed the bill and confirms the $15 billion estimate of its authorizations.

So why do we need this budget waiver? Opponents of the bill want to create the illusion that this bill involves budget problems. That is just not the case.

This budget waiver is needed for reasons that are wholly extraneous to this bill.

We are confronted by a technical problem caused by the fact that total Federal outlays now exceed totals in the congressional budget. That has been the case for the past month or so. During that time, a section 311 point of order could have been lodged against any bill involving outlays—no matter how small. This point of order could have been raised on any appropriations bill or virtually any other bill. It was not raised. Senators have wanted to get on with the business of the Senate. Senators have not wanted to sidetrack important business with nit-picking parliamentary maneuvers.

This housing bill would create only about $10 million in outlays. But that small sum gives the opponents of housing the right to raise this procedural hurdle.

The Senator from Colorado's section 311 point is largely created by timing and the technicalities of budget scoring. First, we do not yet have the reconciliation bill on the books along with its savings. Second, the technicians have scored the continuing resolution as if it extended for the full fiscal year even though it extends only through December 16.

The ACTING PRESIDENT pro tempore. The time of the Senator from California has expired.

Mr. CRANSTON. May I ask the Senator from Colorado if I may have about 1 minute?

Mr. ARMSTRONG. Indeed, I am happy to yield. How much time do I have left; 9 minutes?

The ACTING PRESIDENT pro tempore. The Senator has 8 minutes.

Mr. ARMSTRONG. I am happy to yield a minute of that to my friend from California.

Mr. CRANSTON. I thank my friend from Colorado.

Therefore, for this temporary period, the technical budget scoring shows outlay numbers higher than the budget totals. The budget process should not be used to create these procedural hurdles for the Senate.

I trust a strong majority of Senators—who support responsible housing and community development—will support my waiver motion so that the housing bill can be considered on its merits.

I emphasize that this procedural hurdle is not created by the housing bill itself. In fact, the housing bill would reduce spending even below the level that had been expected for appropriations this year. I urge the waiver be passed.

Mr. ARMSTRONG. Mr. President, I see the Senator from Utah is on his feet and has time allocated to him. I would like to yield myself 1 minute before he speaks.

The ACTING PRESIDENT pro tempore. The Senator from Colorado

Mr. ARMSTRONG. I must protest in the strongest possible terms the observations of the Senator from California. He is entitled to his position; he is entitled to his opinion. But he is not, it seems to me, entitled to come to the floor of the Senate and accuse an agency of the Government, responsible people at the OMB, of misinformation and of lying, because that it what he said; and then not document it. I think he ought to put up or shut up.

If he has such facts, he ought to put them in the record of this proceeding. Opinions are not facts. If he has facts to show a campaign of misinformation, then he is obligated to put it in the RECORD at this point and I ask unanimous consent that I be permitted to have printed at this point the material submitted by the OMB and that the Senator from California be invited to put his information right next to it so that it can be compared.

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

MATERIAL SUBMITTED BY MR. ARMSTRONG

[The White House, August 6, 1987]

WHITE PAPER—PRESIDENT'S HOUSING POLICY

Background

One goal of the Reagan Administration has been to ensure that every American has the opportunity to live in decent, affordable housing.

In 1981, when the President took office, he found 17 percent interest rates. The country was in the third year of a housing depression. Young couples couldn't find first houses they could afford, empty nesters couldn't find buyers for their homes, newcomers to cities found short supplies of rental units, most low-income families were forced to live in housing projects if they wished to receive rental subsidies, and many of those projects were in substandard condition. The taxpayers were saddled with an almost $240 billion debt, much of which was committed to pay for subsidized housing in undesirable neighborhoods that impeded social and economic mobility.

The key to this Administration's housing policy has been economic policies which have created a climate of declining interest and mortgage rates, thus lowering shelter costs for all Americans. A continued threat to low interest rates, however, is the deficit. That is why the President proposed a budget for FY 1988 that meets the Gramm-Rudman-Hollings deficit targets, and keeps the deficit on a downward path. Irresponsible spending bills that increase the deficit will ultimately drive up mortgage interest rates and make housing less affordable.

Effects of the Industry

The housing industry, clearly, has benefitted more than any other industry from the reduction in interest rates brought about by changes in economic policy, and current and future homebuyers have benefitted as well. Right now, this country is enjoying sustained economic growth, low inflation, affordable interest rates and an adequate supply of mortgage funds.

Mortgage interest rates have declined from 17 percent to 10 percent. Mortgage payments on a $60,000 home have dropped over $300 per month since 1981. Each percentage drop in mortgage rates lowers monthly payments by $44 and enables 2 million more American families to qualify to buy homes.

Homeownership affordability in 1986 (as measured by the National Association of Realtors' "Affordability Index") was at the highest sustained level in eight years.

Homeownership rates, which had been declining, have shown a slight upturn over the past year.

Housing starts exceeded 1.7 million units annually for the last four years, and are likely to reach that level for a fifth year. This is an unprecedented period of economic strength, even compared to the boom years of the early 1970s.

The housing industry has additionally benefitted from the enormous growth in total government expenditures for housing (including credit subsidies and tax breaks) which has occurred over the last six years.

Loans and loan guarantees by the Federal government and government-sponsored agencies have quadrupled since 1981 to a total of over $800 billion. Housing's share of the government's total $1.2 trillion credit portfolio has grown from 48 percent in 1981 to 69 percent today.

Special tax breaks benefitting the housing industry have increased dramatically as well, rising 49 percent from $34 billion in 1981 to $50 billion in 1986.

Renters have benefitted because nearly 2.6 million multi-family units have been built over the past four years at a rate of about 650,000 per year. This has resulted in a 7.5 percent nationwide vacancy rate, the highest rental vacancy rate and the best market for renters in the past 20 years.

Low-Income Assistance

This Administration has worked to implement new and better ways to fulfill its obligation to those who are not financially able

to meet their own housing needs. It has proposed continued expansion of the number of low-income families receiving housing subsidies.

By the end of 1987, nearly 5.7 million families (over 16 million Americans) will be receiving Federally-subsidized housing. The President's budget proposed to increase by 100,000 the number of families served each year.

Recent studies have shown that housing availability is not a problem; affordability and quality of the housing has been the problem. Rental vacancies for units renting for between $200 and $249 per month were at 7.6 percent in the third quarter of 1986. This suggests that massive new construction programs—the primary means used by the Federal government in the past to provide for the poor—are largely unneeded. But that is not their only drawback. New housing construction has frequently proved more successful at providing subsidies to developers and real estate syndicators than to poor families and individuals.

New housing construction programs have created an enormous debt burden for the Federal government. Congress has committed billions to pay for the existing stock of low-income housing built over the last 40 years. Even if no new housing is built, the government will have to spend $211 billion over the next 20 years to pay for the existing units.

The programs under which most Federally subsidized housing for the poor has been built have seriously restricted the mobility of needy families by channeling them into available housing projects. Often, such projects are ill-maintained, crime-ridden and face substantial community opposition. This policy-mandated "ghettoization" of the poor has increasingly been a source of social problems and is rightly criticized by proponents of both free choice and a fully integrated society.

New construction of low-income housing has been a slow process fraught with political and economic roadblocks. Regulatory red tape is endemic. Local opposition to housing built specifically for the poor often delays or prevents projects from being constructed; or forces them into the least desirable locations. This in turn limits access of residents to good schools and diverse employment opportunities.

Why Vouchers

These considerations have led the Reagan Administration to seek a better alternative to new construction. Early in the Administration, President Reagan established a Housing Commission to review current policy and the housing problems facing the poor, and to develop more effective approaches to address their needs. In 1983, a voucher system was proposed which would provide housing assistance directly to the needy through vouchers or rental certificates. Vouchers increase the recipients' flexibility in choice of housing and cost only about half as much as new construction programs.

With vouchers, about 84 cents of every dollar spent actually flows through to provide housing assistance; with subsidized construction and public housing programs only 34 cents of every dollar reaches the tenants.

New low-income families are provided housing vouchers, allowing them to live where they desire. Vouchers:

Provide immediate aid to low-income families; building projects can take years to put into place.

Allow free choice of housing, without forcing beneficiaries to live in designated locations. Voucher recipients can have access to better jobs, schools and services than low-income households using other subsidized programs which force them to live in certain areas.

The taxpayers, too, benefit from the voucher program, because vouchers:

Encourage use of available housing instead of requiring more building (apartment vacancy rates have been at a 20-year peak).

Provide an equal number of families with housing, at a dramatically reduced cost—$250 per month as opposed to $700 per month for public housing.

Allow a 5-year rather than a 15- or 20-year financial commitment, thus allowing flexibility for the government to adjust to changes in the housing market. The government can reissue a voucher to the same or another family if needed, or cancel it and save the costs, depending on changes in the housing situation after five years.

In 1986, almost 900,000 families received housing voucher or rent certificate subsidies to live in standard quality housing. The Administration has proposed adding 99,000 additional vouchers for 1988 in urban and rural areas.

In summary, the Administration's efforts to create a stable economy which creates a climate for declining mortgage interest rates has made housing more affordable for renters and middle-income homeowners. Housing vouchers continue to be the cornerstone of the Administration's housing policy. They are less expensive than new construction and benefit tenants by giving them more freedom of choice about where they live. The voucher program for low-income Americans should be given a chance to succeed.

"HOUSING AND COMMUNITY DEVELOPEMENT ACT OF 1987"

The pending housing bill that has emerged from conference is bad legislation for at least five reasons.

1. The bill creates several costly and poorly targeted new Federal spending programs.

New Nehemiah homeownership subsidy program would give interest free loans to middle income homebuyers.

"Hiler-Lehman" Rural Housing Preservation Grant program would provide nonprofit organizations with Federal grants to buy out—and potentially give windfalls to—owners of apartments originally financed with Farmers Home loans.

New HUD preservation loan provision would give Federal loans to owners of apartment buildings financed by FHA insured loans.

2. The bill fails to terminate any on-going wasteful Federal spending.

Even though Senate Appropriations provided no funding for HoDAG, Section 8 Moderate Rehab and Public Housing new construction, Housing bill continues all of these at $812 million price tag.

Housing bill authorizes another $2.3 billion to continue UDAG, Farmers Home rural construction, Section 312 Rental Rehabilitation loan, Housing counseling and FEMA crime insurance programs.

3. The bill imposes costly new regulatory requirements upon Federal programs, lessening the effective impact of Federal spending upon intended beneficiaries.

New anti-displacement provisions applicable to HUD's Community Development Block Grant and UDAG programs will soak up Federal dollars by requiring cities to pay for 10 years of rent subsidies for displaced households, reducing the resources available to actually support construction and rehabilitation work.

New lead-based paint requirements divert over a billion dollars of Federal housing subsidies to remove paint even when it is not threatening to the health of anyone. These new standards will also be imposed upon federally-insured homebuyers in two years, with the possibility that all private homebuyers might be affected.

Salaries of former CETA workers are added to list of costs eligible for Federal operating subsidies paid to public housing authorities.

New FEMA flood insurance requirements direct payment of claims for shoreline erosion in advance of actual physical loss. This liberalization of erosion benefits is another step toward the bailing out of beachfront communities by the Federal Government for nature's uncontrollable forces.

4. Overturns Administration cost saving reforms.

Administration and Congressional standard that subsidized tenants contribute 30 percent of income for rent eroded by new tenant income deduction.

Housing voucher program indexed for annual inflation, thus increasing costs and undermining "shopping" incentive.

Public housing authorities given windfall gain for administering HUD housing programs: Bill increases administrative costs 26 percent for vouchers and 7 percent for Section 8 above 1987 appropriated levels.

Includes pork: Allows several cities—Hartford, Connecticut; Lebanon, Pennsylvania; Richmond, Virginia; Milwaukee, Wisconsin; and East Stroudsburgh, Pennsylvania—to retain land disposition proceeds from closed-out urban renewal projects and to use proceeds for eligible CDBG activities. Further allows Naticoke, Pennsylvania to retain categorical settlement grant funds that remain from a project closeout.

5. $15 billion funding level is too high and phoney to boot!

Does not provide sufficient restraint to reduce deficit.

Does not cover new programs such as Nehemiah which appropriators will be under pressure nevertheless to provide for.

Does not include additional costs from prior year obligations for Farmers Home loan defaults and HUD rent subsidy contract increases which the appropriations committees must nevertheless provide for in their bills.

WHY THE HOUSING BILL SERVES FEWER LOW-INCOME FAMILIES AND COSTS MORE THAN CLAIMED!

GAMES PLAYED WITH THE SUBSIDIZED HOUSING ACCOUNT

The Housing Bill provides $7.091 billion for subsidized housing, less then either the Senate or House Appropriations Committees ($7.3 and $7.6 billion respectively). This seems like good news until one takes a more detailed look at what is included in the $7.091.

The Housing Bill fails to authorize any specific funds for amendments to existing subsidize housing contracts. Unless the Conference's intention is to serve fewer people than HUD currently serves, these amendments must be appropriated—have both of the Appropriations Committees—at $1.05 billion for FY 1988.

The Housing Bill fails to authorize any specific funds for administrative fees paid local housing authorities, yet at the same time authorizes an increase in such fees. Just for new units coming on line in 1988 only, the Appropriations Committees have appropriated $103 million for fees.

The Conference fails to authorize funds for "replacement vouchers" given to tenants losing project-based assistance. Presuming that Congress does not want these families out on the street, the funds to provide them rental subsidies must come from somewhere. Appropriations Committees have already provided $87 million. Once more, this money will come from the $7.091 billion, and at the expense of serving additional needy families.

What is the impact of this type of gameplaying? *Congress will provide housing assistance to fewer additional households than ever before.* Furthermore, the Housing Bill serves fewer than the President's 1988 Request and fewer than the Senate or House Appropriations Committees. Conferees must be aware of this since they are not claiming any numbers of new families to be served. (The number below is OMB's estimate of what the Housing Bill provides.)

1987 Enacted: *81,500.*
1988 President's requested: *82,000.*
1988 Senate appropriations: *77,638.*
1988 House appropriations: *76,850.*
1988 Housing bill: *50,000 to 60,000.*

OTHER SCORING GAMES IN THE HOUSING BILL: HIDDEN COSTS

The Housing Bill authorizes programs at "such sums" levels rather than any specific funding level. This way the program is scored at zero and the bill achieves the $15.0 billion price tag. But, this is simply a charade, since appropriators will presumbly be under pressure to provide funds for such programs, including:

Nehemiah, the homeownership subsidy program;

Emergency Homeownership counseling and Foreclosure Assistance program; and

the Solar Bank.

The Housing Bill authorizes the rural housing construction program, but only scores the BA (actually the loan limit) associated with new units ($2.05 billion). It ignores the $1 plus billion needed to reimburse the Rural Housing Insurance Fund for prior year losses. Appropriators must provide such monies.

The $15.0 billion price tag also excludes BA costs that will occur on an appropriation basis because of new program language, including the CETA worker and rent adjustment provisions for public housing and the provisions requiring reuse of subsidy funds recaptured. The BA cost of these provisions could be as much as $1.3 billion.

In sum, the Housing Bill provides a smaller subsidized housing program than ever before. And, its $15.0 billion price tag is basically meaningless.

ASSERTIONS AND FACTS ABOUT THE HOUSING BILL

Assertion No. 1.—This is the first comprehensive housing bill to be considered seriously in seven years.

Fact: Housing programs have fared quite well without a comprehensive Housing Bill. As a result of appropriation action, one million more families receive housing assistance today than in 1980.

Assertion No. 2.—The Housing Bill, which is below FY 1987 spending levels, is not a budget busting bill.

Fact: The Housing Bill relies on budget gimmickry to get its 1988 stated authorization amounts below 1987 spending levels:

Increases 1989 spending by 5%—inconsistent with Gramm-Rudman deficit reduction targets.

Contains over $100 million of annual direct spending that isn't counted in these totals—money that will add to the deficit regardless of what the appropriators do.

Creates four new programs and countless regulatory requirements that will add to spending pressures in the future.

Assertion No. 3.—Federal housing budget authority has been cut 70% since 1980 at a time when the overall Federal budget has increased over 60%.

Fact: Budget authority for these programs has indeed dropped due to the use of more cost/effective housing vouchers. However, total Federal support for housing (including credit subsidies and tax breaks) has increased 40 percent over this period (from $50 billion in 1981 to $70 billion in 1986).

Assertion No. 4.—Only 28% (or 2.1 million) poverty-level households, receive housing assistance. The Housing Bill would provide funding to allow additional low-income families to attain decent and safe shelter.

Fact: The Housing bill would provide less assistance to poverty-level households than the Administration requested:

20,000 to 30,000 fewer low-income families would be served than in the Administration's proposal.

Administration-proposed measures targeting assistance to the most needy would be relaxed.

New Programs for middle-income homeownership (e.g., Nehemiah grants) would drain scarce HUD resources away from the most needy.

Scarce rural housing subsidy funds would go to construction subsidies for homeowners rather than vouchers for poor renters.

Assertion No. 5.—Homeownership opportunities are declining as housing becomes less affordable for young households. To head off further declines, the housing bill guarantees the uninterrupted continuation of the FHA mortage insurance program.

Fact: Mortgage payments on a $60,000 home have dropped $275 per month since 1981 and homeownership affordability in 1986 was at the highest sustained level in eight years. Budget busting bills such as this will put upward pressure on interest rates—thus threatening the very homeownership affordability it seeks to address. Rather than enacting this fiscally irresponsible bill, interruptions in the FHA program could be avoided through freestanding legislation to make permanent FHA's insuring authorities (which the Administration supports).

[From the Washington Post, Nov. 9, 1987]

WHO NEEDS THE HOUSING BILL—THE AMERICAN PEOPLE DO!

Young families who need low down-payment loans to buy their first homes . . . low income families looking for affordable housing . . . senior citizens on fixed incomes . . . working single parents who pay too much of their incomes for rent . . . rural as well as urban Americans.

Look at the facts:

This is the first major comprehensive housing bill to be considered seriously in seven years.

The federal housing budget authority has been cut by more than 70% since 1980 . . . while the overall federal budget has increased by more than 60%.

This is not a budget busting bill. Spending for housing would be held below FY 87 spending levels.

Homeownership opportunities are declining. The homeownership rate among young households peaked in 1980 and has been declining ever since. To head off further declines, the housing bill guarantees the uninterrupted continuation of the FHA mortgage insurance program.

Affordability has become a major problem for homebuyers. The housing bill would freeze FHA user fees and make housing more affordable in high cost areas by raising the FHA mortgage ceiling.

Only 28%, or 2.1 million poverty-level households, receive housing assistance. S. 825 would provide funding to allow additional low-income families to attain decent and safe shelter.

Rural housing programs have already been cut in half. The housing bill provides affordable housing to low- and moderate-income families living in rural America.

CONSIDER THE VIEWS OF AMERICAN VOTERS

The vast majority of Americans support this housing legislation, according to recent surveys conducted by Information America Corp., a nationally recognized polling firm. The survey shows:

76% of the registered voters polled believe it is harder for young people to purchase a home today than it was 10 years ago.

79% of voters believe that the federal government has a responsibility to help young families buy their first home.

58% believe housing has taken a disproportionate share of federal budget cuts in recent years.

66% say Congress should pass a housing bill, even if it means overriding a Presidential veto.

The right choice is for the Congress to pass and for the President to sign the housing bill (S. 825). That's what the facts support; that's what the American people want.

MATERIAL SUBMITTED BY MR. CRANSTON

RESPONSE TO OMB COST ESTIMATE

We have seen the cost estimate prepared by OMB and staff has carefully analyzed it. Frankly, it is so misleading and shot through with errors that I am surprised the table is being introduced here on the Senate floor.

The conference agreement reflects a clear decision to reduce fiscal year 1988 spending below the current levels. That was a very difficult decision. Most conferees made it very reluctantly. But they did so because enactment of this housing bill is so important.

The CBO analysis of the bill—which is free of the political shenanigans of OMB—shows that the bill, if fully funded, would provide budget authority of about $15 billion in fiscal 1988, and would result in outlays of about $600 million. As every Senator knows, this bill provides authorization ceilings only. Funding for programs in this bill would have to be accommodated within the overall totals available to the Appropriations Committee.

It is no secret that officials in OMB don't want Congress to take any action on housing legislation. They have fought bitterly to prevent Congress from passing any housing bill. For the past three years they have generated cost estimates that proved to be baseless. As far back as last January OMB officials were talking publicly about their strategy for getting a vote on a housing bill—that was long before the details of a housing bill had been decided. After the Senate

passed a two year funding freeze, OMB staff gave President Reagan a cost estimate claiming the bill was a $131 billion spending blow-out.

OMB's position on the housing bill has long since been discredited. Most members on both sides of the aisle know that OMB can no longer be taken seriously on this issue.

Now someone at OMB is circulating a padded cost estimate in an effort to make this bill appear to be something other than the prudent bill it is. OMB's figures are phony.

First, they throw in over $1 billion for "contract amendments". These amounts do not apply to this housing authorization. These are amounts that the Appropriations Committee may have to provide to correct for shortfalls in appropriations estimates that were made in prior years. They would have to occur anyway. They would be provided out of the totals available to the Appropriations Committee—they are not new spending created by this bill.

Second, they throw in an extra $1 billion for Farmers Home programs. Again, these amounts are not relevant to passage of this housing bill—they reflect losses incurred in the Rural Housing Insurance Fund in prior years. This bill actually reduces new spending for rural housing.

Third, OMB's table suggests that "reuse of recaptures" would create almost $1 billion in additional spending. This is simply false. The bill only affects the use of funds that have already been appropriated, not new funding. Any funds that are recaptured but not rescinded could be made available only upon action by the Appropriations Committee. Conferees do not expect any additional spending would result from this provision.

Fourth, the table falsely shows $281 million in additional spending as a result of the Public Housing Operating Subsidies "CETA Provision". This provision of the bill simply establishes a formal process for reviewing out-of-date expense levels for public housing authorities. That review process can have absolutely no impact on fiscal 1988 spending. And in later years it would have an impact not on spending totals but on the distribution of funds available within the program. Moreover, this provision expands costs that can be considered for reimbursement. The reimbursement would have to come out of authorizations for operating subsidies and would involve no additional spending.

Fifth, the table includes $100 million for the Nehemiah Program and $30 million for Emergency Homeownership Counseling. In fact, the bill authorizes only "such sums as may be appropriated" in 1988 for these programs. To date, no appropriations have been included for either program. Under current budget circumstances, the OMB estimate is not based on reality.

Sixth, the table includes $50 million for "Troubled Projects" and "Capital Improvement Loans" and smaller amounts for several other programs. Again, these are inappropriate because the bill makes it clear that these funds are to be provided out of other amounts available.

In conclusion, the OMB table is more an effort of disinformation rather than a responsible cost estimate.

CBO's estimate would make it clear to all Senators that we have here a modest bill that provides funding levels slightly below the current levels for this year.

S. 825—THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987

[Conference report in millions of dollars]

	1988	1989	1990	1991	1992
Section 8 and public housing commitments:					
Authorization level	7,092	7,438	0	0	0
Estimated outlays	12	348	2,111	2,315	1,016
Public housing operating subsidies:					
Authorization level	1,500	1,563	0	0	0
Estimated outlays	750	1,531	781	0	0
Increase PHA management fees:					
Estimated authorization level	0	0	0	0	0
Estimated outlays	30	32	33	35	36
Housing for the elderly and handicapped:					
Authorization level	622	651	0	0	0
Estimated outlays	0	112	314	304	153
Congregate housing services:					
Authorization level	10	10	0	0	0
Estimated outlays	3	7	7	3	0
Rental rehabilitation grants:					
Authorization level	200	200	0	0	0
Estimated outlays	20	60	180	140	0
Rental housing development grants:					
Authorization level	75	78	0	0	0
Estimated outlays	0	8	45	69	31
Housing counseling assistance:					
Authorization level	4	4	0	0	0
Estimated outlays	0	2	4	2	0
Federal Housing Administration Fund:					
Estimated authorization level	0	0	0	0	0
Estimated outlays	(1,213)	(2,032)	(2,012)	(2,025)	(2,036)
Community development block grants:					
Authorization level	3,000	3,090	0	0	0
Estimated outlays	60	1,202	2,734	1,847	247
Urban development action grants:					
Authorization level	225	225	0	0	0
Estimated outlays	11	56	101	113	113
Urban homesteading:					
Authorization level	12	13	0	0	0
Estimated outlays	8	12	4	0	0
Rehabilitation loan fund extension:					
Authorization level	0	0	0	0	0
Estimated outlays	39	77	34	(7)	(7)
Neighborhood Reinvestment Corporation:					
Authorization level	18	18	0	0	0
Estimated outlays	18	18	0	0	0
Neighborhood Development Demonstration Program:					
Authorization level	2	2	0	0	0
Estimated outlays	0	1	2	1	0
HUD research and technology:					
Authorization level	17	18	0	0	0
Estimated outlays	5	14	12	4	1
Flood insurance reauthorization:					
Estimated authorization level	71	5	1	0	0
Estimated outlays	(14)	23	4	2	0
Crime insurance reauthorization:					
Estimated authorization level	(1)	15	15	0	0
Estimated outlays	(1)	12	15	3	0
Flood studies: [1]					
Estimated authorization level	37	38	0	0	0
Estimated outlays	20	33	16	5	1
Retention of land disposition proceeds:					
Estimated authorization level	10	0	0	0	0
Estimated outlays	10	0	0	0	0
Fair housing initiatives:					
Authorization level	5	5	0	0	0
Estimated outlays	1	5	4	0	0
Release of pool funds:					
Estimated authorization level	0	0	0	0	0
Estimated outlays	7	7	7	7	7
Miscellaneous provisions:					
Estimated authorization level	1	1	1	1	1
Estimated outlays	1	1	1	1	1
Nehemiah grants:					
Authorization level	([2])	150	0	0	0
Estimated outlays	([2])	15	30	105	0
Enterprise zones:					
Authorization level	1	1	1	1	1
Estimated outlays	1	1	1	1	1
Rural housing loans:					
Authorization level	2,050	2,147	0	0	0
Estimated outlays	780	1,528	1,086	593	394

S. 825—THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987—Continued

[Conference report in millions of dollars]

	1988	1989	1990	1991	1992
Section 515 displacement prevention:					
Authorization level	73	77	0	0	0
Estimated outlays	48	57	11	11	11
Rural housing grants:					
Authorization level	52	54	0	0	0
Estimated outlays	19	41	27	7	6
Totals: [3]					
Estimated authorization level	15,076	15,803	18	2	2
Estimated outlays	616	3,172	5,556	3,536	(25)

[1] The conference report contains an appropriations authorization for such sums as may be necessary for fiscal year 1989. The estimate shown for 1989 is the 1988 authorization adjusted for inflation.

[2] The conference report includes an authorization for fiscal year 1988 of such sums as may be necessary. CBO has no basis for estimating the potential appropriation.

[3] The conference report would create a new program to provide homeownership counseling grants. The program would terminate at the end of fiscal year 1989. The appropriation of such sums as would be necessary would be authorized for 1988 and 1989.

The act would require claims to be paid from funds of the National Flood Insurance Program to compensate policy holders whose structures are in danger of imminent collapse because of flood-induced erosion. The budget impact of this provision is very uncertain and could range from no significant cost to a cost of several hundred million dollars over the next five years.

Mr. ARMSTRONG. Mr. President, second, I want to point out that this is not a nitpicking point of order, nor is it the only point of order that lies against it.

In addition to violating section 311 of the Budget Act, this conference report also violates section 302(f) and section 402 of the Budget Act because it provides new credit authority, which is not limited by appropriation.

I have only chosen to make a single point of order because it framed the issue. Senators can draw their own conclusion of whether or not this is a procedural hurdle or whether it is real. I believe it is real and I think, upon reflection, many other Senators will see the same.

Mr. CRANSTON. Will the Senator yield so I may have printed in the RECORD OMB's response?

Mr. ARMSTRONG. I will be happy to do so. The Senator has already been granted permission to have it printed at this point.

Mr. CRANSTON. I insert in the RECORD material from CBO disputing the OMB figures.

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

(The material is printed earlier in the RECORD.)

Mr. ARMSTRONG. Mr. President, I yield myself 30 seconds additional, and then I will get off the floor so the Senator from Utah can speak.

The mere fact that someone disagrees with OMB figures does not justify the kind of extravagant charge that the Senator from California has made. In fact, CBO and OMB score these in a different way. OMB analyzes the effects and projects the dollar cost of their estimated effects. CBO simply adds up the numbers in the bill. Those are quite different and do not justify the kind of allegations

which the Senator from California has made.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. ARMSTRONG. I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Utah, Senator GARN.

Mr. GARN. Mr. President, I had adequate time last evening to discuss in an overall sense the problems with this bill, so I will be brief and simply renew my major objection to the bill, and that is the fact that we are creating new programs in a time when we have serious budget difficulty that everyone is well aware of and the Senator from Colorado and the Senator from Texas have certainly pointed out last evening and this morning. While we have a budget summit going on trying to figure out how to reduce this year's and next year's budget, we are playing numbers games. While we say this is $15 billion and it is less than the $15.6 billion approved by the Senate a few weeks ago, and that is correct, we are authorizing new programs without any conception of what the costs of those programs will be in the future, and anyone who has served in the Senate for any period of time knows, when we open that door, what happens. These programs will go up and I will be able to stand on the floor in the not too far future and be able to point out that what I am saying today and what I said last evening are absolutely correct. We are opening the door with new authorizations to vast new spending programs.

Specifically this morning I rise in support of the Senator from Colorado's point of order on the Budget Act. There are at least three provisions in S. 825, the housing conference report, which would cause the total level of budget outlays to exceed the budget for fiscal 1988.

Among the three provisions is $10 million for land proceeds in a handful of cities. This is actually unused urban renewal moneys from the 1960's and 1970's. Instead of returning these unused funds to the Treasury, cities would get $2 million each to pocket for other projects. Another $7 million in the bill would go to section 236 pool funds. This provision basically gives the $7 million to complete an original fund from the 1970's in one State; fund are those intended for the Federal Government and now will be funneled back to the State.

The conference report also raises fees for the administration of section 8 and voucher programs from 7.65 percent and 6.5 percent, respectively, to 8.2 percent. We froze these fees in last year's appropriations bill. Housing authorities have accepted the fees as they are. The increase is unnecessary and will only reduce the amount of actual housing assistance to go to the poor.

Those are some of the technical violations, reasons that this waiver should not be granted.

Again, I repeat, the danger in this bill is the authorized future expenditures. We are playing a numbers game that is not fair to the Americans people. It is not fair to the taxpayers. It is not fair to those who are involved in the summit, trying to come up with a budget reduction so that we can calm the fears in the stock markets and the money markets of not only our own country but across the world.

So I would urge my colleagues to support the Senator from Colorado.

The ACTING PRESIDENT pro tempore. The Senator yields.

The Senator from Colorado has 4½ minutes remaining.

Mr. ARMSTRONG. I yield 2 minutes to the Senator from Texas.

Mr. GRAMM. Mr. President, I thank the distinguished Senator from Colorado for yielding.

I would like to make two points. No. 1, this dispute between CBO and OMB is easily understood. CBO simply took the numbers printed in this bill and added those numbers up and came up with $15 billion. The problem is that there are several programs here that do not have numbers but, instead, have language. That language is that you have authorization for whatever amount may be appropriated.

Now, how do you put a value on that? Do you count as zero when you authorize whatever may be appropriated? Well, what CBO did was nothing. They just left it out. What OMB did is they went back and looked at the programs that were authorized, figured out how much those programs would cost, and plugged that number in.

So the $15 billion figure that we keep hearing about from CBO is a figure that is generated by looking the other way on these open-ended authorizations for such amounts as may be appropriated.

The $19 billion figure comes from doing exactly what CBO did in adding up the numbers and then going back and looking at these open-ended authorizations, looking at the cost of the programs that are authorized, and then adding that to the authorization. So that is where the difference comes from. It is $15 billion if you do not count open-ended authorizations. It is $19 billion if you count them at some reasonable projection of cost.

So, do not be deceived by the fact that this committee did something that virtually any other committee in the Congress would be criticized for, and that is it simply had open-ended appropriations.

The ACTING PRESIDENT pro tempore. The Senator from Colorado has 2½ minutes remaining.

Mr. GRAMM. Would the distinguished Senator yield me 30 seconds?

Mr. ARMSTRONG. Mr. President, I would be honored to do so.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. GRAMM. The final point I want to make is that much is made of the fact that we have a temporary CR and we have negotiators who are negotiating these great savings. The temporary CR saves $10 billion by continuing last year's level of appropriations. Nowhere have the Democratic negotiators offered anything like that level of savings in the budget negotiations, at least in terms of what has been printed in the papers. The reality is that the adoption of a permanent CR at anything like the levels being discussed will raise spending and not lower it and therefore will not solve this problem.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. ARMSTRONG. I mentioned a few minutes ago that the symbol of America is the eagle; it is not the ostrich. They want us to bury our heads in the sand and ignore facts that are not pleasant. Well, we have been doing that around here for a long time, Mr. President. We have just been going on business as usual, appropriating more than we take in, spending more than we earn; as a nation consuming more than we produce as if that would not have any consequences. It does have consequences. Many of those consequences have already been realized. Our children are the first generation of Americans since the Pilgrims came here on the Mayflower who expect to enjoy a lower standard of living than their parents; the first generation in 300 years. The reason, from most committees and others, is because we spend more than we take in. The national budget deficits and all the consequences of it, the housing deficit, is a part of that overall pattern. This motion violates three sections of the Budget Act. The question is whether Senators want to waive the Budget Act and make the situation worse or whether this is where we would like to draw the line and take a stand for fiscal responsibility.

Mr. President, I do not know what the outcome is going to be, but I hope there will be at least 34 Senators who will vote not to waive the Budget Act.

The ACTING PRESIDENT pro tempore. The time of the Senator from Colorado has expired. All time has expired.

Under the previous order, the question is on agreeing to the motion of the Senator from California, Senator CRANSTON, to waive section 311 of the Budget Act with respect to the conference report on S. 825, the Housing and Community Development Act of 1987.

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 Hawaii [Mr. INOUYE], the Senator from New York [Mr. MOYNIHAN] 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 Indiana [Mr. LUGAR], the Senator from Wyoming [Mr. WALLOP], and the Senator from California [Mr. WILSON], are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "nay."

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

The result was announced—yeas 53, nays 40, as follows:

[Rollcall Vote No. 376 Leg.]

YEAS—53

Adams	Dixon	Metzenbaum
Baucus	Dodd	Mikulski
Bentsen	Durenberger	Mitchell
Biden	Ford	Nunn
Bingaman	Fowler	Pell
Boren	Glenn	Pryor
Bradley	Graham	Reid
Breaux	Harkin	Riegle
Bumpers	Heflin	Rockefeller
Burdick	Heinz	Sanford
Chafee	Hollings	Sarbanes
Chiles	Johnston	Sasser
Cohen	Kennedy	Shelby
Conrad	Kerry	Specter
Cranston	Lautenberg	Stafford
D'Amato	Levin	Stennis
Daschle	Matsunaga	Weicker
DeConcini	Melcher	

NAYS—40

Armstrong	Hatfield	Pressler
Bond	Hecht	Proxmire
Boschwitz	Helms	Quayle
Byrd	Humphrey	Roth
Cochran	Karnes	Rudman
Danforth	Kassebaum	Simpson
Dole	Kasten	Stevens
Domenici	Leahy	Symms
Evans	McCain	Thurmond
Exon	McClure	Trible
Garn	McConnell	Warner
Gramm	Murkowski	Wirth
Grassley	Nickles	
Hatch	Packwood	

NOT VOTING—7

Gore	Moynihan	Wilson
Inouye	Simon	
Lugar	Wallop	

So the motion to waive section 311 of the Budget Act was rejected.

The PRESIDING OFFICER. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

Mr. BYRD. Mr. President, move that the Senate stand in recess for 30 minutes.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The question is on the motion to recess for 30 minutes.

Mr. BYRD. That is not a debatable motion.

Mr. ARMSTRONG. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from Colorado will state the parliamentary inquiry.

Mr. ARMSTRONG. Mr. President, I inquire of the majority leader whether his motion is consistent with the earlier time agreement. In discussing the matter with the Parliamentarian, it was my opinion that such a motion would not be in order. Is it the leader's intention that we merely be in recess for——

Mr. BYRD. Thirty minutes.

Mr. ARMSTRONG. Do I not recall correctly that we have a pending point of order before the Chair? Is the Chair required to respond on it? Since there was a motion to waive the Budget Act and the point of order has not been waived, it appears to me that the Chair is obligated, prior to entertaining the majority leader's motion, to rule on the point of order.

The PRESIDING OFFICER. The motion to recess is not barred by the pending point of order.

Mr. ARMSTRONG. With the majority leader's indulgence, may I inquire: When we return, is the Chair then not obligated to rule on the point of order?

The PRESIDING OFFICER. Upon returning from the recess, the point of order then will be before the Senate.

Mr. ARMSTRONG. I thank the Chair.

The PRESIDING OFFICER. Motions relative to this matter will be in order.

The question is on agreeing to the motion to recess.

Mr. DOLE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Republican leader is recognized for a parliamentary inquiry.

Mr. DOLE. Why cannot the Chair rule on the point of order?

The PRESIDING OFFICER. Because the motion to recess has been made.

Mr. DOLE. He can rule on the point of order before.

Mr. BYRD. Mr. President, this motion is not debatable.

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

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BYRD. Mr. President, this matter being of an importance, I think, which deserves further consideration, it is my intention to adjourn the Senate over until Tuesday, and I hope I will not have to go through rollcall votes to get this done, because the ultimate conclusion is going to be put over until Tuesday. The matter, however, should be debated for a little while. Mr. ARMSTRONG wants to say something and possibly Mr. CRANSTON.

I wonder if we could get consent to proceed for 30 minutes for debate to be equally divided between Mr. CRANSTON and Mr. ARMSTRONG and that time be subject only to debate, no motions, no actions of any kind will be in order during that 30 minutes, at the conclusion of which I will be then recognized.

Mr. JOHNSTON. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSTON. Reserving the right to object, will the Senator yield?

Mr. BYRD. I yield.

Mr. JOHNSTON. Mr. President, I understand the importance of this matter. Is it the desire of the majority leader to have it debated. I understand the importance of it to the country. This matter will not be resolved obviously today. We want to put that over until Tuesday.

As I left the floor yesterday evening, we were right on the verge of being able to go to third reading on the energy and water bill, a bill that was delayed over 30 days in coming up. If we put that bill over, Mr. President, there is no telling how many amendments will come out of the woodwork. We were right on the verge of doing that.

I wonder if we could get that bill finished and at least go to third reading, and it will not be voted on until next week and then we could do as we are going to do anyway, and that is resolve this matter next week. We were ready to get that bill to third reading, and there is no telling how many amendments will come up between now and next week.

Mr. ADAMS. Mr. President, reserving the right to object.

Mr. BYRD. Mr. President, I ask unanimous consent that I may proceed for 5 minutes.

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

Mr. BYRD. Mr. President, if I may respond, if we can work out an arrangement whereby everybody understands that this matter will go over until Tuesday and we can get an agreement to that effect, I would be agreeable to making further progress on the energy and water appropriations bill today if we can do so. It might be that we can get an agreement that no further amendments to that bill be in order with the exception of certain amendments that we know about, but let me work with the distinguished Senator to utilize these 30 minutes to

come to some kind of understanding with the Republican leader and other Senators in an effort to continue to make progress on the energy water bill today.

Possibly we could limit the amendments that remain, some of which might be disposed of today, or at least scheduled for a vote before Wednesday. If we can limit the amendments, I think that is really what would help us.

Mr. JOHNSTON. I understand that. If we could get to the bill, I think we could probably finish it inside of an hour or two and have it over with and go to third reading. If we go over, or even if we put the votes over, it is likely to generate a lot more time.

But I do not want to interfere with the majority leader's schedule. I hope and I know he will help us expedite that bill.

Mr. ADAMS. Will the majority leader yield for a question on the point raised by the distinguished Senator from Louisiana?

Mr. BYRD. Yes.

Mr. ADAMS. I wanted to indicate to the majority leader that I would withdraw the amendment, the time that I had on it, and this Senator would have no objection to go to third reading, provided under the unanimous consent that the motion of the Senator from Louisiana, Senator BREAUX, to recommit would be voted on on Wednesday and the vote would occur on Wednesday. So that the Senator from Louisiana, the distinguished manager of the bill, could finish the bill, go to third reading, and have a recommittal motion and final passage on Wednesday and we could complete his bill and shut off the amendments, I would withdraw mine to expedite that.

Mr. BYRD. I thank the distinguished Senator.

The recommittal motion by the distinguished Senator from Louisiana, Mr. BREAUX, will be protected, in any event. Under the rules, he can make that motion at any time up to final passage.

Mr. PRYOR. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. PRYOR. Mr. President, I would like to inquire, especially as it appears now that the energy and water legislation and the housing legislation will be coming up early in the week—and those are very important pieces of legislation—are we taking into consideration the most important issue that we are going to have to deal with before next Friday, and that is the sequestration and the so-called results, if there are any results, of the budget summit?

Mr. BYRD. Yes.

Mr. PRYOR. Are we allowing enough time next week to deal with the most important matter that has come before this body this year?

Mr. BYRD. Yes, we are. If we were not, I would not be taking the actions that I am taking, because I am just as conscious of and just as interested in and just as concerned about that matter as is any other Senator or House Member.

Mr. PRYOR. I thank the leader.

Mr. BYRD. I thank the distinguished Senator.

I may say, as a postscript, I am also concerned about the delay that is occurring on that matter.

Mr. President, did the Chair put the question with respect to the 30 minutes?

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the majority leader?

Mr. DOLE. Reserving the right to object.

Mr. President, I wonder if I might again make a parliamentary inquiry before the Chair rules? And there may be other reservations.

Mr. BYRD. Could I do one thing before the distinguished Republican leader does that?

Mr. DOLE. Yes.

Mr. BYRD. Mr. President, I withdraw my motion to recess for 30 minutes.

Mr. ARMSTRONG. Mr. President, I request the Chair to rule on my point of order.

Mr. BYRD. Mr. President, I have the floor.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. BYRD. Mr. President, I have a right to withdraw it. No action has been taken on it.

Mr. President, if we could get the 30 minutes for the time equally divided, as I requested, after the Republican leader; if he could be recognized for 5 minutes, or whatever he wishes, without its coming out of that time, and no actions, no motions of any kind be in order, the Chair would protect me, and after 30 minutes I would be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Reserving the right to object.

The PRESIDING OFFICER. The Republican leader is recognized under his reservation.

Mr. DOLE. Mr. President, I am still confused by an earlier parliamentary inquiry.

As I read the points of order in Senate Procedure, page 795:

> When a point of order is made, the Chair must rule thereon unless he submits the question to the Senate for decision.

Now, there is no motion to recess pending now, and even if there were, I cannot find where that would take precedence over the Chair ruling on a point of order.

The PRESIDING OFFICER. It is the Chair's ruling that on page 795 of the Procedures, a motion to recess or adjourn is in order pending a point of order.

Mr. DOLE. Mr. President, where is that?

The PRESIDING OFFICER. Page 795.

Mr. DOLE. This has not been submitted. The question has not been submitted. That is "if submitted."

The PRESIDING OFFICER. Will the Republican leader state that again?

Mr. DOLE. "When a point of order is made, the Chair must rule thereon unless he submits the question to the Senate for decision."

Now, it has not been submitted to the Senate for decision and, therefore, it seems to me the Chair must rule. The motion to recess has been withdrawn. There is nothing before the Senate, other than the ruling.

Mr. BYRD. Mr. President, perhaps I could help the Chair.

The PRESIDING OFFICER. Now the unanimous-consent request is pending before the Senate.

Mr. BYRD. That is what I was going to say. And I have the floor.

Mr. GRAMM. Mr. President, I object to the unanimous-consent request and I ask for the regular order.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. Objection is heard to the unanimous-consent request.

Mr. GRAMM. I ask for regular order.

Mr. BYRD. An objection to the unanimous-consent request does not take this Senator off the floor.

The PRESIDING OFFICER. The majority leader does have the floor.

Mr. BYRD. Now, Mr. President, I move to reconsider the vote, and I qualify, and, Mr. President, I——

Mr. ARMSTRONG. Mr. President, I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. BYRD addressed the Chair.

Mr. ARMSTRONG. Mr. President, parliamentary inquiry. Has time not expired?

Mr. BYRD. I yield for a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Colorado will state his parliamentary inquiry.

Mr. ARMSTRONG. My parliamentary inquiry is that, under the previous order of the Senate, I believe all time on this matter has expired. Therefore, we have no choice but to proceed to vote to reconsider.

Mr. BYRD. Mr. President, a motion to reconsider is not debatable, but I ask for recognition because I want to make a unanimous-consent request. I am entitled to that.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that this matter be put aside until Tuesday next at 12 o'clock noon.

Mr. ARMSTRONG. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, there is no doubt that if it is the desire of the majority leader to adjourn the Senate until next Tuesday, he can do so. And, in fact, if that is his motion, I will not even ask for a rollcall vote. But neither will I agree to this unanimous-consent request.

What is happening here is simply that, by various delaying tactics, those who favor the adoption of the housing bill conference report are trying to prevent the Chair from ruling on the point of order. The point of order which the Chair has already said is valid is really not in controversy and for which a motion to waive has failed.

It seems to me that, in the interest of time—we are late in the session—the wisest and best course would be to let the Chair rule. If I may ask the indulgence of the leader, I would like to explain what I think would then ensue and it would not be contrary to his interest or that of any Senator.

If the Chair were permitted to rule on the point of order, as I understand it, the conference report would fall; the bill would still be alive. It would be before us as a Senate bill with a House amendment.

At that point we would have no time agreement. It would be perfectly appropriate and indeed would be acceptable to me and I think to other Senators to lay the bill aside until Tuesday or another time of the leader's choosing while we see if we can work out something that would be agreeable and which would not be subject to a point of order. That would be one way to approach it, which I would think would be orderly and would permit the Senator from Louisiana and others to continue with their bill and finish that up today.

Failing that, I can see no reason why Senators who are seeking to get a ruling on a valid point of order should agree to a unanimous-consent agreement. I am open to discussion of that, but this is simply a case of seeking delay so that the outside interests, which have spent the last 6 months leaning on Senators, threatening Senators in the most blatant way, can have 3 or 4 days to lean on them some more and threaten them some more. I do not think that is good practice. It steps across the bounds of propriety to do so, and I am not willing to cooperate in it and therefore I do object.

The PRESIDING OFFICER. Objection is heard. The majority leader has the floor.

Mr. BYRD. Mr. President, I do not want to put the Senate out immediately because I am hoping we can still get some work done this afternoon.

The obvious reason why I want to put this over to Tuesday is to get the absentees back. It is just that simple. For those who are watching and listening, there is no ulterior motive except to carry this vote. It is important that this housing conference report be adopted. There are absentees and we need to get them back. That is it, plain and simple.

Mr. President, I ask unanimous consent that I may proceed for 5 minutes so that I may yield to Senators without losing my right to the floor.

Mr. ARMSTRONG. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Is there objection?

Mr. ARMSTRONG. I wonder if under the circumstances, the leader would be willing to say that 5 minutes would also be allocated to, say, the minority leader?

Mr. BYRD. Oh, absolutely, yes. I intended, if I could, to get some additional time so that the Senator from Colorado can also speak.

Mr. ARMSTRONG. I have no objection.

The PRESIDING OFFICER. The majority leader has 5 minutes.

Mr. LEAHY. Mr. President, I hope that Senators would listen to what the majority leader has said, and I hope that they will agree with him on this consent request. We have been in a difficult time down here because of weather, and everybody's plane schedule and everything else has been disrupted. There are some people necessarily absent. I know a lot of people tried to get back early yesterday morning. I was one of them.

It seems to me that we are talking about a procedure, and the distinguished majority leader has suggested a procedure, which would get us to a vote on this, wrap up this matter, which is a very important matter. The matter that the distinguished Senator from Louisiana had up would quite possibly either get to a third reading and be at least with a time certain to end; coming into a week where we are all going to be heavily distracted by the various—and rightly so—by the various budget discussions underway. I have got judicial nomination hearings underway right now that I want to get back to, including a judicial nomination from the State of Colorado.

You know, we will spend more time discussing whether we should go to this. I think the distinguished majority leader has given us all a way out where everybody's interests would be protected. Every Senator will get to vote the way they are going to. You know, people will get lobbied one way or the other, but you will on every single vote anyway, and I hope that Senators will agree to the suggestion made by my friend from West Virginia.

Mr. BYRD. Mr. President, I would like to see if we could work out an arrangement whereby we can have a little debate on this and then put it aside with the understanding that we would return to it on Tuesday, say at noon. We can take up other matters on Tuesday prior to that hour if need be. Rather than just go out now, I would rather do further business today. And I believe that we can, hopefully, work something out if Senators will allow me to.

Mr. DOLE. Will the majority leader yield? We are checking now with the manager on this side, Senator McCLURE, and also Senator MURKOWSKI, whom I understand had an amendment. I am not certain how many amendments there are, but Senator McCLURE would hopefully come to the floor.

Mr. BYRD. Mr. President, I ask unanimous consent that there be 20 minutes for debate on this pending matter, the motion to reconsider; that it be equally divided between Mr. ARMSTRONG and Mr. CRANSTON; that no motion to table the motion to reconsider be in order; provided further that this matter then be put aside until Tuesday next at noon; that no further action, debate, or motion be in order to the pending matter prior to next Tuesday; and that the Senate resume consideration of the energy and water appropriation bill.

The PRESIDING OFFICER. Is there objection?

Mr. ARMSTRONG. Mr. President, reserving the right to object, while we digest the implications of the unanimous-consent request, I would suggest the absence of a quorum.

Mr. BYRD. Mr. President, I do not yield for that purpose.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. BYRD. I am sorry; I did not hear the Senator except for that part of it dealing with a quorum call.

Mr. ARMSTRONG. Mr. President, if the leader would yield under a reservation to object? I suggested that we have a moment to digest the import of the leader's request; that we have a quorum call or in some other way take a moment just to consider the implications of what he is suggesting.

Mr. BYRD. Mr. President, let me ask for 30 minutes. I prefer that. I ask unanimous consent that the debate extend for not to exceed 30 minutes—I do not want to have a quorum call. That may chew up 30 minutes or longer—that no motions or action of any kind be in order during that 30 minutes, and that at the conclusion of the 30 minutes, this matter be set aside until next Tuesday at 12 o'clock noon, and that the Senate resume con-

sideration of the energy and water appropriation bill.

The PRESIDING OFFICER. Is there objection?

Mr. ARMSTRONG. Yes, Mr. President. Reserving the right to object, it is the last part of the leader's unanimous consent request that gives me concern. I would suggest that, if he would be willing to propound the first part, that is to say 30 minutes or even 20 minutes further debate be issued, that we could proceed with that and then take under consideration his request about delay it all over until Tuesday and so on.

Mr. BYRD. Very well. Mr. President, I ask unanimous consent that there be 20 minutes equally divided for debate on the pending matter and that no actions or motions of any kind be in order during that 20 minutes and that at the conclusion of the 20 minutes I be recognized.

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

Mr. GRAMM. Will the distinguished Senator from Colorado yield me 2 minutes?

The PRESIDING OFFICER (Mr. GRAHAM). Who yields time? The Senator from Colorado?

Mr. ARMSTRONG. Mr. President, under the unanimous consent, have I been given time on this side?

The PRESIDING OFFICER. The time is allocated to the Senator from Colorado and the Senator from California equally divided. The Senator from Colorado has 10 minutes.

Mr. ARMSTRONG. Mr. President, it is very evident to me that somebody better try to clear this thing up and put it in perspective. I cannot imagine who can do that more ably than the Senator from Texas, to whom I yield such time as he may consume up to 5 minutes.

Mr. GRAMM. I thank the distinguished Senator from Colorado for yielding and for his great confidence.

I think it is important that people recognize that what has happened here is that an effort has been made to override the Budget Act which this very Senate set in place to control deficit spending.

The bill that is before us is a budget buster. It had a 311 budget point of order, which converted into English means that the passage of this bill would raise the deficit in fiscal year 1988. It would raise spending above the level that Congress set out in its own budget.

This Senate, very much to its credit, rejected that motion and did so by a fairly healthy margin. In fact, the distinguished majority leader talks about bringing people back to vote to waive the Budget Act. There are three people who were not here who I am relatively confident would have voted to sustain the Budget Act.

I think it is vitally important that we recognize that what is taking place here is that we have had a debate on the No. 1 issue in America. We have had a debate dealing with the deficit and dealing with it more directly than the so-called summit, which is meeting at this very moment to address this problem.

We had a vote on whether to waive the Budget Act to raise the deficit of the Federal Government. That effort to waive the Budget Act was voted down. We now find ourselves in a situation where those who want to raise the deficit, those who want to violate the very budget that this Senate adopted, those who want to waive the provisions of the Gramm-Rudman-Hollings Act which was adopted in this very body overwhelmingly, have been defeated. Now they are trying to figure out some parliamentary move that will allow them to muster political support to try to waive the Budget Act and to raise the deficit.

What a great paradox, Mr. President, that this is going on at the time when deficit reduction is on every lip, when there are so many born again fiscal conservatives who because of problems on Wall Street and Main Street find themselves now concerned about the deficit. What a great paradox it is that when it came to put your vote where your mouth is that we have so many who still want to raise the deficit, who want to spend more money, who want to buy more votes.

That is the issue that we have addressed here.

Up to this point, the required number of Senators have rejected that. To this point, the required number of Senators have said, "We will not waive the Budget Act and raise the deficit and imperil the recovery that has brought jobs, hope, and opportunity to our people."

Now the question is, What parliamentary maneuver can induce those people to change their vote?

I am hopeful that this will not be successful. I do not understand why the Chair does not simply rule on the point of order, which clearly would strike down this bill which raises the deficit. It would strike down this bill which violates the budget that we adopted, and which violates the Budget Act that we adopted.

I thank the distinguished Senator from Colorado for yielding. I hope people understand the issue here. The issue is, Who is for real and who is phony on the budget deficit issue? Those who are for real on the issue voted not to waive the Budget Act. That is the issue. I hope those votes do not change. I think it is important to the economic future of America. It is important to millions of people who have jobs, who do not want to lose them, and people who want jobs who do not have them, that the spending train is stopped and the siren song that lures us ever forward is resisted. We must maintain our position that we do not waive the budget point of order.

Who can be serious about the deficit and vote to waive the first budget point of order we have had since the stock market collapsed?

I suspect no one can.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from California.

Mr. BYRD. Will the Senator yield to me?

Mr. CRANSTON. I yield.

The PRESIDING OFFICER. The majority leader.

Mr. CRANSTON. Mr. President, the Senate has really been put into an impossible and absurd situation by the vote that we just had on the point of order. Use of a section 311 point of order puts us in an impossible situation on virtually every piece of legislation that comes before this body under present circumstances, if anybody chooses to make this kind of a point of order.

Any bill that results in only $1 of outlay, should it be $1 of outlay of any sort, would at this particular time be subject to this point of order when it comes before the Senate.

That has been the case of the past month or so, but no one has been foolish enough to make that point of order on previous bills. It is now made by Senators who oppose any Federal role in housing.

Let me make it clear once again that this housing bill does not exceed the budget. It does not exceed the budget for programs in this bill. In fact, this housing bill has authorizations that are substantially below the budget assumptions—below the budget assumptions—for the programs in it.

The bill is below a freeze by $600 million. The conference report is well below the level as it passed the Senate earlier this year. We have come down from those figures. This conference report is actually below the level that has been expected from appropriations. The conferees went to these lower funding levels knowing that adoption of this conference report would result in lower appropriations than would otherwise occur.

Mr. SARBANES. Will the Senator yield on that point?

Mr. CRANSTON. Yes.

Mr. SARBANES. In fact, this conference report is below the amount that was in the House bill as well as below the amount that was in the Senate bill when we went to conference. Is that not correct?

Mr. CRANSTON. That is correct. It is lower than both bodies approved.

Mr. SARBANES. So it is important for Members to understand that the figure in the conference report that was brought back is less than the figure that was in either bill when we went to conference. There was a concerted effort on the part of the conferees to bring this figure down. It is well within the budget assumptions that were given when this legislation was considered for enactment.

Mr. CRANSTON. That is right. We are actually almost $1 billion below the House-passed figure.

Mr. SARBANES. The only reason the point of order lies is because of the technicality. The budget process assumes a reconciliation measure, which has not yet been achieved. Until that is achieved, any appropriation would be subject to a point of order, no matter how small, as I understand it.

Mr. CRANSTON. That is correct. One dollar could cause this kind of a problem.

Mr. SARBANES. What is happening here obviously can mess up the works, so to speak, but in terms of the substance it, in fact, is not there. This is an effort to stay well below and well within the budget guidelines that were provided for these programs. In fact, the conference report has done exactly that. In fact, the conference report has done a better job of it than either the House or the Senate did at the time they passed the bill.

Mr. CRANSTON. That is correct. The point is that the budget problem is not created by this bill. The problem is created by other circumstances. The situation revolves around the fact that the current section 311 problem is created by timing and by the technicalities of budget scoring. First, we do not have the reconciliation bill on the books along with its savings. Second, the technicians have scored the continuing resolution as if it extended for the full fiscal year, even though that is not the case, even though the fact is it extends only through December 16. Therefore, for this temporary period the technical budget scoring shows outlay numbers higher than the budget totals. But this bill does not have a figure higher than the budget totals. It is below.

The fact is that the housing budget authorizations have been cut by more than 70 percent from levels funded in the late 1970's—a 70-percent cut since the Reagan administration took office. These cuts have been more severe than those for any other segment of the budget. They have come at a time when we face critical shortages in low-income housing, increases in our elderly population, and increased homelessness in many areas of our country. But for a technicality all programs that can give any help on these and other problems would be halted by this action taken by some Senators today.

The fact is that the programs which still survive despite the cuts of the last 7 years and which we authorize in this bill provide for a range of necessary services such as modernizing public housing projects, providing rental assistance to very low-income families, providing direct loans to build elderly housing, preserving the existing housing stock, supporting economic development in distressed areas, and helping small businesses continue to operate in communities with high crime rates. Perhaps some Senators believe that these programs are not needed in their States. The fact is, however, that in State after State, city after city, town after town, rural area after rural area, these programs are desperately needed to grapple with the housing situation that the private sector and the State and local governments can only solve with some Federal help.

Mr. President, I submit that this is a prudent, responsible fiscal measure. For too long Federal housing programs have been on the defensive. We have seen the clear result of what 7 years of ideological fervor can do—right wing, extremist ideological fervor. It is time to put this Congress squarely on the record in support of programs which address the low- and moderate-income housing and community development needs of the Nation.

Let me specify the elements in this bill that make it vulnerable to this point of order. They are small, but they are very important to some communities:

First, $10 million in land distribution proceeds is involved. This permits a few cities to reuse funds that result from increases in the value of land purchased under the urban renewal program. The very same consideration was given several years ago to Denver, CO, of all places, with the support of the Senators from that State.

Second, $7 million for special pool funds simply would live up to written commitments made by the Federal Government to certain States to help retain lower income housing.

Third, $30 million is included to increase the administrative fees for honoring vouchers and certificates. These are needed to make these programs workable. This administration wants to rely on vouchers alone. This bill simply permits vouchers to work in communities across the country. The bill tries to be responsible on these items and thus exposes us to this point of order.

The total amount involved in these three items is $47 million in a measure calling for $15 billion in expenditures, again a figure well below what either the House or Senate passed and below a freeze, one of the matters being discussed in the summit conference. Obviously, this has nothing to do with our effort to reduce the deficit, and I urge Senators to reconsider and to help us pass this conference report when it comes to a vote.

The PRESIDING OFFICER. The time of the Senator has expired. The majority leader.

Mr. BYRD. Mr. President, I ask unanimous consent that I may proceed for 5 minutes.

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

Mr. BYRD. Mr. President, this motion to reconsider is not debatable under the present circumstances. Just for those who read and run, this is why I have asked consent to have 5 minutes. It is my hope that we can put this measure over until Tuesday and allow absentees to return, and in the meantime get on with the energy-water appropriation bill.

I also wish to address my remarks to those who have wondered out loud why the Chair has not ruled on the point of order. Let me explain that although the Chair is required to immediately rule on the point of order, any Senator is entitled first to seek recognition for the purpose of making a parliamentary inquiry or asking unanimous consent in respect to some matter. Of course, in my judgment, the motion to adjourn takes precedence over the Chair's making a ruling on the point of order. Furthermore, the Chair normally would recognize a Senator before ruling on the point if he wishes to make a unanimous-consent request. If the Senator is recognized and makes a unanimous-consent request, a reservation of objection is in order, but it is not debatable. It is debatable only at the sufferance of the Chair or at the sufferance of other Senators. If they ask for the regular order, then the Senator who reserves the right to object must either object or not object, whichever.

Before the Chair ruled, I sought and received recognition and made unanimous-consent requests which were granted. Hence, the Chair has had no opportunity to rule on any point of order.

So the Chair acted properly under the circumstances and I wish the record to so show.

The PRESIDING OFFICER. The Senator has 1 minute and 52 seconds remaining. The Senator from Colorado has 4 minutes and 58 seconds under his control.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota. Does the majority leader yield?

Mr. BYRD. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator now has 1 minute 16 seconds.

Mr. BYRD. Is some time remaining out of the earlier 20 minutes?

The PRESIDING OFFICER. The Senator from California's time has ex-

pired. The Senator from Colorado has 4 minutes 58 seconds.

Mr. BYRD. In which event the majority leader is to be recognized at the conclusion of that time.

The PRESIDING OFFICER. That is correct. At the conclusion of the 20 minutes equally divided the majority leader will be recognized.

Mr. BYRD. Mr. President, I have 5 minutes under the order of this morning reserved. I take that 5 minutes now.

The PRESIDING OFFICER. The majority leader may proceed.

Mr. BYRD. I yield to the distinguished Senator only for the purpose of a question or statement if the Chair will protect my rights to the floor.

The PRESIDING OFFICER. The Chair will protect the majority leader's rights.

The majority leader has yielded to the Senator from North Dakota for the purposes of a statement or question.

Mr. CONRAD. I would like to make a brief statement, Mr. President.

We have heard a lot of rhetoric on the floor here today about one vote being the litmus test of whether someone is in favor of controlling the deficit or is opposed. I reject that. I am solidly committed to deficit reduction but it seems to me the test of whether or not people are in favor or opposed to the deficit reduction is not the vote on one measure. The question is a package that each and every Senator here be committed to supporting for real deficit reduction. Every Senator here has a different set of priorities. Some might favor reducing the military budget in order to achieve deficit reduction, some might favor revenue, and some might favor a full package.

The question is whether Senators singly and in totality are willing to take the steps necessary to achieve the budget-deficit reduction. One vote does not tell the story. I think it is important that we make that point. One vote does not tell the story on whether a Senator is committed to deficit reduction or not. It is the total plan, and it is not the total package that is the test.

I yield the floor.

Mr. CRANSTON. Would the Senator yield?

The PRESIDING OFFICER. The majority leader has the floor. The majority leader yielded to the Senator from North Dakota.

Mr. BYRD. Mr. President, I yield to the majority whip.

Mr. CRANSTON. I simply want to thank the Senator for his very lucid explanation of the situation we face. This is a technical matter. It has nothing to do with the views of Senators on the overall effort to deal with the budget deficit which we are committed to doing. This is a technical problem. It is ridiculous that the Senate has been put into this position.

The PRESIDING OFFICER. The majority leader has 3 minutes and 29 seconds remaining.

Mr. BYRD. Mr. President, I yield to the distinguished Republican leader without losing my right to the floor.

The PRESIDING OFFICER. Without objection, the Senator yielded to the Republican leader.

Mr. DOLE. Mr. President, we have been trying on this side to determine if we can sort of set everything aside and conclude like it is. Nobody's rights were impaired. I am not certain. I will tell the majority leader maybe we will do that, but I am advised by the distinguished manager on this side—the manager of the bill, Senator McCLURE, and also Senator HATCH, that they feel that the remaining amendments will be disposed of in fairly short order. So maybe it still will not slow down the process, because as I have indicated, if we lose a day today, it is just one more day in December that somebody is going to have to be around this place.

So I would hope that if we can get an agreement to setting aside, go ahead and take up energy and water, dispose of some of the amendments, but of course, if there is an objection that cannot be done.

But I would also just conclude in the record again, because I am not fully in agreement with the Chair, that under points of order the Chair rules. When a point of order is made the Chair must rule thereupon, unless he submits the question to the Senate for decision. That has not been done. Then it says "precedence" at the bottom of that page.

> A point of order which has been submitted to the Senate would take precedence over a motion to refer a bill to a committee but a motion to recess or adjourn would be in order.

I would indicate to the Chair that a point of order has to be submitted to the Senate which is not the case here. It would seem to me what ought to happen ought to be a ruling, and in any event, I want the record to show that as I read that, it seems fairly plain. It says when a point of order is made, the Chair "must"—it does not say "may," but "must" rule thereon. Maybe there is additional precedent that I failed to discover.

The PRESIDING OFFICER. The Chair will respond.

Under the Senate procedures a quorum being present, the Senate has a right to take a recess as often and for as long a time as it may see fit within a 3-day constitutional limitation. The motions to recess take precedence over motions to proceed to consider, consideration of conference report, motions for an executive session, and motions to lay on the table since the motion to recess is not subject to a motion to lay on the table.

Mr. DOLE. I would indicate there is no reference to a point of order in that section which I just read. If the Chair could advise me where he sees the words "points of order" then I could put that.

The PRESIDING OFFICER. The statement that I was reading was from page 875.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. I hope this will perhaps help the Chair. I think references have been made from the book "Senate Procedure." The Senate rule itself—from which all blessings flow except the Constitution of the United States—says rule XXII,

> 1. When a question is pending, no motion shall be received but—
> To adjourn.
> To adjourn to a day certain.
> To take a recess.

Which gives the motion to adjourn or motion to recess the highest status, and such motions are not debatable. If the motion is entered to adjourn or to recess, there is nothing the Senate can do except have a quorum call, and act on those motions.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. I respectfully suggest there is not a question pending. I would refer to rule XX. "A question of order may be raised at any stage of the proceedings, except when the Senate is voting or ascertaining the presence of a quorum, and unless submitted to the Senate, shall be decided by the Presiding Officer without debate, subject to an appeal of the Senate." Rule XX. So I think we have a different interpretation. It just seems to me so clear that a point of order must be ruled on, but in any event, that has now been corrected because the majority leader's motion to reconsider, as I understand, the motion to recess would take precedence. But in any event, if the distinguished majority leader would now entertain or put the unanimous-consent request, we could ascertain whether or not there would be an objection.

Mr. BYRD. Mr. President, I ask unanimous consent that I may proceed for 2 additional minutes.

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

PROPOSED UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD. Mr. President, it is important that we get on with the energy water appropriations bill. The Senate has acted on 9 of the 10 appropriations bills that have been sent over by the House of Representatives. The tenth bill is the energy water appropriation bill. There are other important matters that need to be disposed of before the Senate adjourns sine die—one, being farm credit; two, being

reconciliation; three, being the appropriations bills, and conference reports, and four, being the reconciliation measure. So the Senate needs to utilize its remaining time to the very best advantage.

I, therefore, ask unanimous consent that this pending matter be set aside, retain its status quo, until Tuesday next at 12 noon.

Provided, further, that the Senate then resume consideration of the energy and water appropriation bill.

The PRESIDING OFFICER. Is there objection?

Mr. GARN. Mr President, reserving the right to object, and I do intend to object, the energy and water bill has been going on for some time, and I observe that the delay has come from two Senators on that side of the aisle, which is entirely their right. Sometimes it is on our side; sometimes it is on that side. But the problem with getting the energy and water bill in this particular case is not on this side of the aisle.

We are prepared to go ahead and close off all amendments today and finish it. It is because of the unanimous-consent agreement on that side of the aisle that it is deferred until next Wednesday.

On this particular bill, again, I say that sometimes the delay comes from this side, sometimes from that side, but we are not the ones delaying.

I worked very hard last night to speed up the process, to get the time agreement on the housing bill, which I succeeded in doing, with some great reluctance on this side of the aisle. It appeared that we would be through by noon. The only thing that has taken place is that we won, and therefore we are stopping that bill. We are perfectly content. We won. Let us go ahead. But that is being delayed and put over in order to give realtors, mortgage bankers, and builders time to do their work over the weekend. I understand that process, too. I have been on the other side of that, stirring up opposition.

I think we should complete our work on the housing bill. For these reasons, I object.

The PRESIDING OFFICER. Objection has been noted. The unanimous-consent request is not agreed to.

Mr. BYRD. Mr. President, I do not want to bring the Senate in on Monday. I do want the Senate to have Wednesday of Thanksgiving week out. I hope Senators will do everything they possibly can to expedite the overall business of the Senate, because, as the distinguished Republican leader has just said, every day of delay now is like—it reminds me of the school system in Fairfax. You take a day off for snow and make it up in the spring.

So I hope we do not have to make up days as we approach the Yuletide.

Mr. President, I ask unanimous consent that this pending matter be set aside, status quo, until the hour of 12 noon on Tuesday next.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Mr. President, reserving the right to object, I say to the majority leader that we still have 4 minutes left. I have not had an opportunity to respond to a couple of comments that have been made. I do not object to the unanimous-consent request that the majority leader has propounded. Before we shut business down, though, I would like to have an opportunity to use the remaining 4 minutes, since I am swollen up with a statement of roughly that length.

Mr. BYRD. Mr. President, I withdraw my request for the moment, and I ask to be recognized at the conclusion—I think that is already entered as an order.

The PRESIDING OFFICER. Under the previous unanimous-consent agreement, the Senator from Colorado has under his control 4 minutes and 58 seconds. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I would like to yield 4 minutes and 30 seconds to my colleague from Texas for the statement which I am sure will turn the tide of opinion on this matter.

Mr. GRAMM. Mr. President, I thank the distinguished Senator for yielding.

The tide of opinion has already been turned on this matter. It is the effort to turn the tide back that we are addressing here.

I am struck, however, by the comments of the distinguished Senator from North Dakota and the distinguished Senator from California. We just had a vote on whether to waive the Budget Act. This was not just any waiver. It was the most important waiver in the Budget Act, where it is required that you get 60 votes to waive the Budget Act to raise the budget deficit on this particular bill—in this case, by $47 million.

The distinguished Senator from North Dakota and the distinguished Senator from California voted to waive the Budget Act and therefore to raise the deficit by $47 million. We now hear them protest, and their protest is an interesting protest.

They say: "We are just spending money. What does that have to do with the deficit? All we want to do is spend money, and we got these guys on the other side of the aisle who are pointing the finger at us—not directly, but at the bill itself—saying we are raising the deficit."

The protest is as if spending money has nothing to do with the deficit problem. Well, we know that it has everything to do with the deficit problem.

I am sure that on another day, on another issue, in some other time, another era, they would both be highly counted on the side of those who would reduce the deficit. Perhaps they voted against this because reducing the deficit by $47 million was not enough. Certainly I would never question anybody's motive. But the point is that this is not another time; this is not another issue. The issue today was a yea or nay kind of issue, and it was, Do you want to raise the deficit by $47 million, or do you not want to raise the deficit by $47 million?

I am sure the distinguished Senator from North Dakota and the distinguished Senator from California just want to spend money. They would prefer that the money not raise the deficit. What a wonderful world it would be if we could spend money and never have the bill come due. Wouldn't it be wonderful to have a magic credit card that would allow you to go out and charge, but nobody sends you the bill? We almost have it in Congress. We spend the money; we create constituencies; they vote for us; and then send the bill to the people pulling the wagon, while we load up the wagon.

I have no doubt that on other issues, other days, other amounts of money, both these Senators would be counted among the number who would reduce this deficit. But the point is that today they cast a yes vote to: Do you want to waive the Budget Act to raise the deficit by $47 million? Today, they were counted among the number who wanted to raise the deficit by $47 million. I am happy to be counted among the number that did not.

I am happy that this effort to pillage the public purse as defeated for the time being. We are obviously going to come back on Tuesday and vote on it again. I am sure that there will be many voices heard in the interim. I am equally sure that one voice will not be adequately heard, and that is the voice of the people back home who are working hard, who are planning their budget every day, who manage to deal with problems they face by setting priorities, something we never do.

So, from this day forward, people can say, "I am against deficits." But we had an opportunity to vote yea or nay on raising the deficit by $47 million. We will have that opportunity again on Tuesday. I hope there will not be people who were against raising the deficit today who will decide on Tuesday that it is a great idea. But let us not be confused. You cannot separate spending money from raising the deficit, and that is what this issue is all about.

The PRESIDING OFFICER. The Senator has used the time yielded and has yielded the floor.

The Senator from Colorado has 22 seconds.

Mr. ARMSTRONG. Mr. President, I wonder if I could ask unanimous consent to proceed for 1 minute.

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

Mr. ARMSTRONG. Mr. President, I have made a motion against the bill under section 311. The Senator from California has characterized this as inappropriate, nitpicking, and a technical matter, but it is not, for all the reasons the Senator from Texas has stated.

I could have made a valid point of order under section 302(f) because the conference report provides outlays in excess of allocations adopted under section 302(b). I did not make that point of order because I am not trying to make every point of order. I am trying to make just one, so that we can frame the issue.

But any notion this is frivolous or somehow a tiny detail in the greater scheme of things is simply not borne out by the facts.

Mr. President, I could also have made a point of order which I believe to be valid under section 402 because the conference report provides new credit authority not limited by new appropriations. You can adopt all appropriations bills from now to China and that does not change those facts.

Mr. President, this is not a small matter. It is a basic matter of philosophy and government. It is a matter of are we ready to draw the line and do something about the deficit.

That is the way we voted today. When we vote to reconsider, whether we vote today, tonight, tomorrow, Saturday, Sunday, Monday, or Tuesday, when we get to it, are we ready to stand up and be counted on the budget deficit?

The PRESIDING OFFICER. The Senator's time has expired.

Under the previous unanimous-consent agreement the majority leader is now recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that I may proceed for 5 minutes for purposes of yielding.

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

The majority leader.

Mr. BYRD. I yield to the distinguished assistant leader.

Mr. CRANSTON. Mr. President, I once again would like to respond briefly to the statements that have just now been made.

The problem that has tangled up the Senate and has created the problem that the budget totals now happen to be over the ceiling by $5.4 billion is not as a result of ths bill which was reducing expenditures for housing, but by other actions.

The problem is created because the reconciliation bill has not been scored yet. If it were, when it is, the total outlays will be reduced by $11 billion and when that happens, the problem will no longer exist. We would not then be overbudget. We would not then be increasing the deficit, which is changed by $47 million. The fact is that we are not increasing the deficit by $47 million, when everything is added up.

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

Mr. BYRD. I yield without losing my right to the floor.

The PRESIDING OFFICER. The majority leader yields to the Senator from North Dakota.

Mr. CONRAD. Mr. President, somehow, the Budget Act, it seems to me, has so befuddled this body that we have lost track of what real deficit reduction is all about.

The Senator from Texas keeps talking about this waiver being the determinant on deficit reduction. That assumes that the plan that we are working under provides deficit reduction. It does not. The plan that we are working on supposedly provides $23 billion of deficit reduction. You read it in the paper every day. But it does not provide deficit reduction on a year-to-year basis, and that is exactly what is wrong with it.

The real test of deficit reduction is whether or not we could come up with a plan jointly that would reduce this deficit on a year-to-year basis. The fact is that the $23 billion that gets talked about all of the time and on the floor reduces it off of a projection. It does not reduce the deficit on a year-to-year basis.

If we want to stand up and talk about all the good things we have done about deficit reduction, why do we not stand up here and come forward with a plan that provides real year-to-year deficit reduction? That would be the test.

Let us have an overall plan to cut spending that raises revenue, that does all of the things necessary to provide real year-to-year deficit reduction. Then we can move shoulder to shoulder and get done what this country requires, a fiscal plan that makes sense.

Mr. GRAMM. Mr. President, will the majority leader yield me 30 seconds?

The PRESIDING OFFICER. The majority leader controls the time. He has 3 minutes and 10 seconds.

Mr. BYRD. I yield 30 seconds.

The PRESIDING OFFICER. The majority leader yields 30 seconds.

Mr. GRAMM. Mr. President, the statement by the Senator from North Dakota reminds me of my grandmother's favorite poem. True worth is being, not seeming, in doing each day that goes by some little good, not in dreaming of great things to do by and by.

Today we had a vote on $47 million of deficit spending. Today we had an opportunity to do something about the deficit. Some took it. Some did not.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. How much time remains?

The PRESIDING OFFICER. One minute 29 seconds.

Mr. ARMSTRONG. Mr. President, will the Senator yield?

Mr. BYRD. I yield 1 minute.

Mr. ARMSTRONG. Mr. President, I would like to be sure there is not any lingering confusion. The point of order under section 311 relates to the direct spending of $47 million. There are other points of order which could be made against this bill, points of order which I have reason to believe validly lie against the bill.

So to dismiss them as nit-picking or something that can be cured later by a possible passage of a reconciliation bill, I really think is not framing the issue in its true perspective. That is not to say that Senators may not be able to rationalize the vote to waive. That happens from time to time. The question is whether or not given the present situation, the present level of deficits, the efforts which some have characterized as desperate efforts on the part of our senior leaders and the representatives of the White House, to find a way out of this budget dilemma, whether or not this is the moment to do so, whether the cause here is so urgent that it overrides what would seem to be a very important desire on the part of the Senate and the public to somehow get this budget under control, I do not think so, but this is not about $47 million; it is about $19 billion, which is the amount in the bill.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BYRD. Mr. President, if this matter is put over to Tuesday next, it does carry with it that part of the order which provides for the disposition of Senate Joint Resolution 219, the extension of FHA?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. Mr. President, I ask unanimous consent that the pending matter be put over until Tuesday next at 2 p.m., that it retain its status quo in the meantime.

Mr. ARMSTRONG. Mr. President, reserving the right to object, does the leader's request include the FHA extender?

Mr. BYRD. That would be automatically put over and would follow as it appears in the order previously entered.

Mr. ARMSTRONG. So that the effect of granting the leader's request would be to put this bill and the FHA extender which follows it over until Tuesday?

Mr. BYRD. It would.

Mr. ARMSTRONG. If I could just ask the leader, is he aware the FHA

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Program is going to expire between now and Tuesday?

Mr. BYRD. I would like to handle this whole thing today, if I could.

Mr. ARMSTRONG. So would we. Let us go ahead and clean it up today. It is a good day for it.

Mr. CRANSTON. We would like to proceed with the FHA extender right now if that is the Senator's wish.

Mr. ARMSTRONG. I have no problem about that.

Bear in mind, I would not be willing to agree to that if we are talking about extending to December 16. I was not willing to agree to extend it to December 16 in the first place. I am prepared to agree to and take up by unanimous consent and pass in about 60 seconds a permanent extension of FHA.

I think the notion of holding the FHA Loan Program hostage to the housing bill is really off the mark.

I tried to make that point a few days ago, when along with others, I offered an amendment which would make it a permanent program. No, they said, we have to extend it a brief time so we can get the housing bill before us, get it done by what day it was. Now we are back again, and it is getting ready to languish again.

The PRESIDING OFFICER. The ruling is on the unanimous consent stated by the majority leader. Is there objection to that request?

Mr. ARMSTRONG. Mr. President, as presently stated, I would object, but it is clear that I am negotiable to work something out so it does not have to lapse.

Mr. BYRD. I do not want to impose on the Senate by retaining the floor longer. I ask unanimous consent I may proceed to hold the floor for 5 minutes.

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

Five additional minutes to the majority leader.

Mr. BYRD. Mr. President, I yield to the distinguished Senator.

The PRESIDING OFFICER. The majority leader yields to the Senator from California.

Mr. CRANSTON. We would like to keep the FHA from being knocked out once again, which creates havoc with people who need homes, havoc for those who build homes, those who are the entrepreneurs and those who work in the building trades.

If we could pass a short extender now to December 16, that would prevent that happening. It happened a couple of weeks ago because of the actions of Senators from Colorado, Texas, and others. It would be nice to avoid it. If we could get a short extender through the House when they come back, which would be Monday, it expires on Sunday, so what has already happened is causing FHA to be knocked out on Monday. We are prepared to pass something that will pass the House swiftly, which would be an extender to December 16.

Mr. ARMSTRONG. Too long.

Mr. CRANSTON. The time that the present authorization of the continuing resolution will come to a head. The House will not accept a permanent extension. There is no point to go into that. So we should do a short one now or do nothing. I suspect, given the attitude of the minority in this body, we will do nothing.

Mr. ARMSTRONG. Will the Senator from California yield?

The PRESIDING OFFICER. The Senator from California does not have the floor. The majority leader has the floor. He yields to the Senator from Colorado.

Mr. ARMSTRONG. Mr. President, it is really important in this body that we deal with each other in a friendly manner. I really hope that the Senator from California will be more careful about how he characterizes the minority in this body. It is unfair. It is not borne out by the facts that there has been some delay on the FHA extender now or at any time that I can recall as a result of the minority.

It is the position of the minority, so far as I know, unanimously—now, there might be some dissent—that this program ought to be made permanent. And I do not think the Senator from California can point to a single instance—certainly not during the time I have been interested in this—when we have delayed this.

We are not delaying action on the FHA extender now. But I think it is important, even though circumstances which have already occurred evidently are going to cause this bill to lapse on Sunday, I think it is important for us to work something out.

So I would ask the Senator from California if he would be willing to take, say, a unanimous consent that we could put together to take up the FHA bill, pass it not to December 16 but to some day next week, say, a week from today, so that we would not let it lapse and yet it would come back before us in the same context as the housing bill. So that one way or the other we are either going to pass the housing bill or we are not and we are either going to act on the permanent FHA extender—which I know is a goal of the Senator from California—either as part of the housing bill or on its own merits.

I would be willing to extend it to a week from today or Monday so there would not be an undue lapse.

Mr. CRANSTON. Let us go for a date shorter than December 16. What about November 30? That would give us a little bit of a maneuver so people do not have to be on edge about whether it is going to be halted again.

Mr. GRAMM. What day of the week is that?

Mr. CRANSTON. That is a Monday.

Mr. ARMSTRONG. Is that Monday following Thanksgiving?

Mr. CRANSTON. Yes.

Mr. ARMSTRONG. Mr. President, that is not very appealing because the reality of it is we are probably going to get Thanksgiving Day off.

Mr. CRANSTON. How about December 2?

Mr. ARMSTRONG. How about the Monday before Thanksgiving, instead of the Monday following? That way it will be something we have to clean up before we get out of here.

Mr. BYRD. The Senate will be in on Monday before Thanksgiving. The Senate will be in on Monday and Tuesday of Thanksgiving week.

Mr. CRANSTON. Let us make it Tuesday before Thanksgiving.

Mr. ARMSTRONG. Mr. President, that seems to meet with the general approval on our side. So we need to frame the consent agreement more formally, but, in essence, what we are suggesting is that we take up the bill without amendment by unanimous consent, but certainly at a date which can be Tuesday before Thanksgiving.

Mr. CRANSTON. Right.

The PRESIDING OFFICER. The majority leader has 21 seconds remaining.

AUTHORIZING TESTIMONY BY A SENATE INVESTIGATOR

Mr. BYRD. Mr. President, while the principals are preparing the necessary legislation, I ask that I may send to the desk a resolution on behalf of myself and Mr. DOLE which provides for testimony to be given in a court matter. I ask the Senate immediately proceed to the consideration of the resolution.

The PRESIDING OFFICER (Mr. CONRAD). Is there objection? Without objection, it is so ordered. The clerk will report the resolution.

The bill clerk read as follows:

A resolution (S. Res. 320) to authorize testimony by a Senate investigator in the case of *United States v. Antonio Fernandez, et al.*

The Senate proceeded to consider the resolution.

Mr. BYRD. Mr. President, during 1982-84, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs conducted inquiries into allegations of organized crime influence in the operations of the Hotel Employees and Restaurant Employees International Union. During the 99th Congress, the Senate agreed to S. Res. 128 to authorize the subcommittee to provide to the Department of Justice records from its investigation.

One of the documents provided under that authority was a memorandum of an interview that David Faulkner, a subcommittee investigator, conducted with a union local president

named Antonio Fernandez. Mr. Fernandez is now facing trial in the Southern District of Florida on criminal charges, and the Justice Department has requested that Mr. Faulkner testify at the trial concerning his interview.

This resolution would authorize testimony about the interview of Mr. Fernandez but would not authorize testimony concerning any other aspects of the subcommittee's investigation.

The PRESIDING OFFICER. Is there further debate on the resolution? If not, the question is on agreeing to the resolution.

The resolution (S. Res. 320) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 320

Whereas, in the case of *United States v. Antonio Fernandez, et al.*, No. 87-217-Cr-NESBITT, pending in the United States District Court for the Southern District of Florida, David Faulkner, a former Senate employee and current consultant with the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, has been requested to testify by the United States;

Whereas, under the authority of Senate Resolution 128 in the Ninety-Ninth Congress, the Permanent Subcommittee on Investigations provided to the Department of Justice a memorandum dated April 21, 1983 documenting an interview with Antonio Fernandez, one of the defendants;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that testimony by present or former Senate employees may be needed in any court for the promotion of justice, the Senate will act to promote the ends of justice in a manner consistent with the privileges and rights of the Senate: Now, therefore be it

Resolved, That David Faulkner is authorized to testify in the case of *United States v. Antonio Fernandez, et al.*, concerning only the interview documented in the April 21, 1983 memorandum and concerning no other matters.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent that I may have an additional 5 minutes.

The PRESIDING OFFICER. Without objection, an additional 5 minutes to the majority leader.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield the floor now for the purpose of dealing with the extension of the FHA and that the pending matter, namely, the vote on the motion to reconsider the conference report, retain its status quo and that I be immediately recognized with full protection of all of my rights in that regard immediately following the adoption of the resolution.

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

The Senator will suspend one moment. We need to have quiet in the Chamber so that Senators can be heard.

Mr. BYRD. Has that request been granted?

The PRESIDING OFFICER. Yes; that was approved without objection.

Mr. ARMSTRONG. What have we just approved without objection? Senators on this side could not hear.

The PRESIDING OFFICER. The unanimous consent request that was made by the majority leader to proceed to the FHA extension.

Mr. BYRD. And that I be protected fully in my rights with reference to the conference report.

Mr. ARMSTRONG. To proceed to it at this time, and after that?

Mr. BYRD. That the status quo on the motion to reconsider the vote on the conference report remain what it is and that I be recognized again so that I have the floor.

Mr. ARMSTRONG. At that time we would make further decision as to where we go on the housing bill?

Mr. BYRD. Yes.

Mr. ARMSTRONG. I thank the Chair. I have no objection to that procedure.

Mr. CRANSTON. Unfortunately, it was not the approval of the conference report that we did by unanimous consent.

FHA EXTENSION

Mr. CRANSTON. Mr. President, I send to the desk a Senate joint resolution in accordance with the discussions we had on the floor and informal discussions since then. I understand it is now acceptable to extend FHA until December 2 of this year, and that is what this joint resolution will do.

The PRESIDING OFFICER. The clerk will report the resolution.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 220) to provide for the extension of certain programs relating to housing and community development, and for other purposes.

The Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. Is there further discussion?

Mr. ARMSTRONG. Is the joint resolution before us for debate?

The PRESIDING OFFICER. The joint resolution is open for debate.

Mr. ARMSTRONG. Under the unanimous-consent agreement, the joint resolution is not amendable?

The PRESIDING OFFICER. That is correct.

Mr. ARMSTRONG. I think this is a good resolution of the box we have gotten ourselves into. But let me say, Mr. President, I hope we are not going to have to do this very many more times.

Does the Chair know or can any Senator tell us how many times in the last couple of years we have let the program lapse? In other words, how many times has it actually gone out of business before it got extended? In this case, I guess it is going to die on Sunday, but we hope the House will act on it on Monday and if the President is in town he would sign it, presumably, on Monday so there would only be a short gap.

But how many times has this happened in recent years?

Mr. CRANSTON. If the Senator would yield, it happened 6 times last year, for a total of 51 days; it lapsed once this year, for a total of 2 days.

Mr. ARMSTRONG. The reason I raise this issue—and I hope it is one which all Senators would seriously contemplate—is that this works a tremendous hardship on people who are trying to acquire homes and who are in the business of buying and selling homes. A number of quite specific human tragedies have come to my attention, like the lady who had cancer and who was trying to sell her house in Colorado and, just as it got to the point of closing, the FHA closed down before she could complete the deal.

There is really no reason for this. The FHA program is not controversial. The only reason it has been extended on this basis is so that it could be used as a hostage to obtain the passage of other more controversial legislation.

So I wonder if we could have a general agreement—not a unanimous consent agreement, but just a general agreement—within this body that this is the last year that we are going to treat this in such a manner; that, one way or another, either as a part of the overall housing bill or as a freestanding measure or some way, we will enact a permanent extension of the FHA legislation this year.

I am wondering if the Senator from Utah and the Senator from California would be agreeable to stating that as our objective; that, win, lose, or draw on housing or other bills, before this session ends, some way we would get a permanent FHA extension enacted into law. Is that not the goal of the Senator from California?

Mr. CRANSTON. That is the goal of the Senator from California. I share with the Senator from Colorado his concern. And if the conference report had been adopted, or when it is adopted, we will then have, provided we do not get a veto that we cannot override, we will have permanent FHA status. We need that. We want that. We are determined to get that.

Mr. ARMSTRONG. Let me ask the question this way, because there is some lingering doubt as to what is going to happen to the housing bill:

Would the Senator agree that, when we have disposed of the housing bill one way or the other, either enact it into law, in which case the FHA extender would be included, whatever we do, even if we are not able to pass a housing bill this year, that some way we ought to get an FHA extender, either as a freestanding measure or tack it on to some other legislation or in some way get it before the President in a form he will sign a permanent extension so that we do not have those buyers and sellers and owners and acquirers out on a limb again next year as they have been the last couple of years? Would the Senator help us with that task one way or another before the year is over?

Mr. CRANSTON. Plainly, we have to resolve this matter but I do not wish to speculate that we cannot resolve it by passing a permanent housing bill. We need it. I believe we can get it. We will one way or another.

Mr. ARMSTRONG. Mr. President, the issue really is whether or not we are going to continue to hold the FHA program hostage to other purposes. There is a legitimate difference or opinion here whether the housing bill is good legislation, whether it is good for the future of the country. I do not think it is. The President does not think it is. I noticed this morning in large headlines in the Washington paper—I do not know how it played in Denver or Sacramento or any place else—in the Washington paper there was another account of President-bashing in the press. Once again, a number of people around here decided this would be a good day to open up their big guns on the President and complain of his lack of involvement in the budget process or his unwillingness to come to terms with the thing.

Mr. President, the President is not ambivalent about this. He has sent up not once but repeatedly a clear signal of how he feels about the housing legislation.

What I am trying to identify is, really, the futility and the inconvenience and, in some cases—they may be isolated—the actual human tragedy when we let this housing program get right up to the brink, over and over again.

Nobody can plan. I am not just talking about individuals, although that ought to be a prime concern of Senators of how individual people are affected in their everyday lives, but the disruptive effect it has on the housing market.

We have a stock market that is already in chaos. It seems to me the last thing we want to do is contribute to a chaotic situation in housing as well.

So I just hope that not only will we pass this brief extender, but that in addition, before the year is over, one way or another we are going to get a permanent extension of the FHA Program.

Mr. D'AMATO. Mr. President, as ranking member of the Senate Housing Subcommittee, I rise today to join with the chairman of the subcommittee, Senator CRANSTON, in support of legislation to extend the insuring authority of the Federal Housing Authority [FHA] of the U.S. Department of Housing and Urban Development. Under this legislation, the FHA mortgage insurance authority would be extended until December 2, 1987. Currently, under Public Law 99-122, the FHA authority to insure home mortgages expires on November 15, 1987.

Both the House and the Senate have passed housing reauthorization bills including provisions for the continuation of this insuring authority. The final conference bill has passed the House, but has not yet reached the President. Therefore, Senator CRANSTON and I are sponsoring legislation today that would allow the FHA to continue its operating authority for the numerous mortgage insurance programs through December 2, 1987. This will give the Senate and the President time to act on the housing bill.

Last year, the FHA insuring authority became a pawn in a larger battle between the House and Senate over a controversial reauthorization bill of all Federal housing programs. The Congress passed seven short-term extensions. However, during the course of congressional deliberations, the insuring authority was allowed to expire a shocking six times. FHA shut down its operation a total of 51 days. This caused confusion and frustration among many prospective home buyers. It threatened the housing plans of many low-, moderate-, and middle-income Americans. Furthermore, it destabilized the mortgage and housing financing system in our Nation.

This FHA extender will prevent the insuring authority from expiring on November 15, 1987, while the 1987 housing bill is still being addressed by the Senate and the President. The FHA will be able to operate in a smoother fashion through December 2, 1987, avoiding undue hardship to home buyers, mortgage lenders, homebuilders, and the many individuals involved in our Nation's housing industry and financing system.

Mr. President, FHA is one of the most successful partnerships ever created between the public and private sectors. During its illustrious 53-year history, FHA has assisted more than 15 million American families realize the dream of homeownership. Let us preserve the integrity of this vital Federal agency. I urge my colleagues to join us and to support this legislation.

Thank you, Mr. President.

The PRESIDING OFFICER. Is there further debate? If there be no further debate, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading, was read the third time and passed, as follows:

S.J. RES. 220

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That each provision of law amended by Public Law 100-154 is amended by striking "November 15, 1987" and inserting "December 2, 1987".

Mr. CRANSTON. I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987—CONFERENCE REPORT

Mr. BYRD. Mr. President, I ask unanimous consent that further actions in respect to the conference report on the Housing and Community Development Act of 1987 go over until Tuesday next, to the hour of 2:30 p.m.

The PRESIDING OFFICER. Is there objection?

Mr. ARMSTRONG. Reserving the right to object, I would like to be sure we understand the import of this and then suggest to the leader that some time be allowed for debate prior to vote on the motion.

If I understand the parliamentary situation that will obtain if the leader's request is granted, it is that at the hour of 2:30 we would proceed immediately to a rollcall vote on the motion to reconsider. That all time would have then expired.

It would be my suggestion, Mr. President, that we simply eliminate the time limit, which is inherent in the earlier agreement, and permit that motion to reconsider to be freely debatable; and if it is agreed to, permit the subsequent motion; that is, if the reconsideration motion is agreed to, to also permit debate on the underlying motion to waive the budget. Would that be agreeable? It seems to me to come in and simply have a vote after 3 or 4 days—we ought to have some time to refocus our attention on the issues.

Mr. BYRD. Well, Mr. President, I do not want to belabor this point. I can do it without unanimous consent but I would rather not and I hope that Senators will not draw me and quarter me overlylong on this Friday afternoon. I have no problem with having some debate on the matter Tuesday.

Mr. ARMSTRONG. Mr. President, my desire is to accommodate the leader's wish to lay it over. I do not want to lay it over but I know he can lay it over whether I want him to or not. The only difference is that if he moves

to adjourn, which he has the votes to do, that we preempt the Senator from Louisiana and his bill and I am not trying to gum up the works. I am making the suggestion that if we simply come in at 2:30 and this bill is laid down before us, under the existing order what would happen would be a rollcall and it seems to me that we ought to be able to debate the issue at that point because, by then, 4 or 5 days will have gone by, some things will have happened; somebody will have weighed in, Senators will have additional thoughts and we ought to have additional debate. I am not suggesting lengthy debate.

Mr. BYRD. How much time does the Senator suggest?

Mr. ARMSTRONG. An hour equally divided and the same on the underlying motion if reconsideration passes.

Mr. BYRD. If reconsideration is agreed to there be 1 hour on this motion.

Mr. President, I ask unanimous consent that the pending vote on the motion to reconsider the vote on adoption of the conference report be put over until Tuesday next at the hour of 3 o'clock p.m., that prior thereto there be 1 hour for debate on the motion to reconsider, which would begin at 2 p.m., and that if the motion to reconsider carries, that there be 1 hour for debate on the waiver motion, equally divided in accordance with the usual form in both instances.

Mr. ARMSTRONG. Mr. President, I thank the leader.

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

Mr. BYRD. I thank the Senator and I thank the Republican leader, and I thank all Senators.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1988

The Senate continued with the consideration of the bill (H.R. 2700).

Mr. BYRD. Now, Mr. President, I call attention to the fact that the matter before the Senate right now is the energy-water appropriation bill. Am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. The distinguished managers of the bill are here.

Mr. McCLURE. Would the distinguished majority leader yield?

Mr. BYRD. I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. The distinguished Senator from Oregon, Mr. HATFIELD, is the manager of the bill on this side of the aisle. I have been acting on his behalf with respect to the nuclear waste disposal portion of this bill. I am willing to work with the leadership in whatever way I can to assist in moving this forward, but I do want the record to be plain that it is Senator HATFIELD who is the manager of the bill on this side and whatever is done with respect to the process on this bill has to be after consultation with him.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I think we are virtually ready to go. We have some amendments we can take. We have one or two which may require a rollcall vote, but I do not see why they would require Senator HATFIELD's presence. I think I know where he stands on those.

For example, there is the DeConcini amendment on the supercollider, which we would oppose in its present form, and I am sure Senator HATFIELD would as well. I would hope he would not ask for a rollcall vote. If he did, I would not think Senator HATFIELD would need to be present for that.

Mr. McCLURE. Would the Senator yield on that point? I would like the record to reflect the Senator from Idaho also opposes the DeConcini amendment.

Mr. JOHNSTON. I think certainly the Senator from Idaho also could well represent the position of the minority.

There is another amendment by Senator SHELBY which, actually, I would not oppose. I speak in favor of it, but I would think should require a rollcall vote; very little debate. But I think it would simply require a rollcall vote to get Senators on the record on it.

Mr. McCLURE. Would the Senator yield? With respect to that amendment my understanding is the Senator may be attempting to modify that amendment to make its application narrower.

Mr. JOHNSTON. Yes, and it is perfectly acceptable to me. As a matter of fact I am prepared to speak in favor of it.

Mr. McCLURE. I was prepared to speak in favor of the original amendment. I want to reserve judgment with respect to the application of the amendment that will more narrowly focus it.

Mr. JOHNSTON. But I think that matter really relates to the Senator from Idaho more than the Senator from Oregon. He would certainly be in a position to do that.

So, I would hope we could proceed. I being as sensitive as anybody in this body to the concern of the Senator from Oregon, and if there is a matter that the minority tells me he needs to be here for, we would certainly put that aside.

Mr. President, we are now ready to proceed. I do have an amendment or two.

Mr. BYRD. Mr. President, will the distinguished manager of the bill yield to me for 30 seconds while the Republican leader is on the floor?

Mr. JOHNSTON. Yes, I yield.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. BYRD. Mr. President, the Republican leader has asked me about nominations on the Executive Calendar.

Mr. President, we are ready to proceed on this side with regard to Calendar Order 218 and Calendar Order 418. The Republican leader asked me about those two items.

Mr. President, I ask unanimous consent that the Senate go into executive session to consider those two nominations en bloc, that they be considered en bloc, confirmed en bloc, that a motion to reconsider en bloc be laid on the table, that the President be immediately notified of the confirmation of the nominees, and that the Senate return to legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. I have no objection. I want to thank the distinguished majority leader for this accommodation.

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

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

Royce C. Lamberth, of Virginia, to be United States District Judge for the District of Columbia.

DEPARTMENT OF DEFENSE

June Gibbs Brown, of Virginia, to be Inspector General, Department of Defense.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1988

The Senate continued with the consideration of the bill (H.R. 2700).

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, while we are waiting for the first amendment to be offered, I might just note that I believe there is a total of 13 amendments, or, in one instance, a group of amendments, which are mostly noncontroversial. I would hope that we might avoid rollcall votes this afternoon as much as we can, even to the extent of stacking those votes, if necessary, until we return to the bill next week. I know some Members want to get away early or have already left.

Mr. President, I would also suggest that aside from those 12 or 13, we

have a list here and I guess we can go through them. I hope that we deal with every one of the amendments today or get a unanimous-consent agreement that limits any other amendments so that we will know exactly what we have to deal with when we get back on the bill next week.

I believe the Breaux motion to recommit would be in order, but my understanding is it is the intention of the distinguished Senator from Louisiana not to offer that motion to recommit until sometime next week, either Tuesday or Wednesday. Therefore, we will be on this bill midweek next week in order to complete action with respect to the bill. Am I correct?

Mr. JOHNSTON. The Senator is correct. But concerning the rollcall votes, if we can get one in the next few minutes, and I would hope the Alabama Senators would show up on the floor, I would hope we could vote on that matter right away and get it out of the way.

Mr. President, I understand that the distinguished Senator from Washington [Mr. ADAMS] had reserved at one time unanimous consent to bring up two amendments with a time agreement thereof. Is that still possible under the unanimous-consent agreement?

The PRESIDING OFFICER. The Chair will consult the Parliamentarian.

One amendment of the Senator from Washington and one amendment of the Senator from Alaska.

Mr. ADAMS. Mr. President, the Senator from Washington will not be offering an amendment or using the time that was allocated by the unanimous-consent request. Mr. President, the Senator from Washington will indicate to the manager of the bill that that time will not be needed for that amendment, and an amendment by the Senator from Washington will not be offered. The Senator from Louisiana [Mr. BREAUX] will offer a motion to recommit.

Mr. JOHNSTON. Mr. President, I thank the Senator from Washington for his cooperation in this matter. I ask unanimous consent, therefore, that the unanimous-consent agreement be so modified as to exclude the amendment of the Senator from Washington.

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

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

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

AMENDMENT NO. 1184

(Purpose: To provide for actual testing of transportation packages for plutonium transported by aircraft through the territory or air space of the United States)

Mr. JOHNSTON. 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 Louisiana [Mr. JOHNSTON], for Mr. MURKOWSKI, for himself, Mr. MCCLURE, and Mr. PROXMIRE, proposes an amendment numbered 1184.

Mr. JOHNSTON. 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 40, line 23, strike the period and insert in lieu thereof: "at the end of the bill insert the following new section:

'TRANSPORTATION OF PLUTONIUM BY AIRCRAFT THROUGH THE TERRITORY OR AIR SPACE OF THE UNITED STATES

'SEC. 8. (a) Plutonium in any form may not be transported by aircraft from a foreign nation to any foreign nation through the territory or air space of the United States unless such plutonium is transported in a package that has been certified safe by the Nuclear Regulatory Commission in accordance with subsection (b) and all other applicable law.

'(b) The Nuclear Regulatory Commission shall—

'(1) conduct an actual crash test of a cargo aircraft traveling at maximum cruising speed, appropriately loaded with sample full scale packages containing test material;

'(2) conduct an actual drop test from maximum cruising altitude of a sample full scale package containing test material; and

'(3) certify that the package, samples of which were tested under paragraphs (1) and (2), is acceptably safe for use in the transport of plutonium by aircraft.

'(c)(1) The parameters of the tests under subsection (b) shall be determined by the Nuclear Regulatory Commission after public notice and opportunity for comment.

'(2) The results of all tests under this section shall be available to the public.' "

Mr. JOHNSTON. Mr. President, this amendment is submitted on behalf of the Senator from Alaska [Mr. MURKOWSKI], the Senator from Idaho [Mr. MCCLURE], and the Senator from Wisconsin [Mr. PROXMIRE]. It provides, if any plutonium is shipped in aircraft over the territory of the United States from one foreign country to another, that it must be shipped in a container certified as being safe by the NRC and certain standards are stated in the amendment as to satisfy what the requirements of the container would be. Specifically, Mr. President, this would cover flights from France to Japan, for example, that either overfly or land in Alaska. I think the requirement is reasonable.

The amendment would require additional testing to be conducted on transportation packages used for international shipments of plutonium by air prior to certification of those packages by NRC. This testing includes actual crash and drop tests. Existing law would allow these tests to be simulated by computer model.

The amendment relates solely to the requirements for transportation packages for separated plutonium. It is not intended to affect in any way the existing requirements or requirements imposed by S. 1668 with respect to certification of packages for transportation of spent nuclear fuel or high-level waste.

We support the amendment.

Mr. MURKOWSKI. Mr. President, today I am offering an amendment that will ensure that plutonium, a byproduct of the world's reliance on nuclear energy, is transported in a safe and sound manner.

My amendment concerns the transportation of plutonium by aircraft. It is very simple and straightforward. It simply requires the Nuclear Regulatory Commission [NRC] to conduct actual crash tests of casks before they are certified as safe containers for the air transport of plutonium. The certification process will also require public input and be in accordance with all other laws. I interpret this latter requirement as making the cask certification process subject to the NEPA—that is, the environmental impact statement requirement.

Mr. President, the need for this amendment is readily apparent. Although it is not now the policy of the United States to reprocess spent nuclear waste, that is the policy of certain other countries, including Japan, France, and Great Britain.

A recent agreement worked out between the United States and Japan for the use of reprocessed nuclear fuel specifies air transport as a means of moving the plutonium generated by that reprocessing from Europe to Japan. The agreement requires those shipments to take a polar route or another route selected to avoid areas vulnerable to natural disasters or civil disorders. This means that air shipments of plutonium could fly over Canada and Alaska—including a possible landing for refueling in Alaska or Canada.

And, Mr. President, if Canada objects, these flights may cross over the 11 northern tier States from Maine to Washington, possibly refueling in Washington.

Mr. President, I do want to ensure that we move with the utmost caution. The NRC has yet to certify for air transport a cask capable of carrying the sizable quantities of plutonium envisioned by the Japanese. Already the Japanese have launched a concerted effort to design and build a cask that can be certified by the NRC.

Unfortunately, the NRC regulations will permit certification of such a cask based merely on simulations of an airplane crash. No actual crash test is required.

Mr. President, there is no way reliably to simulate an airplane crash in a laboratory. One need only look back a few years, to the development of a jet-fuel additive that was supposed to prevent postcrash fires, as confirmation on this point. After 17 years of research and development and numerous laboratory aircraft accident simulations, the Government was ready to certify that the Avgard fuel additive would prevent a fire in the event of an actual airplane crash. Just to be sure, however, they decided to crash a Boeing 720 at Edwards Air Force Base. They did, and the plane exploded into a fireball.

That experience raises the obvious question: How can we be sure that a cask carrying plutonium will actually survive intact an airplane crash unless such a cask is subjected to an actual crash of a cargo plane fully loaded with casks containing nonradioactive material?

The only way to be sure is to test the cask in an actual crash.

Some may ask, why do this amendment on this particular bill? What does it have to do with the Nuclear Waste Policy Act?

In fact, it is very relevant to the legislation at hand. First, the bill before us requires that casks used to ship spent nuclear waste by ground transportation undergo an actual crash test. Why should we require a lesser standard for plutonium—one of the most toxic substances known to man? Particularly when that plutonium will be moved by air transport.

Second, plutonium is a byproduct of nuclear waste. If the policy of this country ever changes—from one of burying our wastes, to one of reprocessing—we will also be looking at moving large quantities of plutonium, perhaps by air.

In summary, Mr. President, I would say that this amendment is correct on the merits—I do not believe that anyone can reasonably oppose it—and it is appropriate to include it in this modification of the Nuclear Waste Policy Act.

I urge my colleagues to support the amendment.

Mr. McCLURE. Mr. President, I agree with this amendment. I commend the Senator from Alaska for guaranteeing the safety of America, and requiring the same standards on foreign shipments as would be the case with domestic shipments. It makes great good sense to me. I urge 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. 1184) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1185

(Purpose: To allocate funds for a reconnaissance study of the South Fork of the Sangamon River, Illinois)

Mr. JOHNSTON. 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 Louisiana [Mr. JOHNSTON], for Mr. DIXON, proposes an amendment numbered 1185.

Mr. JOHNSTON. 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 2, line 23, before the period insert a colon and the following: "*Provided further,* That of the amounts appropriated under this heading, $220,000 shall be available for a reconnaissance study of the South Fork of the Sangamon River, Illinois".

Mr. JOHNSTON. Mr. President, this provides on behalf of Senator DIXON for a study of the Sangamon River at a cost of $200,000 within available funds. We support the amendment.

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

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Louisiana [Mr. JOHNSTON].

The amendment (No. 1185) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I now tell Senators the shape of this bill. We think there is an amendment to be offered by the Senator from Alabama [Mr. HEFLIN]. There is an amendment to be offered by Senators HEFLIN and THURMOND relative to a building in Charleston, SC. We are trying to clear that now.

I believe there is a Murkowski amendment which has not been cleared, which is a matter that affects the Finance Committee. We have received a rumor that there may be four Karnes amendments, but I am not sure that is so. If it is so, he should make his wishes known. We just did one Dixon amendment, and there may or may not be further Dixon amendments. If there are, he should make his thoughts known.

We are trying to clear a Lautenberg amendment if he is still interested in that amendment. There is a DeConcini amendment on the superconductor supercollider. There is a possible Domenici amendment on a semiconductor processing. There is a Metzenbaum amendment on the national labs, on which we are awaiting Senator METZENBAUM right now. There may be a Glenn amendment on an RERTR Program. There may be a Leahy amendment on additional solar and wind energy projects, and we think there is a Heflin-Shelby amendment.

Mr. President, that is all we have heard about. If Senators are interested in moving there amendments, they should do so now. We put Senators on notice yesterday that we were moving to third reading. We hoped before the noon hour. So if Senators are in fact interested, they should come to the floor within the next few minutes. Otherwise, we will move to third reading excepting those who have actually told us that they wanted amendments. For example, Senator METZENBAUM has asked for protection and, in fact, we have agreed to that. But some of these others which have the status of only rumors, we cannot protect a Senator on a rumor.

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

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

AMENDMENT NO. 1186

(Purpose: To deny funds for 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)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. MURKOWSKI, proposes an amendment numbered 1186.

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

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

The amendment is as follows:

At the end of the bill, add the following:

SEC. . (a)(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 water development project of the Army Corps of Engineers or the Bureau of Reclamation 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 the Army or the Secretary of the Interior 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 not 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, or

(B) fair and equitable market opportunities for services of the United States in bidding,

for public works 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. JOHNSTON. Mr. President, this amendment is submitted on behalf of Senator MURKOWSKI. It provides that if there are foreign countries which do not allow access by the United States to their markets, they shall not be able to provide services in the form of working on four Bureau of Reclamation projects. There are certain exceptions: if it is not in the national interest and so certified; if the cost exceeds 20 percent. It also provides for the special trade representative to make findings as to whether the particular foreign country is an offending foreign country.

In effect, it says, let us have a level playing field.

This amendment has been cleared with the Finance Committee, and it is the same amendment that has been adopted four times by the Senate. So I urge its adoption.

Mr. McCLURE. Mr. President, we urge the adoption of the amendment.

Mr. MURKOWSKI. Mr. President, I thank my colleagues, the Senator from Louisiana and the Senator from Idaho—the chairman and the ranking member, respectively, of the Committee on Energy and Natural Resources.

This amendment is intended to insure reciprocity on bidding for construction services associated with our energy and water development projects. The basic question is, should foreign construction firms continue to enjoy full unrestrained access to federally funded energy and water development projects if U.S. firms are not given reciprocal opportunities to participate in public works projects overseas?

Mr. President, I believe the answer is no, and I believe my colleagues in the Senate concur in this philosophy. In fact, this reciprocity amendment has already been adopted on the DOD authorization bill, the military construction appropriations bill, the airport and airways improvement reauthorization and most recently, the DOT appropriations bill.

The issues at hand are fairness and market access. Our market for construction services on Federal projects is wide open, this is appropriate—as long as it is reciprocal. But when U.S. firms are not even given the opportunity to bid on projects overseas in a fair and nondiscriminatory manner, we must use the leverage of our market place to address this inequity.

We know the barriers United States firms face in Japan, as well as the fact that Japanese firms are expanding their activities in the United States market at an astonishing pace. In 1980, Japanese firms won approximately $50 million in contracts, by 1986, that figure has grown to over $2.2 billion. At the same time, a United States firm hasn't won a major contract in Japan since 1965.

For over 2 years, we have been negotiating with our friends in Japan on this issue. Prime Minister Nakasone intervened personally offering his assurances he would act to open Kansai Airport and all future projects to foreign firms on a fair and nondiscriminatory basis.

Mr. President, in the final hours of Prime Minister Nakasone's administration, even he was unable to override the entrenched bureaucracy and the domestic industry and get an acceptable resolution to this issue.

On November 6, Ambassador Matsunaga sent a communique to Secretary Verity outlining steps the Japanese Government was willing to take in addressing this issue. While these steps were viewed as progress, they fell short of our minimum requests and were thus presented as a unilateral proposal from the Japanese Government rather than a bilateral agreement.

The GOJ would not agree to apply nondiscriminatory procedures to all major projects—as the Prime Minister had indicated would be done. Instead, they would only agree to apply the procedures to the final phase of Kansai Airport and the Tokyo Bay Bridge project—insisting any additional application to $62 billion in other public projects would not be possible.

At this point, it is clear that unless we are willing to use real leverage, our firms are not going to get the same opportunities to participate in public projects in Japan that Japanese firms enjoy in the United States and the reason why is quite simple, the closed domestic market is critical to Japanese firms' efforts to target overseas market. I would like to share with my colleagues part of an extensive report on the Japanese construction industry conducted by the University of Reading in Britain:

Why has Japan erected and maintained so many barriers to foreign incursion? There is the frequently stated view that only Japanese contractors are familiar with the quality and safety demanded on construction sites and that the licensing any other laws merely exist to protect these standards. Certainly, Japanese contracts have developed an enviable reputation in the design and construction of earthquake-resistant structures. It is difficult to accept however, that they are the only companies with this expertise.

A more convincing reason is, quite simply, fear of foreign competition in the domestic market on which they rely. It is much easier to finance and maintain an aggressive export drive if there is a strong domestic foundation. The domestic market can then be used to cover overheads and establish the basic profitability of the enterprise. This demands that the domestic market be protected from foreign penetration. For the foreseeable future, Japan looks closed to foreign

construction firms. This ensures a solid base for the Japanese, allowing them to move overseas with great confidence.

So, what overall picture emerges from all this? Frankly, a frightening one for those who have to meet the Japanese challenge. We have seen that, in order to maintain a high level of employment, the major Japanese contractors must inevitably seek export orders. Much of this activity is currently concentrated in Southeast Asia. In addition, Japanese contractors are directing their effort to developed market economies for overseas work, most notably the United States and Australia.

Mr. President, not all of the projects Japanese firms are winning in the United States are private sector. According to the United States Department of Commerce, partial figures show at least $68 million in public project contract awards to Japanese firms in 1986. In 1985, the figure was $13.9 million.

Public projects include the Elk Creek Dam in Oregon (Ohbayashi Gumi), and phase two of the Fontenell Dam in Wyoming ($24 million, joint venture between Ohbayashi-Solentache). This legislation would in no way affect contracts that have already been entered into. It is proactive to insure reciprocity for future projects.

Despite vigorous efforts on the part of the United States industry and the United States Government, to gain access to the $8 billion Kansai Airport, and the estimated $62 billion in other projects to be built in Japan over the next decade, we have made little progress. This amendment is an important aspect of our efforts to address this inequity.

I want to make it perfectly clear that this is not a buy-America provision. Our market for these services will remain wide open to those firms whose home markets are open to U.S. participation. It's an attempt to open markets, not close them.

This is how the amendment works: USTR shall determine which countries deny fair, equitable opportunities for U.S. design engineering, construction and architectural firms seeking to participate in public projects. USTR already does this as part of its annual report on foreign trade barriers which was mandated by Congress in 1974. Barrier countries would then be listed in the Federal register, and thus precluded from bidding on these Federal projects.

The bill also includes an escape clause which would waive these provisions if the Secretary of the Army or the Secretary of Interior determine that:

Exclusion would not be in the national interest.

Services offered by U.S. firms or firms from eligible countries are of insufficient quality or are not available.

Or exclusion would raise the project cost over 20 percent. (This figure is based on legislative precedent.)

This amendment is critical to our efforts to gain access to the Japanese construction market. It is an important signal we can send to our friends in Japan, to the new Prime Minister and his administration, reaffirming our commitment to see a responsive resolution to this important issue.

I urge my colleagues to join me in supporting its adoption.

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

The amendment (No. 1186) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1187

(Purpose: To clarify allowable costs for Department of Energy and National Laboratory Contractors)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk, on behalf of myself, the Senator from Iowa (Mr. GRASSLEY] and the Senator from Michigan [Mr. LEVIN] and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself, Mr. GRASSLEY, and Mr. LEVIN, proposes an amendment numbered 1187.

Mr. METZENBAUM. 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:

Strike lines 5 through 9 on page 48, and insert the following new section:

SEC. 305. (a) In any regulations issued pursuant to section 1534 of the Defense Authorization Act for 1986, the Secretary of Energy may not disallow the following costs associated with the activities of contractor personnel from the Department of Energy National Laboratories for Department of Energy personnel of the Department of Energy National Laboratories:

(1) Costs of providing to Congress or a State legislature, in response to a request (written or oral, prior or contemporaneous) from Congress or a State legislature, information or expert advice of a factual, technical, or scientific nature, with respect to:

(A) topics directly related to the performance of the contract; or

(B) proposed legislation; irrespective of whether such information or advice was requested or supplied through the Department of Energy.

(2) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.

(b) No part of any appropriation made in this act shall be obligated or expended to influence, either directly or indirectly, any appropriation or legislation before Congress, or for any publicity or propaganda purpose not specifically authorized by Congress: *Provided*, That this provision shall not apply to:

(1) the communication of departmental or agency views to the Congress; or

(2) the conduct of normal legislative liaison activities;

(3) the costs described in subsection (a).

Mr. METZENBAUM. Mr. President, I rise today to offer an amendment for myself, the Senator from Iowa, Mr. GRASSLEY, and the Senator from Michigan, Mr. LEVIN.

This amendment would replace a committee amendment which completely exempts contractors at DOE's national laboratories from any restrictions against lobbying Congress with Federal dollars.

That does not make sense to permit the Congress to be lobbied with taxpayer dollars.

Mr. President, as you well know, ongoing budget negotiations between the White House and Congress are attempting to resolve the Nation's deficit crisis.

Now, more than ever, we must ensure that every dollar we appropriate is wisely spent.

Few would disagree that the work carried out by the DOE national labs is essential to maintaining an adequate defense and commercial competitiveness in the world.

But if we allow lab contractors to lobby Congress at whim with taxpayer dollars, we divert funds away from essential research and into political activities. Keep in mind that no other contractor is free to expend contract dollars to lobby without restriction.

Most Federal contractors are restricted by Federal acquisition regulations. But the contracts with the national laboratories are maintenance and operation contracts and not subject to these rules. They were finally restricted from lobbying by the passage of Public Law 99-145, the antilobbying cost principle law.

But the committee amendment which Senator GRASSLEY, Senator LEVIN and I oppose would remove the contractors entirely from any restrictions against lobbying with taxpayer dollars from their contracts.

This would seem to send a wrong signal to the national lab contractors at a time when we are trying to limit spending to the most essential activities.

The proponents of the committee amendment assert that it is necessary to allow for the free flow of information between the experts at the labs and Members of Congress.

They claim that this has nothing to do with lobbying.

They claim that DOE's regulations impede this direct contact—that DOE can filter information—preventing important factual information from reaching Members of Congress over DOE's objections.

But let us carefully consider these assertions.

Obviously, there is a fine line between providing information and lobbying. Clearly, when contractors provide information which supports continuing a contract, or beginning a new one, they are promoting their own self-interests.

Furthermore, if we want to allow for direct contact between lab experts and Members of Congress, do we need to exempt them entirely from all antilobbying restrictions?

I believe not, and this amendment I believe will clarify that situation. It is my understanding that the amendment will be accepted by the managers of the bill, which pleases us much.

The amendment which Senator GRASSLEY, Senator LEVIN, and I are offering would allow for direct contact, without giving contractors free rein to come to Washington and talk to Members of Congress, whenever they please at taxpayer expense.

Our amendment retains one important measure of control over such activities by requiring that a Member of Congress invite the contractor, before his expenses are covered.

Is there any need to worry about contractors abusing their contractor dollars for lobbying purposes?

There sure is.

Last year, DOE undertook a lobbying campaign, with the extensive use of the national lab contractors, to lobby against a nuclear test ban.

Obviously, the contractors have a strong interest in averting such a test ban.

Furthermore, that incident led to questions about lobbying by DOE itself, as well as by its contractors.

These questions led to a GAO study, requested by Congressman ASPIN and seven colleagues, about lobbying activities by DOE and its contractors.

GAO concluded that H.R. 2700, with the committee amendment would:

> Exempt management and operating contractors at the national laboratories from the cost principle.

It further clarifies that this exemption eliminates all restrictions on lobbying Congress by national lab contractors with Federal dollars.

It further notes that:

> If the Congress wishes to restrict lobbying activities on the part of DOE officials in addition to DOE contractors, it may wish to consider including language in DOE's next appropriations act for this purpose. DOE's 1986 Appropriation Act does not include antilobbying restrictions on the use of appropriated funds by agency officials for lobbying activities.
>
> This contrasts with the appropriation acts of certain other Government departments and agencies that include antilobbying restrictions, including the Department of Defense.

Our amendment provides for such a general antilobbying provision over all funds appropriated to DOE.

Apparently, GAO believes that DOE and its national lab contractors should be treated like all other Federal contractors. Senator GRASSLEY, Senator LEVIN, and I agree.

Opponents of this amendment when it was originally offered have asserted that the universities contract to run DOE's national labs without profit of any sort. I would disagree.

I have here copies of the last two contracts which DOE signed with the University of California for the operation of the Lawrence Livermore National Laboratory.

Beyond reimbursement for every imaginable cost associated with fulfilling the contract, this so-called $1 a year contract under section (c) on page 18 allows for additional reimbursement for indirect costs which shall be compensated—starting with $5,800,000 the first year, 1982.

The 1987 contract provides for payment of a "fixed management allowance," in addition to reimbursable costs. That allowance, this so-called $1 contract, ranges from $12 million from October 1, 1987, through September 30, 1988; and then $12 million from October 1, 1988, to September 30, 1989; then from October 1, 1989, to 1990, $12½ million; $12.75 million from October 1, 1990, to September 1991; and October 1, 1991, to September 30, 1992, to $13 million.

Enough of this argument that these contractors are so selfless and that they do all of this just for $1 a year.

To make matters even worse, the contract directs that this management allowance should be used for complementary and beneficial activities related to the laboratories.

Then the contract goes on to give examples of these beneficial activities.

It specifically lists activities which could be included as "beneficial activities."

No. 1 says "increased technology transfer activities, including all costs of patent prosecution and invention licensing." That would appear to include promotional activities—marketing products.

No. 4 is unbelievable. It includes "university supported activities necessary to gain increased faculty, student, and general public support of University of California's management of the laboratories."

If that doesn't sound like the contract allows payment for lobbying on behalf of itself, of self-aggrandizement, I do not know what does.

There can be no question that the universities do profit from these contracts and profit handsomely, and have plenty of reason to lobby in their own self-interest. But the taxpayers have no reason to let the taxpayers pay for that kind of lobbying.

There is no reason we should be encouraging it any further.

I have letters here from several public interest groups who also agree and have endorsed this amendment, including the National Taxpayer's Union, Public Citizen, U.S. Public Interest Research Group, the Sierra Club, and Environmental Policy Institute.

I ask unanimous consent that copies of those letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL TAXPAYERS UNION,
Washington, DC, November 12, 1987.

DEAR SENATOR: The National Taxpayers Union [NTU] is writing you to urge your support for an amendment that will prevent taxpayer dollars from being used for lobbying purposes. Senators Metzenbaum and Grassley will offer it to the FY 1988 Energy and Water Appropriations bill (H.R. 2700).

A provision currently in the Senate version of H.R. 2700 would exempt certain DOE contractors from current law restrictions on the use of federal funds to lobby Congress. Under the new rules, contractor employees at the national laboratories would be able to lobby Congress for more contracts and charge their lobbying expenses to American taxpayers. We believe it is inappropriate to divert scarce taxpayer dollars intended for important scientific research and development to lobbying activities, especially in light of the current deficit reduction negotiations and the nationwide demand for fiscal responsibility.

Senators Metzenbaum and Grassley's amendment will retain current anti-lobbying restrictions on lab contractors, while still allowing them to seek reimbursement for costs associated with responding to requests by Members of Congress for factual, technical information related to present and future contracts. The amendment will also specifically direct that no funds appropriated under the bill shall be used for purposes of lobbying. NTU supports this amendment because it allows contractors to provide unbiased information to Congress and prevents the misuse of tax dollars when there is a critical need to regain the confidence of American taxpayers with responsible fiscal policies.

For these reasons, we urge your support for the Metzenbaum-Grassley amendment during Senate consideration of the Energy and Water Appropriations bill.

Sincerely,

SHEILA MACDONALD,
Director, Government Relations.

ENVIRONMENTAL POLICY INSTITUTE,
Washington, DC, November 10, 1987.

DEAR SENATOR: During consideration of the FY 1988 Energy and Water Appropriations Act (H.R. 2700), we strongly urge you to support an amendment that will be offered by Senators Metzenbaum and Grassley to restrict the use of federal funds for lobbying activities of federal contractors associated with DOE National Laboratories.

Under current law, costs incurred by government contractors to influence legislation are generally not reimbursable. This makes sense. Taxpayers should not be forced to write checks for federal contractor lobbying—particularly when the lobbying is for the purpose of increasing federal budget commitments for programs that directly

benefit the contractors, but may not be in the taxpayers' best interest.

The Energy and Water Appropriations bill contains specific language that exempts DOE national lab contractors from current lobbying restrictions. This language gives the employees of these labs a blank check to divert funds from their contract responsibilities for the purpose of lobbying Congress.

Significantly, during the past year, several national labs have utilized loopholes in DOE's interpretation of the current law to lobby Congress on two key issues—the nuclear test ban and Price-Anderson legislation.

The Price-Anderson example is instructive. Some national labs, using tax dollars, successfully lobbied the Senate Energy Committee to exempt them from any financial responsibility for nuclear accidents. The exemptions sought—and granted—by the Committee, allow national labs to intentionally violate federal safety regulations without even being subject to minimal civil penalties.

We find it outrageous for Congress to allow these labs to escape accountability—first for their actions within the labs, and now for their taxpayer-funded lobbying activities in Washington.

The Metzenbaum-Grassley Amendment *would not block* the flow of information between the labs and the Congress. This amendment would allow reimbursement for the costs of providing information whenever it is requested by a member of Congress. We believe that this is a reasonable approach and we urge your support for the amendment.

Sincerely,

BROOKS YEAGER,
Sierra Club.
KATHLEEN WELCH,
U.S. Public Interest Research Group.
KEIKI KEHOE,
Environmental Policy Institute.
KEN BOSSONG,
Public Citizen.

Mr. METZENBAUM. I urge my colleagues to support this amendment which could prevent the needless diversion of important research dollars to political activities.

For the sake of unbiased research, academic integrity at the national labs and the universities who operate them, and limiting Federal spending, I hope that this amendment will be adopted.

Mr. President, it is my understanding the amendment is agreeable to the managers of the bill, and if so, we can move forward with dispatch.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I want to make clear that I designed the original amendment which we put on this bill not to give DOE or its contractors, rich contractors, the right to go out and hire PR firms and engage in direct mail and hire TV and radio. That was never my intent. It was a narrow amendment designed to correct what I saw as a very difficult problem that DOE was prepared to muzzle employees of the Lawrence Livermore Labs, an employee scientist, and muzzle employees of other labs, and in fact had tried to do so, who were supplying me and other Senators scientific information on SDI, on the AVLIS uranium enrichment technology and on a whole series of very vital scientific information.

They came out with these new regulations that would have, in effect, required prior clearance by DOE before they could talk to us or come to Washington. Mr. President, that was outrageous. That would have really restricted the Congress.

The fact of the matter is we are sort of fixing something that is not broken as far as the national labs are concerned. They have not breached the problem. Congressmen, Senators, staff members are not of such tender minds that some scientist is going to be able to come in, and, by whispering in his ear some words of lobbyese, that they are going to take advantage of them.

In any event, that was always my intent, to protect that relationship of scientist to Senator, scientist to Congressman, scientist to staff member, which is absolutely vital. Our national labs are a great resource. The expertise that lies therein is the most credible information that I know anything about and our best source of information on these scientific matters. We should not restrict that free flow of information.

The amendment which has been drawn up between our staffs does not restrict that free flow of information. It allows people to come to Washington and to provide information, provided they are Department of Energy personnel from the national labs, on a variety of topics. They need not write a letter to request them to come. It can be a contemporaneous oral request to give information on whatever the subject is. And it does not interfere with the conduct of normal legislative liaison activities.

Now, that permits a continuation of what I understand, as far as I am concerned, is the furnishing of information to me and to others who need the information. I mean, we are appropriating billions of dollars on scientific matters and we should not have to do that in the dark. We should not have to make a formal request to get somebody to come or issue a subpoena to get them to come give some formal testimony with the preclearance of whoever happens to be the Secretary of the Department of Energy.

There ought to be that free flow of information. And if we ever get around to restricting that free flow, then you might end up buying an SDI program at $100 or $200 billion without ever having the right information, because you may not know what questions to ask. I suspect that most Members of the Congress, including myself, do not know all the questions. So we have to depend on these people, these scientists, these experts, to give us the information. I think this amendment achieves that compromise of doing away with the lobbying but permitting the free flow of information.

So in that spirit, Mr. President, we accept the amendment and thank the Senator for working out the language.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I thank the Senator from Louisiana for the remarks just made and I agree with those remarks.

I want to say to my friend from Ohio, because I could not help but note that he looked at the so-called nonprofit contracts with universities, that indeed universities have a reason to want to be a contractor. They are not in it just for public service. But I do not think I would want to leave the impression either that they are just moneygrubbing capitalists, if indeed that is a bad term, in our society, I suspect they have a self-interest in those contracts, a self-interest which I think is legitimate.

And, just as I would not criticize the so-called public-interest lobbying groups for lobbying—they have a self-interest too; their personnel get paid salaries; that is an overhead in the so-called public-interest lobbying groups that are so involved in many of these issues; that is not illegitimate—it is not wrong for the Senator from Ohio to note that universities have such an interest, as indeed they do have. I think it is appropriate, however, to balance it against the so-called public interest lobbying groups that certainly have every bit as much self-interest in the activities of their own organizations.

Let me say further, Mr. President, that the line that must be drawn between impermissible lobbying and essential information transfer is a very difficult line to draw. This amendment seeks to define that. It is not an immutable objective test that in every instance is crystal clear. I suspect there will be arguments under this language as to whether they have crossed that line or not.

I am ranking member on the Interior and Related Agencies Subcommittee of the Appropriations Committee. We have responsibilities with respect to these laboratories and DOE activities. I am also the ranking member on the Energy and Natural Resources Committee, the authorizing committee that deals with a great many of these subject matters. I am also a Senator from Idaho, a State in which one of these national laboratories is located. The activities at that laboratory are of interest to me as their Senator, as well as a Senator trying to deal with broad national programs.

I noticed the Senator from Ohio was in here offering an amendment to this bill to make certain activities in the State of Ohio get funded appropriately. I know that the Senator from Ohio,

as the Senator from Ohio, has visited that facility. He has talked to the scientists. He has looked at what was going on there. They talked to him. I do not think that is an impermissible activity.

I do not believe it is a violation of our responsibility nor a violation of their responsibility to keep the Senator from Ohio informed. I do not think it is a violation of their responsibility to keep the Senator from Idaho informed about the activities that may be going on within the State of Ohio.

I have, not just the interests in the National Energy Laboratory, but I have to be very much concerned about what happens at Lawrence Livermore Laboratories, at Brookhaven, at Argonne-East as well as Argonne-West, at Oak Ridge, at Sandia and Los Alamos, at the various places the National Federal Government has these research activities that fall within either the legislative oversight of the authorizing committee or of the Appropriations Subcommittees upon which I serve.

It is essential to me that I have the opportunity to talk to the scientists and the personnel that are employed either by DOE directly or by the contractors at these sites, so that I can make good judgments. Whether they come to me or whether I call them and ask them to come, seems to me to be a fine point in terms of my responsibility, trying to understand what the relationship of those programs may be to the national security, to the national programs in energy, to the national programs in environment and physical sciences that are carried on at these laboratories.

I welcome the opportunity to talk to them, whether they come from the laboratory in my State or one of the other States that may be involved. I not only welcome it, I seek it, I solicit it, I need it. I cannot do that job unless I have that information.

This amendment has been drawn in such fashion that I read it to mean that, indeed, access to that information and that personnel is open to me. I read it to mean that those personnel that are involved have the similar opportunity to talk to me about those matters.

I remember one exchange we had in one hearing, I think it was a classified hearing, in which one of the members of the Department of Energy was talking about their desire to make certain that their people did not talk to us at all. My comment at that time was: You are not going to keep me from talking to my constituents and you are not going to be successful in keeping my constituents from talking to me. And I think that is an appropriate relationship for the Senator from Idaho with respect to those men and women who live and work within the State of Idaho and I assume it is the appropriate relationship between any other Senator and the people that they happen to represent from their State.

It is a little more difficult, perhaps, to draw that line between the Senator and the personnel at a Federal installation that may be in some other State. It may be more difficult. I do not believe it is. I believe that certainly the line between impermissible lobbying and the open access and free flow of information is difficult at best and perhaps impossible. I understand the concerns that have been expressed by the Senator from Ohio and others about what sometimes appear to be impermissible attempts to influence Government to do what that person may desire, but I would say to my friend, whether they are a Federal employee, a contractor for a Federal installation, or the employee of a public interest lobbying group, it ought to be the same degree of access, same degree of scrutiny about impropriety; and I find nothing wrong with that kind of dialog. I do not now think this amendment prohibits that kind of dialog and because I do not think it does, I support the amendment and urge its adoption.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. I think we are pretty much in agreement about what the amendment does. It makes it possible for Members of Congress to obtain the necessary information from those people at laboratories, provided they make a written or oral request to talk with that particular individual, whether that request be made prior or contemporaneous with the meeting. But the amendment further provides a specific prohibition with respect to use of funds for lobbying purposes.

With that understanding, Mr. President, I think we are ready to act in connection with this amendment.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 1187) was agreed to.

Mr. METZENBAUM. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1188

Mr. SHELBY. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama [Mr. SHELBY] proposes an amendment numbered 1188.

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

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

The amendment is as follows:

On page 49, after line 20, insert the following new section:

SEC. 309. None of the funds appropriated by this Act or any other Act may be expended by the Department of Energy or the Department of Justice or any of their component agencies to prosecute any action or to enforce any judgment against any individual corporate shareholder, officer or employee for restitution under section 209 of the Economic Stabilization Act of 1970, as amended, in any case decided by the Temporary Emergency Court of Appeals on May 7, 1987, based upon the role of such individual as a central figure in any statutory or regulatory violation, except for the actual dollar amount personally received by such individual from such violation and any interest assessed on such amount.

Mr. SHELBY. Mr. President, I rise to urge my distinguished colleagues to support the following amendment to H.R. 2700.

Mr. President, the purpose of the amendment is intended to prevent the Government from enforcing a novel and unwarranted theory of personal liability against corporate shareholders, officers or agents for nonintentional corporate violations of Federal statutes or regulations.

The amendment would preclude judicial enforcement of individual corporate liability under the "central figure" doctrine announced in Citronelle-Mobile Gathering, Inc. versus Herrington, while the Congress reviews the issue. The Citronelle-Mobile decision, announced by the Temporary Emergency Court of Appeals [TECA], is contrary to congressional intent and threatens to seriously endanger the fundamental corporate law concept of limited liability.

Under the TECA decision, personal liability may be imposed on corporate officers and employees for a corporate violation of Department of Energy [DOE] oil price control regulations under the novel "central figure" doctrine without proof of any of the elements considered in deciding whether to pierce the corporate veil, without proof of any tortious conduct, and without express statutory authority.

Consequently, a corporate officer acting in "good faith," may be held personally liable for the full amount of the corporate violation where that corporate officer or employee authorized the corporate activity later found to have violated a Federal regulation. This is the case even if the individual did not receive any of the funds attributable to the violation.

The widespread significance of the Citronelle-Mobile precedent is evidenced by the fact that the U.S. Chamber of Commerce and the American Corporate Counsel Association have filed an amicus brief with the Supreme Court urging that the decision be reversed.

Mr. President, I would ask unanimous consent that the amicus brief be entered into the RECORD.

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

[In the Supreme Court of the United States October term, 1987]

(No. 87-140)

BART B. CHAMBERLAIN, JR. *et al.*, PETITIONERS v. UNITED STATES OF AMERICA, *et al.*, RESPONDENTS.

On Petition for a Writ of Certiorari to the Temporary Emergency Court of Appeals of the United States:

Brief of the Chamber of Commerce of the United States of America and the American Corporate Counsel Association as Amici Curiae in Support of the Petitioner

The Chamber of Commerce of the United States of America and the American Corporate Counsel Association file this brief as *amici curiae* in support of Petitioners and respectfully urge this Court to issue a writ of certiorari.[1]

STATEMENT OF INTEREST

The Chamber of Commerce of the United States of America ("Chamber") is the nation's largest federation of businesses, representing more than 180,000 corporations, partnerships and proprietorships, as well as several thousand trade associations and state and local chambers of commerce. As a leading advocate of business, the Chamber is greatly and directly concerned when the corporation—the dominant and most productive form of economic enterprise in the United States—is threatened, as it is in this case. The opinion below endangers the very foundation of the corporate form: limited liability. Therefore, the Chamber has a vital interest in addressing the issue of limited liability presented in this case.[2]

The American Corporate Counsel Association ("ACCA") is composed of attorneys who are engaged in the active practice of law as employees of corporations, partnerships or other organizations in the private sector. ACCA has approximately 7,000 members who are employed as corporate counsel by some 3,000 organizations. As counsel to corporate management, the members of ACCA are also concerned when the corporate form is threatened. Furthermore, they are directly concerned when the capacity of legal counsel to advise their corporate clients and the efficacy of seeking out such advice is undermined, as it is by the decision below.

It is now, and has been for several decades, generally recognized that the corporation is the primary form of business enterprise and production in the United States.[3] In fact, the unparalleled growth of the American economic system has depended in large part upon the concurrent development of the modern corporation. Today there are approximately 2,711,000 corporations in the United States.[4] Essential to the corporation's preeminence as a form of economic enterprise is the feature of limited liability.[5]

The doctrine of limited liability provides that, with few exceptions, the corporation itself, rather than its individual shareholders, directors, officers or employees, is solely responsible for corporate liabilities. This Court, in recognizing the importance of the doctrine, has declared that "[l]imited liability is the rule, not the exception; and on that assumption large undertakings are rested, vast enterprises are launched, and huge sums of capital are attracted." *First National City Bank* v. *Banco Para El Comercio De Cuba*, 462 U.S. 611, 626 (1983) (quoting *Anderson* v. *Kirkpatrick*, 321 U.S. 349, 362 (1943)).

By undermining the doctrine of limited liability, the decision below not only threatens the corporation's ability to function appropriately, but also impedes the ability of corporations to recruit and retain responsible managers and directors. Those persons who are willing to serve may choose not to do so because of the risk of ruinous personal liability. Those who do serve may become overly cautious to the detriment of business success and, thereby, to the detriment of society at large. Further, by removing the protection from personal liability afforded by due diligence, this case blurs the distinction between corporate action undertaken with full deliberation and corporate action undertaken with little or no care. Because of the detrimental impact that the decision below will have on the corporate form and effective corporate operations, the Chamber and ACCA are compelled to voice their concerns.

STATEMENT OF THE CASE

The case arises out of the Department of Energy's ("DOE") action to (1) enforce its determination that sales of crude oil by Citronelle-Mobile Gathering Inc. and Citmoco Services, Inc. were not exempt from the price control regulations of the Economic Stabilization Act of 1970, as amended, 12 U.S.C. § 1904 note ("ESA"), and the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. §§ 751 *et seq.* ("EPAA"), and (2) recover the difference between the price charged and the applicable ceiling price. The factual background is as follows: in 1974, Gathering and Services sold four shipments of crude oil to PETCO, a Bahamian corporation. Upon the advice of counsel, and after full disclosure to the appropriate government officials, Gathering and Services sold the oil as exempt from price control regulations. More than four years after the sales had occurred, however, DOE concluded that the sales were not exempt and that an overcharge had resulted.

The district court held that the sales were not exempt and that Petitioner Bart B. Chamberlain, Jr., a corporate officer and shareholder of both companies at the time of the sales, was individually liable for the resulting overcharges, but only to the extent he received proceeds from the sales. In an interlocutory appeal on other grounds, the Temporary Emergency Court of Appeals ("TECA") affirmed the finding of overcharges but remanded the case for determination of the amount of restitution to be awarded. The district court adhered to its determination that Petitioner was personally liable only to the extent of his personal enrichment, reiterating its findings that (1) the "defendants made a good faith effort to comply with extremely confusing regulations," (2) the sales were "made in reliance on the opinion of reputable counsel that the transactions were not subject to price controls," (3) whether the sales were subject to the regulations was "an open question of law which could only be determined after the fact," (4) the defendants were no more at fault than the DOE officials "who were inexperienced in administering new regulations," and (5) the overcharge was "a relatively minor violation." *Citronelle-Mobile v. Herrington*, 1986 Fed. Energy Guidelines (CCH) ¶26,555 at 26,551 (S.D. Ala. Dec. 30, 1985).

On appeal, TECA held Petitioner personally liable for the entire overcharge amount because he was the "central figure" responsible for arranging the sales. A petition for rehearing and suggestion for rehearing *en banc* was denied.

REASONS FOR GRANTING CERTIORARI

The court below wrongly and unfairly imposed personal liability on a corporate officer for the corporation's unintentional regulatory violation. The decision, unsupported by either the law or the facts, creates an unfortunate and dangerous precedent. It turns the concept of limited liability into a hollow mockery, effectively destroying the most essential foundation of the corporate form. Because it is in conflict with well-established and important principles of federal law, the decision should be reviewed by this Court.

A. The Decision Below Abrogates The Rule Of Limited Liability

The doctrine of limited liability provides that, with few exceptions, the individual is protected from the liabilities for the corporation.[6] The concept of limited liability for business transactions was recognized at least as far back as the period of the Roman Emperor Justinian.[7] Certainly, it was well known by the early years of this country.[8] That concept is reflected in modern jurisprudence with even greater vigor.[9] Limited liability is the rule, not the exception.[10] In order to preserve this important principle, courts have been reluctant to impose personal liability in all but the most egregious of circumstances.[11] Courts have traditional-

[1] This brief is filed with the written consent of the parties pursuant to Supreme Court Rule 36.1. The parties' consent letters have been filed with the Clerk of this Court.

[2] While a second issue is before the Court in this case, this brief is submitted solely on the issue of a corporate officer's personal liability for the corporation's regulatory violation.

The Chamber has previously voiced its concern on the issue of limited liability by filing an *amicus* brief in support of Petitioners in the proceeding below and in *Connors* v. *P & M Coal Co.*, 801 F.2d 1373 (D.C. Cir. 1986).

[3] H. Henn & J. Alexander, *Laws of Corporations and Other Business Enterprises* 2 (3d ed. 1983); A. Berle & G. Means, *The Modern Corporation and Private Property* XXV (rev. ed 1968); H. Ballentine, *Ballentine On Corporations* 40 (1946).

[4] *Statistical Abstract of the United States 1987*, 513 (U.S. Dept. of Commerce).

[5] H. Henn, *supra* note 3, at 130; *see* L. Friedmann, *A History of American Law* 168, 178 (1983).

[6] *See* H. Henn & J. Alexander, *supra* note 3, at 344-46.

[7] 3 *The Digest of Justinian* 97 (Book III § 4.7.1) (T. Mommsen, P. Krueger & A. Watson eds. 1985) ("A debt to a corporate body is not a debt to individuals and a debt of a corporate body is not a debt of individuals.").

[8] L. Friedmann, *supra* note 5, at 168.

[9] A. Conrad, *Corporations in Perspective* 424 (1976).

[10] *First National City Bank* v. *Banco Para El Comercio Exterior De Cuba*, 462 U.S. at 626 (1983).

[11] *See, e.g., American Bell Inc.* v. *Federation of Tel. Workers*, 736 F.2d 879, 885-87 (3d Cir. 1984) ("there must be 'specific, unusual circumstances' "); *In re County Green Ltd. Partnership* v. *Lawyers Title Ins. Corp.*, 604 F.2d 289, 292 (4th Cir. 1979) ("to expose those behind the corporation to liability is . . . to be taken reluctantly and cautiously"); *Quinn* v. *Butz*, 510 F.2d 743, 759 (D.C. Cir. 1975) ("penetration of the corporate veil is a step to be taken cautiously"); *Krivo Indus. Supply Co.* v. *National Distiller & Chemical Corp.*, 483 F.2d 1098, 1102 (5th Cir. 1973) ("[t]he corporate form, however, is not lightly disregarded").

ly imposed personal liability only when (1) a legislative mandate imposes personal liability, (2) the individual's conduct involves criminal or tortious acts, or (3) the circumstances justify piercing the corporate veil.

The decision below has misinterpreted, combined, and applied two of the exceptions to the principle of limited liability so broadly as to effectively nullify the rule. One of the exceptions to limited liability upon which the decision relies to impose personal liability is that pertaining to tortious acts: an individual, whether or not acting in his official capacity, who is the "central figure" responsible for causing a corporation's tortious conduct, is personally liable for the harm resulting from these tortious acts.[12] The second exception to the rule of limited liability on which the decision implicitly relies is that personal liability may be imposed upon an officer or director who causes a corporation's violation of a statue which expressly imposes absolute personal liability.[13] But neither of these exceptions was properly applicable in this case, either alone or in combination.

The cases which the decision cites in support of its holding involve either tortious conduct [14] or statutes that prescribe personal liability.[15] Neither of these two conditions is present in the instant case. The free market sale of a lawful product does not constitute a tort. Neither does EPAA impose personal liability on corporate personnel for the corporation's unintentional EPAA violations. Absent tortious conduct or clear legislative intent to impose personal liability for the corporation's violation of a statute of regulation, the rule of limited liability should prevail.

The decision nonetheless creates a new theory of "central figure" liability for any "wrongful" corporate conduct. The case holds that whenever a corporation's conduct results in any statutory or regulatory violation, the conduct of the central figure who was responsible for the corporation's action is *ipso facto* "wrongful" from its inception, even in the absence of any wrongful or malicious intent, knowing or willful violation, or negligence or other lack of due care. Such "wrongful conduct," the decision implies, gives rise to personal liability even though (1) the conduct is not criminal or tortious and (2) the statute or regulation does not mandate personal liability for violations. This result dramatically and wrongly abrogates the rule of limited liability.

("In light of the clear congressional intent to hold 'person[s]' liable for violations [of the Rivers and Harbors Appropriations Act], we see no reason to shield from civil liability those corporate officers who are personally involved in or directly responsible for statutory proscribed activity."); *cf. United States* v. *Sexton Cove Estates, Inc.*, 525 F.2d 1293, 1300 (5th Cir. 1976) (the Fifth Circuit held that the Rivers and Harbors Appropriations Act did not authorize imposition of personal liability on corporate officers for the corporation's violation of the Act absent negation of the corporate form). These two cases are in conflict regarding Congress' intent as to the Rivers and Harbors Appropriations Act. However, they both affirm the general principle which requires legislative intent to impose absolute personal liability before such liability may be imposed on corporate officers and directors for the violation of statutes or regulations.

B. Imposition Of Personal Liability On Corporate Personnel For The Corporation's Unintentional Regulatory Violation Undermines The Purpose Of And Policies Embodied In American Corporate Law

The decision below establishes the proposition that corporate officers, directors, and employees are subject to personal liability for any violation of a regulatory mandate, however innocent and unintentional the violation is in fact or law. Under this standard, corporate decision makers may be subject to ruinous personal liability simply for carrying out their corporate duties in good faith. Such a standard has ominous implications for the corporate business community and its ability to conduct corporate affairs.

By imposing personal liability, the decision contravenes the well-established rule that "directors and officers of a corporation will not be held liable for errors or mistakes in judgment, pertaining to law or fact, when they have acted on a matter calling for the exercise of their judgment or discretion, when they have acted in *good faith.*" *Financial Industrial Fund, Inc.* v. *McDonnell Douglas*, 474 F.2d 514, 518 (10th Cir. 1973), *cert. denied*, 414 U.S. 874 (1974) (emphasis added). The rule is founded on the idea that "in order to make the corporation function effectively, those having management responsibility must have the freedom to make in good faith the many necessary decisions quickly and finally without the impairment of having to be liable for an honest error in judgment." *Id.*

The decision below imperils that freedom to effectively manage corporate affairs. Many corporate officers, by definition of their position, will always be central figures responsible for their corporation's compliance with regulatory statutes. And, other corporate managers will be central figures in particular transactions. Under the standard set forth by the decision below, a corporate officer who acts in good faith and with due care, and who makes full disclosure to the appropriate administering agency, would still have no means of limiting his personal liability resulting from a subsequent finding that the corporation had, however unintentionally, committed a regulatory or statutory violation.

Such a standard stifles the ability of corporations to effectively participate in today's creative, dynamic, and highly competitive economic system. The loss of protection from liability forces corporate decision makers to be guarantors of each and every action they authorize. As a result, corporate managers may become overly cautious and conservative in their business decisions.

The price for this over-caution will be borne by the corporation, the shareholders, and ultimately the consuming public. Business activity will be especially inhibited when relevant statutes or regulations are new or untested at law, or susceptible of diverse interpretations. Shareholders will be deprived of profits from business opportunities left untaken. And, the availability of goods and services to consumers will be reduced.

Companies will find it difficult to recruit and retain responsible individuals to serve as managers and directors if such persons are to personally bear the full risk of regulatory noncompliance. The risk of financial ruin would be greater than the benefit of financial reward. This result would be especially true in the case of outside directors who bring greater independence to the exercise of their oversight functions but receive fewer financial rewards from the corporation. If American business is to succeed, it cannot be hobbled by an ill-considered rule of personal liability which destroys a fundamental basis of American prosperity.

Furthermore, under the standard enunciated by the decision below, corporate decision makers who exercise due care by diligently seeking expert legal opinion to insure that the corporation's conduct conforms to the law, but which conduct nonetheless inadvertently violates a statute or regulation, are in no better position than the corporate managers who exercise little or no care. The decision below irrelevantly states that counsel's opinion need not be adopted as the law of the case. It is the seeking out of such advice which is relevant when considering a manager's or director's culpability. The law should encourage and reward due diligence. However, by abrogating the efficacy of such action, the decision below contravenes such sound public policy and should be reviewed.

C. The Decision Below Is Wrong As A Matter of Law And Therefore Should Be Reviewed

As noted earlier, the actions that gave rise to this case were undertaken only upon advice of counsel. Further, full disclosures were made to appropriate government officials. In fact, it took DOE more than four years after the sales to conclude that they were not exempt from EPAA regulations. In view of these and other facts, the district court below twice found that there was no knowing or willful violation. *Citronelle-Mobile Gathering* v. *Herrington*, 1986 Fed. Energy Guidelines (CCH) ¶ 26,555 at 26,551 (S.D. Ala. Dec. 30, 1985). Nevertheless, TECA subjected the individual officer to personal liability for the full amount of the corporations' overcharges. This result cannot be supported by either the controlling statute or the general principles of liability established by the case law.

Section (5)(a)(4) of EPAA provides only that corporate officers and directors may be subjected to discrete penalties, far less in amount than personal liability for overcharges when the corporation commits knowing or willful violations. The very fact that EPAA includes specific sanctions for such violations indicates that Congress did not intend to subject officers and directors to unrestricted personal liability for nonwillful corporate violations.[16] That conclu-

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[12] W. Fletcher, 3A *Cyclopedia of the Law of Private Corporations*, § 1135 at 267-68 (rev. perm. ed. 1986).

[13] TECA explicitly stated that liability was not premised on the traditional "piercing of the corporate veil" doctrine, *i.e.*, that the corporation was inadequately capitalized, failed to comply with corporate formalities, was used to perpetrate a fraud, or was a mere alter ego of the corporate officer. *Citronelle-Mobile Gathering, Inc.* v. *Herrington*, Nos. 11-7 & 11-8, slip op. at 12 (TECA May 7, 1987).

[14] The tortious conduct in these cases involved either committing a common law tort or violating a statute which codified a preexisting common law tort. *LCL Theaters* v. *Columbia Pictures Industries*, 619 F.2d 455 (5th Cir. 1980) (fraud); *Donsco Inc.* v. *Casper Corp.*, 587 F.2d 602 (3d Cir. 1978) (unfair competition); *Tillman* v. *Wheaton-Haven Recreational Ass'n., Inc.*, 517 F.2d 1141, 1143 (4th Cir. 1975) ("An action brought under statutes forbidding racial discrimination is fundamentally for the redress of a tort.").

[15] *United States* v. *Pollution Abatement Services of Oswego, Inc.*, 763 F.2d 133, 135 (2d Cir. 1985), *cert, denied*, 106 S. Ct. 605 (1985).

[16] To imply liability where none is expressly provided would be inconsistent with numerous federal court holdings construing other federal regulatory statutes. *See. e.g., Connors* v. *P & M Coal Co.*, 801 F.2d 1373 (D.C. Cir. 1986) (Employee Retirement Income Security Act); *Auditor of Public Accounts of Illinois* v. *Izatt*, 205 F.2d 785 (7th Cir. 1953) (Defense Production Act). The expression in a statute of certain powers implies the exclusion of others. *See, e.g., Marshall* v. *Western Union Tel. Co.*, 621 F.2d 1246, 1251 (3d Cir. 1980) ("Under the usual canons of statutory construction, where Congress, or in this case an administrative agency, has carefully employed a term in one place and excluded it

sion is also supported by this Court's decision in *Slodov* v. *United States*, 436 U.S. 238 (1978).

In *Slodov*, this Court refused to hold a corporate owner and operator personally liable under the tax code for failing to use the corporation's funds to satisfy its prior delinquent taxes. This Court reasoned that "[t]he fact that the provision [§ 6672 of the tax code] imposes a 'penalty' and is violated only by a 'willful failure' is itself strong evidence that it was not intended to impose liability without personal fault. Congress, moreover, has not made corporate officers personally liable for the corporation's tax obligations generally and § 6672 therefore should be construed in a way which respects that policy choice." *Id.* at 254. Similarly, personal liability under EPAA arises only from intentional violations. That EPAA was not intended to impose personal liability without personal fault is unambiguously demonstrated by its legislative history. That history indicates Congress did not intend to change the existing law or corporate director and officer liability:

With [one] exception [not relevant here], nothing in this section is intended to change existing case law relating to the individual responsibility of corporate directors, officers or agents for violations of these corporations.[17]

Further, even TECA has made clear that the petroleum price control regulations promulgated pursuant to EPAA impose no greater liability for non-willful violation than is provided under general corporate law. In *Johnson Oil Co.* v. *DOE*, 690 F.2d 191, 202 (TECA 1982), TECA declared that "EPAA and the regulations promulgated thereunder were not passed in a vacuum [and] . . . in no way derogate the general rule that stockholders are immune from corporate obligations." Accordingly, TECA in that case refused to hold principal shareholders and corporate officers personally liable for the corporation's overcharges in violation of petroleum price control regulations because the violations were not knowing, willful or malicious. *Id.* at 201-03,[18] TECA's earlier decision in *Johnson Oil* further demonstrates that the imposition of personal liability in the instant case for a non-willful regulatory violation was both erroneous and grossly unfair. Because the decision below is contrary to well-established principles of law enunciated by this Court and other courts of appeals, the decision should be reviewed.

CONCLUSION

Ignoring the fundamental legal and policy principles of corporate law, the decision below has created an unreasonably expansive standard for determining a corporate officer's personal liability for corporate acts. That standard, by unfairly subjecting officers and directors to personal liability for the corporation's unintentional regulatory violations, would destroy one of the fundamental bases of the corporate form. For these reasons, the Chamber of Commerce of the United States of America and the American Corporate Counsel Association urge this Court to grant certiorari.

Respectfully submitted,

ROBIN S. CONRAD,
Counsel of Record.
LYNN M. SMELKINSON,
National Chamber Litigation Center, Inc.;
Counsel for the Chamber of Commerce of the United States of America.
NANCY A. NORD,
American Corporate Counsel Association,
Counsel for the American Corporate Counsel Association.

Mr. SHELBY. Further, Prof. Peter D. Junger of the Case Western Reserve University School of Law, a noted legal authority of the subject of restitution and Prof. Emeritus George E. Palmer of the University of Michigan Law School and author of the leading treatise on restitution have criticized the court's imposition of personal liability in the Cirtonelle-Mobile case.

Enforcement of personal liability on the same grounds in numerous other cases on the strength of the Citronelle-Mobile precedent will cause hardship through imposition of personal liability on individual corporate officers and employees.

Mr. President, the business community in general and, more specifically, small, family-owned businesses will suffer severe economic harm if the proposed amendment is rejected. Small, family-owned businesses have played a key role in our country's growth. Therefore, we must not allow these small business owners to suffer irreparable damage.

Consequently, a temporary stay of further enforcement activity by DOE under the "central figure" doctrine is necessary to enable Congress to consider whether the Citronelle-Mobile decision is consistent with congressional intent and, if not, what to do about the decision.

Precedent exists for such an amendment. Both the House and Senate have a long history of amendments to appropriations bills limiting the expenditure of funds for specific purposes. In fact, the Senate added a similar amendment to the Interior appropriations bill (H.R. 2712) that prohibits the use of funds by the DOE to pursue certain forms of judicial enforcement actions. That amendment was added because the committee's "strong objections over both the wisdom and legal justification of the Department's actions." That argument is equally applicable with the present amendment.

During the period covered by the amendment, government enforcement efforts would not be adversely affected. The amendment would not prevent the DOE from pursuing individual liability where: First. The individual received the funds, second, individual liability is proper under traditional "piercing the corporate veil" principles; of third, the individual participated in a knowing and willful—that is, criminal—violation of the regulations.

Additionally, during the period the amendment is in effect and unless Congress adopts a permanent solution, interest will continue to accrue on any overcharge for which an individual may be held personally liable.

Mr. President, the amendment simply preserves the status quo with respect to DOE's enforcement power while Congress considers whether the central figure precedent established in the Citronelle-Mobile case is consistent with congressional intent.

Finally, the scope of this amendment is specifically limited to the enforcement of individual liability in the case I have described, for any amount beyond the amount personally received by the individual corporate offices, plus interest. This amendment will, therefore, serve to give notice of the concern of Congress respecting this issue, but will not impair in any manner DOE's continuing enforcement efforts while this issue is being reviewed by the Congress.

Mr. DOLE. Mr. President, I would like to let my colleagues know that Senator DOMENICI was necessarily absent for this afternoon's vote on the Shelby amendment numbered 1188 because of a longstanding commitment he has this evening in his home State of New Mexico.

As my colleagues well know, these commitments are made weeks, if not months, in advance. Senator DOMENICI was under the impression that there would be no further votes in the Senate this afternoon, and that he would be able to keep his commitment to his constituents. That situation obviously changed with the requested vote on the Shelby amendment, and I know Senator DOMENICI regrets that he was unable to be recorded on that vote.

Mr. JOHNSTON. Will the Senator yield?

Mr. SHELBY. I yield to the Senator from Louisiana.

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in another, it should not be implied where excluded."); *Marshall* v. *Gibson's Products, Inc.*, 584 F.2d 668, 675 (5th Cir. 1978) (natural inference to be drawn from omission of any grant of power is that no grant was intended); *Alcoa Steamship Co.* v. *Federal Maritime Comm'n* 348 F.2d 756, 758 (D.C. Cir. 1965) ("Where Congress has consistently made express its delegation of a particular power, its silence is strong evidence that it did not intend to grant the power.").

[17] S. Conf. Rep. No. 516, 94th Cong., 1st Sess. 200, *reprinted in* 1975 U.S. Code Cong. & Ad. News 1762, 1956, 2042. Section 5(a) (4) was added to EPAA by the Energy Policy and Conservation Act of 1975, 42 U.S.C. §§ 620 *et seq.*

[18] In *Johnson Oil*, a third party complainant had sought to hold the corporate officers and shareholders personally liable. TECA held that complainant's reliance on *United States* v. *Arizona Fuels Corp.*, 638 F.2d 239 (TECA 1980), *cert. denied*, 451 U.S. 985 (1981), was misplaced because, in that case, the individual's flagrant misuse of the corporate assets for his personal gain had justified holding him personally liable. The holding in *Arizona Fuels* was thus found by TECA to be consistent with the case law regarding piercing the corporate veil.

Mr. JOHNSTON. I thought the Senator had yielded the floor.

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

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I ask for the yeas and nays on the amendment.

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

The yeas and nays were ordered.

Mr. JOHNSTON. Mr. President, this is a difficult amendment, but in my judgment it is a meritorious amendment.

Mr. President, this is one of the more outrageous court decisions I have had the opportunity to read. The reason is that it is totally at odds with any intent that the Energy Committee or the Congress had.

There was a manager of a relatively small oil company in Alabama who was following what at that time was the usual practice but which turned out to be the wrong practice in pricing of oil products, and ended up overcharging for oil products.

He owned some stock in that company. The company, by the overcharge, received a relatively large benefit. His personal share in that benefit was miniscule.

The district court found that he was in good faith in applying what he thought to be the regulations or, at least it was not in bad faith, is the phrase they used, but when the case got to the temporary emergency court of appeals, the court found that the manager, though no finding of bad faith had been made, was personally liable for the full amount of the charges against the corporation, together with interest.

It, in effect, disregarded the corporate form and without a finding of bad faith found him libel for the whole thing.

Mr. President, I think that is really an outrage. This amendment takes away from that.

The reason I asked for the yeas and nays is because it is the kind of matter that I think the Senate ought to speak upon and which should not be decided by a floor manager. However, I think it is a good amendment and, therefore, the Senate will get its opportunity to express itself on it.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, this amendment was brought to me the day before yesterday by Senator SHELBY, who asked my comments with respect to it. At that time, the amendment was a rather generic one dealing with all cases of this type. Since then, the amendment has been narrowed under, I understand, the opposition of some others who were more concerned about the broad application of a generic amendment. Now it applies more narrowly to the situation as described by the Senator from Alabama and the Senator from Louisiana.

The Senator from Idaho is not familiar with the facts of the case with sufficient clarity to have an opinion with respect to the right or justice, one or the other, of a position. I am certainly not sufficiently familiar with facts that would impel me to oppose the amendment. I agree with those who believe that perhaps there should be a further investigation of the facts, indeed, a hearing of the "other side," if there is another side.

Before this is cleared in conference, I suspect the other side will be heard from and we will have an opportunity to move to an adjustment and will move toward that adjustment if that is necessary or warranted. Any refinements in the amendment that might be required can certainly be discussed between now and the time this matter will be resolved in the conference.

It is on that basis, Mr. President, that I will not oppose the amendment though I suspect there may be some who will at least raise an eyebrow if not a question with respect to the wisdom of legislating in this fashion on this bill with respect to an individual lawsuit.

But, again, Mr. President, I do not oppose the amendment.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Will the Senator from Alabama yield for a question or two?

Mr. SHELBY. Yes.

Mr. SPECTER. What is the status of the appellate court? Why could this matter not be handled in the next highest court?

Mr. SHELBY. Unfortunately, the court denied certiorari earlier this week, that is the problem right now. We will have to reconsider that.

We are merely asking for some time here, as the Senator from Pennsylvania knows.

Mr. SPECTER. Senator JOHNSTON has represented that there was no finding of bad faith to pierce the corporate veil in this case.

Mr. SHELBY. That is my understanding. I read the brief and there was never an accusation of bad faith. I have not reviewed the record, but the U.S. Chamber of Commerce, on behalf of a lot of small businesses, is interested in this case as to what to do down the road.

Mr. SPECTER. I can see, Mr. President, that there would be serious concern as to how this principle would be carried out in other cases. I can see that as a grant for legislative action. But it seems highly questionable to this Senator that there would be action by the Congress of the United States to affect litigation in midstream. That would be a highly unusual course to take.

I will ask the Senator from Alabama if he knows of any precedent for doing that.

Mr. SHELBY. I do not know all the precedents here, but I do know that there is precedent for a similar amendment in an appropriations bill even this year.

Mr. SPECTER. But you have no specific precedent?

Mr. SHELBY. This was in a House bill that came over. It was in the Interior appropriations bill, H.R. 2712, as I understand.

Mr. SPECTER. There are many bills where there is a limitation on spending so that a Federal agency cannot take certain action. But the thrust of my question goes to whether there is any precedent for resolving a court case in midstream.

We had an analogous situation in the Judiciary Committee in 1982, as I recollect, on legislation that was sought to affect contributions in trust proceedings. There was great reluctance. I think ultimately that action failed in the Judiciary Committee because of the concerns for legislative action on specific cases.

It seems to this Senator to be highly irregular and to be really unprincipled. That is the concern I have, as I have heard the debate. I ask the distinguished Senator from Alabama, who is the judgment against in this case?

Mr. SHELBY. It is by the Department of Energy against the Citronelle-Mobile Corp., and the individual.

Mr. SPECTER. But the judgment was in favor of the U.S. Government?

Mr. SHELBY. That is right.

Mr. SPECTER. It would seem to this Senator that there would be ample opportunity to cure any injustice here by seeking repayment of the judgment. This is not a case where you have two private parties and it would be inappropriate for Congress to act most probably to affect judgment for a private party. But if there is an injustice here and we go through the hearing with the appropriate committee, it would be entirely appropriate for the Congress to legislate to redress any grievances. It would seem to me to be highly improper to enter a lawsuit in midstream.

Mr. SHELBY. If the Senator will yield, we are not trying to stop the lawsuit. We are talking about further collection of the judgment. That is what this Senator is talking about. The lawsuit has been tried on a questionable theory. What we are doing is to try to set a precedent here, in a sense, to have 9, 10, or 11 months respite so we can pursue some other theories here. This is going to affect not

only this company, this individual, it is going to affect thousands of small businesses in this country.

Mr. SPECTER. I might respond, and I do have the floor, it seems to me that is the entirely appropriate course but the legislation ought to go to the public policy and there have not been hearings on this issue, have there, if I may ask the Senator from Alabama that question?

Mr. SHELBY. Not on this issue, if the Senator will further yield, but we would pursue other legislative opportunities if this amendment goes through because we would only have a few months to do it. Time is of the essence.

Mr. SPECTER. Whether this amendment goes through or not does not affect the status of the other defendants. It certainly would cast a pall over such legislation, but in order to reach that effectively, you have to have a change in the substantive law. It would seem to me the way to do it would be to have hearings and have the matter presented in due course. I just have reservations, and have expressed them in the past, when the appropriation process is used to restrict some governmental action to obtain some substantive purpose.

I thank the Chair and I yield the floor.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I think we are in a state of confusion because as I understand it, the House has passed a generic amendment that applies to all cases of this kind. I told the Senator from Alabama, with whom I spoke earlier, I would oppose that very strongly. The Senator from Alabama then said he just wants a 10-month stay with respect to this particular case. I said, "What happens after that?" And he said, "I'm not certain but that is all I'm seeking, a 10-month stay." This amendment is not limited to that 10-month stay and so we are going to have to try to correct that.

But having said that, then I want to come back to what the Senator from Alabama said. The Senator from Alabama in speaking to his amendment was speaking as if it would affect lots of cases, and then in response to the Senator from Pennsylvania just said it would affect literally thousands of small business people.

Now, the Senator from Ohio thinks this particular case warrants the 10-month stay. I have no trouble with that because, as I understand it, it is a $20-million judgment against the man who made something like $50,000 out of the entire matter. But as far as affecting the entire law, I would not want to accept this amendment unless several things occurred. First, we must change the amendment to be certain that it is just a 10-month stay. Second, I think the Senator from Alabama has to correct his earlier statement that it would affect thousands of other businesses and indicate it only affects this one.

And third, since the Senator from Alabama has said this is a generic change that is in the House bill, if this amendment is passed, I would want some assurance the managers of the bill will protect the Senate and see to it that we do not go any further than this amendment in conference.

I am willing to take care of this one particular case for the 10-month period. I am not willing to change the law and to make that change on the floor which would tie down the Department of Energy and the Department of Justice in matters of this kind. I do not believe any of us think we should be doing that. We want to be certain that we do not do it.

Now, if the Senator from Alabama will be good enough to respond first, am I correct that it is only intended as a 10-month stay?

Mr. SHELBY. Absolutely. Until October 1. That is absolutely correct. If the Senator from Ohio will yield further on this, when I said it would affect thousands of other small businesses, I want to attribute that to the case if it were allowed to stand. This amendment would only affect one case.

Mr. METZENBAUM. One case.

Mr. SHELBY. That is right.

Mr. METZENBAUM. So an amendment would have to be made. The Senator from Louisiana would have to get unanimous consent either to withdraw his request for the yeas and nays in order that the Senator from Alabama would modify his amendment or he could send an amendment to the desk which could then be accepted, I suppose. But one way or the other, we have to work out that parliamentary procedure. I want to be certain that we make that change and we all understand we are not going any further.

My staff has proposed an amendment which would read: "The prohibition in this section shall apply only until October 1, 1988." And I understand that is agreeable to the Senator from Alabama.

Mr. SHELBY. That is exactly right. If the Senator will yield further, I was looking at the amendment we are talking about and I believe if I struck out "or any other act" it would meet the Senator's objection.

Mr. METZENBAUM. I am not sure the point of that, "or any other act."

Mr. SHELBY. I want to strike out "or any other act" and this would restrict it, I would think, only to this particular bill for this period of time.

Mr. METZENBAUM. I do not think that would do it, if I may say so.

Mr. SHELBY. If the Senator has another suggestion——

Mr. METZENBAUM. I think the Senator's staff might take a look at this. Perhaps he would like to offer this modification since it is the Senator's amendment. I think that would limit it.

Mr. SHELBY. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SHELBY. I have an amendment to my amendment. Would it be in order at this time——

Mr. JOHNSTON addressed the Chair.

Mr. SHELBY. I yield to the Senator.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Senator be allowed to modify his amendment.

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

Mr. SHELBY. Mr. President, I have an amendment to my amendment, which would modify the time that was questioned by the Senator from Ohio, and I send it to the desk.

The PRESIDING OFFICER. Does the Senator wish to modify his first-degree amendment?

Mr. SHELBY. That is right.

The PRESIDING OFFICER. The clerk will read the modification.

The legislative clerk read as follows:

At the end of the amendment add the following: The prohibition in this section shall apply only until October 1, 1988.

Mr. SHELBY. Mr. President, I believe that modification is self-explanatory. That was done because of the concern of the Senator from Ohio.

The PRESIDING OFFICER. The amendment is so modified.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I am glad the Senator cleared up whatever ambiguity there was. That was always the floor manager's understanding of what the amendment intended to do.

Mr. President, just for the record, the district court stated as follows:

An assessment of the penalty in this action requires the finding that the defendants willfully violated the FEA pricing regulations. The court has found that the defendants sought the advice of counsel before proceeding with their transaction. The defendants made a good faith effort to comply with the regulations, and clearly and fully explained their transactions to the Department of Commerce. It is clear that any violation proceeds from the inexperience of the agencies in administering the new regulations and the unusual time constraints under which they were placed. The regulations contained no examples which might have alerted the defendants that the transactions were not exempt from the price controls.

That is from *Citronelle-Mobile Gathering, Inc., et al.* v. *O'Leary*, 499 Fed. Sup. 871 at 888. In other words, the court found that there was good faith. What the Temporary Emergency Court of Appeals did was create a brand new theory on the central figure theory. They did not require the piercing of the corporate veil, which is one theory of personal liability, a time-honored theory. They did not require bad faith. They simply created this new theory of a central figure whereby in effect the manager of a corporation becomes a central figure, thereby personally liable for any violations of the corporation. In confecting that new theory the court of appeals relied upon Prof. George E. Palmer of the University of Michigan Law School. In writings of his, Professor Palmer's conclusion is:

None of this supports the court's conclusion in the Citronelle case that the United States is entitled to restitution of overcharges never received by the individual Chamberlain.

I also have other letters from distinguished professors in the field, such as professor of law, Peter D. Junger from the Case Western Reserve University Law School in Cleveland, OH, and in fact I have two letters from Professor Junger.

I ask unanimous consent that the full text of the letters from Professor Palmer and Professor Junger be put into the RECORD at this point.

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

UNIVERSITY OF MICHIGAN LAW SCHOOL,
Ann Arbor, MI, October 23, 1987.

Senator J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR JOHNSTON: Mr. Joel Saltzman has asked me to write you primarily in connection with the decision of the Temporary Emergency Court of Appeals in Citronelle-Mobil Gathering, Inc. v. Herrington, decided May 7, 1987. The United States sought restitution of overcharges on the authority of 12 U.S.C. 1904 Note, and the court upheld recovery from the individual Chamberlain of all overcharges by the corporations, even though he had received for his own benefit only a portion of those overcharges. This could be upheld as a proper case for restitution if the court were to pierce the corporate veil but it did not do so. The Government must have assumed, correctly I believe, that the facts did not support a piercing of the corporate veil.

I see no other basis for requiring Chamberlain to make restitution of moneys he did not receive. The court rests its decision on the theory that Chamberlain was the "central figure" in the wrongful sales. This might support recovery of the amount of the overcharges as damages (which evidently the Government cannot recover under the statute) but in my opinion such a recovery is not permissible under the common law of restitution.

The court relied on a statement in the Restatement of Restitution § 1, comment *e* (1937), but that statement is of very limited significance and does not justify the court's decision. The statement is concerned solely with situations in which there has been a transfer of goods or services from plaintiff to defendant; the usual measure of recovery in a restitution action is the fair market value of the goods or services, and that is the measure used in the two examples given by the Restatement. In one the physician recovers the reasonable value of his services even though his patient dies. In the other the owner of a chattel recovers the value of the chattel even though the defendant purchased it in good faith from a thief. In the law of property the defendant got no title. The owner can recover the chattel simply because it is his, or alternatively he is entitled to restitution of its value. The defendant lost his money when he bought the chattel and cannot recapture his loss at the true owner's expense.

None of this supports the court's conclusion in the *Citronelle* case that the United States is entitled to restitution of overcharges never received by the individual Chamberlain.

Yours truly,

GEORGE E. PALMER,
Professor Emeritus of Law.

CASE WESTERN RESERVE UNIVERSITY,
Cleveland, OH, October 21, 1987.

Senator J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR JOHNSTON: Thank you for your kind letter of October 5, 1987. I am afraid that I am not quite as far along with my article on "Retributory Restitution" as you suggest, but I am happy to have this opportunity to state the conclusions I have reached with respect to *Citronelle-Mobile Gathering, Inc. v. Herrington*, 826 F.2d 16 (T.E.C.A. 1987).

As far as I know, *Citronelle-Mobile* is the only case in Anglo-American jurisprudence in which a court has knowingly ordered a party to make restitution of a benefit that he never, even constructively, received. The conclusion of the Temporary Emergency Court of Appeals ("TECA") that Part B. Chamberlain is personally liable "for the full amount of overcharges, $6,769,956.76," which he had never received, cannot be supported by any conceivable theory of restitution and is contrary to law and the clear intent of Congress.

TECA apparently reached its mistaken conclusion because it did not understand the difference between the remedy of damages and that of restitution. This distinction is critical to an understanding of the *Citronelle-Mobile* case, because the government's claim, and TECA's jurisdiction, was based on the last sentence of section 209 of the Economic Stabilization Act of 1970, as amended ("ESA"), which provides:

In addition to such injunctive relief, the court may also order restitution of moneys received in violation of any . . . order or regulation [under the price control laws].

Damage actions by the government, on the other hand, are not authorized by section 209, as is made clear by ESA section 210 which authorizes a damage action by the person who paid the overcharges; the legislative history of section 210 makes clear that:

This action is intended to be brought by private persons against other private persons. The government will not bring such action nor be the subject of one.

S. Rep. No. 92-507, Nov. 20, 1971, *reprinted in* 1971 U.S. Code Cong. & Admin. News 2283, 2291.

The critical difference between damages and restitution is that damages are measured by the *claimant's loss*, while restitution is measured by the *defendant's gain*. It is easy to see why Congress did not permit the governmnt to sue for damages for violations of the price control laws: the government could never show any calculable damages in such a case. It is also easy to see why Congress (and the courts; *see, e.g., Porter v. Warner Co.*, 328 U.S. 395 (1946)) have authorized the government to obtain restitution of overcharges made in violation of the price control laws: otherwise it would pay violators to pay the penalties and keep the overcharges—in *Citronelle-Mobile*, for example, no penalties were assessed, while the overcharges were in excess of $6.75 million.

As the Supreme Court said in *Snepp v. United States*, 444 U.S. 507, 515 (1980), a case where the government sought restitution, in the form of a "constructive trust" (the technical name for restitutionary relief of the type authorized by ESA Section 209), of the profits received by a former CIA agent from the sale of a book which he published in violation of his fiduciary duty to the United States:

A constructive trust . . . protects both the Government and the agent from unwarranted risks. . . . It deals fairly with both parties by conforming relief to the dimension of the wrong. . . . If the agent published unreviewed material in violation of his fiduciary and contractual obligation, the trust remedy simply requires him to disgorge the benefits of his faithlessness. Since the remedy is swift and sure, it is tailored to deter those who would place sensitive information at risk. And since the remedy reaches only funds attributable to the breach, it cannot saddle the former agent with exemplary damages out of all proportion to his gain.

444 U.S. at 515-16. Yet, in *Citronelle-Mobile*, TECA required Chamberlain to disgorge benefits that he had never received and, in effect, saddled him with exemplary damages out of all proportion to his gain.

TECA justified its holding that Chamberlain (who did not receive the overpayments) and the corporate counter-defendants (which did) were "jointly and severally liable for the full amount of the overcharges" (826 F.2d at 31) on the authority of a series of cases where individual defendants, officers of corporate defendants, were held liable for *damages*, two of its own earlier opinions, and its misconstruction of a misleading comment in the Restatement of Restitution.

The theory that TECA adopted in *Citronelle-Mobile* was that:

Chamberlain is a "central figure" in the misconduct of the corporation insofar as his misconduct has brought about the corporate violations of crude oil pricing laws.

826 F.2d at 23. The court expressly stated that:

[l]iability is premised only on a finding that Chamberlain committed the wrongful acts.

Id. This "central figure" theory does support the finding that Chamberlain committed the wrongful act and that finding in turn would justify holding Chamberlain liable for the *damages* caused by his wrongful acts, but—again—a damage action cannot be brought by the government pursuant to ESA. The fact that Chamberlain's acts caused damages cannot justify a restitutionary award against him; in fact, as

TECA repeatedly recognized, quoting from its earlier opinion in the same case, in an action for restitution

[A]s this court has already said, "[n]o proof is required that the plaintiff was damaged, much less the amount of any damage." *Citronelle-Mobile,* 669 F.2d at 722."

826 F.2d at 29; *see also, id* at 23. In order to justify the restitution order against Chamberlain, the government would have had to prove that he had received the benefits of his misconduct—that he had received the "moneys received in violation" of the pricing order; that, of course, could not be proved, with or without the help of the "central figure" theory.

It follows that none of the *damage* cases relied on by TECA to establish the "central figure" theory is authority justifying the *restitution* decree against Chamberlain.

One of the earlier TECA opinions relied on by the court in *Citronelle-Mobile* was *United States v. Sutton,* 795 F.2d 1040 (T.E.C.A. 1986), *cert. denied, — U.S. —,* in which, relying in part on its first opinion in the *Citronelle-Mobile* case, the court held that Sutton, a corporate officer and stockholder—like Chamberlain—was liable in a restitution action pursuant to ESA section 209 on two separate theories, one right and one—the "central figure" theory—wrong. In *Sutton* the court said:

The evidence fully supports the district court's conclusion that Robert Sutton is jointly and severally liable with his corporate defendants because these corporations were Sutton's alter egos ["piercing the corporate veil" theory] and because Sutton personally engaged in tortious conduct ["central figure" theory].

795 F.2d at 1061. Since the court in *Sutton* found that Sutton was the "alter ego" of his corporations, he received all the benefits received by them and was thus liable to make restitution. To the extent, however, that *Sutton* holds that a party who did not receive a benefit can be required to make restitution of that benefit under a "central figure" theory, it is as misguided as *Citronelle-Mobile* itself.

The other TECA case relief on was *Sauder v. D.O.E.,* 648 F.2d 1341 (T.E.C.A. 1981), which did not involve a corporate officer who was the "central figure" in a wrong committed by his corporation. *Sauder* did not involve any corporations. The court in *Citronelle-Mobile* said:

In *Sauder,* we rejected the argument that the common law concept of restitution does not permit a court to order an infringer to refund benefits never received by that individual. 648 F.2d at 1348. We refused to characterize the decision to hold Sauder fully responsible in restitution as an attempt to award damages to the victimized party. Rather, we imposed liability in such a manner as to restore the precise amount of the overcharges, "to set things right." 648 F.2d at 1348.

826 F.2d at 27. If this is a correct characterization of the *Sauder* holding, then that case is also as misguided as *Citronelle-Mobile;* refusing to characterize damages as damages does not keep them from being damages.

I suspect, however, that *Sauder* may have been correctly decided—if not for the right reasons—and it is certainly easy to distinguish it from *Citronelle-Mobile.*

Sauder was "the part owner and operator of three oil leases . . . [which] were operated as a single unit"—without benefit of a unitization agreement. 648 F.2d at 1342. Since our library contains no up-to-date treaties on oil and gas law, I cannot readily determine what the liability of the operator of such a unit is. If he is treated as a partner (or a joint venturer) in the unit, he would be liable for the debts—including those arising on restitutionary theories—of the partnership (or joint venture). I would, myself, expect the operator to be held liable for all the debts of the unit as if he were the general partner of a limited partnership. I would not, however, be surprised if the law in this area is unsettled; if that is so, perhaps I will have to write another article.

In any event, an operator of an oil and gas lease or unit like Sauder bears little resemblance to a corporate officer like Chamberlain. The *Sauder* court justified holding Sauder liable for all of the unit's overcharges on the grounds of administrative convenience:

To require the agency to seek refunds from each individual property owner would place a heavy burden on the agency.

648 F.2d at 1348. This rationale cannot, of course, be applied to *Citronelle-Mobile,* for in that case the corporations were the obvious parties to make restitution; no administrative convenience was served by extending liability to Chamberlain.

As to the comment from the Restatement, the court said:

"Ordinarily, the measure of restitution is the amount of enrichment received." Restatement of Restitution § 1 comment a (1937). However, restitution also can serve "to restore the status quo." . . . [quoting *Sauder*] "[A] person who has been unjustly deprived of his property or its value . . . may be entitled to maintain an action for restitution against another although the other has not in fact been enriched thereby." Restatement of Restitution § 1 comment e (1937).

It is, of course, true that restitution can, and usually does, serve to restore the defendant to the status quo by depriving him of his undeserved gain. Damages, on the other hand, restore the claimant to the status quo by making good his loss. This is just another way of stating the distinction between restitution and damages, the distinction that the court ignored when it required Chamberlain to make restitution of benefits he had never received.

Comment e to section 1 of the Restatement of Restitution refers to a case where A has converted B's goods and sold them to C. In such a case, if C refuses to return the goods, B, their owner, may sue either for damages (the tort of conversion) or for restitution of the goods or their value. If C paid full value for the goods, one can argue that he was not enriched by his innocent conversion, but the fact remains that he did receive B's goods. Chamberlain, on the other hand, did not receive anything whatsoever, so this comment can have no application to his case. Palmer in his treatise on Restitution takes the position that C actually is enriched, claiming that the fact and amount of a defendant's enrichment can be ascertained only in the context of a legal system, here by reference to rules relating to title to chattels.

1 Palmer, Restitution 59 (1978). In any event, this academic dispute has no bearing whatsoever on the issue of whether the court's treatment of Chamberlain was correct. It wasn't.

If you desire to amend ESA to overrule *Citronelle-Mobile* and make clear that a defendant may not be compelled to make restitution of moneys that he never received, I would suggest that the last sentence of ESA section 209 be amended to read as follows: "In addition to such injunctive relief, the court may also order restitution of moneys received in violation of any such order or regulation, *but only from the person who received such moneys.*" Since this is clearly what was intended all along, I find it unsettling that any court could so misconstrue section 209 as to make this proposed amendment necessary.

Very truly yours,

PETER D. JUNGER,
Professor of Law.

CASE WESTERN RESERVE UNIVERSITY,
Cleveland, OH, October 27, 1987.

Senator J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources U.S. Senate, Washington, DC.

DEAR SENATOR JOHNSTON: This will supplement my letter of October 21, 1987 since there are two matters which I should, perhaps, have mentioned but which—since I did not want to use footnotes—I decided to exclude from that letter:

1. Chamberlain did receive a small portion of the overcharges, and the trial court held that the government was entitled to restitution of, and only of, the amount of those overcharges. Though I did not discuss those overcharges in my letter, it is, of course, my opinion that the trial court was correct and that Chamberlain was obligated to make restitution of the amounts that he actually received.

2. TECA's assesment of prejudgement interest at the prime rate, a rate far in excess of the legal rate and probably of any rate of return that Chamberlain's companies could in fact have earned suggests that that court applied its misconception of restitution to the corporate counter-defendant's as well as to Chamberlain. I find difficulty in reconciling this portion of the *Citronelle-Mobile* decision with decisions like *SEC* v. *Manor Nursing Centers, Inc.,* 458 F.2d 1082, 1104–05 (2d Cir. 1972).

I would also alike to amplify my statements with respect to the *Sauder* case. Further research convinces me that Sauder was properly held liable as a partner in the unit, that is, as an operating partner in a mining partnership; *cf., e.g., Blocker Exploration Co. v. Frontier Exploration, Inc.,* 740 P.2d 983 (Colo. 1987) and cases therein cited.

Finally, I wish to assure you, as I failed to do in my first letter, that I will send you a copy of my article as soon as it is finished.

Very truly yours,

PETER D. JUNGER.

Mr. JOHNSTON. I simply urge, Mr. President, that this is a 10-month delay to allow time for various committees. I do now know whether this would appropriately be in the Energy Committee or in the Judiciary Committee. But it ought to be looked at because indeed this decision has far-reaching impact. I think really it ought to be looked at.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I direct this question either to the distinguished Senator from Louisiana or the distinguished Senator from Alabama. The upshot is it is simply a 10-month delay on the execution and during the interim

there will be consideration by the Congress of any change of law or clarification of law on the central figure theory adopted by the appellate court in this case.

Mr. SHELBY. The Senator is absolutely right. That is the whole purpose of the amendment and the intent of the offerer here.

Mr. SPECTER. I thank the Senator.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Alabama.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES], the Senator from Tennessee [Mr. GORE], the Senator from Michigan [Mr. LEVIN], the Senator from New York [Mr. MOYNIHAN], the Senator from Georgia [Mr. NUNN], the Senator from Rhode Island [Mr. PELL], the Senator from North Carolina [Mr. SANFORD], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] would vote nay.

Mr. SIMPSON. I announce that the Senator from New Mexico [Mr. DOMENICI], the Senator from Utah [Mr. GARN], the Senator from Utah [Mr. HATCH], the Senator from Oregon [Mr. HATFIELD], the Senator from Indiana [Mr. LUGAR], the Senator from Arizona [Mr. MCCAIN], the Senator from New Hampshire [Mr. RUDMAN], the Senator from Wyoming [Mr. WALLOP] and the Senator from California [Mr. WILSON] are necessarily absent.

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

The result was announced—yeas 70, nays 13, as follows:

[Rollcall Vote No. 377 Leg.]

YEAS—70

Adams	Glenn	Nickles
Armstrong	Gramm	Packwood
Baucus	Grassley	Pressler
Bond	Harkin	Proxmire
Boren	Hecht	Pryor
Boschwitz	Heflin	Quayle
Breaux	Heinz	Reid
Burdick	Helms	Riegle
Byrd	Hollings	Rockefeller
Cochran	Humphrey	Roth
Cohen	Inouye	Sasser
Cranston	Johnston	Shelby
D'Amato	Karnes	Simpson
Danforth	Kassebaum	Specter
Daschle	Kasten	Stafford
DeConcini	Leahy	Stennis
Dixon	Matsunaga	Stevens
Dodd	McClure	Symms
Dole	McConnell	Thurmond
Durenberger	Melcher	Trible
Evans	Metzenbaum	Warner
Exon	Mikulski	Wirth
Ford	Mitchell	
Fowler	Murkowski	

NAYS—13

Bentsen	Chafee	Lautenberg
Biden	Conrad	Sarbanes
Bingaman	Graham	Weicker
Bradley	Kennedy	
Bumpers	Kerry	

NOT VOTING—17

Chiles	Levin	Rudman
Domenici	Lugar	Sanford
Garn	McCain	Simon
Gore	Moynihan	Wallop
Hatch	Nunn	Wilson
Hatfield	Pell	

So the amendment (No. 1188) as modified, was agreed to.

Mr. BYRD. Madam President, I just take the floor at this moment to see if we can have some understanding of the program for the rest of the day on this measure, whether or not there are going to be additional rollcall votes, and whether or not we can put a limit on further amendments by unanimous consent so that the managers will know what they can count on as well.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. If the Senator from Louisiana will withhold, the Senate is not in order. It is difficult to hear the Senator from Louisiana and the majority leader.

Senators will kindly take their seats while we discuss the remaining part of the program in the colloquy about to take place between the manager and the majority leader. Senators will please take their seats.

The Senator from Louisiana.

Mr. JOHNSTON. Madam President, I would think we would have no more rollcall votes this afternoon. The amendments I have on the list yet to deal with are as follows: A Heflin-Thurmond amendment, which is waiting to be cleared, relative to a building in Charleston, SC; four Karnes amendments, which I hope we can dispose of with a colloquy; five Dixon amendments, with the same comment; a Lautenberg amendment, which we will soon accept; a Domenici amendment; a Glenn amendment; a Leahy amendment, which we will soon accept; and a Hatfield amendment. I think those are the only amendments that have either been brought to our attention or about which we have heard rumors.

Mr. BYRD. Madam President, I wonder, with the distinguished Republican leader on the floor, could we get an agreement that the amendments would be limited to those that have just been enumerated by the distinguished manager.

Mr. DOLE. That is fine on this side.

Mr. McCLURE. Would the distinguished majority leader yield?

Mr. BYRD. Yes.

Mr. McCLURE. There is a unanimous-consent agreement with respect to a motion to recommit. What you are suggesting now would not displace that or alter that?

Mr. BYRD. It would not.

Mr. McCLURE. We certainly have no objection to limiting the list to those enumerated.

Mr. JOHNSTON. Madam President, I ask unanimous consent that, in addition to the matters previously provided for by unanimous consent, the following amendment and none other be in order: one Conrad amendment, which will be germane to the bill; and I have already listed the others and described those.

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

Mr. BYRD. Madam President, as I now understand the order that was entered, it limits all further amendments to those that have been enumerated by the distinguished manager of the bill, Mr. JOHNSTON.

The PRESIDING OFFICER. The majority leader is correct.

Mr. BYRD. So once they are disposed of, the Senate may go to third reading, with the understanding, of course, that the motion to recommit is still in order up until the time of passage.

The PRESIDING OFFICER. The majority leader is correct.

Mr. BYRD. I thank the Chair, I thank all Senators, and I thank the Republican leader.

There will be no more rollcall votes today, Madam President.

AMENDMENT NO. 1189

Mr. LAUTENBERG. Madam President, I send an amendment to the desk and ask for its immediate consideration. This amendment is on behalf of Senator BRADLEY and myself.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for himself and Mr. BRADLEY, proposes an amendment numbered 1189.

Mr. LAUTENBERG. 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 38, line 5, before the period, insert the following:

": *Provided*, That of the amount appropriated under this heading for the magnetic fusion program, $8,000,000 shall be available to continue research, development, engineering and design only of Project 88-R-92, Compact Ignition Tokamak; *Provided further*, That the Princeton Plasma Physics Laboratory and the Office of Fusion Energy shall submit a report and a 5-year plan based on current budgetary resources allocated for fusion energy research to the Committees on Appropriations of the House

and Senate providing detailed information, costs and schedules for the concurrent construction of the Compact Ignition Tokamak project with the continued operation and completion of the Tokamak Fusion Test Reactor project."

Mr. LAUTENBERG. Madam President, This amendment would designate funds within the energy supply, research, and development activities. This adds no money to the total program.

The Princeton Plasma Physics Laboratory is working on experiments funded by the Department of Energy to release energy through the fusion of some abundant elements found in sea water. The current project, the Tokamak fusion test reactor [TFTR], has succeeded in reaching a record temperature. At present, the TFTR uses more energy than it releases. The goal is for the TFTR to achieve a break-even point in 1989-90.

The next step will be the development of the compact ignition Tokamak [CIT], which will build on the successes of the TFTR. The CIT is designed to reduce the differential between energy production and energy release. It has reached the stage in engineering research that initiation of construction should begin in 1988.

One way of understanding this project is to view the TFTR as providing a spark. The CIT will turn the spark into an ignition and a flame that will remain for short periods of time. The final step will be an engineering test reactor, which will sustain the flame over a longer period and convert its energy to more useful forms.

The Department of Energy has recommended the CIT project for a new construction start in fiscal year 1988. Secretary Herrington has written to me, expressing his support for the CIT and stating that the CIT is a "unique and critical element of the Department's most successful R&D programs."

This amendment assures that the preliminary work on the CIT will continue with engineering, studies, and plans. A project of this magnitude must not be allowed to flounder. The House of Representatives has included funds to start construction of this project. Although this amendment does not specify a beginning for construction, I hope that the chairman and members of the conference committee will take another look at the possibility of committing construction funds.

Madam President, it is my understanding that this amendment has been cleared. That being the case, I urge its adoption.

Mr. JOHNSTON. Madam President, the distinguished Senator from New Jersey makes a powerful and persuasive case on the compact ignition Tokamak. He makes that powerful case not only here on the floor, but I can assure my colleagues he makes a very powerful case off the floor. In fact, my arm, shoulder, and elbow socket is very sore on this question. So on the basis of his persuasiveness, we are glad to commit $8 million to this effort.

It is an important effort, Madam President, because we need to define the relative role of the new compact ignition Tokamak with the existing TFTR, which is an operating Tokamak at this time, which, as a matter of fact, is not totally complete. The TFTR has not demonstrated scientific breakeven yet. It hasn't completed the mission for which it was constructed.

This money will be used not only to begin the planning on the new CIT, but to define how the two mesh in, to define a long-term plan for the operations of the TFTR during the period of time that the CIT will be constructed, if that is the case, or the plan for phasing out one and phasing in the other. All of those important questions need to be determined. This $8 million will go to help fund that as well as the preliminary design and engineering of the CIT.

So, Madam President, this is a big undertaking and an important undertaking for the Nation. I congratulate the Senator from New Jersey for so persuasively bringing this to our attention.

I might add that the compact ignition Tokamak, when and if built—and I can say, if the Senator continues to be as persuasive as he has been both with me and other Members of the Senate, I would imagine it would be built—but that is a machine that would cost in the neighborhood of $400 million. This is a first step in that direction. I congratulate the Senator from New Jersey and urge the Senate to adopt the amendment.

Mr. McCLURE. Madam President, the amount of money that is contrained in this amendment is the budgeted request and therefore, simply puts in the bill language which has already been requested.

But there is an addition to that which I think the House committee ducked and that was they urged a delay, as I understand it, because they were not ready to make the commitment to move forward in construction. And there is more than a small implication in this amendment that indeed we are going to move to construction.

I mention that only because certainly there will be a debate about the commitment to a construction start in this conference. And all Members should know, I think, that when we commit to a construction start, that we are then beginning to impact upon other items within the budget. We are setting priorities. That is the reason I suspect that this item was not in there originally and why the Senator is on the floor offering the amendment, is to get that commitment to the start.

I will not object to the amendment but I want people to understand very clearly that the door is opening wider than was the case before. The Senator from New Jersey is entitled to commendation for doing that. On the other hand, I do not want anybody to be misled about the fact that it is only $8 million that we are talking about. We are talking about much more money that that, ultimately.

Mr. LAUTENBERG. Mr. President, I thank the managers of the bill for their wisdom and for their support. The fact is that it is very clearly understood that this is for review of the process. Everyone is aware of the fact that we have to find alternative sources of energy. This is a very important part of the research that is going on.

So I appreciate the acceptance by the manager and the ranking member of the subcommittee and I hope that we will be able, as the years pass on, to go ahead with the construction. I understand all the caveats that have been offered.

Mr. BRADLEY. Mr. President, I rise in support of this amendment to provide $8,000,000 in funding to assist in the engineering and design of the compact ignition Tokamak, the CIT. I would especially like to thank Senator JOHNSTON for his assistance and support in these efforts, which are critical to the long-term interests of the Nation.

The CIT is widely regarded as the next step for the U.S. Magnetic Fusion Program. This machine will be located at Princeton and build upon the successes that have characterized the Tokamak Program at the Plasma Physics Laboratory there. With the CIT we move even closer to the day when the energy that creates stars creates power, light, and warmth in the homes of all Americans.

Mr. President, we hear much in the Senate about security of our energy supplies. The essence of our security depends on diversity. With an active fusion program, we potentially create a whole new and significant option for our future energy needs. Without a Government program, this option disappears. These actions are farsighted, but costly. Fortunately, the payoff is there. There is real gold at the end of the rainbow and our children will thank us for this commitment and resolve.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from New Jersey.

The amendment (No. 1189) was agreed to.

Mr. JOHNSTON. 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. 1190

(Purpose: To restore funds for renewable energy research)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. LEAHY (for himself, Mr. STAFFORD, Mr. HARKIN, Mr. RIEGLE, Mr. GORE, Mr. MATSUNAGA, Mr. CRANSTON, Mr. KERRY, Mr. ADAMS, Mr. LAUTENBERG, Mr. INOUYE, Mr. DODD, Mr. BIDEN, Mr. GRAHAM, Mr. DECONCINI, Mr. MOYNIHAN, Mr. SANFORD, Mr. BURDICK, Mr. FOWLER, Mr. PELL, Mr. BAUCUS, Mr. CHAFEE, Mr. DASCHLE, and Mr. SIMON), proposes an amendment numbered 1190.

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

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

The amendment is as follows:

On page 41, line 4, after "expended," insert "of which $2,000,000 shall be available from within available funds for wind research."

Mr. LEAHY. Madam President, this amendment is budget neutral and will not increase spending in the bill.

The amendment will restore $2 million of the $19 million cut under the bill from the Renewable Energy Research and Development Program at the Department of Energy. Over the last 6 years, the budget for renewable energy R&D has been slashed by more than 80 percent. This year, alone, the administration sought another 40-percent reduction. This cannot be allowed.

Under the Energy and Water appropriations bill, funds for research on wind energy were cut by more than 49 percent.

These are difficult fiscal times. The proponents of this amendment recognize that. We also recognize that the Energy and Water Subcommittee was forced to make many tough choices to bring this bill to the floor under budget. That is why our amendment only partially restores the funds cut from renewable energy research. Under the amendment, $2 million would be restored to the Wind Energy Research Program, leaving it still with a substantial reduction.

Madam President, the deep cuts contained in this bill must be partially restored, however, if the United States is to maintain its energy security and if we, as a nation, are to again become competitive in international trade in energy technologies.

A recent report by the General Accounting Office found that cuts in DOE's research on renewable energy have already contributed to significant delays in developing renewable energy technology. At a time when hostilities are ever increasing in the Persian Gulf and the security of the oil supply from that region cannot be guaranteed, the United States has become more and more dependent on foreign oil. We are again importing more than 6 million barrels of oil per day—the highest level since 1980. All the while, the administration has sought and won cuts in programs that encourage the development of energy alternatives.

Renewable energy sources currently provide 8 percent of America's power needs. A recent Energy Department study projects that with adequate Federal support safe, reliable, American renewable energy sources could provide six times that amount by the year 2010.

We are using renewable energy now. It works. Wind energy, perhaps the least exploited of the technologies, already provides enough energy to provide power to a city of 600,000 each year. We know that there will be a demand for energy alternatives to oil in the future. Oil prices are not going to continue at their bargain basement level forever; nor are we certain of our future oil supplies.

But, we must invest now, if we want these technologies to be available when we need them in the future. We cannot afford to fall any further behind the curve.

Nor should we permit our competitors overseas to capture the emerging multibillion dollar market in renewable energy technology. Last year, more than $1 billion in renewable energy equipment was sold internationally. In just 5 years, that market is projected to double. Yet, while the market has grown, American firms are losing out. We used to sell nearly 100 percent of the world's alternative energy technology. Now we sell one-third. The Danish now dominate wind energy markets in the United States. Again, GAO concluded that cuts in Federal support for research and development of this technology are directly to blame.

The $2 million restored by this amendment came from funds available within the DOE budget.

Our amendment is a modest step toward restoring our commitment to basic research into alternative sources of energy. It will not bust the budget and it complies with the Gramm-Rudman-Hollings balanced budget law.

Madam President, I urge the adoption of the amendment.

Mr. McCLURE. Madam President, we have no objection on this side.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1190) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Madam President, I am advised that the motion by Senator CONRAD for an amendment is not necessary and consequently I ask for unanimous consent that the reservation for the amendment of Senator CONRAD be stricken from the list.

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

Mr. JOHNSTON. Madam President, the remaining amendments to be dealt with are Heflin-Thurmond, which I understand is to be taken up next week, or perhaps in a few minutes; the Karnes amendments; the Dixon amendments; the Domenici amendments, which will be next week if offered; the Glenn amendment; and a Hatfield amendment.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1191

(Purpose: To transfer title of the land at South Shore State Park, Illinois)

Mr. JOHNSTON. Madam 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 Louisiana [Mr. JOHNSTON], for Mr. DIXON and Mr. SIMON, proposes an amendment numbered 1191.

Mr. JOHNSTON. 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:

At the end of the bill insert the following: "The Secretary of the Army shall transfer title to all land presently leased to the State of Illinois at South Shores State Park, Lake Carlyle, Illinois for development in accordance within the State Plan for development of recreational opportunities throughout the state park system. Title to all lands transferred shall be encumbered to insure that the development does not interfere with operation of the project for flood control purposes."

Mr. JOHNSTON. Madam President, this amendment has to do with a land transfer in the State of Illinois. We had originally resisted the amendment because it had not been cleared with

the authorizing committee. The transfer is of title in South Shores State Park, Lake Carlyle, IL, for development in accordance with the State plan for development of recreational opportunities throughout the State park system.

This amendment has now been cleared by the authorizing committee, so we are glad to take the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. McCLURE. Madam President, we have no objection to the amendment and urge its adoption.

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

The amendment (No. 1191) was agreed to.

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

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1192

(Purpose: To allocate funds for repairs of the East St. Louis, Illinois pumping station)

Mr. JOHNSTON. 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 Louisiana [Mr. JOHNSTON], for Mr. DIXON and Mr. SIMON, proposes an amendment numbered 1192.

Mr. JOHNSTON. 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 12, line 10, before the period insert a colon and the following: *"Provided further,* That the Secretary of the Army is directed to accomplish channel rehabilitation, repair and rehabilitation of fourteen pump stations and appurtenant works and rehabilitation and replacement of bridge structures in the vicinity of the East Side Levee and Sanitary District in East St. Louis, Illinois, by making available $1,000,000 in fiscal year 1988".

Mr. JOHNSTON. Madam President, this amendment was originally not cleared with the authorizing committee and it does in fact authorize channel rehabilitation and repair and rehabilitation of 14 pump stations and appurtenant works in East St. Louis, IL, by making $1 million available in fiscal year 1988. The matter has now been cleared by the authorizing committee. Therefore, we urge acceptance of the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. McCLURE. Madam President, I have been persuaded that indeed this is a unique situation in a number of respects. We probably would have acted differently earlier except for the lack of clearance on the part of the authorizing committee. That has now been given so I have no objection to the adoption of the amendment.

Mr. DIXON. I thank the Senator.

The PRESIDING OFFICER. Is there any other debate on the amendment? If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 1192) was agreed to.

Mr. DIXON. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1193

(Purpose: To appropriate funds for the Davis Creek Dam, North Loup Division, Nebraska)

Mr. KARNES. Madam President, 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 Nebraska [Mr. KARNES] proposes an amendment numbered 1193:

At the bottom of page 23, insert the following: "*Provided further,* that $1 million of available funds shall be available for use on the Davis Creek Dam, North Loup Division, Nebraska."

Mr. KARNES. Madam President, I rise today to offer an amendment which addresses an anomaly in the budget request for the North Loup project in Nebraska. The project is $1 million short of the necessary funds to complete the project including the Davis Creek portion. The shortfall is due to a timing problem rather than any substantive difficulty.

The North Loup project in Nebraska is substantially underway, as defined by the Bureau of Reclamation. As of September 30, 1987 the project was 60-percent finished, and thus is considered by the Bureau of Reclamation to be a priority for completion. The Bureau policy recognizes the need to treat projects nearing completion, requiring this Member to place special emphasis on making sure the project does not fall behind schedule.

Without the additional $1 million the North Loup project will fall behind and hinder the scheduled development already underway and funded downstream. In order for this project to be completed the Davis Creek portion must be started. As a priority project for completion, North Loup is eligible for all funds necessary to complete construction.

The additional funds are necessary to award contracts for the Davis Creek Dam. These moneys would be used to first, secure right of ways—$300,000; second, relocate contracts—$30,000, and; third, award contract earnings—$670,000.

Last year, it became apparent that the authorization limit would not be adequate to finish the project. The Bureau of Reclamation informed my Nebraska delegation colleague in the House, Congresswoman VIRGINIA SMITH, that the Bureau would proceed with the Davis Creek portion if two conditions were met.

The first condition was that Congress would have to raise the authorization limit for the overall project. Subsequently, the authorization limit was raised, but it was raised too late to be reflected in the President's Budget request for 1988. Public Law 99-500 increased the authorization to $333,865 million—and indexed to 1987 prices it becomes $354,609 million. In fact, if the authorization limit had been raised in a more timely manner, the new situation regarding Davis Creek would have been reflected in the budget and this amendment would be unnecessary today. The current budget request for the North Loup project was made conservatively, allowing for the possibility that the limit might not be raised. In short, the current budget request is a low figure, and if the authorization limit had been raised earlier, then the administration would have requested the additional $1 million necessary to begin the Davis Creek portion.

Members of my staff have met with Secretary Hodel, Commissioner Duvall, and their staffs recently to discuss this situation. My staff and I have been reassured that the administration is fully prepared to proceed with the project given the current status of the project, and has no objections to the request I am making today to secure the requisite funds.

The second condition was for the repayment contract to reflect the higher ceiling. The original contract dated back to 1976 and required adjustment. The new contract with the Twin Loups reclamation district was executed on April 10, 1987, with three important changes: First, it increased per acre irrigation payments from $4.95 to $8.95; second, it shortened the development payments from 10 to 7 years, and; third, increased the expenditure limitation from $59.8 million to $166.4 million.

The two conditions stipulated by the Bureau of Reclamation for construc-

tion to begin on the Davis Creek portion of the North Loup project have been met. The citizens of Nebraska have done their part. It is now necessary for Congress to appropriate the funds for the successful completion of the project.

The North Loup project is a very large project that has been completed in sections. The reservoir is, for all intents and purposes, finished, but we need to complete the water distribution system before the project can be called complete. The Davis Creek portion is an integral part of the system. The completion of the Davis Creek Dam will open 20,000 more acres of the project.

We should not let this project fall behind schedule. It will do precisely that if we do not appropriate money to reflect the status of the project as it exists today. The North Loup project is a priority project for completion. The project will not cost less over time. Let us push ahead toward completion of the project.

Mr. JOHNSTON. Madam President, I appreciate the strong case which the Senator makes. I think he fully describes it and we are prepared to take the amendment, and with the taking of this amendment I understand the other amendments on the list by the distinguished Senator can be dropped.

Mr. KARNES. That is correct.

Mr. JOHNSTON. Madam President, we accept the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. McCLURE. Madam President, if I understand correctly, the other three amendments to be offered by the Senator from Nebraska are in the House bill and they will be before the conference. Am I correct?

Mr. KARNES. Yes. If the distinguished manager will yield, I would request that these three projects be given due consideration during the conference since they are included in the House bill. They are important for our State of Nebraska.

Mr. JOHNSTON. Madam President, we will certainly give sympathetic consideration to those amendments. I hope we can find them to be worthy in conference.

Mr. KARNES. I thank the Senator.

Mr. McCLURE. Madam President, I urge adoption of the amendment. I have no objection to the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question occurs on agreeing to the amendment.

The amendment (No. 1193) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Madam President, I would like for the RECORD to reflect that Senator EXON had spoken to me about this and other projects and is in strong support of this, and was a moving force in getting this done as well.

Madam President, I ask unanimous consent that the other Karnes amendments which have been reserved under the unanimous consent be stricken from the list.

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

Mr. JOHNSTON. Madam President, I ask unanimous consent that the remaining Dixon amendments be stricken from the list.

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

Mr. JOHNSTON. Madam President, the only amendments remaining, as I have on my list, are Heflin-Thurmond amendment relative to a building in Charleston; a Domenici amendment relating to semiconductors; a Glenn amendment relative to RERTR and Hatfield amendment.

And then of course there is the motion to recommit which was previously reserved. Mr. President, I think that is as much business as we can do for today. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DASCHLE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. McCAIN. Mr. President, I would like to thank my colleague, Senator DECONCINI, for his thoughtful comments with which I heartily concur. Mr. President, 20 years ago, the Congress passed the Lower Colorado River Basin Act, embarking on the august and essential endeavor we have come to know as the central Arizona project. The vision was to transport water from a plentiful source across many miles for people so that they might live, for their municipalities and tribes so that they might prosper, and for their crops and industries so that they might flourish.

It has been a long road, but the end is in sight. We anticipate that the main CAP aqueduct will be finished sometime in 1991. The road has not always been an easy one, Mr. President. Recently, differences over the Cliff Dam component of CAP's plan six created legal entanglements jeopardizing the momentum needed to maintain support for the project as a whole. The differences were reconciled, and a major stumbling block to the timely and unencumbered completion of CAP was removed by an agreement between several environmental groups opposed to Cliff Dam and the Arizona congressional delegation.

My friend, the senior Senator from Arizona, Senator DECONCINI, has already described the details of the agreement and the resulting amendment incorporated in the bill currently before the Senate. I do not feel that it is necessary for me to add to his clarifications or augment his commentary.

I would like to say, however, that I am satisfied the amendment provides the necessary authorization for the Secretary of the Interior to secure water to replace that which was anticipated to be stored behind Cliff Dam. The amendment will ensure the water supplies necessary to uphold the integrity and spirit of the cost-sharing agreement entered into by the municipalities and other beneficiaries of the central Arizona project.

I would like to conclude, Mr. President, by expressing gratitude to my colleagues in the Arizona congressional delegation—Senator DECONCINI and Representatives UDALL, STUMP, KOLBE, RHODES, and KYL. Their diligence, dedication and foresight enabled us to make the best of a difficult situation. Together with the environmental groups we negotiated an end to our differences based on good faith and trust. We now have the concensus and freedom to move forward to make the long held vision of the central Arizona project a reality.

ENVIRONMENTAL SCIENCE CENTER, EAST CENTRAL UNIVERSITY, OKLAHOMA

Mr. NICKLES. The chairman of the subcommittee, Mr. JOHNSTON, is aware of the need for funding of an environmental science center at East Central University in Oklahoma. I understand from the chairman that subcommittee cannot accommodate the request at this time. However, he is willing to consider this item during the conference on the bill or on the continuing resolution.

The amendment I had asked to be considered would provide within available funds from the energy supply, research and development activity, $2 million for a grant to be used for construction of the Center for Physical and Environmental Science at East Central University in Ada, OK.

Presently, the university has no central facility for their environmental research. They now utilize facilities at the nearby Kerr Laboratory operated by the EPA which conducts ground water research. In 1981, the Oklahoma State Regents for Higher Education designated East Central for the establishment of an environmental research institute and to conduct research in environmental areas.

I hope that the Senator would be able to work with us during conference to see what we can work out.

Mr. JOHNSTON. The Senator is correct, he has made me aware of the need for this type of facility at the university. When we do get to conference on this matter, I will keep this request in mind. As the Senator knows, there were literally hundreds of requests before the subcommittee and many of those for these types of facilities, most of which have not been accommodated. However, knowing of the Senator's personal interest in this and his desire to see the university meet its optimum potential in research, I will do what I can to assist.

Mr. BORDEN. I join Senator NICKLES in requesting the chairman's assistance in the conference on the amendment to provide a $2 million grant for this center at East Central University with available funds. As he knows, the House has approved such an amendment in House Joint Resolution 395.

This center will house components of their existing physical and environmental science programs and provide for much needed expansion. This will allow badly needed research to be conducted as it relates to the environmental impact, and use, of renewable and other forms of energy.

I understand the constraints on the chairman to accept this amendment at this time, but greatly appreciate his willingness to consider the issue in conference.

Mr. NICKLES. For the purpose of establishing the legislative intent of the energy and water appropriations for fiscal year 1988, I would like to engage in a colloquy with Senator JOHNSTON, chairman of the Subcommittee on Energy and Water Appropriations.

The legislation before us, H.R. 2700, the fiscal year 1988 energy and water appropriations measure, contains $2 million for recreation improvements for paved access roads and parking facilities at Skiatook Lake in Oklahoma.

The Floor Control Act of 1962 authorized this multipurpose reservoir and stipulated the Corps of Engineers would construct recreational facilities at full Federal expense. Yet, to date, only limited facilities have been developed, contrary to a 25-year-old Federal commitment. The Skiatook Lake recreational improvement funding contained in the Senate's version of H.R. 2700 is to be expended in accordance with the project's authorizing legislation.

For the purpose of establishing legislative history and avoiding differing interpretations in the future, I would ask the subcommittee chairman, Senator JOHNSTON, if he shares the understanding that the funds provided in this legislation are to apply to the recreational facilities at full Federal expense with no local cost sharing.

Mr. JOHNSTON. I thank the Senator from Oklahoma and note that he and Senator BOREN have a keen interest in furthering the development of Skiatook Lake. It has always been my understanding the funding mentioned by the Senator would be expended in accordance with the original project authorization, which is full Federal expense.

Mr. NICKLES. I appreciate the chairman's comments. And as the chairman knows, full Federal funding has been provided for recreational facilities and improvements for other projects when so authorized. As the chairman also knows, water projects being authorized today no longer authorize full Federal funding for recreational improvements.

Mr. JOHNSTON. The Senator is correct. When it comes to water projects, the commitments being made today are often different than those made 25 years ago. In the case of Skiatook Lake, commitments were made and should be honored and it is in keeping with that commitment that these funds are provided.

CORPS/OUACHITA REGIONAL WATER DISTRICT AGREEMENT

Mr. BUMPERS. Mr. President, I want to discuss an important issue with the floor manager and chairman, Mr. JOHNSTON. I have proposed an amendment that will require the Corps of Engineers to honor its obligation to allow the Ouachita Regional Water District the right to market water from DeGray Lake in Arkansas, and will end the foot dragging and deception practiced by the corps in its recent relations with the Ouachita RWD.

Under the Water Supply Act of 1958, as amended, Congress authorized the Corps of Engineers to construct storage capacity for municipal and industrial uses when constructing any reservoir project. The aim was to get local interests involved in planning for and meeting future water needs. Such capacity could only be constructed, however, where some local sponsors agreed to pay back over the life of the project, but in no event to exceed 50 years, the entire amount of construction, including interest, allocated for water supply purposes. The act also sets out other repayment terms which will be discussed later.

The Ouachita Regional Water District was created in 1959 under provisions of State law, and was authorized by State law to be a local sponsor for corps water projects. In 1962, Ouachita RWD adopted a resolution of assurances that met the requirements of Federal law with the respect to the repayment of costs associated with the construction of water supply at DeGray Lake. Based upon Ouachita RWD's commitment to meet such repayment requirements, the corps constructed 252 million gallons of water supply capacity at DeGray. The cost of constructing such capacity was approximately $6 million.

At the time, Ouachita RWD had no customer for the water, and wasn't expected to have a customer for years. The law provided some flexibility for repayment. For example, no repayment on the principal had to be made until "such supply is first used," and no interest accrued until the expiration of 10 years or first use, whichever came first. In the case of the Ouachita RWD, the interest began to accrue in 1982, 10 years after the dam was completed, but it did not have to be paid until the first use of the water. The corps, subsequently, attempted to tighten its repayment policy.

The city of Little Rock began to negotiate with the Ouachita RWD in 1981 on a contract to provide Little Rock with the option to purchase up to 152 mgd of water from DeGray Lake. An option agreement was reached and the city of Little Rock paid the Ouachita RWD a small amount for the first year of the option and a smaller amount since then annually.

Recently, the corps has become much more aggressive about marketing water, and has begun to place pressure on local sponsors to place water under contract for use as soon as possible. The corps decided it would seek purchasers for the water. Finally, the corps has announced a new policy on repayment. Rather than requiring payment to begin on the date of "first use," the corps now requires annual payment of interest, operation and maintenance costs to begin on the date a future use water storage is approved by the corps. Payback of the principal will continue to be deferred until the first use of the water. This change of policy will rather dramatically increase the up-front costs on any contract negotiated by the Ouachita RWD with the city of Little Rock.

The problem has been the dealings of the corps with the district and the city of Little Rock over the last several years. When the city first approached the Ouachita district, the corps assured the city that it could contract directly with the district, and that the corps would merely approve or disapprove any agreement reached. Recently, the corps has been stating that before the district can contract with the city, the district must reach its own binding future use water storage contract with the corps. In a letter I received from Colonel York of the Vicksburg, MI, corps office on March 1, 1985, the colonel clearly stated that the district must first contract with the corps.

The Ouachita RWD believes that its adoption of the 1962 resolution of assurances, along with the corps construction actions in reliance on the as-

surances contained in the resolution, constitutes a binding contract between the corps and the district. The district has taken the position that the corps is legally bound to give the district the exclusive right to market water from DeGray Lake, but the corps is taking the position that it may deal with any potential purchaser. Subsequent legal research has shown that the corps position is faulty, but the dispute has caused severe problems.

Frequent negotiations with the corps by members of the Arkansas congressional delegation resulted in an agreement with the then Chief of Engineers, Robert Dawson, that a right of first refusal would be given to the district, that is, they would agree to a contract granting the district a right of first refusal. Based on these negotiations, the district developed a draft right of first refusal agreement, but the acting Chief of Engineers has thus far failed to reach agreement.

Clearly, the corps is pursuing its own agenda and may have entered into negotiations with other possible purchasers, in violation of what I believe is a clear obligation to the Ouachita RWD. The amendment I have drafted would direct the corps to enter into a right of first refusal agreement, with the payment of interest to begin upon of the execution of a water storage contract, and with principal and other associated costs to be amortized over 50 years with payment to begin on the date water is first taken from the project. There are other terms I won't go into. There is great urgency in this. The corps has given the district a March 1988 deadline to enter into a contract with the city of Little Rock and to begin paying for water use, even though the city of Little Rock will not need water until the 1990's.

Mr. JOHNSTON. Mr. President, the Senator makes a compelling case that the corps should reach a fair agreement with the Ouachita Regional Water District. If the Senator will withhold his amendment, I will work closely with him to urge the corps to reach such an agreement. The March deadline set by the corps is upon us, and I want the Senator to know I will do all I can to get this worked out to his satisfaction.

Mr. BUMPERS. Based upon the Senators assurances, I will withhold my amendment. I thank him for his consideration.

CENTRAL ARIZONA PROJECT, "MODIFIED PLAN 6"

Mr. DECONCINI. Mr. President, I want to take this opportunity to thank our very able and distinguished chairman of the Subcommittee on Energy and Water Development, Mr. JOHNSTON, and the ranking minority member, Mr. HATFIELD, for all of the assistance they have provided over the years in finding the funds necessary to get some very important energy and water projects in my State of Arizona underway. In particular, Mr. President, I want to express my appreciation to these fine gentlemen for their continued understanding and support for the completion of the central Arizona project, including all plan 6 components.

This has been a unique year for the central Arizona project. The aqueduct itself is on a steady course and completion to the Tucson metropolitan area is expected by 1991. Approximately 25 miles of unfinished work remains. For plan 6 in the Phoenix metropolitan area, a $32 million contract has just been let by the Bureau of Reclamation for work on the new Waddell Dam. And, with the $230 million included in the bill pending before this body, I am confident the Bureau will be able to maintain its progress toward completion of the project according to the existing time schedules. Important safety of dams work at Stewart Mountain and Roosevelt Dams are funded to the Bureau's capability in this bill so that critical safety of dams work will continue as well in fiscal year 1988.

Included in the pending legislation is a provision which modifies plan 6 and resolves once and for all the 10-year controversy over a suitable alternative to Orme Dam. That provision, Mr. President, is the result of amiable negotiations between environmental interests and the Arizona congressional delegation. Cliff Dam, an important water conservation, flood control, and safety of dams structure that was to be constructed on the Verde River, will not be built. In its place, the benefits Cliff would have provided will be carried forward by safety of dams repairs to Horseshoe and Bartlett Dams; acquisition of water rights within the State of Arizona to replace the yield lost by the elimination of Cliff; and flood control to be determined by investigations conducted by the Bureau of Reclamation and the U.S. Army Corps of Engineers. The decision to eliminate Cliff Dam from plan 6 and authorize alternative projects, which provide benefits similar to those that would have been provided by Cliff, was not made lightly by the Arizona congressional delegation. All of us would have preferred to have kept Cliff Dam alive. However, in the interest of insuring that the important benefits of other plan 6 components proceed on schedule, we felt it was in everyone's best interest to put Cliff behind us and authorize alternatives. We have accomplished that goal, Mr. President.

Inherent in a process of negotiated agreements are misunderstandings that need clarification. I would like to take this opportunity, Mr. President, to clear up several very important issues. The first relates to a statement made on the floor of the House of Representatives by Congressman UDALL regarding the definition of the Verde River. Mr. UDALL stated that "it is understood that the term 'Verde River' in this provision is intended to include the Salt River from its confluence with the Verde through the city of Phoenix." This statement, Mr. President, was intended to clarify that for the purposes of studies to determine a comprehensive flood control solution for the Phoenix metropolitan area, reference to the Verde River for flood control only was meant to take in review of the Salt River downstream from the confluence of the Verde and Salt Rivers. There was never any intention on the part of the Arizona congressional delegation to redefine the Verde River. In the context of flood control, it was merely used as a means to convey the intention of the sponsors of the amendment for the flood control investigations by the Bureau of Reclamation and the U.S. Army Corps of Engineers.

The second clarification concerns the purpose of limiting the scope of the Bureau of Reclamation and the Corps of Engineers study to determine the flood control fix at Horseshoe and Bartlett Dams. The CAWCS studies which provided the basis for plan 6 as the suitable alternative to Orme Dam, was the result of 4 years of intensive study in the Phoenix metropolitan area. Much of the information collected from those studies is still relevant to any future flood control determinations. For this reason, both agencies have been directed to make use of relevant existing data in the determination of flood control needs. Obviously, any new information based on physical changes must be taken into consideration by both the Bureau of Reclamation and the Corps of Engineers in the studies authorized under the amendment in H.R. 2700. In fiscal year 1988, $500,000 has been provided to the Bureau of Reclamation, in conjunction with the Corps of Engineers, to undertake flood control studies at Horseshoe and Bartlett Dams. Those studies are anticipated to be completed in about 12 months. At that point, an additional $450,000 will be needed specifically for the Corps of Engineers to identify remaining flood control needs. In fiscal year 1989, if sufficient funds have not been requested by the administration for the corps' upstream-downstream studies, I intend to offer an amendment to the fiscal year 1989 bill for this purpose.

Since modifications to Roosevelt Dam on the Salt River will proceed with no change as a result of this agreement, there is no need to restudy the Salt River upstream from Roosevelt Dam or from Roosevelt Dam down to the confluence of the Salt and Verde Rivers. Roosevelt Dam will be built under the same terms and conditions as intended under the original plan 6 record of decision. The flood

control protection that will be provided by Roosevelt Dam should be recognized by both agencies in their review of the need for remaining flood control in the Phoenix metropolitan area.

The next clarification I would like to make, Mr. President, is in reference to the safety or dams modification report to be prepared by the Bureau of Reclamation for Horseshoe and Bartlett Dams. In the Senate report, the committee has earmarked $1 million from the central Arizona project water development activities for the Bureau to initiate a safety of dams modification report for Horseshoe and Bartlett Dams. This action was necessary to expedite safety or dams repairs to protect the structural integrity of these two structures on the Verde River. Without Cliff Dam, safety of dams repairs at Horseshoe and Bartlett Dams must be completed. The separate account for the Safety of Dams Program under the cap does not reflect the $1 million increase for these two structures. It should, Mr. President, and I hope to address this issue during the conference on H.R. 2700. This oversight should not be construed as any intention to fund safety of dams activities under the authority of the central Arizona project.

On a related matter, Mr. President, committee report language identifies incidental flood control benefits that were provided by Horseshoe and Bartlett Dams in 1978, 1979, and 1980. However, there is no intention on the part of the sponsors of this language to authorize the use of safety of dams funds for any additional flood control at these structures as an outcome of the Bureau of Reclamation and Corps of Engineers flood control studies.

Finally, with reference to the authority given the Secretary of the Interior to acquire water to replace a yield up to 30,000 acre-feet that Cliff Dam might have provided, while there is no language either in the amendment or in the report language requiring cost-sharing, which is applied to newly authorized water supply projects, it must be noted that under the terms of the agreement, the modified plan 6 will be subject to the same cost-sharing arrangements authorized under the Colorado River Basin Project Act of 1968. The agreement to eliminate Cliff Dam did not alter repayment provisions that otherwise would have applied to Cliff Dam under current law. Because Cliff Dam was part of an already authorized project, the central Arizona project, the cost-sharing required for new municipal and industrial water supply will not be applied to the Cliff alternatives. However, it is anticipated that the contributions made to the supplemental cost-sharing agreement will be applied to the costs of the acquisition of the replacement water. The agreement we have entered into on the modified plan 6, Mr. President, is unique and is not intended to set a precedent for other, newly authorized water supply projects. The water supply provision contained in the agreement does not authorize the construction of any new Federal conservation storage features on the Verde River. Instead, it simply provides authority to the Secretary of the Interior to acquire water rights for municipal and industrial purposes.

I want to thank those individuals in the environmental community who have been very professional, thoughtful, and straightforward in their approach to resolving the Cliff Dam controversy. The constructive efforts of Liz Raisbeck, David Conrad, Ed Osann, and Bob Witzeman are sincerely appreciated. I also want to express my personal thanks and appreciation to Peter Hayes of the Salt River project who made significant contributions in helping us achieve a responsible compromise. Mr. President, I ask unamimous consent that the "statement of principles" entered into by the Arizona congressional delegation and representatives of the National Coalition to Stop Cliff Dam be printed in the RECORD immediately following my remarks.

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

(See Exhibit 1.)

Mr. DECONCINI. Mr. President, I think it is necessary to point out that any Senate modifications to the plan 6 provision as passed by the House of Representatives supplement the understandings laid out by Congressman MORRIS K. UDALL when H.R. 2700 was considered earlier this year by the House. The modifications made in the Senate bill are consistent with the original "statement of principles."

In closing, Mr. President, I also want to express my appreciation to the subcommittee staff, Proctor Jones, David Gwaltney, and Stephen Crow. They have all been very helpful in ensuring that Arizona energy and water projects have been given every possible consideration.

EXHIBIT 1

STATEMENT OF PRINCIPLES ON THE ARIZONA CLIFF DAM SETTLEMENT JUNE 18, 1987

1. Language in the FY 1988 Energy and Water Appropriations Act will state that no further funds will be appropriated for the study or construction of Cliff Dam, and that Plan Six without Cliff Dam is deemed to constitute a "suitable alternative" to Orme Dam within the meaning of the Colorado River Basin Project Act of 1968.

(This prohibition includes funds appropriated under the Reclamation Safety of Dams Act, as well as the Lower Colorado River Basin Project Act of 1968.

Funding will continue for Verde River fish and wildlife studies now under way as a result of the 1985 U.S. Fish and Wildlife Service biological opinion).

2. The organizations comprising the National Coalition to Stop Cliff Dam (hereafter "Coalition") agrees not to oppose funding in Fiscal Year 1988 and succeeding years for the construction of remaining features of Plan Six—New Waddell Dam, Modified Roosevelt and Modified Stewart Mountain Dams—provided that Cliff Dam or similar conservation storage reservoirs on the Verde River, federal or non-federal, are not a part of Plan Six, the Central Arizona Project generally, or any other plan.

(Remaining elements of Plan Six will be implemented in accordance with applicable environmental statutes.

There is a continued commitment by all parties to implement a fish and wildlife mitigation plan that will fully offset the loss of habitat values to riparian and wetland communities resulting from the construction of the balance of Plan Six elements).

3. The Coalition agrees to terminate its lawsuit against Cliff Dam and Plan Six without prejudice, upon agreement by the Secretary of the Interior to modify his decisions of April 3, 1984, and May 20, 1986, to remove Cliff Dam from the approved plan for the CAP.

The Coalition further agrees not to contest the adequacy of the Final Environmental Impact Statement as it pertains to all Plan Six features other than Cliff Dam.

4. The Arizona congressional delegation agrees, upon termination of the lawsuit, to declare its intention not to pursue any future funding for Cliff Dam or similar water conservation storage feature on the Verde River.

5. The Coalition agrees to support congressional appropriation of funding under the authority of the Reclamation Safety of Dams Act to complete safety-related improvements at Horseshoe, Bartlett, Modified Roosevelt and Modified Stewart Mountain Dams.

(Existing Safety of Dams Modification Reports for the Salt River Project Dams will be amended to remove Cliff Dam and to identify corrective measures for Bartlett and Horseshoe. Such measures will be subject to compliance with the National Environmental Policy Act and consultation under the Endangered Species Act, as appropriate.)

6. The parties agree that additional flood control measures may be needed on the Verde River and that the addition of flood control measures at Bartlett and/or Horseshoe Dams may be required to meet such needs. The parties agree to ask the U.S. Army Corps of Engineers to undertake studies to determine and identify appropriate flood control solutions on the Verde River. The parties further agree that once the studies are completed and flood control alternatives identified, the parties will work together to effectuate an appropriate flood control solution which is consistent with applicable environmental laws, to protect the people and property of the Phoenix Metropolitan Area from flooding.

7. The Arizona congressional delegation and the Department of the Interior are committed to ensure that the Valley cities will secure water supplies necessary to replace the water yield that otherwise would have been provided by Cliff Dam. The delegation has obtained a commitment from the Secretary of the Interior and the Commissioner of Reclamation to do all within their authority to assist in identifying sources of such water for the cities and for the purposes of settling the water rights claims of the Salt River, Pima, Maricopa, and Fort McDowell Indian Communities.

Mr. CRANSTON. I note that the fiscal year 1988 Energy and Water De-

velopment appropriation bill includes $450,000 for the Bureau of Reclamation's San Joaquin Valley Conveyance Study. It's my understanding that this appropriation would be used to prepare the planning report and environmental impact statement on the Mid Valley Canal and to initiate more specific work on the project. I would like to ask the chairman of the Energy and Water Appropriations Subcommittee if this is his understanding as well.

Mr. JOHNSTON. The Senator from California is correct. The committee has provided $450,000 for the Bureau of Reclamation to continue work on the Mid Valley planning report and site specific environmental impact statement and to start additional work necessary for the Bureau to seek project authorization from the Congress. The committee understands that in response to local interest the Bureau plans to make available for public comment a progress report/informational document on Mid Valley in January 1988. The committee expects the Bureau to move forward the planning report as quickly as possible and understands the agency plans to release the water marketing plan and EIS in September 1988 with the final planning report on Mid Valley to be issued in March 1989.

Mr. CRANSTON. I thank the Senator from Louisiana for the clarification.

CALVERT CLIFFS NUCLEAR PLANT

Mr. COCHRAN. Mr. President, last August a team of experts from the International Atomic Energy Agency—IAEA—inspected the Baltimore Gas and Electric Co.'s nuclear powerplant at Calvert Cliffs, MD. The team was impressed with the overall safety level at the plant. This was important, though not surprising, given the high safety standards of the American nuclear industry. Perhaps of greater significance, however, was the fact that this marked the first time that an Operational Safety Review Team—OSART—from the IAEA had inspected a nuclear plant in the United States. It signaled to the world that, just as our country expects other nations to allow international safety inspections of civilian nuclear installations, utilities in the United States are willing to open their facilities to international scrutiny.

The Calvert Cliffs inspection was the 20th IAEA review conducted since the OSART program began in 1982. OSART's are invited by host nations to make objective assessments of a plant's safety practices from an international perspective, and even advanced nations like the United States can set a good example by inviting inspections. As Adm. Lando Zech, Chairman of our Nuclear Regulatory Commission has said:

We are pleased to compare our safety practices with those of other countries in the hope it will contribute to a higher level of nuclear powerplant safety worldwide.

This inspection was commended by the Washington Post on August 28, and I request that a copy of that editorial be placed in the RECORD at the conclusion of my remarks.

Whatever one may think about the long-term desirability of nuclear power in the United States, we all know that it is a significant source of energy in many parts of the world. Over 400 nuclear reactors now produce about 16 percent of the world's electricity. All nations have an interest in ensuring that these plants are operated safely, and one of the best ways to do this is through strengthened international cooperation. This is where the IAEA plays such a vital role.

All of us remember that fateful day in April 1986, when the Soviet power station at Chernobyl experienced the most severe reactor accident in the nuclear age. In the wake of this tragedy, the IAEA became the focal organization for international cooperation to prevent similar disasters. The confidence in the Agency and the 30-year tradition of cooperation in the vital area of nonproliferation proved to be great assets when there was a need for prompt action on nuclear plant safety. Nations found it natural to turn to the IAEA.

They continue to do so. Requests for IAEA safety reviews have increased substantially since Chernobyl. Thus far, 16 countries have invited 21 reviews. An inspection team is visiting a West German plant this month and the first OSART mission to Spain is planned for December. The Soviet Union, Czechoslovakia, Hungary, Japan, and the United Kingdom have already expressed interest in reviews next year, and the Agency expects to conduct at least one inspection per month in 1988. This is very encouraging news, especially in light of the recent bilateral talks between the United States and the Soviet Union on improved nuclear plant safety.

The IAEA is celebrating its 30th anniversary this year, having been created in 1957 as an outgrowth of President Eisenhower's Atoms for Peace initiative. It is therefore altogether fitting to pay tribute at this time to the widening influence of the Agency in the field of nuclear safety and to express the hope that the United States, the Soviet Union, and other nations will continue to strengthen their political and financial commitments to the important mission of the International Atomic Energy Agency.

[From the Washington Post, Aug. 29, 1987]

VISITORS AT CALVERT CLIFFS

For the past three weeks, an international team of 15 safety inspectors has been going carefully through the nuclear reactors at Calvert Cliffs, Md. The audit was organized by the International Atomic Energy Agency, and it's the first time that an American plant has invited this kind of visit. The IAEA has been running safety reviews of reactors for the past four years, but most of them have been in Western Europe. The disaster at Chernobyl last year has suggested to other governments that it might be no more than self-interest to give greater attention to safety standards worldwide and to try to establish the principle that all countries open their plants to these audits. An IAEA team is to go through a Hungarian reactor next year, and the Soviets have been discussing a similar review of one of their plants.

The Calvert Cliffs reactors, operated by Baltimore Gas and Electric Co., are among the best run of the American nuclear plants, and they are apparently coming out of their review well. Most of the IAEA team are Western Europeans, but there are several Eastern Europeans as well as a Canadian and a Korean—all under the chairmanship of a West German. Most are people who have been running reactors in their own countries.

The inspection team not only carries out its critique of operations and maintenance at Calvert Cliffs but learns something from a close acquaintance with a plant that is in most respects a model. As the IAEA continues these reviews throughout the world, it will ideally produce an international consensus on good practice that all countries accept.

There are two possible futures for nuclear power. One is that public opinion will increasingly resist building reactors as too dangerous. That is the way things seem to be going at present in most of the West—with some interesting exceptions. But it's conceivable that as anxieties increase in the next decade regarding damage to the atmosphere and change in the climate, people will begin to reflect on the dangers of total reliance on burning coal, gas and oil. At that point they may begin to reconsider the technologies that can generate power without creating carbon dioxide. Only one of them, so far, is capable of operating on an industrial scale. If a smoky and overheating planet begins to turn back to reactors as an environmentally preferable power source, the precedents being set at Calvert Cliffs for raising safety standards and sharing experience may prove to be an important influence for public protection in the next century.

Mr. STEVENS. Mr. President, I rise in support of the allocation of funds made by the bill before us for the Department of Energy's nuclear medicine program. One of the most important projects within this program is positron emission tomography, or PET. PET is a new imaging technique that allows scientists and physicians to watch and measure the chemical processes of the human body.

All functions of the human body are performed by chemical systems. Likewise, all diseases have chemical origins. Through increased access to the human body chemistry, PET is helping us to better understand the fundamental nature of disease so that we can develop new therapies. PET is a truly worthy project, one which is currently providing us with answers to complex questions about human disease.

The PET project deserves to receive a fair share of the slated increase for nuclear medicine programs. I would ask the Senator from Louisiana if it is his committee's intention that the PET project receive, at a minimum, a proportional share of the increase allocated to the nuclear medicine program?

Mr. JOHNSTON. The Senator from Alaska is correct. The Department of Energy's nuclear medicine program is slated to receive no less than $22.89 million in this bill. It is the committee's intention that the PET program receive a funding increase which is, at a minimum, proportional to the increase to be received by the entire nuclear medicine program for fiscal year 1988.

Mr. STEVENS. I thank the Senator from Louisiana for his support for this highly valuable program, and for his assurance that his committee will work in conference to sustain the Senate position on fiscal year 1988 funding for nuclear medicine programs.

In addition to providing full funding for the PET project, it is my hope that the Energy Department will implement a thorough public education campaign to inform scientists, physicians, and the general public about the value of PET. I look forward to working with the chairman on drafting Conference Committee report language addressing PET funding and public education issues.

Mr. CONRAD. I would like to engage the manager, Senator JOHNSTON, and the ranking minority member, Senator MCCLURE, in a colloquy concerning the Great Plains Coal Gasification Plant located at Beulah, ND.

The Department of Energy has hired Shearson Lehman Bros., to assist it in the sale of the Great Plains plant. DOE hopes to complete the sale by September 1988.

I have drafted an amendment and a sense-of-the-Senate amendment that require the Secretary of Energy to notify the Appropriations Committees of the Senate and House and the Energy and Natural Resources Committee of the Senate, and the appropriate authorizing committees of the House, of his intent to enter into a binding contract for the sale of the plant at least 30 calendar days before the agreement is effective. The amendment and sense-of-the-Senate amendment further require that the Secretary obtain a statement of commitment from the purchaser that the purchaser will continue long-term operation of the plant at a rate and for a period determined appropriate and reasonable by the Secretary.

I will not offer the amendments at this time. I would, however, like to obtain the concurrence of the bill manager and the ranking minority member to seek to have the language of the amendments made a part of either the continuing resolution or the conference committee report for the Interior appropriations bill. I ask that the language be printed in the RECORD.

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

Mr. JOHNSTON. The Great Plains Coal Gasification Plant is very important to our Nation's goal of achieving energy independence, and the Senator from North Dakota has my support for his request.

Mr. MCCLURE. I concur and support the objectives of the Senator from North Dakota.

The material follows:

(Purpose: To ensure congressional notification of the terms and conditions of a proposed sale of the Great Plains Coal Gasification Plant in Beulah, North Dakota.)

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

SEC. . Notwithstanding any other provision of law, the Secretary of Energy is directed to notify the Appropriations Committees of the Senate and House and the Energy and Natural Resources Committee of the Senate, and the appropriate authorizing committees of the House, of his intent to enter into a binding contract for the sale of the Great Plains Coal Gasification Plant in Beulah, North Dakota. Such notification shall:

(a) be submitted at least thirty (30) calendar days before the agreement is effective; and

(b) include a detailed description as to the terms and conditions of the sale, including, but not limited to, the purchase price, the name of the prospective purchaser, the rationale used in evaluating and ultimately selecting the firm to transfer ownership of the plant and associated assets, the relationship of the purchaser to national security interests, and a statement of commitment signed by an authorized individual of the purchaser for continued long-term operation of the facility at a rate and for a period determined appropriate and reasonable by the Secretary.

It is the sense of the Senate that the Secretary of Energy should place high priority on the continued long-term operation of the Great Plains Coal Gasification Plant as part of its divestiture activity. Continued long-term operation is needed to avoid disruptions to the local community, capture the benefits associated with extended plant operations and collect emission reduction technology data. A prerequisite to consideration of any offer must be a statement of commitment signed by an authorized individual of the purchaser for continued long-term operation of the facility at a rate and for a period determined appropriate and reasonable by the Secretary. The 25-year Gas Purchase Agreements are effective until 2009. There must be a proper balance between realizing fair value for the project and continued operation. The Secretary of Energy shall submit to the Appropriations Committees of the Senate and House and the Energy and Natural Resources Committee of the Senate, and the appropriate authorizing committees of the House, the rationale used in evaluating and ultimately selecting the firm to transfer ownership of the plant and associated assets. The Department must assure the Federal, State and local governments as well as the affected citizens of the area that a fair, reasonable, and equitable arrangement has been arrived at during the divestiture process.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there now be a period for morning business not to extend beyond 5 p.m. today.

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

Mr. BYRD. I ask unanimous consent that Senators may speak therein for not to exceed 5 minutes each.

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

Mr. BYRD. Mr. President, I ask unanimous consent that I may speak longer therein.

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

BICENTENNIAL MINUTE

NOVEMBER 14, 1832: DEATH OF SENATOR CHARLES CARROLL

Mr. DOLE. Mr. President, 155 years ago tomorrow, on November 14, 1832, Charles Carroll, one of the first U.S. Senators and a signer of the Declaration of Independence, died in Baltimore, MD. Born in 1737, he was educated in Europe, and he returned to Maryland in 1765 to take over operation of a 10,000-acre family estate. Banned from political activity in Maryland due to his Roman Catholic faith, Carroll nonetheless was drawn into the ranks of those defending American resistance to British taxation. His articulate writings in support of the colonial cause earned him a prominent place among the public figures of his day. In 1776 he and Benjamin Franklin were members of a delegation sent to convince Canada to enter the Revolutionary War on the American side. Following the failure of that mission, Carroll was elected to the Continental Congress on July 4, 1776. He arrived in Philadelphia just in time to sign the Declaration of Independence.

In 1777 Charles Carroll began a 23-year career in the Maryland State Senate. While there, he also served several 1-year terms in the Continental Congress. Late in 1788, the Maryland Legislature elected him as one of that State's first two U.S. Senators.

For the next 3½ years, Carroll served simultaneously in the Maryland Senate and in the U.S. Senate. When the State legislature passed a law prohibiting such dual service, Carroll chose to resign from the U.S. Senate. His decision to serve at the State level reflected a common attitude among U.S. Senators of his era who found public service close to home a great deal more rewarding than that in the Nation's capital (then located in New

York and Philadelphia). During the Senate's first decade, members' average service amounted to less than 5 years.

At the time of his death in 1832, the 95-year-old Carroll was the wealthiest man in America and the last surviving signer of the Declaration of Independence.

CANADA-UNITED STATES TRADE AGREEMENT

Mr. DASCHLE. Mr. President, the United States and Canada recently concluded a 16-month negotiation board in search of free-trade agreement between our two countries. For the two largest trading partners in the world, this agreement represents a wide range of trade policy changes, the hallmark of which would be the elimination of all tariffs between the two countries by 1999.

This agreement is also said to represent the first international agreement on trade in services. This is particularly important as the administration seeks to elevate trade on the agenda of the General Agreement on Trade and Tariffs [GATT].

However, while the complete details of this agreement are not available, and thus have not yet been analyzed, there are those in both countries who are concerned with its scope and the concessions made by American negotiators in order to achieve its framework.

Concern over the American concessions will dictate the public sentiment on this agreement, and ultimately, have a bearing on congressional opinion regarding its implementation.

The magnitude of trade between the United States and Canada is clearly an important component of the world economy. In 1986, the United States exported 54 billion dollars' worth of goods to Canada. This represents nearly one quarter of all U.S. exports. Nearly 70 percent of Canada's imports of goods originates in the United States.

Likewise, the United States is an important purchaser of Canadian products, totaling $70 billion in 1986. This represents nearly 78 percent of total Canadian exports.

At a time when the United States' trade deficit has reached record proportions, United States-Canada trade during the past 6 years has produced a $14 billion increase in exports to Canada.

Notwithstanding the importance of trade between our two countries, this agreement is not without its critics. There are many specific areas over which potential problems have been cited. For example, the agreement is vague with reference to the treatment of Canadian industry subsidies. In general, Members of the Senate will be concerned with the agreement's treatment of Federal and provisions assistance to Canadian businesses. This assistance currently is made in the form of low- and interest-free direct loans, grants, and regional development programs and must be factored into any agreement which purports to promote "free trade."

Given the difference in size between the Canadian and United States markets, some have argued that access to the United States market is more critical for the Canadians than their market is to the United States industries. Thus, they argue, any concession must be viewed with that basic criteria in mind.

One example which points to this difference is the access each country will be provided to the other's governmental procurement. It has been estimated that this agreement will permit the Canadians to bid on 3 billion dollars' worth of United States Government procurement contracts, while yielding United States companies only $500 million in Canadian.

Another closely monitored provision will be the binding dispute settlement mechanism which would be established by this agreement. A key provision calls for a dispute settlement tribunal to which all controversies may be appealed. This panel, composed of two United States appointees, two Canadian appointees, and a fifth member selected by both countries, will serve as a binding "court of review" and will serve as the final arbitrator of all dumping actions by either country.

Some supporters of this provision argue that such a binding tribunal will serve as positive, disciplinary force for international trade, an exercise in which it is maintained that the United States is bound to win. However, at the same time others argue that it is a violation of U.S. sovereignity for the United States to concede U.S. trade law to a tribunal comprised of foreign citizens. In addition, others have criticized the administration's concession that the Canadians have the right to appeal any future United States trade law to the tribunal if Canada feels that such a law will violate this agreement.

For a predominately agricultural State like South Dakota, there are other more industry-specific concerns with this agreement. Total agricultural trade between Canada and the United States totals $3 billion. Yet, for a State like South Dakota, near the Canadian Border, the brunt of changes in agricultural trade will fall directly on my State's farmers and ranchers.

On the surface, this agreement purports to eliminate the Canadian grain licensing system. This system establishes a two price grain system, with domestic grain sold at a higher price than grain grown for export. Imports are effectively prohibited because the access of imports to the Canadian market is limited by this licensing system.

If the "subsidies" in the two countries are equal, the pending agreement calls for the elimination of the Canadian import licensing system. That is expected to be the case for oats and barley. However, the licensing system is expected to continue for wheat and corn. This is due to the apparent belief that United States subsidies for wheat and corn exceed those subsidies for Canadian producers. The result will be continued imports of Canadian wheat into the United States, while at the same time maintaining the import licensing system to block United States wheat shipments. It is unreasonable for the Canadians to allege that United States grains are subsidized at a higher level than Canadian grain. It will be critical for the administration to clearly define this subsidy issue.

Another important provision in this agreement is that pertaining to the elimination of meat import laws. The agreement provides that the meat import laws of the respective countries will not apply to imports from the other. Because the formula calculation for the Meat Import Act of 1974 utilizes only the imports of fresh, frozen, or chilled beef, the cattle industry will primarily be affected by this provision. The full ramifications of this proposal have not yet been addressed and must be before the agreement receives the approval of Congress.

Finally, the Canadian hog industry has long been a center of controversy for the domestic pork industry. Health issues have been used as an impediment for trade between the United States and Canada. While U.S. negotiators have pledged to have included in this agreement a comprehensive harmonization of animal health standards, the details of this effort are far from clear. Nor is the issue of the abolition of the Canadian program for the subsidization of pork production. Again, this issue must be addressed if we are to have a true "free trade" agreement.

Mr. President, there will be many detailed and contentious issues to be reviewed by the Congress in consideration of this comprehensive free trade agreement.

Many trade law experts believe the Reagan administration has left a period of neglecting U.S. trade policy and entered into negotiations, the substance of which may impact on international trade long after this President has left office.

This administration has placed its near total emphasis on GATT negotiations and the need to address trade in a multilateral fashion. It is the framework of the multilateral GATT negotiations that the administration seeks to

eliminate all agricultural subsidies by the year 2000. Also, through this framework, the administration will attempt to negotiate a comprehensive service trade agreement.

At the same time, we are asked to enter into a bilateral agreement with Canada, our largest trading partner. For both political and substantive reasons, the impetus behind this agreement is obvious. The ramifications are, perhaps, not so clear.

The administration would like us to believe the United States is the winner by adopting this agreement. Like many other Senators, I will be examining many areas in this agreement, including agriculture, services, banking, and the general effect of this agreement on essential U.S. trade law.

At the same time, however, there are those who believe the administration may be entering into an agreement with far wider ramifications than trade between our two countries. An agreement between Canada and the United States will add pressure to countries balking at multilateral trade discussions, for they will not want to be excluded from such a comprehensive trade agreement.

On the other hand, the stakes may have been raised by the announcement of this agreement. If agreement is not possible with our closest trading partner, how can the United States expect multilateral negotiations to be successful?

As a member of the Senate Finance and Agriculture Committees, I enter this important congressional consultation period with a certain degree of skepticism, yet with an open mind. South Dakotans have repeatedly told me they can compete with the best in the world if only trade barriers would be eliminated. If this is an agreement which indiscriminately removes barriers on both sides of the Canadian-United States border, it should and will receive both public support, and that of the Congress.

If, on the other hand, this agreement is revealed to be a one-sided negotiation session, the balance of which is tipped against U.S. industries and producers, it will not pass this Congress.

I intend to work with colleagues to make certain the full ramification of this agreement is fully known and withhold my final judgement until the consultation period between the Congress and the administration has concluded.

TRIBUTE TO EVANGELINE ATWOOD

Mr. STEVENS. Mr. President, I have spoken very few times on the floor of the Senate concerning the death of a constituent, but Alaska mourns the loss of one of its true pioneers with the death of Evangeline Rasmuson Atwood last week.

A historian, author, founder of civic and cultural organizations in Alaska which continue to influence my State today, an early proponent of statehood, a gracious hostess to the great and near-great who have visited my State through the years, Evangeline Atwood was a women of remarkable enthusiasm and energy.

She lived, worked, and influenced Alaska during my State's most exciting times, from territorial days through statehood, to the opening of the trans-Alaska pipeline.

Born in Sitka, AK, 81 years ago to one of the families who helped shape the territory of Alaska, Mrs. Atwood, through her many interests, touched the lives of almost all Alaskans.

The author of six published works on Alaska history and politics, she completed only recently a seventh, a history of Alaska journalism. For more than 50 years she has been co-owner, with her husband Robert B. Atwood, of the Anchorage Times.

A graduate of the University of Washington, Mrs. Atwood received a master's degree in social services administration from the University of Chicago. Doing social work in Illinois after her graduation, she met and married Bob Atwood, a newspaperman who became every bit as Alaskan as his wife.

The Alaska Statehood Association, which she founded, was the driving force behind the coordinated effort for statehood, which culminated in Alaska becoming the 49th State on January 3, 1959.

Among the organizations which she founded or helped to found are the first League of Women Voters chapter in Alaska, the Alaska Federation of Women's Clubs, the Cook Inlet Historical Society, the Alaska World Affairs Council, the Anchorage Opera Association and the Anchorage Community Theater.

Through her generosity and interest she played a major role in the effort to fund and build the Anchorage Museum of History and Art, an institution that would hold its own in a city 10 times the size of Anchorage.

Candid, direct, brilliant, she was also a good listener, interested in the ideas of those whose views did not match her own.

Numerous boards and commissions asked her to serve, and when she did, it was not in name only. When Evangeline Atwood had a responsibility she took it seriously and worked toward perfection.

As a pioneer Alaskan with such varied interests, and as co-owner of one of the State's largest newspapers, she was called on often to host dignitaries when they came to Alaska.

She entertained graciously and with gusto. Kings, princes, Presidents, statesmen from our own and foreign nations, greats from the theater, film, literature and music, newspapers and airwaves, adventurers, a host of friends from every walk of life, were all guests at her table through the years.

Evangeline Atwood enjoyed life and contributed greatly to other's enjoyment of it.

While she chronicled Alaska's history, she also helped make it. But she chose not to seek honors for herself. She asked only for recognition for her great State, and for the accomplishments of those who made it great.

Evangeline Atwood's legacy to Alaska and Alaskans will help fill the space left by her death. Her work and her words will continue to influence our State and our people. She has left us all richer through the establishment of so many cultural and community organizations, as well as through her books.

Her husband Bob and daughters Elaine and Marilyn are in our thoughts in this sad time. They have all worked side by side with Evangeline in many of her endeavors, and will miss greatly her presence and counsel and affection.

My family and I and all Alaskans have lost a friend.

Mr. President, I ask unanimous consent that a number of newspaper articles about Evangeline Atwood be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Anchorage Times, Nov. 6, 1987]

CIVIC LEADER EVANGELINE ATWOOD DIES—HOSTESS, COMMENTATOR PRODDED TERRITORY INTO STATEHOOD

Evangeline Rasmuson Atwood, writer, historian and a driving figure in Anchorage's social and civic life for half a century, died late Thursday afternoon after a brief illness.

She died at her Forest Park home, the Marilaine, where she and her husband, Robert B. Atwood, have served as hosts over the years to hundreds of internationally noted political leaders, diplomats, authors, entertainers and other notables from the world over.

Her fame as a hostess was legendary, but that was only one facet of a career that touched almost every aspect of life in the building of Anchorage and Alaska.

Only in the last two months, after cancer was discovered during surgery, had her drive and energy diminished and kept her from actively participating in public affairs.

Until then, she was at the age of 81 still a powerful enthusiast for projects that she supported and led. Only recently she had completed work on her last book, a still-unpublished history of Alaska journalism.

Her interest in the state's newspaper heritage came naturally. She was co-owner of The Anchorage Times, a paper her husband has headed since the couple came to Anchorage in 1935. Their daughter, Elaine, is assistant publisher. Another daughter, Marilyn, lives in Washington, D.C., and writes a

weekly column of Washington comments for The Times.

Memorial services for Mrs. Atwood will be next week, but the arrangements were not immediately complete.

During her 52 years in Anchorage, Mrs. Atwood played a leading role in more civic and public enterprises than perhaps any other person of her time—including her husband. He is known as a giant of Alaska journalism. She had a gigantic presence in many fields.

The author of six published books on Alaska politics and history, she was named historian of the year by the Alaska Historical Society in 1975 and in 1981 was named Alaskan of the Year.

Her activities and achievements span the years of Alaska's most exciting decades, from territorial times through statehood and into the pipeline era—a period during which Anchorage grew from a town of less than 3,000 people into a sophisticated city with a population of a quarter of a million. Mrs. Atwood helped spark the evolution of Anchorage into the modern metropolis it has become.

She was the founder of the Alaska Statehood Association, the organization which planted the seeds of statehood. It was this organization which powered the statehood effort and eventually led to the creation of the 49th State on Jan. 3, 1959.

Years, earlier, over the objections of the then-superintendent of schools, who didn't want parents interfering in the way he ran the schools, she formed the Anchorage Parent-Teacher Council, which led to the present-day Parent-Teachers Associations which are so much a part of the support system for the Anchorage School District.

She founded the first League of Women Voters chapter in Alaska in 1950. The organization now has chapters in Anchorage, Fairbanks, Juneau and other cities, directed by a state organization that coordinates programs with the national league organization.

She formed the Alaska Federation of Women's Clubs, served two terms as president and another two as state director.

She founded the Cook Inlet Historical Society.

In 1958, Mrs. Atwood founded the Alaska World Affairs Council and served for more than six years as its executive director.

She was one of the founders of the Anchorage Opera Association and long has been one of its leading benefactors—as well as a major supporter of other arts organizations in Anchorage. For many years she held a presidential appointment as Alaska's representative on the advisory board of the John F. Kennedy Center for the Performing Arts in Washington, D.C., and played a leading role in the drive which resulted in the financing and construction of the Anchorage Museum of History and Art.

She was one of the founders of the Anchorage Community Theatre, and was an early advocate of the Alaska Repertory Theatre. In recent years, she has been one of the active supporters of the Alaska Light Opera Theatre.

Her past memberships include service on the editorial board of the Alaska YWCA World Service Council, the Alaska State Historical Commission, the Alaska Technical Review Board for Historical Preservation, the Anchorage Historical and Fine Arts Commission and the state Advisory Board for the Institute of Northern Agriculture.

She served for six years as a member of the Alaska Board of Public Welfare, a post for which she was qualified as a result of more than eight years of professional social case work in Illinois and Massachusetts, after her graduation from college and before she returned to Alaska in 1935.

Mrs. Atwood was born in Sitka to pioneer Alaska parents. Her father, E.A. Rasmuson, came to Alaska in 1908 as a missionary teacher for the Swedish Covenant Church, and later went Outside for additional schooling. He obtained a law degree and returned to Alaska, founding the National Bank of Alaska—an institution now headed by the family of Mrs. Atwood's brother, Elmer Rasmuson.

She was graduated from the University of Washington and obtained a master's degree in social services administration from the University of Chicago. She was working as a case worker in Springfield, Ill., when she met and married her husband in 1932.

She received an honorary doctor of literature degree from the University of Alaska Fairbanks in 1967 and was awarded a doctor of humane letters degree from Alaska Pacific University in 1982.

Her books include "83 Years of Neglect," published in 1950 and a work that helped propel the statehood movement; "Anchorage, All-America City" (1957), and history and major reference guide to Anchorage's civic history; "We Shall Be Remembered" (1966), a history of the Matanuska colony; "Who's Who in Alaska Politics," written in 1977 with Robert DeArmond of Juneau; "Frontier Politics: Alaska's James Wickersham," a 1979 biography of Alaska's first elected delegate to Congress, and most recently, "Anchorage: Star of the North."

Mrs. Atwood told a reporter:

"I felt that if we did not have a recorded history, we'd be leaving all the work for professors from Outside to come in and dissect what we did and find out what was driving Alaskans. I felt it was important to have a real Alaskan tell about it.

"I'm not a feminist. I have never felt that issues of importance are either women's or men's issues," she once said. "I've done a lot of public speaking and I never felt that men didn't accept my arguments. They gave me equal attention and consideration that they would have given a man."

She didn't always agree with her husband.

"Bob and I have a different approach to these community problems, but it's not a male-female approach," Mrs. Atwood said. "I've had time to do research which has helped him work out his ideas because he was busy running a newspaper. He was busy making history and I was busy recording it.

"I never worried about being eclipsed by my husband, but always worked shoulder to shoulder with him."

[From the Anchorage Times, Nov. 7, 1987]

EVANGELINE ATWOOD

In a world in which many people seek honors for themselves, Evangeline Atwood stood apart from the pack. She didn't work to win awards. She worked out of a sense of commitment to Anchorage, out of a great love for Alaska.

The last thing in the world she would ever think about was a place in history for herself. She was too busy writing about it. Too busy helping make it.

Yet her lifetime obviously was one in which honors and acclaim came her way. She did so much and contributed so much that it was inevitable that she would accumulate a healthy collection of citations and awards and honorary degrees. But these in no way reflected a full measure of the things she did for the city of Anchorage and for the state of Alaska.

It is difficult for us to write in these columns about Mrs. Atwood. With her husband, Robert B. Atwood, she shared ownership of The Times. Commenting editorially in praise of one of the members of his family is not something Bob Atwood would ever do himself or condone having others do.

But he's not in the office this week. And we trust he will forgive the rest of us if we break one of his editorial guidelines and say that with the death of Evangeline Atwood, our city and our state has lost one of its most remarkable people.

For 55 marvelous years she and Bob Atwood shared their lives. In the course of those five and a half decades, she was every bit as much of a community and civic leader as he remains today. Her leadership in Alaska's successful battle for statehood—in which she joined her husband as a powerful and effective team—was alone an achievement that would be a highpoint in the life of an ordinary individual.

But Evangeline Atwood was more than ordinary. She was extraordinary.

Many of the so-called quality-of-life refinements that we all enjoy as Anchorage residents today, and much of the cultural and artistic splendor that blesses our city, grew from roots planted by this distinguished lady. And the research she did and the history she recorded in her books, her newspaper articles and her other professional writings will serve generations to come.

Bob Atwood will be embarrassed by our saying this. But it needs to be said, as we would in these same columns honor any other Alaskan who has done much to make this a better place to live.

Evangeline Atwood was a rare and special person. She was truly a great Alaskan.

[From the Anchorage Times, Nov. 7, 1987]

SATURDAY SUNDRY

(By William H. Tobin)

A long time ago, back when Anchorage was a pretty small town, Evangeline Atwood became convinced that even in the northern wilderness there was no reason why entertainment in the home couldn't be raised to a civilized level. Not that she and her friends and neighbors were uncivilized, you understand. After all, Anchorage was part of the Territory of Alaska, and people still had linens and silverware and candlesticks for those special occasions. But what the town lacked was a home that was built for entertaining, one that could accommodate visitors from far places coming here to see if this little outpost was for real.

That concept started the motor running on a plan to build a big log cabin out on the bluff in what was to become the city's first modern subdivision. Colorful Col. Muktuk Marston and young Wally Hickel got together on the plans, and one of the first lots they sold was one overlooking the waters of Cook Inlet, across the way from Mount Susitna, with Mount McKinley in the distance.

At the time, this was a homestead far from the center of town. The subdivision was called Turnagain-By-The-Sea, and that bluff lot became the site of Evangeline Atwood's new home. Actually, it was sort of three log cabins put together in something of an H-shape. It wasn't all that big by today's standards, but for Anchorage in those territorial days, it was a large house. Big rafters across the ceiling. A huge stone fireplace in which giant-size logs could be

burned. A big living room, with comfortable chairs and sofas where a lot of people could gather.

Outside, on the north side of the house, was a large patio—one around which glass walls were placed to block the chilly winds that occasionally blew across the inlet and made it too cool to enjoy the evenings of late summer. The patio—and the house itself—became a gathering place for those who made Anchorage tick, and for their guests who came to town on business or pleasure.

Military leaders, national politicians, diplomats, writers, adventurers, newspaper people, figures from the entertainment world—these became regulars around the big fireplace in Turnagain-By-The-Sea. Evengeline Atwood served them gourmet meals and whipped up chocolate souffles and kept the conversation rolling. The whole Joint Chiefs of Staff, in town secretly, relaxed there one evening.

Fortunately there was no dinner party planned the evening of Good Friday in March 1984. Bob Atwood was at home alone, practicing the scales on his trumpet. Their daughters were Outside. Evangeline was completing some Easter shopping at Carr's. At 5:36 p.m. that March evening the greatest earthquake ever to strike the North American continent slammed across Southcentral Alaska. The clay beneath the Turnagain bluff turned to jelly and washed away. The Atwood house, and many of those nearby, were tossed and turned on the churning blocks of earth. The logs splintered apart, and the house and everything in it went tumbling into the shattered ground.

Bob Atwood crawled out of the rubble dazed but basically unhurt. But nothing—literally nothing—was left of the house or its contents. Every family possession—books, dishes, clothing, furniture, photo albums, souvenirs collected in travels around the world—was lost. He had the clothes on his back—and the battered trumpet in his hand. Everything else was gone. Only a handful of things were later recovered. Gone, too, was the city's premier home for entertaining.

In the wake of the earthquake, in the months and years that followed as Anchorage fought back from the effects of the disaster, a new spirit of determination to build again moved the city's people. Bigger and better than ever was the goal. And one of those who rebuilt, unafraid of another natural calamity, was Evangeline Atwood. The home she designed is known today as the Marilaine, in Forest Park where once stood Leo's Supper Club and the Elk's nine-hole, par three golf course. It, too, was a home for entertaining—a place where Anchorage leaders were invited to meet and dine with notables from the world over. Since 1968, when it was completed, it has been the scene of hundreds of festive occasions.

Every small dinner party and every large banquet at which Evangeline Atwood served as hostess was a memorable event. The names of her guests read like the pages of Who's Who. Presidents, princes and at least one king. Senators and congressmen. Secretaries of State and secretaries of Defense. In fact, scores of members of presidents' cabinets. Hollywood stars. Governors and political kingpins. Media luminaries. World adventurers. Authors. Candidates for high office. Generals and admirals. Heroes and statesmen. Musicians and artists. From all fields and all the corners of the world, Evengeline Atwood made them feel at home in Anchorage, and introduced them to the people of Anchorage.

She loved to entertain, obviously. She did so with zest and excitement. To her, every guest was special. Every menu a joy. Every party a chance to learn something more about the world and the challenging issues of the day. Every visitor was one who brought something unique to Anchorage—a special viewpoint, a rare firsthand glimpse of some distant crisis, an opportunity to expand the horizons beyond Anchorage's mountains and sea.

But all of these candlelight gatherings around the dining room table and all of the after-dinner coffee before the fire in the living room were just one little bit of the regular routine of Evangeline Atwood. As has been pointed out since her death on Thursday, she was a woman of remarkable energy, a brilliant intellect and a hundred different interests and activities. In every sense, she was a modern woman in a world where women command every bit as much influence as men.

She was a person of delightful contrasts. As befitted her professional background as a social worker, she was a flaming liberal on some issues. She was a rock-ribbed conservative on others. She admired people of talent and genius. She applauded those who accomplished high goals, who fought the good fight, who ran the long race over the difficult course. But she had a low tolerance for those who squandered talent or who, blessed with ability to achieve worthy aims, coasted through life without reaching out, without contributing, without sharing the load.

She gave the best she had, and she expected the best from others. She wasn't perfect—who is? She was outspoken and direct. But she wasn't afraid to listen to the other side, ever. She was interested in others' ideas and thoughts, and was never reticent about giving hers. She was a wonderful editor, a good writer, a careful and diligent researcher, a first-class historian. And she was a beautiful and unforgettable friend.

[From the Anchorage Daily News, Nov. 8, 1987]

EVANGELINE ATWOOD

Alaskans are diminished this week by the passing of Evangeline Atwood, a woman whose long and busy life mirrored and helped shape the city she served. Author, activist and adventurer, she brought contagious enthusiasm to everything her busy career embraced.

The daughter of one of Alaska's founding families and the wife of its most prominent newspaperman, she was not eclipsed by either. A co-owner of The Anchorage Times, she left much of its shaping to husband-publisher Robert Atwood and directed her formidable energies to a variety of other tasks.

As the author of numerous histories of Anchorage and Alaska, she sought to preserve the story of her times and ensure a local perspective. Her fascination with the history of the pioneer territory into which she was born 81 years ago was a lifelong hallmark.

The city of Anchorage and Evangeline Atwood grew together. Her devotion to the enrichment of social and cultural life in the emerging metropolis left an indelible signature on institutions ranging from the Alaska Statehood Commission to the League of Women Voters. Indeed, the title "founder" might be the most descriptive to attach to her.

It would be difficult to overstate the scope of her involvements here. From her earliest days in what was then a dusty, tiny town, she was ever engaged in pushing Anchorage toward increased sophistication. She entertained visitors and won converts for her hometown. The clubs, civic organizations and cultural activities she established will always influence the city.

Her death marks a sad moment for the hundreds who called her friend. It turns the page on an important chapter for Anchorage.

COMMENTS ON MANDEL CONVICTION REVERSAL

Mr. McCONNELL. Mr. President, I would like to call my colleagues' attention to a set of articles which appeared on the front page of the Washington Post today. The news here ought to concern every Member of this body, and I bring it up because I believe we can remedy the situation quickly, through legislation which I introduced only last Tuesday: S. 1837, the Election Fraud Prevention Act of 1987.

First there is the news, which must come as a shock to most of us familiar with the case, that the 10-year-old mail fraud and racketeering conviction of former Maryland Gov. Marvin Mandel was reversed yesterday. As many of us know, Mandel was convicted in what seemed to be an airtight case: Vast amounts of evidence and testimony indicated that Mandel had helped a racetrack get special treatment, in exchange for cash, jewelry, vacations, and other benefits from the track's secret owners.

More shocking than the news of this reversal, however, is the court's reason for granting reversal: It wasn't that Mandel was found innocent of the charges raised against him; in fact, the court basically accepted the evidence of Mandel's racetrack scheme. Instead, the court was compelled to reverse because it could find no Federal law on which to convict Mandel.

Even though there was clear evidence of government corruption, perpetuated through the mails, the court couldn't find any violation of Federal mail fraud statutes—despite the fact that the statute has been used for years to prosecute this kind of corruption, especially against entrenched politicians who can insulate themselves from local investigation.

This denial of justice has its roots in a recent Supreme Court case originating in my home State. In McNally versus United States, the High Court reversed the mail fraud conviction of a high-ranking Kentucky official who had set up a scheme to funnel kickbacks on State contracts to a Shell Co. controlled by the official.

In that decision, the Supreme Court held that Government fraud wasn't really "fraud," because it didn't take tangible property away from anyone. The Court rejected arguments that

citizens had a proprietary right to honest Government, saying that Congress' intent in enacting fraud statutes was limited only to ownership rights, not democratic rights. Therefore, if you take someone's money through a fraudulent mail scheme, that's illegal; but if you put the whole Government up for sale, that's not punishable under any Federal law.

Mr. President, not only is this decision outrageous, but it also bodes great harm for the future. It could overturn more than 185 earlier convictions of corrupt public officials that were based on mail fraud. Many predict that the Mandel case is only the beginning of an avalanche of reversals. Further, the McNally and Mandel decisions have tied the hands of the Justice Department in at least 100 Government corruption cases now under investigation.

Last, these cases send a clear message to every Government official and citizen in the land: That if an official can get entrenched, and insulate himself from local investigation, then he can put his position on the auction block without fear of the Federal Government putting him behind bars.

Mr. President, this situation is closely related to another set of circumstances I described last week: The practices of vote buying and voter intimidation that go unchecked and unpunished in State and local elections. Last week, I introduced the Election Fraud Prevention Act of 1987, to clamp down on these ignored crimes against the democratic system.

But this bill also would go a long way toward correcting the McNally problem, by expanding the definition of "fraud" to include violations of Federal and State election laws. I hope that we can schedule hearings on my bill as soon as possible, and hope to work with the Rules Committee to strengthen the McNally provision of S. 1837.

I believe the Federal Government has a compelling interest in weeding out corruption at all levels of government, wherever Federal funds flow. We owe it to our taxpayers, if not to all American citizens, to ensure that government officials do not abuse the democratic process which put them in power.

Therefore, I urge my colleagues to take a careful second look at the Election Fraud Prevention Act of 1987, and work with me to let the courts and the people know that we are serious about stopping corruption in government.

Mr. President, I ask unanimous consent to insert into the RECORD at this time an editorial which appeared in the Paducah Sun yesterday, arguing the need for my bill, S. 1837, and urging quick action to address the very real election problems I have spoken on. So far, the response from my home State has been very positive, and I expect interest in the bill to increase once the repercussions of McNally begin to cause real damage, as they have already with the Mandel conviction.

Mr. President, I also ask unanimous consent to submit for the RECORD the series of articles which appeared in the Washington Post today, on the reversal of Mandel's mail fraud conviction, and on the dim prospects for other convictions of this type.

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

[From the Paducah Sun, Nov. 12, 1987]

MCCONNELL'S BILL IS WORTH A TRY

Not long ago, a candidate for statewide office met with our editorial board. A couple of weeks earlier, the Louisville Courier-Journal published an eye-opening expose' on election fraud in Kentucky. We asked the candidate, who had survived a hotly contested primary race, if such tales were so.

He told me a story about a county in eastern Kentucky. It seems a top county official invited the candidate to come by for a talk one day during the primary. After conversing with the candidate for awhile, the official said he thought they could get along, and boasted that he could deliver 80 percent of that county's vote to the candidate. The candidate left, obviously pleased.

Then, shortly before the election, the candidate was approached by a person he believed to be an emissary of his new-found supporter. He told the candidate it was time to come up with the money. The candidate asked what he meant. The response was that it was tradition, in return for the support of the county political machine, that money be provided to pay some 100 or so people to "assist" the election effort. The candidate refused to pay. He said he finished last in that county, although he fared pretty well in some surrounding counties and won the statewide race.

To us, that was a rather sobering account. Although the Courier-Journal investigation indicated that the bulk of election fraud and vote buying takes places in eastern Kentucky counties, it is nevertheless a practice that can disenfranchise voters in other parts of the state by swinging close statewide races in favor of the highest bidder. It offends the very concept of democracy.

We know we have at least one person who agrees with us on this is U.S. Sen. Mitch McConnell, R-Ky. Sen. McConnell has told us up front that part of his concern stems from his belief that Republican candidates in particular have been frequent victims of election fraud in Kentucky, and cites examples from his personal experiences as evidence. But that personal motivation aside, we agree with Sen. McConnell's view that the time has come to take some serious steps to do something about the problem, which is by no means limited to rural areas of Kentucky.

That is why we support new legislation Sen. McConnell has introduced that would toughen the penalties for fraud and voter intimidation, and provide an opportunity for federal supervision of polling places.

We emphasize the word opportunity, because voting fraud seems to be limited to a few select regions of the country, and any proposal for nationwide federal supervision of the polls would be unspeakably expensive and offensive to the concept of free elections.

Sen. McConnell's bill would provide that any candidate who is concerned about potential fraud at specific polling places could request that a federal observer be sent to oversee voting activities there. Only in the precincts where such requests are made would there be federal supervision. Sen. McConnell believes such a system would deter voter intimidation and tampering with ballots and vote counts.

Of course, it would not necessarily stop vote buying. To address that problem, Sen. McConnell's bill would amend existing federal anti-fraud laws to make any type of vote buying, selling, or trading of votes for jobs, felonies. It would raise existing penalties ($1,000 fines and up to 5 years in jail for such activity) to $25,000 and up to 10 years in jail.

Because the bill would apply to elections to any government body receiving at least $1,000 in federal money, its provisions would not just apply to statewide races. Elections to city governments and school boards would also be covered.

Sen. McConnell says the mechanics of his bill are inspired by provisions of civil rights laws created to protect the rights of minority voters in the South. As he put it: "We always have worried about civil rights for the minorities. This is a bill that provides civil rights for the majority. . . . this bill will give people the right to cast an unintimidated ballot and let the winner truly be the winner."

We don't see Sen. McConnell's bill as a total cure for the problem, and neither does he, but we agree that it is a step in the right direction.

As we told Sen. McConnell, we will favor almost any reform measure that will serve to make elections more honest and fair, so long as the reforms are not unduly expensive and do not give the incumbent an unfair advantage. From what we know so far about Sen. McConnell's bill, it would seem to pass those tests.—JIM PAXTON.

CONVICTIONS OVERTURNED IN MANDEL RACEWAY CASE

(By Paul W. Valentine)

BALTIMORE, Nov. 12.—A federal judge today overturned the 10-year-old mail fraud and racketeering convictions of former Maryland governor Marvin Mandel and five associates in a reversal that stunned prosecutors and brought at least temporary vindication to the once-powerful Mandel.

U.S. District Judge Frederic N. Smalkin, basing his ruling on a June Supreme Court decision, said that Mandel and the others were convicted in an overly broad use of the federal mail fraud statute and all counts against them therefore must fall. That Supreme Court decision prompted Mandel to seek a new review of his case.

The ruling, if upheld on appeal, could lead eventually to Mandel's criminal record being expunged, restoration of his right to practice law and the return of thousands of dollars in fines levied against four of his associates.

Maryland U.S. Attorney Breckinridge L. Willcox said he would appeal.

"Vindication is all that I've ever been seeking, and the judge has provided that," a smiling Mandel, 67, said at a news conference just hours after the ruling. He said he will not seek financial compensation for his time in prison.

"I never did anything to hurt the people of the State of Maryland or deprive them of anything," he said. "And the judge has just said the same thing."

Barnet D. Skolnik, the zealous federal prosecutor who spearheaded the Mandel prosecution, said yesterday that Smalkin's decision doesn't change anything.

"Nothing will ever change what Mr. Mandel did," Skolnik said. "He sold his office . . . He sold out the people of Maryland and that's never going to change."

Speaking in the office of his Baltimore attorney, Arnold Weiner, Mandel said he has no plans to reenter politics, but left the possibility open by adding "at this time." He said his wife Jeanne, who sat by him at the news conference, does not want him to run for office again.

What kind of political position might be open to Mandel is unclear. Since his release from prison nearly six years ago, he has acquired growing influence behind the scenes in state politics and Maryland Gov. William Donald Schaefer has said he is one of Mandel's fans. Mandel has said that he has turned down offers to lobby for various groups.

Schaefer, who as mayor of Baltimore offered Mandel a work-release job at City Hall when Mandel had completed his prison time in 1981, said yesterday, "I am not surprised by the ruling. I have known Marvin Mandel and Irv Kovens [one of the codefendants] for years and never knew them to do anything illegal."

Today's decision was the latest in one of the longest-running and most dramatic political sagas in Maryland's history. As governor—a post he first won by legislative appointment when Gov. Spiro T. Agnew became vice president—Mandel was considered a master of politics and legislative strategy. In the early 1970s, he shocked Marylanders by leaving his wife Barbara for another woman.

By the mid-1970s, he was caught up in the scandals that swept Maryland, such as taking a $50,000 loan from a Catholic fundraising order called the Pallottine Fathers to help finance his divorce from Barabara Mandel.

The case involving the Marlboro Race Track unfolded with indictments of Mandel and his codefendants in 1975 and a mistrial in 1976 because of publicity concerning jury-tampering allegations. After his conviction in a second trial the following year, Mandel appealed the case through the federal appellate courts and was ultimately turned down by the Supreme Court.

Prosecutor Willcox expressed disappointment at today's ruling but added, "I can't say I'm totally surprised" in light of the Supreme Court decision on which Smalkin based his ruling.

In that decision, made in June, the high court held that mail fraud prosecutions against state officials can be made only when the fraud involves economic loss rather than intangible losses, such as the loss of good governance by public officials, as charged in the Mandel case.

Mandel and five other defendants were convicted in 1977 of 15 counts each of mail fraud and one count of racketeering in an alleged scheme to increase the value of Prince George's County's Marlboro Race Track in 1972 and 1973. The horse racing track, now defunct, was secretly owned at the time by the five codefendants, W. Dale Hess, Harry W. Rodgers III, William A. Rodgers, Irvin Kovens and Ernest N. Cory.

As governor, Mandel helped the track obtain extra racing days, which are controlled by the state and worth millions of dollars in profits for track owners.

In exchange, according to prosecutors, the tracks' secret owners heaped money, jewelry and vacations on Mandel, as well as financial assistance in his divorce and remarriage.

Mandel served 19 months in prison and was disbarred. Hess, Kovens and the two Rodgers were fined $40,000 each and imprisoned for terms of one to three years. Cory received a suspended sentence.

Mandel, who was released from prison in late 1981 and has worked as a building contracting consultant and sometime radio talk show host, had sought repeatedly to get his conviction overturned, ironically on much the same grounds as Judge Smalkin provided for him today.

In various appeals, Mandel had contended that both the indictment against him and the trial judge's charge to the jury in 1977 referred primarily to defrauding the citizens of Maryland of their right to "conscientious, loyal [and] faithful . . . services" of the governor, all intangible values, rather than concrete economic worth, as required by the federal mail fraud statute.

Smalkin agreed. Under the *McNally* ruling of the Supreme Court in June, he said, the mail fraud statute "has been limited from its inception to the protection of money and property (rather than nonmonetary, i.e., "honest and faithful government") rights."

The legislative history and intent of the statute show that its reach "has logically been as narrow as *McNally's* interpretation since the day of its enactment," Smalkin said.

The jury, he said, was incorrectly instructed to allow a "conviction if the jurors simply became convinced that the defendants had subverted the process of honest government in Maryland. The evidence of concealment of ownership of Marlboro shares and of Mandel's secret financial arrangements certainly showed that something fishy, and perhaps dishonest, involving Maryland's governor and some of those personally and politically closest to him was going on."

"Mandel might well have been bribed," the judge said. "His codefendants might well have bribed him. But however strong the evidence of dishonesty or bribery, the jury was told it could convict for something that did not amount to a federal crime."

Smalkin, a former U.S. magistrate and a federal judge here for little over a year with a reputation for painstaking scholarly research, added in an unusual passage that his ruling today "has nothing to do with [Mandel and his codefendants'] guilt or innocence, in any moral sense."

He said: "The people of Maryland, as a matter of natural law, have and have always had an inalienable right to good government. A jury of 12 citizens found beyond a reasonable doubt that the [defendants] had deprived all the citizens of Maryland of that right. This conduct, however, for reasons amply set forth . . . cannot sustain a judgment that the defendants were guilty of federal crimes. A final answer to the question of [the defendants'] guilt or innocence, in any broader sense than that, must await the judgment of history."

Willcox argued in court papers this fall that bribery—the taking of tangible goods for illegal purposes—underlay the mail fraud and racketeering charges.

The case involved a "sordid tale of corruption, bribery and deceit at the innermost sanctum of state government," Willcox said.

But Smalkin ruled that while the word bribery appears in the Mandel indictment, its main thrust nevertheless was the loss of intangible "good government" rights, and both the racketeering charges and the underlying fraud counts thus must be set aside.

"We had hoped to persuade [Smalkin] that this was a bribery case, an economic deprivation case, unlike McNally," said Willcox today. "But we failed."

HIGH COURT OPINION COULD JEOPARDIZE OTHER FRAUD CASES

(By Ruth Marcus)

The Supreme Court decision that led to the reversal of the decade-old conviction of former Maryland governor Marvin Mandel has also jeopardized scores of other prosecutions and convictions of corrupt public officials and private citizens.

The high court's ruling in June could affect at least 185 convictions and 100 more cases under investigation, and that estimate is conservative, said Gerald E. McDowell, chief of the Justice Department's Public Integrity Section.

The decision severely restricted the reach of the federal mail fraud law, enacted by Congress in 1872 "to prevent the frauds which are mostly gotten up in the large cities . . . by thieves, forgers, and rapscallions generally, for the purpose of deceiving and fleecing the innocent people in the country."

In recent years, the law, which prevents the use of the mails in any "scheme or artifice to defraud," has been a favorite tool of federal prosecutors. They have used mail fraud and its modern-day companion, wire fraud, as a means of punishing conduct that looks wrong yet may not be explicitly prohibited under other federal statutes.

The theory—accepted by all the lower courts to consider it, including the appeals court in the Mandel case—had been that, in the case of public officials who abused their trust, citizens have been defrauded of their "intangible rights" to honest and impartial government. Likewise, private individuals have been convicted of mail or wire fraud for violating their fiduciary duty to their employers or unions.

The rule among prosecutors has been, "When in doubt, charge mail fraud," said Columbia University law professor John C. Coffee Jr. "If it didn't fit into the clear pigeonholes of other statutes, you charged mail fraud and charged generally a scheme to defraud the public of the faithful and honest services of public officials."

The Supreme Court's 7-to-2 ruling in *McNally* v. *U.S.* ended all that.

In an opinion by Justice Byron R. White, the court held that federal prosecutors must show that the fraud caused actual economic injury, not just intangible harm.

The ruling came in the case of James E. Gray, cabinet secretary to then-Gov. Julian M. Carroll of Kentucky, and Charles J. McNally, a Kentucky businessman, who participated in a scheme to funnel commissions on state insurance business to an agency nominally owned by McNally but in fact controlled by Gray and another Kentucky politician.

"Rather than construe the statute in a manner that leaves its outer boundaries ambiguous and involves the federal government in setting standards of disclosure and good government for local and state officials, we read [the mail fraud law] as limited in scope to property rights," White wrote.

The opinion prompted an outraged dissent by Justice John Paul Stevens. "Can it be

that Congress sought to purge the mails of schemes to defraud citizens of money but was willing to tolerate schemes to defraud citizens of their right to an honest government, or to unbiased public officials?" Stevens asked in an opinion joined by Justice Sandra Day O'Connor.

McNally's lawyer, Carter Phillips, termed the ruling "about as good news as defense lawyers have had in 10, 15 years."

Assistant Attorney General William F. Weld, head of the Justice Department's criminal division, called *McNally* "a real kick in the teeth" and said he had heard "yelps from all over" the country as U.S. attorneys assessed the damage to convictions and pending prosecutions.

In the aftermath of the decision, the effect of which is considered retroactive:

The Supreme Court last month vacated the conviction of former Cook County, Ill., circuit judge Reginald Holzer, sentenced to 18 years for mail fraud, extortion and racketeering in the Operation Greylord scandal. The high court returned the case to a federal appeals court in Chicago for reconsideration in light of the *McNally* decision, which could also imperil nine other Greylord convictions.

Prosecutors in New York dropped several fraud counts against Rep. Mario Biaggi (D-N.Y.) and three others in a case involving charges that the Wedtech Corp. bribed public officials to help obtain military contracts.

Lawyers for former Wall Street Journal reporter R. Foster Winans and two others convicted in an insider trading scheme to profit through advance tips about contents of the Journal's Heard on the Street column argued in the Supreme Court last month that—under the reasoning in *McNally*—their fraud involved only intangible harm and that therefore their convictions should be overturned.

Solicitor General Charles Fried contended that *McNally* did not apply because "property was misappropriated here" in the form of information belonging to the Wall Street Journal.

A federal judge in New York dismissed 46 of 54 mail and wire fraud counts in a major Iran arms-smuggling case against 10 international businessmen accused to conspiring to ship more than $2 billion in arms to Iran.

"The kinds of cases that are going to go down the tubes I would call abuse of power cases, where people like Gov. Mandel sold his power," said G. Robert Blakey, a law professor at Notre Dame. Mandel "didn't cheat on a particular contract. Nobody lost anything. The state gained the revenue. Who lost in the old-fashioned tangible sense? The answer is nobody. But the government was for sale."

Not all convictions challenged on the basis of *McNally* have been overturned. In Philadelphia, a federal judge last month rebuffed an attempt by former city commissioner Maurice Osser, found guilty in 1972 of a scheme to take kickbacks from a printing contractor, to win a new trial. The judge said Osser failed to raise the issue earlier and that giving him a new trial "at such a late date . . . would create a manifest injustice to the city of Philadelphia and its citizens."

Rep. John Conyers Jr. (D-Mich.), chairman of a House Judiciary subcommittee on criminal justice, has introduced legislation to undo the McNally decision. The Justice Department, meanwhile, is embroiled in an internal dispute over what, if any, legislation to propose. While a number of federal prosecutors and others are arguing for legislation that would directly overrule the case, some top department officials cite principles of federalism and question the advisability of that approach, department sources said.

In the meantime, said Associate Attorney General Stephen S. Trott, "it's a severe blow." The law "has been used successfully and effectively by federal prosecutors against corrupt politicians," he said. Without any hint of trouble from the Supreme Court, "we thundered ahead in lots and lots of cases."

Now, he said, "We really have a lot of repair work that has to be done."

WHAT NOW FOR MARYLAND MAIL FRAUD DEFENDANTS?

(By Robert Barnes)

BALTIMORE.—Marvin Mandel reclaimed his good name today, he said, and his license to practice law should follow.

A political comeback?

Unlikely, he said, though he couldn't quite bring himself to say absolutely, positively no.

The television lights were set up once again in the long conference room in attorney Arnold Weiner's office, the same place Mandel has met the media after many of the extraordinary twists and turns in the legal battles to determine whether he was a corrupt governor.

He thinks this finally is the last stop.

"I never did anything to hurt the people of the State of Maryland or deprive them of anything," he said. "And the judge has just said the same thing."

Actually, the federal judge who overturned the convictions of Mandel and his five codefendants was not exactly forgiving, writing that "the judgment of history" will determine "the question of petitioners' guilt or innocence."

But that was only a detail to Mandel and his codefendants, a group that ranged from one of the state's most influential political kingmakers to a lawyer even prosecutors seemed to feel was an unlikely and unfortunate player in the alleged scheme.

"I couldn't feel any better," said the kingmaker, Baltimore political fund-raiser Irvin Kovens, a close confidant of both Mandel and Gov. William Donald Schaefer. "I've finally been vindicated."

Mandel, Kovens and the other businessmen convicted in the affair—Harry W. Rodgers III, William A. Rodgers and W. Dale Hess—remained successful nonetheless. Ernest N. Cory said he was not as lucky.

The former Prince George's County lawyer accepted voluntary disbarment and to pay off debts he sold off real estate, cars, horses and a baby grand piano.

Before his law license was reinstated several years ago, Cory and his wife took in boarders to make ends meet.

"I'm not doing well," he said, "I'm making a living."

Cory was a friend of the Rodgers brothers, and never close to Mandel and the others, he said. Now 73 and in poor health, he said, "We'd kind of like to put this behind us and forget it."

The Rodgers brothers were reported out of town at a convention today, and Hess could not be reached for comment.

Today's opinion is another step in what Annapolis observers have called Mandel's comeback. Mandel already has asked the Maryland Court of Appeals to reinstate his license to practice law, which is considered likely if his conviction remains reversed, and he and his attorneys were putting the finishing touches on a petition for a presidential pardon.

Mandel is also much more visible in the State House now that his friend Schaefer has replaced Harry Hughes as governor. Hughes, who in effect won election as a reformer after the Mandel years, said he had no comment on today's ruling.

Schaefer, who was a character witness for Mandel and Kovens at their sentencings, said he was not surprised by the ruling. "I have known Marvin Mandel and Irv Kovens for years and never knew them to do anything illegal," he said.

And at Chick and Ruth's Delly in downtown Annapolis, where a breakfast booth is still roped off for Mandel and proclaimed as the Governor's Office, the regulars are expecting a celebration.

1987 CALL TO CONSCIENCE FOR SOVIET JEWRY

Mr. CHAFEE. Mr. President, I rise today to join in the 1987 Call to Conscience for Soviet Jewry. As one who has participated in this effort for a number of years now, I am pleased that we finally have some cause for optimism. This year there has been a fairly dramatic rise in the number of Soviet Jews granted exit visas. I am hopeful that the recent liberalization of Soviet emigration policy is more than just an aberration.

In my view, the Soviets' decision to allow an increase in Jewish emigration is, more than anything else, proof that our efforts in behalf of the refuseniks have not been in vain.

A few years ago, it seemed as if we were shouting into the darkness. Soviet authorities turned a deaf ear to pleas from the West that Jews be allowed to practice their beliefs in peace, and that those desiring to leave the Soviet Union be granted exit visas. It was commonplace to hear grim news about the closing of synagogues, the persecution of Hebrew teachers, and cruel, discriminatory treatment of Jews who sought nothing more than the freedom to carry on their religious tradition. Most of those subjected to this kind of treatment had nowhere to go. The authorities basically had locked the doors leading out of the Soviet Union, preventing Soviet Jews from joining their families and friends in Israel, the United States and elsewhere.

I have no doubt that official discrimination against Jews is still widespread in the Soviet Union. That is a source of great concern in this country, where we place the highest value on religious freedom. While it remains to be seen whether the severely repressive Soviet system will see meaningful democratic reform under the new Soviet openness, the good news is that the escape hatch—emigration—finally seems to be creaking open again.

In the early 1980's, Soviet Jewish emigration levels had plummeted from a high of 51,320 in 1979 to a mere 896

in 1984, 1,140 in 1985, and 914 last year. As of October 31, the number of Jewish emigration approvals for 1987 was 6,340. That is still way below the excellent levels we saw at the end of the 1970's, but an encouraging improvement over last year.

I can offer personal evidence that the exit visa approvals are coming through for Soviet Jews, Mr. President. Last summer, I heard about the case of Tsalo and Khaya Lipchin, an elderly couple in Leningrad that had been seeking exit visas since 1978. The Lipchins, who wished to join their only son Leonid in Massachusetts, had been refused permission to emigrate 17 separate times in 9 years. The reason given was the convenient allegation that national security would be endangered by allowing emigration in this case. It was alleged that Mr. Lipchin had had access to state secrets during his employment in the computer industry.

The Lipchins denied this claim of access to state secrets, and finally this year they were vindicated. The Committee for State Security [KGB] of the U.S.S.R. determined that alleged access to secret information by Tsalo Lipchin was not a valid basis for refusal of permission to emigrate. Still, however, the Lipchins lacked an exit visa.

At this point, I made an effort to bring their case to the attention of Soviet authorities. I wrote letters to General Secretary Gorbachev; to Rudolph Kuznetsov, head of the Visas and Registration Department [OVIR] of the U.S.S.R.; and also to the chief of the Leningrad office of OVIR. I pointed out to these officials the simple desire of the Lipchin family to be reunited in the United States. I also mentioned the fact that Khaya Lipchin had suffered a stroke in 1986 and remained ill. In addition, I asked the U.S. Embassy in Moscow and our consulate in Leningrad to lend a hand with the Lipchin case.

A little over a month after I got in touch with these officials, the Lipchins finally received word that they would be allowed to leave the Soviet Union. Whether or not my intervention made the difference is impossible to say for sure, but I have no doubt that pressure from the United States at least nudged the Lipchins' file closer to the approval category in the Leningrad office of OVIR. Tsalo and Khaya Lipchin are now in Italy awaiting final approval of their papers so that they can come to the United States to join their son.

Also resolved in the last few months was a refusenik case in which I had a longstanding involvement. It concerned the family of Mikhail Lieberman, of the city of Bendery in the Moldavian Republic. Mr. Lieberman, a professional metallurgist who had worked for a mining enterprise in Siberia, faced the same allegation as Tsalo Lipchin: access to classified information. Like Mr. Lipchin, Mr. Lieberman denied the charge, and yet Soviet officials refused to grant him an exit visa. Unable to work in their professions while they awaited approval, Mikhail Lieberman and his wife Hanna experienced a great deal of hardship during the years they waited for an exit visa.

In 1978, I asked the State Department to intervene in the Lieberman case. In April of this year I wrote directly to General Secretary Gorbachev about the Liebermans, requesting approval of their application. Now, at long last, there seems to be good news for this Jewish family. Recently published lists of Jews approved for emigration from the U.S.S.R. include Mikhail Lieberman, and I am optimistic that he and his family will soon be settling in Israel.

It is obvious from these and other happily resolved cases that the pendulum of Soviet policy on Jewish emigration has swung in the direction of liberalization. We should not forget, however, that this is a new and recent development, a policy change that can be reversed again just as suddenly as it was this year.

I would like to close my contribution to the 1987 Call to Conscience with the message that we must not let the approval of 6,000 or 10,000 or even 50,000 exit visas allow us to become complacent. For every Tsalo Lipchin and Mikhail Lieberman, there are many more Soviet Jews waiting anxiously for permission to emigrate. For every well-publicized emigration of a Natan Shcharansky or an Ida Nudel, there are thousands of less famous refuseniks aching to leave the Soviet Union, and suffering for their decision to come forward and apply to leave.

Indeed, there is understandable fear that, as notable Soviet Jews are granted exit visas, the world will believe that all goes well and efforts to obtain religious freedom for Jews in the Soviet Union can be relaxed.

As Americans we are in many ways guardians of the principle of religious freedom. For this reason, I believe we have a moral obligation to champion the cause of Soviet Jews. Until the unlikely day when genuine religious freedom is established in the Soviet Union, or when Soviet emigration is freed from the capricious grip of the totalitarian Soviet bureaucracy, we must not give up this struggle.

BENJAMIN CHARNY

Mr. KENNEDY. Mr. President, on October 27, the friends and family of Benjamin Charny gathered in Washington to observe his 50th birthday—although no true celebration will be possible until Benjamin and his wife, Yadviga, are permitted to emigrate from the Soviet Union and join their family here in the United States.

Benjamin Charny is a mathematician who worked on various scientific projects more than 16 years ago. His repeated requests over the last 8½ years to emigrate and join his daughter, granddaughter and brother in the United States have been denied on the basis of that "secret" work. This story is not an uncommon one.

However, what makes Benjamin's case more urgent is that he suffers from cancer and a serious heart condition. Ben also has a growing tumor on his neck and thyroid gland and his doctor in the Soviet Union is afraid to operate due to his heart condition. While doctors at the New England Medical Center are confident that they will be able to treat Ben's disease, chances for success diminish with each day that passes.

Last March, all 100 Senators joined in urging General Secretary Gorbachev to let eight critically ill patients leave the Soviet Union so they could join their families and receive the medical attention they need. Of the eight cancer patients, three—Benjamin Charny, Marinana Simotova and Edward Erlikh—remain in the Soviet Union in grave condition. Of the other five—two have died, two are living in New York, and one resides in Israel.

On September 21, I welcomed Benjamin's daughter, Anna, to the United States with her husband, Uri Blank, and their daughter Sima. During a visit with them in my office last month, Anna shared with me a recent statement written by Benjamin regarding the falacy of the authorities' claim that he holds state secrets too sensitive to permit his departure from the Soviet Union. I ask unanimous consent that Benjamin's statement, as well as related editorials by Elie Wiesel and Anthony Lewis may 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, Nov. 10, 1987]

MUST DEATH BE A SOVIET PASSPORT?

(By Benjamin Charny)

MOSCOW.—On Sept. 20, Faina Kogan died in Moscow of bone marrow cancer. For many years, she had been refused permission to leave the Soviet Union for the West, where she sought treatment for her illness and reunification with her son.

The reason given by Soviet authorities for the denial concerned the "secret work" her husband, Naum Kogan, had done some 16 years ago. At the time she made her request, her husband's "secret work" was in fact not secret at all. Rather, it became the excuse for keeping a sick woman from receiving medical treatment.

Mrs. Kogan is but one victim of the stamp of false secrecy; she was sacrificed to the state for so-called security interests. Other victims were refused on the grounds of state secrecy—refuseniks who have also died in

the last year—include Rimma Bravve, Yuri Speizman and Inna Meiman.

For each of these people, years of exhausting struggle to obtain exit visas ended with the granting of permission to leave, but only after it was too late. Each died before having had a chance to receive sufficient care. In each case, "state secrecy" was the reason given by authorities for their refusal.

If the possession of obsolete and arbitrarily classified state secrets remains a legitimate reason for refusing those in need of medical treatment, many other seriously ill refuseniks will share the fates of Mrs. Kogan and the others.

I also have been diagnosed as having cancer. Yet because I am a mathematician and worked on various scientific projects more than 16 years ago, I too have been refused permission to seek medical treatment outside the Soviet Union. Although my theoretical and practical findings were published in unclassified scientific journals, which were translated into English and distributed in the West, I have repeatedly been denied an exit visa. In May 1987, I was officially told that my work during this period is still considered "secret."

As I said, the work was done more than 16 years ago. It is hardly possible to talk seriously about scientific secrecy in any work done so long ago, especially considering the great technological advances made during recent years in the fields of computers and automation.

The only applied problem I worked on between the years 1966 and 1971 was the design of an atmosphere reentry guidance algorithm for a space vehicle returning to Earth from the Moon or another planet. In other words, it concerned the design of software for the on-board computer that controls a vehicle's reentry flight.

This work consisted of two parts, theoretical and practical. The theoretical part, concerning the derivation of mathematical formulas that define the algorithm, has never been secret. Similar formulas were widely published by many authors in the Soviet Union and the United States.

The practical part of my work consisted of adjusting any theoretical algorithm, solving the guidance problem in principle, to specific onboard computers. The capacity of vehicle-borne computers at that time was extremely limited because of computer dimensions and weight requirements.

To "squeeze" a theoretical algorithm in the computer, one had to invent a special mathematical technique, which I did. It was that practical part of my work that was considered secret at *that time.* Is it possible that this work could still be considered secret today?

Of course not, for the vehicle-borne computers of that period have become hopelessly obsolete. Microprocessors used in today's personal computers are infinitely smaller in dimension and, in every respect—from memory to bit capacity—more powerful. Known theoretical algorithms have since solved the problem in principle by using microprocessors without any tricks.

Utilizing a mathematical technique devised in the 1960's with today's more advanced computational tools is like extracting cubic roots on an abacus instead of doing so by means of a pocket calculator. Thus, the part of my work that was considered secret some 16 years ago has long ago ceased to be secret. That work ceased to be secret the day the first microprocessor appeared.

Seven years ago, authorities acknowledged that much. At that time, they gave my assistant. A.A. Goltsin, permission to leave the Soviet Union. He had carried out computations for me and was educated enough (he was a graduate of Moscow University in mechanics and mathematics) to have understood all the details of my work. It seems obvious, therefore, that the status of all my work ceased to be secret with Mr. Goltsin's departure.

The Soviet visa office has stated that decisions concerning "work secrecy" are made by a chain of authorities from the plant, the ministry and finally, the visa office. At each link of the chain, a decision is made by people who are not competent to evaluate specialized work—three people openly confessed that much to me.

I.A. Karaculco, deputy chief of the visa office; N.A. Gavrilenco, deputy chief of the General Machinery Building Ministry, and V.I. Lomonosov, deputy director of the Institute of Automation and Instrument Making all conceded that they are unable to discuss the general tenets of my work from the 1960's. Mr. Lomonosov has refused to draw on competent experts to discuss and re-evaluate the matter of my so-called secret work.

In October, the Forum on Space was hosted in Moscow. The wonderful words "Together to Mars" were the forum's motto. Let it be so, but Soviet officials seem to suggest that we return to Earth quite separately, for they persist in branding my work on vehicle re-entry for some 16 years ago as "secret." My work is no longer secret, and it is obsolete.

Athough my life is in danger, I still have hope. I have many hopes. Let us go to Mars together, but let us not go if, in so doing, we trample over the corpses and time-marked lives of the refuseniks, victims of the stamp of false secrecy.

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

BARGAINING IN LIVES

BOSTON.—The Soviet Government has acted in recent weeks to resolve some longstanding emigration cases. Two weeks ago, for example, it gave an exit visa to Ida Nudel, a leading campaigner for Soviet Jews. This week officials told Vladimir Slepak, another prominent refusenik, that he and his wife could move to Israel, 17 years after they first applied.

Such actions are evidently designed to improve the atmosphere in Soviet-American relations before Mikhail Gorbachev makes his expected trip to the United States for a summit meeting. But the effect will be limited.

Every time one well-known person is allowed to leave the Soviet Union, we in the West remember others who have not been. Thus Mr. Slepak's good news was coupled with reminders that such admired figures as Aleksandr Y. Lerner and Valery N. Soifer are still forbidden to emigrate many years after they began seeking visas.

Soviet officials have complained to Americans about that reaction. When they take some positive step, they say, instead of being praised they are criticized for not having done something else. That provides little motivation for resolving any cases, they argue.

It is crucial to beware of that Soviet view, I think—crucial because it is so mistaken. It misunderstands fundamental Western attitudes on human rights. And the misunderstanding is as harmful to legitimate Soviet interests as it is to the victims of injustice.

The Soviet view is based on the premise that the resolution of individual human rights cases is a valuable gesture—a favor—to Western opinion. Soviet leaders traditionally save those gestures to be used as bargaining chips. When a summit meeting approaches, the chips are played in order to brighten the mood for substantive negotiation.

But we do not regard such things as letting citizens emigrate or practice their religion or speak their minds as governmental favors. We think of them as rights—rights that have a legal basis in Soviet undertakings at Helsinki.

Moreover, Americans and others in the West do not like the idea of human lives being used as bargaining chips. So when restraints on some Soviet citizen are relaxed at a politically opportune moment, it is inevitable that Western gratification for the individual will be mixed with resentment at the tactic.

The sense that human lives are being played with is deepened by the haphazard, seemingly senseless cruelty of Soviet bureaucracy in these matters. Or is it just bureaucracy?

Benjamin Charny, a mathematician, presents one of several especially heart-rending Soviet emigration cases. He and the others have cancer. They want to leave to get treatment or to be with their families. Mr. Charny wishes to be with his brother, Leon, who is at the Massachusetts Institute of Technology.

Last month Benjamin Charny's daughter, Anna, was allowed to leave with her husband, their 3-month-old child and her husband's parents and grandmother. In effect, the whole family is out—except Benjamin Charny.

Or consider the question of divided Soviet-American couples: spouses and fiances kept apart by Soviet barriers. About 20 couples are in that category now.

On Oct. 23, Elizabeth Condon, a high school teacher of Russian and French, will mark the eighth anniversary of the day she was supposed to marry Victor Novikov in Moscow. The marriage was stopped. And ever since, Mr. Novikov has been refused permission to emigrate and Miss Condon to visit the Soviet Union.

Last spring Miss Condon was encouraged to apply again for a visitor's visa. She did. Two days before her planned flight to Moscow, she was told that her visa had been denied. More recently, Mr. Novikov was told that he could still not leave because he learned secrets years ago. That reason, officials said, will expire in 1990.

The Soviet Union pays a high price in the West for such inhumanity, and it is not only the price of moral disapproval. The feeling that the U.S.S.R. cannot be trusted—not even to keep to its Helsinki undertakings—feeds opposition to the arms control agreement that both Mr. Gorbachev and President Reagan want.

Mr. Gorbachev understands there is a price. He has resolved some of the high-profile cases, not only allowing prominent refuseniks to leave but releasing important political dissidents from prison. But action case by case cannot really solve the problem. Only removal of the underlying wrongs can.

When a Soviet citizen joins an American fiancé, it should not be news. When a seriously ill man in Moscow leaves to be with his brother in the U.S., it should not be news. It should be the rule: so routine that it is not newsworthy.

[From the New York Times, Oct. 23, 1987]

SOON, FREE AT LAST

(By Elie Wiesel)

The news from Moscow is good. Vladimir and Mariya Slepak—Volodia and Masha—are free to leave the Soviet Union on Sunday. Their 17-year ordeal has ended. Another victory for glasnost? Whatever the explanation, it cannot but influence our attitude toward its author. Mikhail S. Gorbachev has given us some reasons to view his policies with less suspicion.

When I was in the Soviet Union a year ago, Andrei D. Sakharov was still in internal exile, in Gorky. There were 15 "prisoners of Zion" in jails and camps; today, they are all free. Some cancer patients and divided spouses have received authorization to join their families abroad. Mr. Sakharov is at home. Ida Nudel is in Israel. These are encouraging signs.

Are we dealing, however, with a new philosophy or with shrewd tactics? Mr. Gorbachev alone has the answer. He surely understands that for glasnost to have a real impact on the outside world, free immigration must not be halted or curtailed.

He wants us to believe him, and many of us are eager to believe him. His policy of openness could be a blessing not only for his own countrymen but for men and women everywhere. It could lead to détente. It could bring urgently needed solutions to dangerous conflicts. It could make our planet a safer place. But if Mr. Gorbachev does not understand that international peace and human rights issues are inseparable, our optimism may remain an illusion.

For the moment, however, skepticism must yield to joy, which swept through me when the Slepaks told us that yes, they believed this time their visa had arrived.

I remembered our meetings earlier in Moscow—long walks, endless conversations about Israel, discussions about the strange fascination Communism had exerted in the beginning over many Eastern European Jews.

I relived our visit to the crowded Moscow synagogue during Simhat Torah. Several thousand men and women had gathered outside to celebrate the Law the way Jews everywhere celebrate it: They sang, they danced, they did nothing to restrain their fervor.

An 8-year-old girl addressed me in pure Hebrew. I wondered, Who are her teachers? A young man invited me to join him and his friends to study Talmud. When? In the morning. Where? "We'll take you." All around, the faces reflected suffering but also resistance to suffering.

Later, in our hotel room with Volodia and Masha, my wife improvised a festive birthday dinner for Volodia. We toasted one another, we shared stories and memories. We laughed and laughed, almost forgetting where we were. "Aren't you afraid?" I asked Volodia. "Why should I be afraid?" he answered. "What can they do to me? I am a free person. They know I am Jewish. They know I want to go to Israel. I want them to know all that." He raised his glass and yelled for the whole world to hear, "Next year in Jerusalem!"

The Slepaks are among the noblest refuseniks I have had the good fortune to meet. They have endured more than any humans should have to tolerate: social discrimination, humiliation, official and unofficial hostility, imprisonment. For nearly 18 years, they have lived as outcasts, consumed by waiting.

Year after year, they would take luckier friends to the airport and to the railway station, and return home a little bit more alone. They waited for another day, another list, another journey to the airport, this time with someone else accompanying them. They grew melancholy. A newspaper article said they would "never" leave the Soviet Union. Never? Why? Long ago, it said, Volodia had had access to state secrets.

Friends in the West were outraged. To deprive a person of the right to hope is the ultimate inhumanity. We appealed, for the 1,000th time, to the Kremlin. We pleaded. We warned that we would not give up our fight until the Slepaks were free to leave. We seemed to be shouting in the dark, and all the time the Slepaks were getting more and more desperate.

What produced the change? The coming summit meeting in Washington? Does Mr. Gorbachev wish to avoid the huge demonstrations some of us have been planning for him? No matter. Whatever the reason, we are grateful.

Thank you, Mikhail Sergeyevich Gorbachev, for allowing my friend Vladimir Slepak to celebrate his 60th birthday with his children and grandchildren. Thank you for opening the door for those who preceded him. But, please, leave the door open. Thousands of refuseniks are still waiting for vias.

T.C. WALKER

Mr. TRIBLE. Mr. President, T.C. Walker was an eminent Virginian whose life was the embodiment of the American dream. Born in slavery, he rose to national eminence. A successful lawyer, he donated his time and his wealth to aid those less fortunate. A black man, he sought to win for his brethren their rightful place in our society.

"Lawyer" Walker gives us all an example of a life dedicated to helping others. He demonstrates to us that individual commitment is what lifts people up and gives them a sense of purpose and direction.

T.C. Walker reached out to his neighbors. And in so doing he did far more to change lives than any program designed in Washington.

He pursued his goals with a clear vision. He wrote in his autobiography:

The simple rule I myself have followed is to seek by the simplest and most direct means to restore the dignity of the human spirit where poverty, crime and disease have trodden it down. Economic gadgets, pressure groups, programs will not restore it unless good will and friendliness are established first. In these my faith is absolute.

Recently, Thomas C. Walker's memory has been honored by the creation of a scholarship program in his name. At the dedication ceremony Thomas M. Boyd, Deputy Assistant Attorney General and a constituent, spoke movingly in tribute to the life and works of T.C. Walker and I ask unanimous consent that his remarks be printed in the RECORD.

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

A TRIBUTE TO THOMAS C. WALKER

(By Thomas M. Boyd)

When I was asked to speak to you, I wasn't quite sure what I would say. But less than a month ago, I was invited to attend a huge ceremony at the United States Capitol in Washington. Its purpose was to celebrate the 200th anniversary of our Constitution, this little document I hold here in my hand. Much of what I do involves its provisions, and as I listened to the speakers, including President Reagan, I thought about Thomas Walker. When he was born, he wasn't in it.

None of us can imagine what it must have been like to have been born a slave, as he was, at a time when black men and black women were legally less than people—just property, and therefore had no rights under the law. We fought an awful Civil War while Thomas Walker was a little boy, principally over whether States have the right to determine for themselves whether a practice as onerous as slavery should be tolerated in this country. The result was the adoption of the 13th, 14th, and 15th amendments to the Constitution.

I have to assume that the role of the law in Thomas Walker's young life must have played a major part in his desire to become an attorney, and it must have pleased him no end to become the first black attorney in Gloucester and one of the first ever in Virginia.

But changes in the law alone were not enough to guarantee Thomas Walker's future, and he knew it. There were other obstacles to overcome.

Like so many Americans of stature, he started with nothing. There was no public school for him to attend and no money to pay for private tutors. He has to fight for his place in the world. But he understood what so many of us tend to forget: That in America, even the America of the last quarter of the 19th century, education can be the ultimate emancipation. Otherwise, he understood, he was destined to be dependent on others, including government, for his well-being. And Mr. Walker and his family knew what it was like to be the captive of someone else.

Throughout his life, he urged people in this county to own property and go to school. When I talked to the late Levi Clayton about Mr. Walker's enthusiasm for education, Mr. Clayton used to chuckle about how Mr. Walker would prod him to go to college. But Mr. Clayton fully fulfilled Mr. Walker's hopes for him. He learned a profession and made his own solid mark in this life.

Thomas Walker's efforts, as many of you know, resulted in the first organized education for black people in Gloucester County. In fact, his own personal funds supplied the down payment on what eventually became the Gloucester Training School. He wanted others to have the opportunity for the education he had worked so hard to obtain. "My aim always," he once wrote, "has been to substitute knowledge for suspicion." It is so appropriate, then, that the school I knew as T.C. Walker when I was growing up, and which lost that name when the schools were consolidated, has now been re-named after Mr. Walker.

Mr. Walker lived his life according to a solid set of principles. For so many of us, idealism in time gives way to convenience. Not for Thomas Walker. He could easily have harvested the fruits of his accomplishments. Two Republican Presidents, in fact, offered him appointments. One, Teddy Roo-

sevelt, offered him the post of consul general for the Caribbean island of Guadaloupe. But he declined, preferring to remain here, in Gloucester County, where he felt his responsibilities were.

I never knew Thomas Walker, but I knew about him. My mother and grandmother knew him well and respected him enormously. My mother once told me how proud she was to know this man when he spoke at St. James Church in Richmond when she was just a little girl. Her admiration, and that of our family, was founded, I think, in what he did with his life. I believe that what appealed to them most was his steadfast determination to succeed, the quintessentially American quality of his rise from no one to someone. To them, and to me as I read about him, he seemed to embody what we think of when we try to define the American spirit. His was an example of innate ability of the individual to prevail over adversity and circumstance. Ability played a prominent role in his triumph, to be sure, but the main ingredients were sheer determination and will. This is the kind of individualism which created this country, and which fostered Thomas Jefferson's famous vision of replacing the elite of his time with "an aristocracy of merit". In this very real and important way, Thomas Walker was a Virginia aristocrat.

This uniquely human spirit resides in each of us. And this Constitution, in conjunction with the society its authors created, helps make all dreams possible, even those as unlikely as Thomas Walker's admission, in the aftermath of the Civil War, to the legal profession in Virginia.

To me, Mr. Walker should be a symbol for all Virginians; indeed, for all Americans. He bettered himself through his devotion to education and to principle, and it is this legacy which we celebrate today with the creation of this scholarship. I am proud to have been raised in the same county where Thomas Walker was born, and I thank you all for inviting me to join you this afternoon. Thank you.

DAV TRANSPORTATION NETWORK

Mr. MURKOWSKI. Mr. President, today I rise to recognize the outstanding work that the Disabled American Veterans [DAV] have done for the veterans of this country by setting up the DAV Transportation Network. This transportation network is a national program to provide transportation services to those veterans seeking access to and from Veterans' Administration Medical Centers. The outstanding efforts of the DAV have helped many veterans receive the health-care services which they need. I commend the DAV for their efforts in this area.

At a time of prioritizations and cutbacks in spending, VA Medical Centers have been faced with difficult spending choices. One of the programs to take a substantial cutback was beneficiary travel. Because the funding for beneficiary travel comes directly out of the medical care account, medical directors have been faced with choices as to whether to fund the beneficiary travel program or to spend those limited funds on direct patient care. The DAV, in response to this dilemma and understanding the importance of VA medical care, responded by assisting veterans with their travel needs.

At present, the DAV has placed 104 DAV Hospital Service Coordinators in Veterans' Administration Medical Centers [VAMC's] across the country. These coordinators have established programs within the medical centers that provide transportation to veterans needing treatment through the use of DAV volunteers. Currently, there are 30 States with active DAV Transportation Programs and 17 States in the planning stages. In the 11 months since the program's beginning, the DAV has provided more than 100,000 miles of transportation to thousands of disabled veterans. In addition to coordinating and implementing this program, the DAV has also donated to the VA 24 1988 Dodge passenger vans. These vans, which will be driven by DAV volunteers, will be distributed to the appropriate medical centers for use in the program. It is the goal of the DAV to establish these transportation programs in each of the 172 VA medical centers. It is my sincerest hope that our veterans in Alaska will have the opportunity to take advantage of this beneficial program. I believe that the early success of this program can be attributed to the many dedicated DAV volunteers who have given so much of their time to assist the veterans of this country. I applaud them all.

To help DAV departments in setting up these transportation programs, the national organization budgeted $2 million in grant moneys. As of October, the DAV had issued over $355,000 and pledged an additional $389,150 in grant moneys. In addition to this DAV departments have committed another $1,384,850 in financial support to the Transportation Network Program. Not only is the DAV providing the staffing and vehicles, but they are providing the finances to keep this program on track as well.

Mr. President, I take this opportunity to share with my colleagues the truly outstanding work that the DAV has done in assisting our Nation's veterans. I commend the DAV for this much needed program and the efforts they have taken to make it work. But, the DAV's Transportation Network Program is just one of the many volunteer programs that the DAV provides on a day-to-day basis. Another highly successful volunteer program is that of Veteran Service Officers [VSO's]. These VSO's represent and assist veterans with their disability claims. The VSO's have done a superb job representing veterans at no cost. Mr. President, I cannot stress enough the fact that these programs are volunteer programs. The DAV's highly successful National Volunteer Service Program is a prime example of veterans working for veterans. With over 1 million members, the DAV is one of the most highly organized and goal-oriented volunteer organization in the country. This volunteerism has played a major role in the VA's health care system, a role which I believe has made the Veterans' Administration the most cost-effective health care system in the country. It is my firm belief that this type of program should be used as a role model for other organizations.

Mr. President, as veterans look to the future, they look with confidence in Veterans' service organizations like the DAV who are interested in their well-being. At a time when action was needed to assist veterans, the DAV was there to help. It is my sincerest belief that they will be there in the future as well. The DAV has once again proven to the Veterans' Administration that they will not let the veterans of this country down.

CALL TO CONSCIENCE

Mr. METZENBAUM. Mr. President, I rise to remind the Senate of the thousands of Jews struggling to emigrate from the Soviet Union.

In 1979, over 51,000 Soviet Jews were allowed to emigrate from the Soviet Union. By contrast, fewer than 45,000 Jews have been allowed to emigrate during the 1980's, and total annual emigration fell below 1,200 for 1984, 1985, and 1986. Largely due to the more progressive policies of Secretary General Mikhail Gorbachev, the current outlook is more positive, and more than 6,000 people have received permission to emigrate during 1987. Although this figure is promising, it is not good enough. There are still hundreds of thousands of Soviet Jews yearning to be free of the tyranny and religious oppression of the Soviet regime.

But this is much more than a game of numbers. It is the story of countless Soviet citizens who are being denied their internationally recognized right to free emigration. It is the story of Soviet Jews who ae being denied the right to practice religion freely, without fear of persecution. Above all, it is the story of the Soviet Government unfairly denying basic human rights and liberties to its citizens.

It is also the story of Judith Ratner-Bialy and her husband, Leonid Bialy, two citizens who have been denied permission to emigrate from the Soviet Union for 10 years. They have been refused visas since 1977, because of consideration of state security. As an engineer, Leonid allegedly had access to classified information, but he was fired from that job in 1971 and has not had access to such information since that time. It is my understanding that after 10 years, those who were previ-

ously exposed to classified information are no longer considered to be security risks. Therefore, their visa denial for security reasons seems to run contrary to Soviet emigration policy.

Judith, who was seriously disabled in a 1979 car accident, has had only menial work since 1973. Her mother currently lives in Israel, but she is 82 years old and fears that she may never see Judith again. Judith's sister, Marina, was allowed to emigrate in 1971, and now lives in the United States, half a world away. Thus, the denial of Judith and Leonid's requests further violates Soviet emigration policy which calls for the speedy reunification of divided families.

This summer, 38 Senators joined me in urging Soviet officials to expedite the emigration requests of Judith and Leonid. I fear that this request has fallen on deaf ears, because only a few weeks ago, Judith was once again denied permission to emigrate. This was truly a crushing blow to all of us who have been working on behalf of this family.

Mr. President, this is but one case among the thousands of cases of Soviet citizens who are being denied their right to free emigration. I will continue to work to free Judith and Leonid and the thousands of others who have been denied permission to emigrate. The recent improvements in emigration figures are encouraging, but we cannot ease the pressure.

I will keep up my efforts in this fight, and I urge my colleagues to do the same.

CONGRESSIONAL CALL TO CONSCIENCE

Mr. MELCHER. Mr. President, several of my colleagues have made statements over the last several months calling attention to the plight of the Terlitsky family of Moscow, who have been attempting to emigrate from the Soviet Union since 1976.

The facts of this case have been told before but bear repeating. The family consists of Mark, his wife Svetlana, their 19-year-old daughter Olga, and Mark's mother Fanya. When the family first applied for visas in 1976, Mark's brother Leonard was the only one who received permission to leave. Leonard now lives in New York where he practices as an architect and continues to work actively to help the other members of his family to join him in the United States.

The intervening years have been hard for the rest of the family. Mark, an architect like his brother, and his wife both lost their jobs shortly after applying for and being denied visas and since then have lived on their earnings from temporary employment. Olga is said to be an accomplished violinist for her age. In all likelihood her status as the daughter of a refusenik has hampered her chances to pursue a career. Mark's mother Fanya, who is in her seventies, is suffering from Alzheimer's, with little treatment available in the Soviet Union.

The reason I wish to highlight their case again today is that we have received news that their application for visas was again denied on November 2. Although they have been denied visas to the United States in 1983, 1985, and earlier this year, this most recent refusal is extremely disturbing to us because it was made by a special commission appointed by the Supreme Soviet to hear appeals of emigration denials.

We are not sure of the grounds for the denial. In the past the requests for visas have been denied on the grounds of State security. Although it seems odd that an architect would be classified as a security risk, Mark apparently had a low-level security clearance when he worked as an architect for an institute that was involved in various restoration projects in Moscow. Having access to the Moscow water supply and sewer system apparently constitutes "state secrets" under the newly expanded definition of security risk, even though Mark meets the other requirement of having a first-degree relative overseas.

Now after the elapse of 11 years in the Terlitsky family's struggle to leave the Soviet Union, there do not appear to be any further avenues of appeal open to them. Yet we cannot give up hope for the Terlitskys or the countless other families who remain unknown to us in the West. At the same time that we applaud the release of prominent refuseniks such as Natan Scharansky and Andrei Sakharov, we must not cease our efforts to highlight these lesser known cases and bring the full force of world public pressure to bear on the Soviets in the hopes that they will finally relent and allow the Terlitskys to emigrate. We ask Secretary Gorbachev to demonstrate that the policy of glasnost offers real hope to the Soviet people that they will be afforded the right to be reunified with their families and the full measure of other individual rights to which they are entitled.

STAY THE COURSE AND REDUCE THE DEFICIT

Mr. SYMMS. Mr. President, I observed the discussion on the floor earlier this morning and I think some of our colleagues, particularly Senators ARMSTRONG and GRAMM, deserve the commendation of many of us for their leadership and effort to try to focus on the question of whether or not we are willing to strive for budget restraint here in this body.

I have often said that in the last 6 years one of the things that happened was the Tax Code became a little more equitable so that all people who were working taxpayers are helping pull the wagon.

The tax rates have been dramatically reduced. I think our Tax Code is now horizontally more equitable than it was prior to the 1981 and 1986 tax bills, with tightening of loopholes and the reduction in the rates which took place in 1986.

So, in a general sense, we have a more fair Tax Code. We have reduced the amount of taxation as a percentage of the GNP as the economy has grown. We have reduced it to below 20 percent of the GNP.

The one place we have not made progress, however, is to restrain spending, to get spending in line with the revenue flow.

Senator NICKLES, yesterday, spoke on this floor with an excellent graph to show that in the last year, fiscal year 1987, we actually had an increase in revenues to the Treasury of about $85 billion and spending only increased by $12 billion.

If we could hold that course direction in the way we are taking the fiscal policy of this Government, we would have the budget balanced and we would even be in a position of surplus, which would be very healthy, in my judgment, for this country. I think that is most important.

The situation now seems to be changing. The fiscal year 1988 budget calls for an increase in spending.

For the past 2 weeks, some of our colleagues have been working to achieve some kind of budget solution. I would hope that all of our colleagues would recognize what I have believed for many years, and what Nobel Laureate Milton Friedman has said many times, about Government spending. What really matters is, whether we borrow the money or tax the money, the net result is that Government spending takes money out of the private sector and puts it in the Government sector.

The botton line is this: Do we want to raise taxes and let Government grow, or do we want to hold the line on taxes and spending and let the private sector grow? That is the bottom line.

I just hope that in any budget measure we come out with this year that will be recognized. As far as I am concerned, this is one Senator who feels, if we have to have a sequester—crude and difficult as it may be because of our different parochial interests as Senators from all over the country and Members of Congress from different parts of the country, with different interests and different drives—if we cannot do it any other way, the reason Gramm-Rudman-Hollings was passed in the first place was to ensure that cuts would occur, even if they were crude and sometimes difficult. Cuts would fall across the board and

we would achieve those necessary savings.

As I have said all along, I think any tax increase this Government of ours, might resort to should be matched with a savings in spending of no less than 2½ or 3 to 1 in the ratio of savings over tax increases.

I think we should pass a constitutional amendment that both limits spending and taxes and requires a balanced budget. We need a constitutional amendment that states very clearly we can only spend so much of the gross national product, of our national wealth, and that the Federal Government has to make do with a strictly limited amount.

Mr. President, I think the President should be given a line-item veto, and I think that anyone should recognize this is a very doable task. We can do these things. We have failed to do them so far but it is not because we could not, but because we have not really wanted to.

Anyway, having said that, I want to praise my colleagues again for what they did this morning. We defeated an attempt by the majority to override a point of order on the Budget Act. I think it is a sad commentary that we cannot show such resolve more often. I glad we did it because I think we in the Congress of the United States need to display the courage to stay the course and reduce the budget deficit even if it means making hard choices.

Mr. President, it is no wonder, as the world watches our weakness, that our currency depreciates, foreign investors lose faith in our future, and our Soviet enemies smile at us and offer seductive arms agreements.

In light of this, Mr. President, I ask unanimous consent that an article from yesterday's Wall Street Journal by Sir James Goldsmith, Chairman of the Editorial Board of the influential Paris newspaper L'Express, be printed in the RECORD immediately following my remarks.

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

(See exhibit 1.)

Mr. SYMMS. Mr. President, Mr. Goldsmith calls our attention to the danger signals we are sending to the Europeans with the INF agreement, the implication that America is putting itself increasingly into a posture where we will not be able to intervene in Europe if necessary.

He calls our attention to the danger signals we are sending to the Europeans with the INF agreement—the implication that America is putting itself increasingly into a posture where we will not be able to intervene in Europe if necessary. The Soviet strategy is very clear, that is, to dissolve NATO and to tap the industrial and technological power of Europe for their own economic development. As Sir James Goldsmith says, the Soviets intend for Europe to become "The Milk Cow of the Soviet Empire."

I might note, Mr. President, the fact is that the Soviet economy is bankrupt. It is a dead philosophical, immoral, and economic system, and the only way they can survive is to continue to expand imperialistically and, so to speak, to lap up the milk of someone else's cow in order to feed themselves.

Mr. Goldsmith calls our attention to the foolishness of currency debasement, which is what we are doing to solve our trade deficit. No nation has ever gotten stronger by debasing its currency. He accuses this Congress—truthfully—of responding to the competitive challenge of the world by proposing to protect our sunset industries, our weakest corporate managements, and to turn our back on world leadership.

Mr. President, this Congress has to take its share of the responsibility. It must demonstrate a willingness to face reality. Every vote we take to raise the budget deficit makes America weaker. Every vote we take to increase taxes makes America weaker. The only way that we can make America stronger is to take a hard look at Government spending and reduce it.

As Dr. Friedman has taught many times, and I share his viewpoint, to increase Government spending and then increase taxes to pay for it in the long-run only allows Government to grow. To increase Government spending and not raise taxes has the same effect; the debt grows with it but the Government gets bigger.

So I want to emphasize that the gut issue facing us is whether we are willing to let the private sector grow by holding back the tide of more and more Government spending in all areas, and are we willing to face up to our responsibilities and do the things that we want to?

If we are not willing to display the courage to lead the world, to vote in the coming weeks to make America stronger, as we wrap up this first session of the 100th Congress, Sir James Goldsmith says, "Perhaps we live in tragic times. Perhaps this is one of those great turning points in history."

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SYMMS. I yield the floor.

EXHIBIT 1

AMERICA, YOU FALTER

(By Sir James Goldsmith)

And so the free world yet again watches its leader, the U.S.A., afflicted by a political and economic nervous breakdown.

From 1981 to 1985, we thought that you in America had recovered your spirit of confidence, pride and responsibility. During those years you demonstrated how a democracy, based on individual freedom and enterprise, could succeed.

Your example was contagious. Throughout the world, democracy began to flower like buds in the springtime. Nations that had almost forgotten freedom, such as Argentina, Guatemala, Turkey and many others, rediscovered democracy. Everywhere local politicians campaigned to roll back the intrusion of the states; to privatize their ossified nationalized industries; to liberate the energies of their people.

Then, through global television, the world watches your democracy tear itself apart over such matters as Iran-Contra and the Bork nomination.

ASSESSING THE CONSEQUENCES

It might be useful to assess some of the consequences:

In Europe, if you carry through your proposed INF agreement, followed by the suggested 50% cut in strategic weapons, you will have abandoned your capacity to intervene. Faced with overwhelming Soviet military supremacy, you will have become isolated in your own continent. Your friends in Europe will want you to maintain your troops there, but they will know, and so will you, that these troops represent no more that a tripwire, potential hostages, to force you into a European war that you would be ill-equipped to fight. So we all understand that in due course you will be forced to withdraw from Europe. Thereby the Soviets will have accomplished their primary objective—the decoupling of Europe and America.

The second stage of the Soviet strategy, which has already begun, is to avoid having Europe react out of fear and create a valid independent European military system. The Soviets know that without Germany, Europe is not economically able to do so. That is why they will talk of the reunification of Germany within a neutral zone. This will destabilize Germany, particularly at a time when pacifism in Germany is a strong temptation. Helmut Kohl will be unable to resist, because his foreign minister, Hans-Dietrich Gentsher, an unreliabile ally, will threaten to switch allegiances by taking his FDP party into an alliance with the Socialist SDP and thereby destroying the CDU (Kohl) / FDP government majority.

The third leg of the Soviets' strategy will be to convince Europeans that the natural market for their exports is the Eastern Bloc. They will explain that whereas it is difficult for European industry to compete with the Japanese in world-wide markets, it is quite different in the Eastern Bloc. There Europeans will receive preferential treatment. This part of the strategy has also begun. Communist trade-union leaders and leftist politicians throughout Europe are promoting this policy.

Then the Soviets will persuade European banks to finance exports from Europe to the U.S.S.R. and its satellites.

The result will be that Europe will have been Finlandized militarily, and will depend on the Soviets for its exports, and therefore for its industrial activity and employment. And what is more, the development of the U.S.S.R. will be financed by European banks. Europe will have become the milk cow of the Soviet empire.

On the economy, like all nations that have lost their will to win, systematically you choose the soft option. For example:

If your national economy is uncompetitive, you debase your currency. This solution has been tried unsuccessfully throughout history. As you devalue, you receive fewer dollars for your exports and pay more dollars for your imports. To compensate, you must sell more and more units. Like a drug, the initial effects are gratifying. Your factories produce more and, expressed in de-

based dollars, the earnings of your industry rise. But down the road a little you will pay the price.

Your industry will not have to adjust to become competitive. Instead, constant devaluation will create the illusion that it is. What is more, if the strategy begins by working, you will have inflation. Increased unit production will put pressure on employment, which is already historically high; you will import inflation because, as imports become more expensive, your industry will become free to raise prices. You will re-create inflationary expectations, with the consequent profound effects on the workings of your economy. Each devaluation will lead to another.

If one particular industry in the U.S. becomes unable to face competitive market forces, then the proposed solution is to eliminate those market forces. Congress proposes to vote for protection.

If a particular company becomes noncompetitive because of bad management, you entrench that management with special laws to protect it from its shareholders and from the marketplace. Thereby you block change; create a nonaccountable, self-perpetuating oligarchy, and grant life tenure to inefficiency. The world used to mock Britain when its successive socialist governments protected lame-duck industries. Today your lawmakers wish to enshrine lame-duck management.

Unfortunately, it won't work. You need to borrow from abroad to finance your national budget. Why should anyone, here or abroad, invest in U.S. government bonds if the U.S. government is committed to a policy of debasing its currency? You will be forced to increase your interest rates, as do the issuers of junk bonds. And then you will have a crash.

In the rest of the world, the vacuum of leadership that you will have created will have profound effects everywhere. In the Middle East and in Southeast Asia others will move to fill that vacuum.

In your own hemisphere, in Latin America, emerging democracy will wither on the vine. Against the background of American abandonment, the Soviets will establish themselves as they have in Cuba and Nicaragua. Then you will have lost even your continental isolation. You will have betrayed the Monroe Doctrine.

Perhaps we live in tragic times. Perhaps this is one of those great turning points of history. It is not impossible that our civilization, the European and American civilization, is in the process of transferring world leadership to others. In the 1920s, England also lost her will. And she thrust world economic leadership onto you. You did not much want it, but you shouldered the burden with courage and responsibility. This was a transfer between cousins, and within a similar culture. The next transfer will not be so easy. If you transfer economic pre-eminence to Japan and military supremacy to the Soviets, both of whom thirst for it, then the world will suffer a historic seismic shift.

The economic aspects of this debacle can be largely avoided, however, if global measures are taken. That you will have a recession is now inevitable. You might be able to postpone it a bit. But then it will be all the harder when it comes.

It is a fact that you need to reduce your trade deficit and that you will find it progressively harder to finance your budget deficit. So you need to slow demands in the U.S., cut government spending and raise revenues. But at the same time there must be compensating reflation outside the U.S. in those countries that can afford it, principally Japan and Germany. Only in this way can we achieve a global zero sum, i.e., a reduction in the U.S., compensated dollar for dollar by expansion elsewhere. This will avoid a world recession and allow your industries partially to fill the slack by exporting to growing markets overseas.

At the same time:

Japan should help the lesser-developed countries float off the rocks and return as active participants in the world economy. Japan could achieve this by lending them $30 billion to $40 billion.

Other developed countries, each according to its circumstances, could follow the German and Japanese reflation.

The "tigers" of the Pacific—Hong Kong, Taiwan, Singapore and Korea—should allow their currencies to float freely with market forces.

But for this to occur the U.S. must lead. The Germans and the Japanese, not unreasonably, believe that if they reflate, then the pressure will be off and once again you will only talk cuts and not effect them. So there needs to be a firm, verifiable agreement. If such a deal is proposed by the U.S., others will want to follow, because it is in their acute self interest to do so. A global slump would affect not only the economy of each country, it would also tear their social and political fabric.

But unfortunately all this is unlikely, because the Republican administration has lost its nerve and seeks popularity instead of respect. And the Democratic Congress is enjoying the collapse of its political opponents and hopes to benefit by peddling sweet-tasting poison packaged to resemble medicine.

You Americans, and others throughout the world, deserve better.

TOSHIBA AND THE TRADE BILL

Mr. HELMS. Mr. President, I am informed that some of the House conferees working on the trade bill have indicated that they intend to drop the Senate provision that provides for compensation to the U.S. taxpayers for the damages resulting from actions of the Toshiba Corp., and the Kongsberg Corp.

I can scarcely believe these reports. The action taken by the Senate was unanimous, with no dissent whatsoever. It is incredible that any representative of the American people could object to compensation for this grievous wrong—a wrong that not only affects our pocketbooks, but calls into question our national security.

Mr. President, the Kongsberg/Toshiba high-tech export scandal had its origin in the most significant case of treason in recent decades, the Walker family spy ring. The U.S. Government's response was immediate and severe. John A. Walker, Jr., if the sentencing judge has his way, will never leave the Federal maximum security prison at Marion, IL. His son, now in his early twenties, could well be middle-aged when he is released. If and when his brother and his friend Jerry Whitworth are ever paroled, they will be senior citizens.

Having learned from the Walker family spy ring how NATO antisubmarine warfare specialists were picking up the sounds of Soviet submarine propellers, the Soviets turned to avaricious Western businessmen for the equipment needed to make their submarines run silently and deep.

Mr. President, officials of the Norwegian Government-owned arms maker Kongsberg and the Japanese industrial giant Toshiba were eager to sell out the Western alliance for cash. They delivered to the Soviets eight room-sized milling machines and the computer equipment to operate them. Accurate down to a hundredth of a millimeter, and operating on as many as nine separate axes, these industrial robots have the flexibility of the human hand coupled with the computer's ability to repeat the operation over and over.

NATO's strategic deterrent rests on three legs: land-based bombers, land-based missiles and nuclear submarines. The effect of the Kongsberg/Toshiba treachery is to disarm unilaterally one third of the NATO strategic deterrent. Formerly, we were able to detect Soviet ballistic missile submarines up to 200 miles away. Now we cannot detect them unless they are within 10 miles.

The North Atlantic contains millions of miles of open ocean. Inevitably, ballistic missile and attack submarines will henceforth slip through the net unless and until the United States can regain its technological edge.

Mr. President, regaining the edge in antisubmarine warfare will be expensive. Former Navy Secretary Lehman predicted that it will be necessary to spend $40 billion on new attack submarines. There are no credible estimates to the contrary.

On June 30, by a unanimous vote, the Senate adopted an amendment to the trade bill which would allow the Attorney General to recover damages in Federal court from firms which violate national security export control regulations.

This amendment is very narrowly drawn. First, it extends only to individuals and companies which violate the regulations; it does not propose compensation from foreign countries or their taxpayers.

Second, it would cover national security export controls only and would not extend to foreign policy export controls. American foreign policy export controls with their extraterritorial application of American law proved to be very unpopular with allied governments during the Soviet Yamal pipeline controversy.

Third, placing the case in the hands of the Attorney General would ensure that all of the due process of law provisions will be respected. And fourth, the amendment does not discriminate

against foreign firms. American firms which violate national security regulations also would be subject to recovery for the damage they cause.

To date the legislation has passed only the Senate. However, I cannot believe our House colleagues will oppose legislation which indemnifies the American taxpayer.

At the heart of my amendment is the simple notion of equity. Someone should pay for the losses brought about by treachery. Will it be the American taxpayer? Or will it be those who put the free world at risk for the sake of a $20 million deal?

Compensation for damages caused is a universal legal principle. This applies to both simple negligence and to deliberate illegal acts. A few years ago the vessel, *Amoco Cadiz*, spilled a load of oil on the beaches of Brittany in Northern France. The American firms involved and their insurance companies were required to pay for the clean-up. What sense does it make to say that someone who fouls beaches must pay for the cleanup, but someone who illegally exports high-technology gear to the Soviets does not?

Mr. President, the U.S. State Department has suggested that compensation for national security violations is inappropriate because it will lead to allied claims against Americans. I say to the State Department and any allied government wishing to demand compensation from John A. Walker, Jr: Be my guest. His address for service of process is: U.S. Penitentiary, P.O. Box 1000, Marion, IL, 62959, registration number 22449-037.

When sales get slow, a Western businessman may be tempted to send something out the back door to Moscow. The knowledge that a violator is potentially liable for the damages caused by such illegal sales and that the damages could be immense should prove to be a powerful deterrent to such temptation.

Long ago the free world decided not to match the Soviets tank for tank, plane for plane but to depend upon the technological superiority our free economies can produce. The Achilles heel to U.S. strategy is clearly greed and treason by our own people. If the American Government is willing to jail its own citizens for life in such cases, foreign firms and their governments have no legitimate complaint against a bill for just compensation.

WHY WE NEED A TRADE BILL

Mr. LEVIN. Mr. President, two items came across my desk in the last few days that reminded me why we need to pass a trade bill this year.

First, I believed the 1987 edition of the U.S. Trade Representative's "National Trade Estimate Report on Foreign Trade Barriers." This is the third in an annual series of reports which the United States Trade Representative was directed to prepare by a provision in the Trade and Tariff Act of 1984. Congress wanted to have a comprehensive accounting of all the ways that other countries keep out our goods, services, and investment. The United States Trade Representative is required by the statute to "identify and analyze" these barriers, and to "make an estimate of the trade-distorting impact" of the barriers.

This year's report is thicker than ever, and reveals that the walls erected by foreign governments to keep out our goods and services remain high and, in many cases, impenetrable. Its 375 pages are replete with examples of protectionist policies that cost our industries billions of dollars in lost exports.

Did my colleagues know, for example, that Brazil, with which we had a $3.5 billion trade deficit in 1986, has something called the "Law of Similars" which allows the Government to withhold import licenses for any product that is also being produced in Brazil? Or that China, with which we had a $2.1 billion deficit last year, has banned imports of approximately 80 types of consumer goods, including televisions, tape recorders, washing machines, and air conditioners? Or that Korea, which ran a $7.4 billion trade surplus with the United States last year, bans our oranges, apples, peaches, fruit cocktail, grape juice and orange juice concentrate, avocados, edible offals, pork, and frozen french fries?

One of the trade barriers identified the United States Trade Representatives report, one that I have spoken about a number of times on the floor of the Senate, is the Japanese ban on the importation of rice. I often use the example of Japan's rice ban because to me it epitomizes the double standard inherent in many of our trade relations.

I was reminded of this double standard the other day when I saw an article from the Japan Economic Journal of October 24, 1987. It is based on an "exclusive" interview with the Japanese Minister of Agriculture, Mutsuki Kato, and bears the discouraging headline: "Foreign pull is unlikely to uproot policy on food." There are no surprises in this article—just a depressing confirmation of business as usual.

"Japan should never never decontrol the importation of rice," Mr. Kato is quoted as saying. "In America, there is no exact equivalent of a staple food as rice is a staple to Japan. This is a concept Americans cannot understand."

Mr. Kato is right. We cannot really understand the Japanese attitude toward rice because we do not share their cultural traditions. But likewise, the Japanese cannot really understand our attitude toward products we have traditionally produced. In many parts of our country, for instance, the automobile is as much a cultural staple as rice is to the Japanese.

And the Japanese cannot really understand the devastating effects that the closing of an automobile or a steel or a textile plant has on an American community, because they do not live in those communities. And we should not expect them to understand. It's not their responsibility to look out for the interests of American workers.

The responsibility belongs to our Government. The U.S. Government has a duty to understand the impact our trade policies have been having on many of this country's "staple" industries. And it has a duty to seek a more balanced trade relationship that will assure us the same open access to other markets that foreign countries have in our market.

Now, those of us who call for reciprocity in our trade relations, who believe that we should treat our trading partners no better—and no worse—than they treat us, are often met with the reply that even if we were to eliminate all the foreign barriers to our products, it would only make a small dent in the trade deficit. I've heard estimates that up to 20 percent of our trade deficit is accounted for by unfair trade barriers to our goods, which would have added up to over $30 billion last year. But even if it is a lower figure—even if it's as low as 15 percent or 10 percent—the necessity of aggressively attacking these barriers is just as great. Why? Because it affirms a principal, a bedrock principal that is vitally important to our country's economic future: We will trade with other nations on an equal and reciprocal basis. Free trade must be free both ways.

A strong trade bill will give the President all the tools he needs to establish this principal. The sooner he has these tools and begins to use tools he has, the sooner we will stop preaching the virtues of free trade in the abstract and start realizing the benefits of genuinely free trade in the real world.

Mr. President, I ask unanimous consent that the article from the Japan Economic Journal, entitled "Foreign Pull Is Unlikely to Uproot Policy on Food," be printed in the RECORD following my remarks.

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

[From Japan Economic Journal, Oct. 24, 1987]

FOREIGN PULL IS UNLIKELY TO UPROOT POLICY ON FOOD

(By Masahiko Ishizuka)

"Any discussion about Japan's agriculture and its import liberalization policy must start with the fact that Japan is the world's largest importer of agricultural products,

and hence the greatest contributor to international farm trade," said Minister of Agriculture, Forestry and Fisheries Mutsuki Kato in an interview with The Japan Economic Journal.

"As an industrialized country, Japan's self-sufficiency in foods in terms of calories is among the lowest," added the minister, referring to the nation's concern with "a stable supply of foods."

"As a country which depends on imports for a major portion of food supplies, our stance differs fundamentally from that of a country for which food export is a national preoccupation," Kato continued. "Without their recognition of these facts, we cannot sit at a negotiating table with foreigners."

The 61-year-old veteran politician, who held various ministerial posts in the past, joked that he has various nicknames conveying his image as a tough negotiator. "My colleagues in the Cabinet call me 'Mr. No-Ten,' because of my repeated rejections of U.S. demands on agricultural trade issues," he laughed. "A Harvard professor called me 'Mr. Rice' recently. I didn't know that I was called that in the U.S."

Kato, however, was quick to add that it was not that his stand never went beyond "No." "I simply want foreigners to first of all understand Japan's position," he said.

Domestically, the agriculture minister is an advocate of greater efficiency for Japan's badly retarded farm management so it can secure sound growth. He also stresses that any agricultural policy that ignores consumer interests is self-defeating.

Kato's position with regard to the importation of foreign rice thus appears strong.

"Japan should never decontrol the importation of rice," Kato declared in an unyielding tone. But he qualified his statement by adding that "so far as rice for staple use is concerned." "The awamori liquor in Okinawa Pref. is made of Thai rice, and rice crackers made in Korea are imported," he said, implying the possibility of allowing foreign rice into Japan for non-staple use, e.g. processed food-making.

"In America, there is no exact equivalent of a staple food as rice is a staple to Japan," Kato said. "This is a concept Americans cannot understand. Rice, moreover, is the mainstay of Japanese agriculture, accounting for one third of total farm output. Paddy fields for rice growing also play an essential role in preservation of national land."

These factors lead Kato to conclude that there is no room for Japan to consider importing rice for staple use. At the same time, he is fully aware of the wide differentials between domestic and international price levels.

"Politically, the most important thing is ensuring a stable supply of food," he said. But how to reconcile the notion with a high cost consumers have to pay is a difficult question.

"Just how expensive Japanese rice is depends on the international price level, and a national consensus must be hammered out regarding the level of financial hardship acceptable to the consumer," Kato said, adding that consensus building will be an important issue for a couple of years to come.

"If the rice price in Tokyo is four times the level in New York, it is a problem. The sewage cost in Tokyo is four times that in New York, gasoline four times, water and cooking gas three times. Why are these not made issues?," Kato asked.

On the production side, since importation of cheap rice is ruled out, the only way to lower the price is improvement in farm management characterized by delaying in enlargement of management size and raising productivity. Kato also emphasized the importance of strengthening farm management so that younger generations are attracted to agriculture.

"Japanese farmers are already under triple pressures—steep rice acreage cutbacks, difficulties in growing alternative crops, and the lowering of government's rice purchase prices," Kato said. "They are bleeding under the hardship, but this is the reality Japanese farmers are being put to."

Kato said the controversial food control system, whereby the government buys a majority of rice from farmers and sells it to consumers, needed to be retained. But flexible adjustment must be made according to changing circumstances for the sake of consumer interests, he added.

Kato's policy became evident when he alarmed bureaucrats at his ministry recently by announcing a policy of lowering consumer rice prices for the first time in the postwar years. This cut follows the lowering of the producer price, also the first in 31 years, decided upon earlier this year. These steps are described as an application of market principles to the food control system.

Asked about the U.S. proposal for eliminating all agricultural subsidies, he was noncommittal about domestic price support systems. He cited "special circumstances" in each country. But he was unequivocal about abolishing export subsidies. "Foreign governments' export subsidies lower the prices of products we buy from them, but the benefits are temporary because subsidized exports are actually dumping. They work against stable supply of foods, which is Japan's top priority," he said.

Kato, a Liberal Democratic member of the House of Representative from Okayama Prefecture since 1967, is considered an expert on tax issues. He once served as chairman of the Liberal Democratic Party's tax system research council. He has close relations with the transportation industry, particularly trucking and shipping sectors.

"There are no farmers' pressure groups behind me," he said. Unlike many of his predecessors, Kato has no close affiliation with farm interests. An observer said this has given him a relatively free hand in dealing with agricultural issues.

MESSAGE FROM THE HOUSE

A message from the House of Representatives announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 435. An act to amend title 3, United States Code, and the Uniform Time Act of 1966 to establish a single poll closing time in the continental United States for Presidential general elections;

H.R. 1326. An act to amend the Public Health Safety Act to provide for additional funds to Community and Migrant Health Centers for the purpose of reducing the incidence of infant mortality; and

H.R. 2167. An act to amend the Railroad Unemployment Insurance Act to assure sufficient resources to pay benefits under that Act, to increase the maximum daily benefit provided under that Act, and for other purposes.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 435. An act to amend title 3, United States Code, and the Uniform Time Act of 1966 to establish a single poll closing time in the continental United States for Presidential general elections; to the Committee on Rules and Administration.

H.R. 2167. An act to amend the Railroad Unemployment Insurance Act to assure sufficient resources to pay benefits under that act, to increase the maximum daily benefit provided under that act, and for other purposes; to the Committee on Finance.

MEASURE PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 1326. An act to amend the Public Health Safety Act to provide for additional funds to Community and Migrant Health Centers for the purpose of reducing the incidence of infant mortality.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CRANSTON, from the Committee on Veterans' Affairs, without amendment:

S. Res. 319: An original resolution authorizing supplemental expenditures by the Committee on Veterans' Affairs (Rept. No. 100-219).

By Mr. INOUYE, from the Select Committee on Indian Affairs, without amendment:

S. Res. 321. An original resolution consolidating and authorizing supplemental expenditures by the Select Committee on Indian Affairs (Rept. No. 100-220).

By Mr. STENNIS, from the Committee on Appropriations, without amendment:

S. Res. 322. An original resolution authorizing supplemental expenditures for the Committee on Appropriations (Rept. No. 100-221).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources:

Linus D. Wright, of Texas, to be Under Secretary of Education.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. NUNN, from the Committee on Armed Services:

Frank C. Carlucci, of Virginia, to be Secretary of Defense.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. NUNN. Mr. President, I ask unanimous consent that a short biography of Mr. Carlucci be printed in the RECORD.

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

FRANK C. CARLUCCI

Frank C. Carlucci was sworn in as Assistant to the President for National Security Affairs on January 2, 1987.

Mr. Carlucci had been Chairman and Chief Executive Officer of Sears World Trade, Inc., since October 1984, after serving as President and Chief Operating Officer since January 1983.

A retired Career Minister in the U.S. Foreign Service, Mr. Carlucci was born in Scranton, Pennsylvania, on October 18, 1930. He graduated from Princeton University in 1952. He served for two years as Lieutenant (junior grade) in the Navy aboard the USS *Rombach* (DE-364). Thereafter, he attended the Harvard Graduate School of Business Administration and joined the Jantzen Company in Portland, Oregon, in 1955.

In 1956, Mr. Carlucci joined the Department of State as a Foreign Service Officer and was assigned, from 1957 to 1959, as Vice Consul and Economic Officer in Johannesburg, South Africa. He was subsequently assigned as Secretary and Political Officer in Kinshasa, Congo, for two years.

From 1962 to 1964, he was Officer-in-Charge of Congolese Political Affairs in Washington and from 1964 to 1965 was the Consul General in Zanzibar. From 1965 to 1969, he was Counselor for Political Affairs in Rio de Janeiro, Brazil.

Mr. Carlucci was appointed Director of the Office of Economic Opportunity in December 1970, after having served as Assistant Director of OEO from June 1969. He was then appointed Associate Director of the Office of Management and Budget and was later appointed Deputy Director. For the next two years, until 1974, Mr. Carlucci served as Under Secretary of the Department of Health, Education and Welfare, followed by appointment as Ambassador to Portugal. He returned to the United States in February 1978 and served as Deputy Director of Central Intelligence until January 1981. From February 1981 until January 1983, Mr. Carlucci served as Deputy Secretary of Defense.

His awards and honors include: Presidential Citizens Award, 1983; Distinguished Intelligence Medal, 1981; National Intelligence Distinguished Service Medal, 1981; Defense Department Distinguished Civilian Service Award, 1977; Department of Health, Education and Welfare Distinguished Civilian Service Award, 1975; State Department Superior Service Award, 1972; and State Department Superior Honor Award, 1969.

Mr. Carlucci is married to Marcia McMillan Myers of Madison, Wisconsin, and has three children: Karen, Frank and Kristin.

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. HECHT (for himself and Mr. REID):

S. 1866. A bill to provide duty-free treatment for three-dimensional cameras; to the Committee on Finance.

By Mr. CRANSTON (for Mr. SIMON) (for himself, Mr. HATCH, Mr. CRANSTON, Mr. BOREN, Mr. KERRY, Mr. MATSUNAGA, and Mr. PELL):

S. 1867. A bill to amend title 28, United States Code, to make certain improvements with respect to the Federal court interpreter program, and for other purposes; to the Committee on the Judiciary.

By Mr. MOYNIHAN:

S. 1868. A bill to promote nondiscrimination in State medical licensure and medical reciprocity standards, and to amend title XIX of the Social Security Act; 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. CRANSTON, from the Committee on Veterans' Affairs:

S. Res. 319. An original resolution authorizing supplemental expenditures by the Committee on Veterans' Affairs; to the Committee on Rules and Administration.

By Mr. BYRD (for himself and Mr. DOLE):

S. Res. 320. Resolution to authorize testimony by a Senate investigator in the case of United States v. Antonio Fernandez, et al.; considered and agreed to.

By Mr. INOUYE from the Select Committee on Indian Affairs:

S. Res. 321. An original resolution consolidating and authorizing supplemental expenditures by the Select Committee on Indian Affairs; to the Committee on Rules and Administration.

By Mr. STENNIS from the Committee on Appropriations:

S. Res. 322. An original resolution authorizing supplemental expenditures for the Committee on Appropriations; to the Committee on Rules and Administration.

By Mr. MELCHER:

S. Con. Res. 88. Concurrent resolution to facilitate the convening of a Silver Haired Congress; to the Committee on Rules and Administration.

By Mr. DECONCINI (for himself, Mr. CHILES, Mr. WILSON, Mr. GRAHAM, Mr. NICKLES, Mr. THURMOND, Mr. GRASSLEY, Mr. BENTSEN, Mr. D'AMATO, Mr. DIXON, Mr. DOLE, Mr. RIEGLE, Mr. SYMMS, Mr. SHELBY, Mr. DOMENICI, Mr. MCCLURE, Mr. LUGAR, Mr. QUAYLE, Mr. LAUTENBERG, Mr. KARNES, Mr. MOYNIHAN, Mr. BOSCHWITZ, Mr. WARNER, and Mr. KASTEN):

S. Con. Res. 89. Concurrent resolution expressing the sense of Congress regarding the continuing disregard and systematic abuse of basic human rights and freedoms by the Government of Cuba and the failure of the United Nations Human Rights Commission to address the human rights situation in Cuba; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

(By Mr. CRANSTON (for Mr. SIMON) for himself, Mr. HATCH, Mr. CRANSTON, Mr. BOREN, Mr. KERRY, Mr. MATSUNAGA, and Mr. PELL):

S. 1867. A bill to amend title 28, United States Code, to make certain improvements with respect to the Federal court interpreter program, and for other purposes; to the Committee on the Judiciary.

COURT INTERPRETERS IMPROVEMENT ACT

● Mr. SIMON. Mr. President, today I am introducing the Court Interpreters Improvement Act of 1987 which will make useful reforms in the area of protecting the fifth and sixth amendment rights of the hearing impaired and non-English speakers in our Federal judicial system.

For an individual to have to go through court proceedings with his or her life and liberty at stake and not be able to understand the proceedings is something which should be foreign to our courts. That is why Congress enacted the original Court Interpreters Act in 1978. After 9 years, it is now time to revisit that statute and make some modest reforms.

The purpose of the Court Interpreters Improvement Act of 1987 is to provide competent interpretation services to parties and witnesses in Federal judicial proceedings instituted by the United States in order to assure that such persons who are hearing impaired or who have as their primary language a language other than English may participate meaningfully. It directs the Administrative Office of the Courts to establish a program to facilitate the use of certified and otherwise qualified interpreters.

This legislation requires the development and promulgation of certification tests in at least eight languages in addition to Spanish which already has a certification test. It also requires certification of interpreters for the hearing impaired. Currently, the eight most requested languages in the Federal courts are Creole, Italian, Arabic, Korean, Chinese, Portuguese, French, and Russian. As demographic and other factors will change in the future, the bill does not specify these languages by name so as to give the administrative office the latitude to update its efforts without the necessity of further legislative amendments.

Often certified interpreters will not be available for each language in each area of the country. Nonetheless, we want to assure that the highest standards of accuracy are maintained in the judicial proceedings. Therefore, this bill directs the administrative office to provide guidelines to the courts on the selection of otherwise qualified interpreters when certified ones are not available. A master list of certified and otherwise qualified interpreters shall be made available by the administrative office to local district courts and U.S. attorneys. Also, this bill requires that judicial proceedings where interpreters are used be electronically

sound-recorded at the request of a party to the matter.

This bill makes one more necessary improvement over current law. It expands the availability of court interpreters to grand jury and other pretrial proceedings. These judicial proceedings can have as much or more impact on an individual's life or liberties as a trial. It makes sense to make quality interpretation services available to individuals at this point as well.

Mr. President, we live in a culture that has paid too little attention to foreign language instruction. We are the only nation on the face of the Earth where you can go through grade school, high school, college, and get a Ph.D. without a year of a foreign language. The problems we cause ourselves in the field of trade, in the security field, as well as in the cultural field, are enormous. But one of the little-known areas where we cause ourselves difficulty is in the field of justice.

The contributions that court interpreters make to guaranteeing equal justice under the law for non-English speakers and the hearing impaired are recognized by too few. To be a good interpreter takes more than knowing English and another language and takes more than knowing legal terminology. The court interpreter must be able to convey technical information of vital importance to and from a witness or a defendant in often tense courtroom situations which put a premium on accuracy and speed.

This bill recognizes the importance of court interpreters and seeks to ensure that the protections they provide to the fifth and sixth amendment rights of the hearing impaired and non-English speakers are more widely and consistently available.●

Mr. CRANSTON. Mr. President, I am pleased to be an original cosponsor of the Court Interpreters Improvement Act of 1987 which is sponsored by the Senator from Illinois, Mr. SIMON. This bill represents an important step forward in assuring due process and equal access to justice to non-English-speaking and hearing-impaired individuals. I hope that my colleagues will support this legislation and that it will receive expeditious consideration in the appropriate committee.

Mr. President, I am particularly interesterd in seeing this legislation move forward quickly because, while it is a very simple measure, it has the potential of making a very significant difference in people's lives. Our Constitution guarantees to everyone—U.S. citizen as well as those who are foreign born—due process of laws and equal access to justice. Yet, in spite of these guarantees, it often turns out that the non-English-speaking individual, or the hearing-impaired individual, does not get his or her full measure of justice. While the courts and Congress have recognized that Constitution's guarantee of due process requires that a defendant understand the charges against him or her, and be given the opportunity to respond to those charges, the unavailability of competent interpreters often thwarts that guarantee.

Nowhere is this problem more evident than in my home State of California. Mr. President, an article which appeared in the New York Times on August 11, 1987, reported that "[t]here have been some cases in Los Angeles in which defendants and witnesses speak several different languages, including Spanish, Chinese and Vietnamese, all being translated simulataneously." That same article noted that requests for interpreters in Federal courts has nearly doubled since 1982. Mr. President, I ask that the full text of this article be printed in the RECORD at the conclusion of my remarks.

Mr. President, in light of the increased demand for interpreters in Federal court proceedings, we should take the necessary steps to assure that the requirements of due process are adhered to the fullest extent possible. For this reason, I support the legislation which my colleague from Illinois, Senator SIMON, is introducing. It will guarantee that interpreters who will be utilized in pretrial, grand jury, or regular trial proceedings instigated by the U.S. Government, meet specified performance requirements. The bill will require that the Administrative Office of the U.S. Courts certify and test interpreters for at least eight additional languages other than those currently certified. This legislation will have a significant positive impact in States, such as California, which have growing immigrant and refugee populations.

In sum, Mr. President, this is a necessary piece of legislation to fulfill our country's commitment to equal access to justice and I urge my colleagues to support it.

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

[From the New York Times, Aug. 11, 1987]

COURTS SEEKING TRANSLATORS FOR ALIEN CASES

(By Robert Reinhold)

LOS ANGELES.—With two juries and a welter of conflicting evidence, the capital murder trial here of Hau Cheong Chan and Sang Nam Chinh would be complicated enough even if Mr. Chinh could understand English. But all through the long trial, a translator had relayed the proceedings to the 21-year-old Chinese man by whispering into his right ear in Cantonese.

Down the hall in Los Angeles County Superior Court, many other languages can be heard in addition to legalese: Korean, Vietnamese, Tagalog, Yoruba, Farsi and Arabic, to name a few.

ANSWERS LOOSELY PARAPHRASED

In courts from California to Texas to New York, a growing immigrant population has placed a cumbersome and costly burden on the judicial system. Increasingly, judges and lawyers must use interpreters to help defendants bewildered by both the English language and the American legal system.

Although schools, social agencies and many other government offices have also had to cope with exotic languages, the problems are probably nowhere more sharply etched than in the courts, where life and liberty are often at stake and where the outcome of a case can turn on a mistranslated phrase.

In April, the Texas Court of Criminal Appeals ordered a new trial for a Salvadoran man sentenced to death for murder after a three-hour trial in which a local Mexican-American restaurant owner was called in to translate. The appeals court cited sloppy translation, in which the accused man's answers were loosely paraphrased, as a major reason for its decision.

The courts offer a rare window on immigrant life in America. From minor traffic violations and civil disputes to murder trials, they provided a picture of a widely diverse immigrant community at once attempting to assimilate into American life and struggling against its norms.

This is most apparent in the Los Angeles area, which has attracted the largest concentration of new immigrants, legal and illegal, in the country. The number of interpreters used by the country courts has risen from 125 in 1975 to 400 today, handling 80 languages and dialects. The annual budget for them has jumped from $2.5 million to $6.2 million, according to Burdette L. Harris, director of the county court system's interpreters service.

Meanwhile, the number of sessions requiring interpreters in the Federal courts here has risen from 2,200 in 1982 to 4,087 last year and the freelance translators available can handle 22 languages, including Bengali, Punjabi, Thai and Hungarian.

IT GETS VERY NOISY

In the San Fernando Valley of Los Angeles, whose name evokes images of a white, affluent population, the local traffic court has 13 full-time Spanish interpreters.

In New York, the state Office of Court Administration keeps a list of more than 50 languages from Albanian to Yoruba for which interpreters are on call. Chinese, in five dialects, has been in high demand recently, as has been Wolof, spoken by Senegalese, a result of a recent police crackdown on street peddling. New York City has 118 fulltime Spanish-language court interpreters.

And the Federal courts in Houston, as a result of the influx of Mexicans and Asians into the Gulf Coast area, have experienced about a 25 percent increase in use of interpreters from 1984 to 1986.

There have been some cases in Los Angeles in which defendants and witnesses speak several different languages, including Spanish, Chinese and Vietnamese, all being translated simultanteously. "It gets very noisy," said Howard Gillingham, one of the defense lawyers in the Chin and Chinh case.

Under Federal law and the laws of most states, an interpreter must be provided for a defendant who cannot speak English to insure his constitutional rights of due process and access to counsel.

All of this has created a boon for interpreters and has raised a host of delicate

legal questions over their proper role and demeanor.

"It becomes an art," said Tom Kavelin, who is translating Spanish for a defendant in a Federal drug trial here. "You've got to find the exact shade of meaning in the context and from the look the witness is giving you. There may be four or five words to choose from. The artful interpreter will find not just the meaning but the nuance and the register." He defined register as the class and cultural level of the person speaking, which can substantially alter the meaning of expressions.

Under the rules of most courts, the interpreter is expected to be neutral, not an extension of the defense team. But many say it is difficult to resist sympathizing with their countrymen.

"I have sympathy," said Keung Wong, a 36-year-old immigrant from Canton, China, who is an interpreter in the Chan and Chinh trial. "They don't understand the language and the system. You can picture yourself in a foreign courthouse and you don't know what's going on. I am able to explain: this is the marshal, this is the judge, this is the court reporter."

"You are in the middle, like being a bridge for two pieces of land, separated by the river," he said. In the murder trial, which involved the deaths of three men in a robbery, the two defendants each have a different defense, and each has a separate jury.

While Mr. Wong may sympathize with his countrymen, he says he resists becoming partial. "Sometimes the defendant asks whether he should plead guilty or not, tell me what to do," he said. "I say I cannot advise you, that you must talk to the lawyer. I try not to solve their particular problem. I can't say, based on my long experience, you should plead guilty. You can't say that."

The interpreters play an unusual and possibly contradictory courtroom role in that they may be translating at one point between a defense lawyer and his client and at another when the client is questioned by the prosecutor.

Sophia Zahler, an immigrant from Kiev in Russia who directs the Federal court interpreters office here, urges her staff to remain polite but uninvolved. Since 1982 Federal interpreters have been required to take formal training in courtroom interpreting and an examination to be certified. They earn $210 for a full day, $110 for a half day. State and county courts in California and New York also require certification, but the rules are often looser in other parts of the country.

Indeed, in the Texas case, when José Moises Guzmon of El Salvador was charged with murdering a motorist in Corsicana in 1984, the judge called in the Hispanic owner of a local Mexican restaurant, who had no training, to translate for the defendant. Neither the judge nor any of the lawyers understood Spanish.

In reversing the conviction, Judge John F. Onion Jr., of the Texas Court of Criminal Appeals wrote:

"It appears that neither the attorneys nor the interpreter understood the proper use of an interpreter, that attorneys frequently phrased their questions 'ask him if he . . .' and the interpreter frequently stated 'he says . . .'

"Attorneys should ask their questions as if no interpreter were present. The interpreter should translate the question and answer in a literal manner."

AMBIGUOUS WORDS

But even when a professional interpreter is used, problems can arise. "Sometimes an attorney will ask a question and all of a sudden the answer does not make sense," said Judge Jean E. Matusinka, who is presiding in the Chan and Chinh case. "The interpreter wasn't asking the right question." She added that defendants often are not given correct information when entering guilty pleas.

Even good interpreters have trouble with ambiguous words, dialects and slang. Guagua means bus in Cuba but baby in Chile. Trueno can mean thunderbolt or gunshot. The interpreters have differing philosophies over whether to convey the emotion of the speaker or translate flatly, a difference that can sway a jury.

Finding enough good interpreters in some languages is becoming a tough challenge. Ms. Zahler of the Federal interpreters office here said she had trouble getting enough interpreters for Los Angeles' fast-growing Korean population. She recently tried to recruit the Korean owner of a laundry she patronizes, who was once a teacher in Korea. "I don't require degrees," she said. "I require knowledge."

But Silvia Pubchara, a Cuban-born assistant district attorney in Fort Bend County near Houston, complained that almost any bilingual person can get on the court's list of interpreters. "Just because you speak a second language does not qualify you," said Ms. Pubchara, a former interpreter. "Translation of one word can make a big difference."

● Mr. KERRY. Mr. President, I am pleased to join with my distinguished colleague from Illinois, Senator SIMON, in sponsoring the Court Interpreters Improvement Act of 1987. I cosponsored similar legislation in the 99th Congress and I am delighted to do so again in the 100th Congress.

President John F. Kennedy said that America is a nation of immigrants. Today, this is more true than ever before. Immigrants from all parts of the world continue to pour into the United States seeking greater freedom and opportunity. This adds to our strength as a nation. It also means that many first-generation immigrants, speaking many different languages, must necessarily at times require the assistance of interpreters in this country.

Nowhere is this more true than in court proceedings. The assistance of a qualified court interpreter can mean the difference between understanding and misunderstanding between justice gained and justice denied.

This legislation would assure that the fifth and sixth amendment rights of non-English speakers and the hearing impaired are fully protected in our Federal courts and in Federal grand jury proceedings. It would require the Administrative Office of the U.S. Courts to test and certify interpreters in eight most commonly requested languages in district courts—including Creole, Italian, Portuguese, Chinese, French, Arabic, Korean, Russian, and Spanish. The list of languages could be updated in the future to include additional languages as well.

Many citizens of Massachusetts come from countries such as Portugal, Italy, China, Mexico and other parts of the world. This bill would ensure that their legal rights and constitutional rights are fully protected in our Federal courts. I urge my colleagues to join in supporting this legislation.●

ADDITIONAL COSPONSORS

S. 39

At the request of Mr. MOYNIHAN, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 39, a bill to amend the Internal Revenue Code of 1986 to make the exclusion from gross income of amounts paid for employee educational assistance permanent.

S. 437

At the request of Mr. METZENBAUM, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 437, a bill to amend the Small Business Investment Act of 1958 to permit prepayment of loans made to State and local development companies.

S. 450

At the request of Mr. ARMSTRONG, the names of the Senator from Arkansas [Mr. PRYOR], and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of S. 450, a bill to recognize the organization known as the National Mining Hall of Fame and Museum.

S. 824

At the request of Mr. SPECTER, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 824, a bill to establish clearly a Federal right of action by aliens and U.S. citizens against persons engaging in torture or extrajudicial killing, and for other purposes.

S. 998

At the request of Mr. DECONCINI, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of S. 998, a bill entitled the "Micro Enterprise Loans for the Poor Act."

S. 1085

At the request of Mr. GLENN, the names of the Senator from Tennessee [Mr. GORE], and the Senator from Oregon [Mr. HATFIELD] were added as cosponsors of S. 1085, a bill to create an independent oversight board to ensure the safety of U.S. Government nuclear facilities, to apply the provisions of OSHA to certain Department of Energy nuclear facilities, to clarify the jurisdiction and powers of Government agencies dealing with nuclear wastes, to ensure independent research on the effects of radiation on human beings, and for other purposes.

S. 1201

At the request of Mr. PROXMIRE, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 1201, a bill to prevent consumer abuses by credit repair organizations.

S. 1489

At the request of Mr. MOYNIHAN, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 1489, a bill to amend section 67 of the Internal Revenue Code of 1986 to exempt certain publicly offered regulated investment companies form the disallowance of indirect deductions through passthrough entities.

S. 1516

At the request of Mr. LEAHY, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 1516, a bill to amend the Federal Insecticide, Fungicide and Rodenticide Act, and for other purposes.

S. 1529

At the request of Mr. GLENN, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 1529, a bill to improve financial management in the Federal Government.

S. 1578

At the request of Mr. STEVENS, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 1578, a bill to amend chapter 83 of title 5, United States Code, to provide civil service retirement credit for service performed under the Railroad Retirement Act, and for other purposes.

S. 1724

At the request of Mr. DASCHLE, the name of the Senator from Idaho [Mr. MCCLURE] was added as a cosponsor of S. 1724, a bill to amend the Petroleum Marketing Practices Act to require retail gasoline dispensing devices to post health hazard warning labels informing the consumer of the presence of elevated levels of benzene.

S. 1731

At the request of Mr. METZENBAUM, the name of the Senator from Texas [Mr. BENTSEN] was added as a cosponsor of S. 1731, a bill to amend the Job Training Partnership Act to establish a demonstration program employment opportunities for severely disadvantaged youth, and for other purposes.

S. 1776

At the request of Mr. ARMSTRONG, the names of the Senator from Delaware [Mr. ROTH], the Senator from Texas [Mr. GRAMM], the Senator from Maine [Mr. COHEN], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of S. 1776, a bill to modernize United States circulating coin designs, of which one reverse will have a theme of the Bicentennial of the Constitution.

S. 1787

At the request of Mr. DASCHLE, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 1787, a bill to amend title 38, United States Code, to prescribe certain presumptions in the case of veterans who performed active service during the Vietnam era.

S. 1794

At the request of Mr. MOYNIHAN, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of S. 1794, a bill to establish, within the Department of Transportation, the High-Speed Ground Transportation Office; to develop the technology for a magnetically levitated superconducting transportation system; and for other purposes.

S. 1844

At the request of Mr. KARNES, the name of the Senator from Idaho [Mr. SYMMS] was added as a cosponsor of S. 1844, a bill to provide for the orderly implementation of Environmental Protection Agency programs established to comply with the Endangered Species Act of 1973.

SENATE JOINT RESOLUTION 203

At the request of Mr. D'AMATO, the name of the Senator from Rhode Island [Mr. PELL], the Senator from Iowa [Mr. HARKIN], and the Senator from Delaware [Mr. BIDEN] were added as cosponsors of Senate Joint Resolution 203, a joint resolution calling upon the Soviet Union immediately to grant permission to emigrate to all those who wish to join spouses in the United States.

SENATE JOINT RESOLUTION 214

At the request of Mr. LAUTENBERG, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of Senate Joint Resolution 214, a joint resolution to designate the week of February 7-13, 1988, as "National Child Passenger Safety Awareness Week."

SENATE RESOLUTION 270

At the request of Mr. LAUTENBERG, the name of the Senator from Connecticut [Mr. WEICKER] was added as a cosponsor of Senate Resolution 270, a resolution paying special tribute to Portuguese diplomat Dr. de Sousa Mendes for his extraordinary acts of mercy and justice during World War II.

SENATE RESOLUTION 317

At the request of Mr. BOSCHWITZ, the names of the Senator from New York [Mr. D'AMATO], the Senator from North Carolina [Mr. SANFORD], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of Senate Resolution 317, a resolution to express the sense of the Senate with respect to the current budget reduction negotiations between the Congress and the President.

SENATE CONCURRENT RESOLUTION 88—TO FACILITATE THE CONVENING OF A SILVER HAIRED CONGRESS

Mr. MELCHER submitted the following concurrent resolution; which was referred to the Committee on Rules and Administration:

SENATE CONCURRENT RESOLUTION 88

Whereas States have adopted senior citizen advocacy and legislative bodies; and

Whereas older Americans are therefore provided opportunity within their States to express their concerns, promote appropriate interests, and advance the common good by influencing legislation and actions of State government; and

Whereas, a National Silver Haired Congress with representatives from each state would serve as a national grassroots forum to determine on a nonpartisan basis the recommendations for solutions to older American concerns without regard to race, creed, national origin or social status; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress encourages and authorizes the convening of a National Silver Haired Congress in Washington, District of Columbia in 1989.

Sec. 2. The Speaker of the House of Representatives and the President pro tempore of the Senate shall facilitate and coordinate the convening of such a Congress.

Sec. 3. Expenses incurred in carrying out this resolution, not to exceed $300,000, shall be paid from the contingent fund of the Senate upon vouchers signed by the President pro tempore of the Senate.

SENATE CONCURRENT RESOLUTION 89—RELATING TO THE HUMAN RIGHTS SITUATION IN CUBA

Mr. DECONCINI (for himself, Mr. CHILES, Mr. WILSON, Mr. GRAHAM, Mr. NICKLES, Mr. THURMOND, Mr. GRASSLEY, Mr. BENTSEN, Mr. D'AMATO, Mr. DIXON, Mr. DOLE, Mr. RIEGLE, Mr. SYMMS, Mr. SHELBY, Mr. DOMENICI, Mr. MCCLURE, Mr. LUGAR, Mr. QUAYLE, Mr. LAUTENBERG, Mr. KARNES, Mr. MOYNIHAN, Mr. BOSCHWITZ, Mr. WARNER, and Mr. KASTEN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

SENATE CONCURRENT RESOLUTION 89

Whereas the United Nations was established in 1945, for, among other purposes, the promotion and encouragement, of respect for human rights and fundamental freedoms for all;

Whereas the United Nations Human Rights Commission was established by the Economic and Social Council in 1946 to investigate and make recommendations concerning the violation of human rights and fundamental freedoms;

Whereas the Government of Cuba has engaged in systematic and flagrant abuses of basic human rights and freedoms so offensive that they demand universal condemnation, including—

(1) the arbitrary arrest and prolonged imprisonment of individuals accused of political opposition to the Government of Cuba for engaging in such activities as the open

or private expression of political opinions or religious beliefs, the attempt to form independent labor unions, the possession, reproduction, or intended distribution of religious or political literature, including the Universal Declaration of Human Rights, or even the professional representation by legal counsel of those so accused;

(2) the murder of political prisoners while in custody or the execution of individuals sentenced to death for political offenses;

(3) the reported systematic use of physical and psychological torture and the degrading and abusive treatment of political prisoners, especially the plantados—those who refuse out of conscience to participate in so-called political rehabilitation programs;

(4) the institutionalized use of a network of neighborhood informants organized by political "block committees" or so-called "Committees for the Defense of the Revolution" to repress the exercise of any freedom of expression and to otherwise control the behavior of citizens through intimidation;

(5) the repression of the independent Committee for Human Rights in Cuba for its attempt to register as a legal organization under the laws of the State, and the reported arrest, disappearance, or death of members of the Committee, and the continuing persecution of its president who has had to seek the safety of a foreign embassy out of fear for his life and continues to be deprived of the right to leave Cuba or to be reunited with his family; and

(6) the expulsion from Cuba of foreign journalists for having attempted to interview Cuban citizens and report objectively on the human rights situation in that country;

Whereas, the Congress further recognizes that the United Nations has consistently failed to address the violation of fundamental human rights and freedoms in Cuba: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the United Nations and the United Nations Human Rights Commission have acted selectively and inconsistently in addressing violations of basic human rights in various countries;

(2) the United Nations General Assembly and the United Nations Human Rights Commission have failed to responsibly address the deplorable human rights situation in Cuba despite overwhelming evidence of the continuing disregard and systematic abuse of the most basic human rights by the Government of Cuba;

(3) the President, the Secretary of State, and the Permanent Representative of the United States to the United Nations are to be commended for their efforts to place Cuba on the human rights agenda of the United Nations and are strongly encouraged to continue in their efforts to bring this issue to the attention of the United Nations;

(4) the following countries are to be commended for their courageous vote in favor of considering human rights violations in Cuba, particularly in light of the thinly vieled threats of the Cuban delegation: Austria, Australia, Belgium, Costa Rica, France, Gambia, Federal Republic of Germany, Iceland, Italy, Japan, Lesoto, Liberia, Norway, Philippines, Somolia, Togo, and the United Kingdom;

(5) the United States strongly urges the United Nations Commission Member States interested in democracy in the region, particularly Mexico, Spain, Peru, Venezuela, Argentina, and Colombia, to support the United States resolution on Cuban human rights at the next session of the United Nations Human Rights Commission, and the United States should take into account this vote in determining U.S. bilateral and other assistance to all countries which are members of the Commission;

(6) the United States should continue to emphasize how other countries vote on fundamental issues such as human rights when determining financial support for the United Nations, which includes the contribution to the Human Rights Commission; and

(7) the United Nations Human Rights Commission which will hold its forty-fourth session in Geneva, Switzerland, in 1988, should include among the highest priorities of its human rights agenda consideration of human rights violations in Cuba.

INTERNATIONAL PRESSURE FOR CUBAN HUMAN RIGHTS

Mr. DECONCINI. Mr. President, I rise today to introduce a concurrent resolution on encouraging the United Nations Human Rights Commission to address the systematic abuse of basic human rights by the Government of Cuba. The current regime in Cuba has the highest number of political prisoners, per capita, in the Western hemisphere. It has exhibited a flagrant disrespect for the freedoms and rights of its citizens. This behavior demands universal condemnation by the United States, the United Nations, and the concerned governments around the world.

This resolution has 23 original cosponsors, including wide bipartisan support. Congressman SHUMWAY has introduced a companion measure in the House of Representatives. Mr. SHUMWAY's resolution currently has 76 cosponsors. Both of these resolutions are strongly supported by President Reagan, Ambassador Walters, and the State Department.

Equal in importance to these prestigious endorsements is the support of Armando Valladares, a former political prisoner in Cuba. He has personally written about the stench, horror, and degrading experiences in Cuban jails. Paraphrasing his distinguished book "Against All Hope," it is "with all hope" that we join forces today to encourage a unified effort to condemn the odious regime in Cuba. His courageous book chronicles the sustained evil and cruelty of Castro's Cuba which continues to stampede the political and human rights of its people. Today, we link hands with the legislative, executive, and international bodies of this country to voice our concern, outrage, and hope that we might change the horrible situation which exists today.

Earlier this week a press conference took place with Ambassador Walters and Armando Valladares. I am extremely honored to join Congressman SHUMWAY, Ambassador Walters, Armando Valladares, and the other concerned supporters of this legislation to send a resolute signal to the world that the United States will devote all its efforts to condemn Cuba for the highest number of political prisoners, per capita, in the world. As Ambassador Walters has so eloquently stated in impassioned speeches in the United Nations, the United States sponsored resolution condemning Cuban human rights atrocities is "an appeal to the conscience of man." We are here to echo and amplify this appeal and see that we have success in this effort.

As a member of the Senate Foreign Operations Appropriations Subcommittee, which oversees funding for the United Nations, I will carefully monitor the progress of this resolution in the upcoming session. The United States should continue to emphasize such issues as human rights when determining financial support for the United Nations. I am encouraged by the early efforts exhibited with this legislation to seriously encourage other countries to support this resolution. I hope we will soon celebrate the successful passage of this proposal in the United Nations.

SENATE RESOLUTION 319—ORIGINAL RESOLUTION REPORTED AUTHORIZING SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON VETERANS' AFFAIRS

Mr. CRANSTON, from the Committee on Veterans' Affairs, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 319

Resolved, That section 18(b) of Senate Resolution 80, 100th Congress, agreed to January 28, 1987, is amended by striking out "$907,901" and inserting in lieu thereof "$949,401".

SENATE RESOLUTION 320—AUTHORIZING TESTIMONY BY A SENATE INVESTIGATOR

Mr. BYRD (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 320

Whereas, in the case of *United States* v. *Antonio Fernandez, et al.,* No. 87-217-Cr-NESBITT, pending in the United States District Court for the Southern District of Florida, David Faulkner, a former Senate employee and current consultant with the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, has been requested to testify by the United States;

Whereas, under the authority of Senate Resolution 128 in the Ninety-Ninth Congress, the Permanent Subcommittee on Investigations provided to the Department of Justice a memorandum dated April 21, 1983 documenting an interview with Antonio Fernandez, one of the defendants;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence

under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that testimony by present or former Senate employees may be needed in any court for the promotion of justice, the Senate will act to promote the ends of justice in a manner consistent with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That David Faulkner is authorized to testify in the case of *United States* v. *Antonio Fernandez, et al.*, concerning only the interview documented in the April 21, 1983 memorandum and concerning no other matters.

SENATE RESOLUTION 321—ORIGINAL RESOLUTION REPORTED AUTHORIZING SUPPLEMENTAL EXPENDITURES BY THE SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE, from the Select Committee on Indian Affairs, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 321

Resolved, That Senate Resolution 353, Section 21, paragraph (b), 99th Congress as amended, be amended by striking out $790,797" and inserting in lieu thereof $795,797"; and be it further

Resolved, That Senate Resolution 80, Section 21, paragraph (b), 100th Congress, be amended by striking out "$842,335" and inserting in lieu thereof "$1,142,335.

SENATE RESOLUTION 322—ORIGINAL RESOLUTION REPORTED AUTHORIZING SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON APPROPRIATIONS

Mr. STENNIS, from the Committee on Appropriations, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 322

Resolved, (a) That section 4(b) of Senate Resolution 80, 100th Congress, agreed to January 28, 1987, is amended by striking out "$4,119,856" and inserting in lieu thereof "4,209,856".

(b) That section 4(b)(1) of such resolution is amended by striking out "$135,000" and inserting in lieu thereof "$180,000".

AMENDMENTS SUBMITTED

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, FISCAL YEAR 1988

MURKOWSKI (AND OTHERS) AMENDMENT NO. 1184

Mr. JOHNSTON (for Mr. MURKOWSKI, for himself, Mr. MCCLURE, Mr. JOHNSTON, and Mr. GLENN) proposed an amendment to the bill (H.R. 2700) making appropriations for energy and water development for the fiscal year ending September 30, 1988, and for other purposes; as follows:

On page 40, line 23, strike the period and insert in lieu thereof:

"; with the following amendment:

"at the end of the bill insert the following new section:

'TRANSPORTATION OF PLUTONIUM BY AIRCRAFT THROUGH THE TERRITORY OR AIR SPACE OF THE UNITED STATES

'SEC. 8. (a) Plutonium in any form may not be transported by aircraft from a foreign nation to any foreign nation through the territory or air space of the United States unless such plutonium is transported in a package that has been certified safe by the Nuclear Regulatory Commission in accordance with subsection (b) and all other applicable law.

'(b) The Nuclear Regulatory Commission shall—

'(1) conduct an actual crash test of a cargo aircraft traveling at maximum cruising speed, appropriately loaded with sample full scale packages containing test material;

'(2) conduct an actual drop test from maximum cruising altitude of a sample full scale package containing test material; and

'(3) certify that the package, samples of which were tested under paragraphs (1) and (2), is acceptably safe for use in the transport of plutonium by aircraft.

'(c) (1) The parameters of the tests under subsection (b) shall be determined by the Nuclear Regulatory Commission after public notice and opportunity for comment.

'(2) The results of all tests under this section shall be available to the public.

DIXON AMENDMENT NO. 1185

Mr. JOHNSTON (for Mr. DIXON) proposed an amendment to the bill (HR 2700), supra; as follows:

On page 2, line 23, before the period insert a colon and the following: "*Provided further*, That of the amounts appropriated under this heading, $220,000 shall be available for a reconnaissance study of the South Fork of the Sangamon River, Illinois".

MURKOWSKI AMENDMENT NO. 1186

Mr. JOHNSTON (for Mr. MURKOWSKI) proposed an amendment to the bill (HR 2700), supra; as follows:

At the end of the bill, add the following:

SEC. . (a)(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 water development project of the Army Corps of Engineers or the Bureau of Reclamation 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 the Army or the Secretary of the Interior 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, or

(B) fair and equitable market opportunities for services of the United States in bidding,

for public works 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.

METZENBAUM (AND OTHERS) AMENDMENT NO. 1187

Mr. METZENBAUM (for himself, Mr. GRASSLEY, and Mr. LEVIN) proposed an amendment to the bill (HR 2700), supra; as follows:

Strike lines 5 through 9 on page 48, and insert the following new section:

SEC. 305. (a) In any regulations issued pursuant to section 1534 of the Defense Authorization Act for 1986, the Secretary of Energy may not disallow the following costs associated with the activities of contractor personnel from the Department of Energy

National Laboratories or Department of Energy personnel of the Department of Energy National Laboratories:

(1) Costs of providing to Congress or a State legislature, in response to a request written or oral, prior or contemporaneous from Congress or a State legislature, information or expert advice of a factual, technical, or scientific nature, with respect to:

(A) topics directly related to the performance of the contract; or

(B) proposed legislation; irrespective of whether such information or advice was requested or supplied through the Department of Energy.

(2) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.

(b) No part of any appropriation made in this act shall be obligated or expended to influence, either directly or indirectly, any appropriation or legislation before Congress, or for any publicity or propaganda purpose not specifically authorized by Congress: Provided, that this provision shall not apply to:

(1) the communication of departmental or agency views to the Congress; or

(2) the conduct of normal legislative liaison activities.

(3) the costs described in subsection (a).

SHELBY AMENDMENT NO. 1188

Mr. SHELBY proposed an amendment, which was subsequently modified, to the bill H.R. 2700, supra; as follows:

On page 49, after line 20, insert the following new section:

SEC. 309. None of the funds appropriated by this Act or any other Act may be expended by the Department of Energy or the Department of Justice or any of their component agencies to prosecute any action or to enforce any judgment against any individual corporate shareholder, officer or employee for restitution under section 209 of the Economic Stabilization Act of 1970, as amended, in any case decided by the Temporary Emergency Court of Appeals on May 7, 1987, based upon the role of such individual as a central figure in any statutory or regulatory violation, except for the actual dollar amount personally received by such individual from such violation and any interest assessed on such amount. The prohibition in this section shall apply only until October 1, 1988.

LAUTENBERG (AND BRADLEY) AMENDMENT NO. 1189

Mr. LAUTENBERG (for himself and Mr. BRADLEY) proposed an amendment to the bill H.R. 2700, supra; as follows:

On page 38, line 5, before the period, insert the following: ": *Provided*, That of the amount appropriated under this heading for the magnetic fusion program, $8,000,000 shall be available to continue research, development, engineering and design only of Project 88-R-92, Compact Ignition Tokamak; *Provided further*, That the Princeton Plasma Physics Laboratory and the Office of Fusion Energy shall submit a report and a 5-year plan based on current budgetary resources allocated for fusion energy research to the Committees on Appropriations of the House and Senate providing detailed information, costs and schedules for the concurrent construction of the Compact Ignition Tokamak project with the continued operation and completion of the Tokamak Fusion Test Reactor project."

LEAHY (AND OTHERS) AMENDMENT NO. 1190

Mr. JOHNSTON (for Mr. LEAHY, for himself, Mr. STAFFORD, Mr. HARKIN, Mr. RIEGLE, Mr. GORE, Mr. MATSUNAGA, Mr. CRANSTON, Mr. KERRY, Mr. ADAMS, Mr. LAUTENBERG, Mr. INOUYE, Mr. DODD, Mr. BIDEN, Mr. GRAHAM, Mr. DECONCINI, Mr. MOYNIHAN, Mr. SANFORD, Mr. BURDICK, Mr. FOWLER, Mr. PELL, Mr. BAUCUS, Mr. CHAFEE, Mr. DASCHLE, and Mr. SIMON) proposed an amendment to the bill H.R. 2700, supra; as follows:

On page 41, line 4, after "expended," insert "of which $2,000,000 shall be available from within available funds for wind research.

DIXON (AND SIMON) AMENDMENT NOS. 1191 AND 1192

Mr. JOHNSTON (for Mr. DIXON, for himself, and Mr. SIMON), proposed two amendments to the bill H.R. 2700, supra; as follows:

AMENDMENT NO. 1191

At the end of the bill insert the following: "The Secretary of the Army shall transfer title to all land presently leased to the State of Illinois at South Shores State Park, Lake Carlyle, Illinois for development in accordance within the State Plan for development of recreational opportunities throughout the state park system. Title to all lands transferred shall be encumbered to insure that the development does not interfere with operation of the project for flood control purposes."

AMENDMENT NO. 1192

On page 12, line 10, before the period insert a colon and the following: *"Provided further*, That the Secretary of the Army is directed to accomplish channel rehabilitation repair and rehabilitation of fourteen pump stations and appurtenant works and rehabilitation and replacement of bridge structures in the vicinity of the East Side Levee and Sanitary District in East St. Louis, Illinois, by making available $1,000,000 in fiscal year 1988".

KARNES AMENDMENT NO. 1193

Mr. KARNES proposed an amendment to the bill H.R. 2700, supra; as follows:

At the bottom of page 23, insert the following: *"Provided further*, that $1 million of available funds shall be available for use on the Davis Creek Dam, North Loup Division, Nebraska."

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on November 13, 1987, to hold a hearing on judicial nominations.

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

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 Friday, November 13, 1987, to receive testimony on the nominations 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 PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SURFACE TRANSPORTATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Surface Transportation, of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on November 13, 1987, to hold oversight hearings on transportation property brokers.

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

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs, be authorized to meet during the session of the Senate on Friday, November 13, 1987, to hold a business meeting to consolidate supplemental expenditures for the Select Committee on Indian Affairs and the Special Investigations Committee.

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

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Taxation and Debt Management of the Committee on Finance be authorized to meet during the session of the Senate on November 13, 1987, to hold a hearing on S. 983, S. 788, and S. 1781, miscellaneous tax issues.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Friday, November 13, 1987, to hold a hearing on intelligence matters.

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

SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY, TRADE, OCEANS AND ENVIRONMENT

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on International Economic Policy, Trade, Oceans and Environment of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Friday, November 13, 1987, to hold a

hearing on economic assistance to Central America (S. Con. Res. 63).

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

ADDITIONAL STATEMENTS

ON THE UPCOMING ELECTIONS IN HAITI

● Mr. CHILES. Mr. President, in 2 weeks elections are scheduled to be held in Haiti. Tragically, there are those in Haiti who have resorted to violent and repressive means to shape the outcome of these elections.

In February 1986, the 30-year reign of the Duvalier family came to an end. The downfall of "Baby Doc" Duvalier roused the Haitian people and gave them hope that they would finally have a chance for free elections and a democratic government.

Mr. President, the Haitian people believed that the ouster of Duvalier would mean an end to the violence they suffered at the hands of the Ton Ton Macoute, the Haitian secret police. The Haitians now have hope that they will be able to express themselves freely without fear of imprisonment or torture.

In recent months, however, it has become distressingly clear that while Duvalier is gone, the Duvalier loyalists still wield significant power in Haiti. Despite the fact that the secret police was disbanded, many have reportedly been recruited into the armed forces.

And, Mr. President, the army continues to be involved in episodes of violence against unarmed civilians.

This summer, Haiti's interim government attempted to seize control of the upcoming elections from the independent electoral council. This spurred protests in which more than 30 people were killed by the army.

Incidents of violence continue to escalate as the elections approach. Already, two Presidential candidates have been murdered and the Offices of the Electoral Council and the Christian Democratic Party have been attacked.

The National Government Council has promised to provide adequate security to enable the electoral process to take place. I hope this will be the case. But, Mr. President, while I am hopeful that this is the case, I have doubts.

The Haitian people have waited 30 years for this election. They have worked for it. Many have died for it. It would be a tragedy, if after coming so close to freedom and democracy, Haiti slipped back into the pattern of corruption, repression and despair that has plagued this country for so long. Over 90 percent of the electorate supported the establishment of a constitution—they obviously want and support a democracy.

Mr. President, a country that has not held elections for 30 years faces significant challenges. We provided funds and assistance for the electoral process. We have made our support for free and fair elections abundantly clear. We must continue to do so.

At this point, however, it is up to the Haitians to make this process work. We can offer our support, but the challenge is theirs. If they succeed, the fruits of their victory will also be theirs. Many Haitian Americans join me in support of a fair election on November 29. Democracy cannot prevail without such an exercise.●

MONETARY POLICY IS THE CULPRIT AND THE CURE

● Mr. KASTEN. Mr. President, the recent difficulties in the world equity markets are the direct result of central bank monetary policy. The tight monetary policy pursued by the world's central banks in 1987 and the subsequent rise in interest rates threatens to tip the world into recession.

In a November 2 letter to Federal Reserve Chairman Alan Greenspan; four distinguished economists, Dr. David Meiselman, professor of economics at Virginia Polytechnic Institute, Dr. William Niskanen, president of the CATO Institute and former member of the President's Council of Economic Advisors, Dr. Paul Craig Roberts, holder of the William E. Simon Chair in Political Economy of the Center for Strategic and International Studies, and Richard W. Rahn, vice president and chief economist of the U.S. Chamber of Commerce urged the Fed to signal a permanent change from the tight monetary policy that is threatening the world economy. They argued that the Federal Reserve's response to the equity market crash has been inadequate. The Fed can provide leadership only by cutting the discount rate and standing ready to purchase long-term bonds in order to prevent a premature end to the rally in bond prices.

Mr. President, decisive action to cut the Federal budget deficit is an essential ingredient to reassure the financial markets and revitalize the economy. However, I believe that we must focus our attention on the major culprit and the most effective cure—central bank monetary policy. I ask that the full text of the letter to Chairman Greenspan be printed in the RECORD.

The letter follows:

NOVEMBER 2, 1987.

Hon. ALAN GREENSPAN,
Chairman, Board of Governors of the Federal Reserve System, Washington, DC.

DEAR ALAN: Those of us in the policy community who are sympathetic to the efforts of the G-5 conservative governments to promote economic progress by expanding private property rights through privatization, deregulation, tax rate reduction, and control of inflation are concerned that the Federal Reserve and other central banks are jeopardizing the political revival of private property by leading the world into recession.

During 1987 money growth in the U.S. has abruptly slowed and practically halted. The subsequent rise in interest rates has been misinterpreted even by some Fed officials as the consequence of rising inflation expectations, and the Fed even raised the discount rate in the mistaken belief that it would reassure the markets and stabilize, if not reduce, long-term rates.

As long-term rates moved sharply, the theory failed the test. Moreover, dollar-based inflation expectation fears cannot readily explain the sharp upward movement in both German and Japanese Government bond yields from May to October. It is dangerous for central banks to postulate world inflation from an exchange rate adjustment.

The willingness to risk a recession over commodity prices is also hard to understand. A rise in commodity prices from extreme lows reflects a rebound of the economy. Recession level commodity prices must not be taken as the norm. In addition, volatility in commodity prices can be a result of speculative factors and random events. Moreover, central banks must not interpret every price rise as inflationary, as prices play allocative roles and act as signals to expand output.

The Fed's response to the global stock market crash has been inadequate. The provision of reserves on an overnight basis through repurchase agreements does not signal any but a temporary change from the tight monetary policy that is threatening the world economy. Leadership is required and can be provided only by cutting the discount rate and standing ready to purchase long-term bonds in order to prevent a premature end to the rally in bond prices.

The Fed is targeting reserves, and the sharply increased spread of Fed funds over the 3-month T-bill rate suggests that the Fed is underestimating the demand for reserves. This is worrisome in view of the tendency for stock market crashes to increase the demand for money, causing velocity to decline.

The Fed should remember that a higher price level due to an exchange rate adjustment is not the same as monetary inflation—especially in a year during which there has been little money growth. The Fed should cease trying to stabilize the dollar by going on a mark standard and, instead, stabilize the economy by getting money growth up into the Fed's announced target ranges. Recession may already be baked into the cake, and action to minimize its severity is an appropriate concern for the Federal Reserve.

DAVID MEISELMAN,
PAUL CRAIG ROBERTS,
WILLIAM NISKANEN,
RICHARD W. RAHN.●

BUDGET SCOREKEEPING REPORT

● Mr. CHILES. Mr. President, I hereby submit to the Senate the budget scorekeeping report for this week, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report was prepared consistent with standard scorekeeping conventions. This report also serves as the scorekeeping report

for the purposes of section 311 of the Budget Act.

This report shows that current level spending is under the budget resolution by $8.4 billion in budget authority, but over in outlays by $5.4 billion.

The material follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 13, 1987.

HON. LAWTON CHILES,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of congressional action on the budget for fiscal year 1988 and is current through November 12, 1987. The estimated totals of budget authority, outlays, and revenues are compared to the appropriate or recommended levels contained in the most recent budget resolution (H. Con. Res. 93). The report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of Section 5 of Senate Continuing Resolution 32.

This is my first report for fiscal year 1988 and includes the second continuing resolution, Public Law 100-162, the Medicare provisions of the Balanced Budget and Emergency Deficit Control Reaffirmation Act, Public Law 100-119, the interim extension of certain veterans' housing programs, Public Law 100-136, and technical amendments to laws relating to Indians, Public Law 100-153.

With best wishes,

Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE 100TH CONGRESS, 1ST SESSION

[As of November 12, 1987, fiscal year 1988—in billions of dollars]

	Current level [1]	Budget resolution (H. Con. Res. 93) [2]	Current level +/− resolution
Budget authority	1,137.6	1,146.0	−8.4
Outlays	1,040.1	1,034.7	5.4
Revenues	910.1	932.8	−22.7
Debt subject to limit	2,379.4	[3] 2,565.1	−185.7
Direct loan obligations	34.0	34.6	−.6
Guaranteed loan commitments	148.9	156.7	−7.8

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other mandatory programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] In accordance with section 5(a)(1)(b) the budget authority and outlays include an adjustment that reflects the amount reserved for subsequent allocation under section 302(a) of the Congressional Budget Act.

[3] The permanent statutory debt limit is $2,800.0 billion.

PARLIAMENTARIAN STATUS REPORT, 100TH CONGRESS, 1ST SESSION, SENATE SUPPORTING DETAIL, FISCAL YEAR 1988, AS OF CLOSE OF BUSINESS, NOVEMBER 12, 1987

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			909,754
Permanent appropriations and trust funds	779,621	681,502	
Other appropriations		205,550	
Offsetting receipts	−169,458	−169,458	
Total enacted in previous sessions	610,163	717,594	909,754
II. Enacted this session:			
Water Quality Act of 1987 (Public Law 100-4)	−2	−2	
Emergency supplemental for the homeless (Public Law 100-6)		−7	
Ginnie Mae fees (Public Law 100-14)		52	
Surface Transportation and Relocation Act (Public Law 100-17)	10,969		364
Federal Employees Retirement System Technical Corrections (Public Law 100-20)	10	10	
Farm Disaster Assistance Act (Public Law 100-45)	−30	−30	
Supplemental Appropriations, 1987 (Public Law 100-71)	68	915	
Small Business Administration program and authorization amendments (Public Law 100-72)	−41	−41	
Competitive Equality Banking Act of 1987 (Public Law 100-86)		−650	−7
Credit certain air traffic controller service for retirement benefits (Public Law 100-92)		3	
Medicare and Medicaid Patient and Program Protection Act (Public Law 100-93)		3	
Balanced Budget and Emergency Deficit Control Reaffirmation Act (Public Law 100-119)		−160	
Interim extension of certain veterans' housing programs (Public Law 100-136)	677	608	
Technical amendments to laws relating to Indians (Public Law 100-153)	1	1	
Total enacted this session	11,652	702	357
III. Continuing resolution authority: Continuing Resolution, fiscal year 1988			
(Public Law 100-162)	560,544	366,808	
Offsetting receipts	−30,823	−30,823	
Total continuing resolution authority	529,721	335,985	
IV. Conference agreements ratified by both Houses			
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Disaster relief	142	85	
Guarantee reserve fund	(532)	(532)	
Military service wage credit	(391)	(391)	
Food stamp program	592	341	
Uranium supply and enrichment (receipts)	−90	−90	
Federal Energy Regulatory Commission (receipts)	−6	−6	
Loan guaranty revolving fund	90	100	
National wildlife refuge fund	1	1	
Total entitlement authority	729	431	
VI. Adjustment for economic and technical reestimates	−14,650	−14,650	
Total current level as of November 12, 1987	1,137,615	1,040,061	910,111
1988 budget resolution (H. Con. Res. 93)	1,146,000	1,034,700	932,800
Amount remaining:			
Over budget resolution		5,361	
Under budget resolution	8,385		22,689

Note: Numbers may not add due to rounding.●

NEWLY ELECTED PRESIDENT OF THE NATIONAL PUBLIC LANDS COUNCIL—W.H. "BUD" EPPERS

● Mr. DOMENICI. Mr. President, today I wish to share with my colleagues my pleasure at the selection of a fellow New Mexican—W.H. "Bud" Eppers—as president of the National Public Lands Council [PLC].

I have known Bud for many, many years and consider him a close and dear friend.

In my opinion, the members of the PLC could not have chosen a better leader. Bud is dedicated to the principle of sound management of the Federal lands for grazing and for other multiple uses. He is deeply concerned about public range improvement, range caterpillar and grasshopper control, and other vital public land issues. He is also both innovative and knowledgeable about livestock production on public lands.

I have worked together with Bud on public land issues many times through the years. In fact, I often seek his advice and counsel on pressing issues that come before the Senate. I greatly value his friendship and expertise.

Bud has testified numerous times before Congress. Those most notable were during the consideration of the Federal Land Policy and Management Act of 1976 [FLPMA] and the 1978 Public Rangelands Improvement Act [PRIA]. Bud has actively lobbied in New Mexico and Washington for many years.

Bud Eppers was born in Roswell, NM, and has been in the ranching business all his life. He owns and operates two ranches in the Roswell area. He is a loving father and well respected community leader.

He first demonstrated his leadership to the industry and Congress when he chaired an ad-hoc rancher group whose land was besieged by an invasion of range caterpillars and grasshoppers in 1973. Under his helm, the group spearheaded an effort that ultimately brought about a new rangelands spraying program in cooperation with Federal and State agencies.

In subsequent years, he has tirelessly represented public land livestock producers interests in grazing matters. He has been involved in everything from drafting legislation to establishing a range improvement task force team of Ph.D.'s to work with Government and private individuals on problems affecting New Mexico rangelands.

In the past Bud has served on the board of directors of the New Mexico Wool Growers' Association. He has also served as vice president of the New Mexico Cattle Growers' Association. In addition to serving as president of the National Public Lands Council, he is currently the president of the New Mexico Public Lands Coun-

cil and the Southeastern New Mexico Grazing Association.

Bud is also a member of the New Mexico Farm Bureau, the National Rifle Association, the National Association of Property Owners, Airplane Owners and Pilot Association, and Flying Farmers International.

Bud is an active member of his local church, the First Christian Church. He also is active in other civic organizations such as the Elks Club.

I am sure that Bud's wife, Alice, and his four children, Carl, Thomas, Catherine, and Robert, miss him so much during those periods when he must be away from home fighting tirelessly for the industry he loves.

But I'm equally sure that they share my pride in having him serve in such a prestigious position as president of the National Public Lands Council.

My congratulations to Bud. I know he will do an excellent job.●

INFORMED CONSENT—CALIFORNIA

● Mr. HUMPHREY. Mr. President, there is a growing body of evidence showing that abortion can and often does have significant medical and emotional side effects. Women who undergo abortions face the possibility of sterility, guilt and depression as well as many other complications. Of course, there are few serious medical procedures that have no risk at all, but in the case of abortion, women are often not even told about the risks they face before they consent to the procedure. That is not right.

I urge my colleagues to help end this medical injustice and support my informed consent legislation, S. 272 and S. 273. The bills would require that medical personnel fully inform women considering abortion about the risks, effects, and alternatives. I ask that several letters from women in California in support of informed consent be entered into the RECORD.

The letters follow:

SEPTEMBER 27, 1986.

DEAR SENATOR HUMPHREY: I am one of those unfortunate women who were duped into believing abortion was the answer to a problem pregnancy. Anyway . . .

I am Robin Strom, 32 years old and the Marin County, California Director of W.E.B.A., the speakers bureau chairman of Marin Right to Life and a member of the Marin Pro-Life Coalition. I've also been trained as a crisis pregnancy center volunteer counselor. But before this . . .

At 16 years old I had my first abortion in New York City at the Margaret Sanger Institute. All I needed was a confirmed pregnancy test, $250 and a friend who would help me afterwards. I received no counseling except medical history and how I would be cramping and bleeding afterwards. I wanted a local anesthesia only so I was awake during the procedure and afterwards. Most women at the institute were put out under general anesthesia (which wouldn't be any help afterwards). The procedure was painful and emotionally devastating. I pretended nothing happened, that I hadn't been pregnant (no one knew except for a few close friends). What happened afterwards is too intense to be written down so I will only pick up a few points. I began doing drugs (any kind except shooting with a needle) all the time. Before school, after school and at night. I began to be very sexually promiscuous, indiscriminately! I became a cocaine addict and ended up hating myself and my lifestyle so deeply that I joined the Hare Krishna cult. I so desired freedom from the drugs and immorality that I totally entrenched myself in the cult. I was in for 2 solid years where I fundraised daily and made an average of $100 in 6 hours, (tax free and I never kept a dime) a day. My parents rescued me (had me deprogrammed at Passover). Then the fellow who deprogrammed me and I fell in love and got married 4 months later (1976). We married and moved to Colorado. I broke my foot and then found out I was pregnant (both almost on my honeymoon). We went to Planned Parenthood in Boulder, Colorado and they suggested I get an abortion, since my foot was in a cast and it was "bad timing." We went to Denver, P.P. and had the abortion. Again the only counseling I received was medical and family history.

That time I felt really bad emotionally because we really wanted children. But, it was done. During the abortion I asked if it was a girl or boy and they said they couldn't tell. (Years later I found out why—because the baby gets torn from limb to limb.) Life went on with suppressed emotions of guilt, shame, anger, bitterness, resentment and loss. Until I got pregnant, on purpose, in 1979. While pregnant, I've accepted Jesus Christ as our Messiah and Lord. He began showing me (and Michael) what we had done in our past, especially the abortions. We began to start seeing and understanding what happened to us and to the babies.

This is a condensed version of what abortion has done to us, the parents. You are well aware to what happens to the unborn boys and girls. It affects future siblings, too. My kids all say that its good we didn't abort them (our children are 6, 4 and 2 years old). They worry about the babies in Mom's tummies all across the earth. They pray with us that legalized murder will be stopped in this decade!

Please feel free to use my story. There is a lot more to it too. Thank you for taking this stand for the unborn. You are a voice for unborn babies and the countless women and men affected by abortion. May God richly bless you and your efforts for America, now and in the future.

In Friendship,

ROBIN STROM,
California.

FEBRUARY 22, 1987.

DEAR HON. GORDON J. HUMPHREY: I am a 33 year old woman with a story to share. As a junior at Penn State University, 20 years old, I was told by a doctor at the University Health Center that I was pregnant. Whenever I think back to the days (or was it weeks?) it is difficult to pinpoint any feelings except numbness. It was as if I was going through the days as a machine; the reality of an unplanned pregnancy was too much to handle.

I was referred to a church building for an "appointment" which was the first step in getting an abortion. Looking back now, this must have been an attempt at counseling or screening. I remember the presence of a male (a church clergyman, I believe) and a woman—I can't remember anything we talked about except one question. They asked, "Can you get married?" I left that church with the woman and as she got in her car to go, I remember feeling comforted by her comment "It will be O.K. I had an abortion too!"

Within a week, I had borrowed a friend's car and driven by myself to Pittsburgh, PA, a 4 hour drive from Penn State where I sat in a waiting room with 10-12 other women. Right before they performed the abortion, I remember being taken in a small room and shown a board with different kinds of contraceptives on it. I suppose the message was if I was going to be sexually active, I should use contraceptives.

But you see, they never addressed the problem. The problem wasn't safe sex; the problem was that I was using sex to fulfill an aching deep inside to be held, loved and appreciated. And I went on continuing to do that, because I hadn't yet figured out what the problem was. And I used the pill, for a while. But there were still many times to come where I had sexual relations with no contraceptives.

In the past 15 years I have learned a lot about abortion. I have carried the emotional scars, the guilt, the shame. No one ever gave me a choice—really. No one ever offered me help, support, encouragement to give my baby life—no one talked about adoption or single parenting. No one talked about the risks of the abortion to my body physically, or to the chances that future pregnancies and my ability to have children later were at risk.

In my opinion, adequate information and all options should be presented to all women considering abortion. Please continue to work for informed consent.

JUDY RICHARDS,
California.

FEBRUARY 11, 1987.

DEAR SIR: This is very difficult for me. But I know I must write. For I believe everyone should be adequately informed. I believe all aspects should be explained, very detailed, exactly what they are doing to their own bodies and to the unborn life and what God says about abortion. I believe it should be a law that each person should fully understand what they are doing. For it's murder!!

In January 1975 I had an abortion. I was told there was an abortion clinic in our town—the Lovejoy Specialty Hospital in Portland, Oregon. I called, made an appointment for an abortion. I was dropped off there, I paid them and I underwent an abortion. I was not questioned or no details were given to me on what I was really doing. It was in and out in one day. And I didn't ask much, either. I just wanted it to be over. I can't say for sure if I would have made the same decision if I would have totally understood. I believe I wouldn't have.

Now that I'm born-again and I've seen and read what is really involved, it makes me feel too sick and sad for what I've done. Yes my God has forgiven me, but that can never bring my baby back. It can't change what I once did.

I have a daughter almost 16. She doesn't know. Yet at times I feel I need to do more for the fight for Right to Life, yet I don't want her to know yet.

I hope this helps a little.

God Bless,

LINDA,
California.

FEBRUARY 9, 1987.

DEAR SENATOR HUMPHREY, in 1978 at the age of 18, I became pregnant out of wedlock. My father was enrolled in the Kaiser Health Foundation, and I was still covered by it also. I went in for a routine GYN exam when they said I look like I may be pregnant, so they did a pregnancy test right then.

When the nurse walked into the room and told me the test was positive, I began to cry, being quite upset and overwhelmed at the thought. The very next words out of her mouth were "Do you want to get an abortion?" I said yes, because I knew of no other alternative.

At that time, she said that Kaiser would not do abortions, so she gave me the name of a clinic where I could go, and that the fee would be paid by Kaiser, under my father's health care plan. She also said that they might have to inform my father since it was on his plan.

Later on that week someone from Kaiser called me on the phone and said that they would go ahead and pay for the abortion and that my dad would not find out. (At the time, I thought they were helping me).

I can remember, one day before the abortion, walking down the street in tears, and talking to the baby inside of me. I told him (I figured it was a boy) how very sorry I was that I had to get an abortion, but that there was "no other way." I loved that baby and I wonder if I still would have had the abortion if someone would have explained to me that I could give him his life and give him to a good home.

I still remember the agony I felt inside, and the tears I shed while driving to the abortion clinic.

Once inside I saw the doctor who saw how upset I was, but he tried to calm me by telling me that he has done this thousands of times and that it is my body to do with what I want. Not even once did anyone ask me if I would rather not kill my baby. Never was any other option presented to me.

After the procedure was over, I must have laid sobbing on that table for almost half an hour, all alone with my grief. Finally, someone came in and told me it was time to leave. But once I started to walk down the hall I passed out because of the grief, not from anything physical.

I went through the entire ordeal alone, with no support, and I felt very trapped. I only wish someone would have told me that there was another way; that I didn't have to kill my baby. I thank you for your concern about abortion, and hope that your efforts to inform women through the informed consent bill will be successful. Women are denied the truth of the devastation until it is too late.

Sincerely,

LINDA LINDSEY,
California.●

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, may I state for the information of Senators that if a Senator comes into the Chamber and wishes recognition, I will be glad to yield the floor temporarily and I ask unanimous consent that in that event my speech not show an interruption in the RECORD.

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

THE UNITED STATES SENATE

PROFILE OF "THAT GREAT ENIGMA": AARON BURR

Mr. BYRD. Mr. President, in my continuing series of addresses on the history of the United States Senate, I have paused from time to time to review the careers of individual Senators. Some of them served for as long as three decades. Others served but a single term. Among those in the latter category are such men as William Maclay, John Randolph, Andrew Jackson, John Foster Dulles, and Richard Nixon. Each, in varying degrees, was defined and enriched by his brief service here. Yet, with the exception of Maclay, the reputations of these men were formed outside the Senate. Today, I shall discuss the career of an extraordinary American public figure. Although his Senate service was brief, 6 years only, a recounting of his career will surely add to an understanding of the Senate in earlier times. This man's tombstone bears the following inscription:

Aaron Burr
Born February 6, 1756
Died September 14, 1836
A Colonel in the Army of the Revolution
Vice-President of the United States from 1801 to 1805.

Mr. President, there is a good deal more to the story.

John Davis, an Englishman, visited the United States in the late 18th century, and in his travels of 4½ years in the United States of America, he commented: ". . . no other state was so respectably represented as the State of New York, in the combined talents of Mr. Burr and Mr. King."

Jabez Hammond, in *The History of Political Parties in the State of New York*, said that neither in the New York legislature nor in the United States Senate, ". . . did Aaron Burr originate any great measure, nor can I find that he, at any time, distinguished himself in discussing any important questions raised by others."

At the time of Burr's death, John Quincy Adams wrote that "Burr's life, take it altogether, was such as in any country of sound morals his friends would be desirous of burying in profound oblivion."

Nathan Schachner, in *Aaron Burr*, referred to Burr as one who "in the era of giants . . . was of the elect."

I find that the foregoing references to Burr are but a few of the many diametrically opposite perceptions of the man to whom I have referred in an earlier speech as "That Great Enigma." Burr had his partisans and his enemies, and there is much that we will never know about the man. Much of his personal correspondence and private papers was lost in a storm when the ship, *Patriot* vanished at sea carrying with it Burr's beloved daughter, Theodosia, who, at the time, was travelling from South Carolina to New York to join her father. Newspapers in those days were fewer, smaller, and sketchier than they are today, and the resources for keeping records were far less ample. There were no official reporters in the Senate, and, hence, little evidence of Burr's political and other speeches while a member of that body or as Vice President is extant to shed light upon his rhetorical ability or his legislative proficiency.

Burr's surviving personal papers fell into the hands of manuscript collectors and autograph seekers in the decades following his death. Only in 1962 did the New-York Historical Society succeed in acquiring a significant private collection. In 1983, a significant portion of that collection was published by Princeton University Press.

Ergo, Aaron Burr will probably always be, just as he has been, "That Great Enigma."

Aaron Burr was born on February 6, 1756. His father was Aaron Burr, a minister and second president of the College of New Jersey, later renamed Princeton University. His mother, Esther Edwards Burr, was the daughter of Jonathan Edwards, the third president of the College of New Jersey and perhaps the Nation's best-known theologian.

By the time Aaron Burr was 2 years old, his father had died of a fever; his grandfather Edwards had also died of a fever which followed inoculation for smallpox, only to be followed by the death of Aaron's mother 16 days afterward of a similar ailment. His maternal grandmother, the widow of Jonathan Edwards, died in that same year in Philadelphia where she was seized with dysentery. Hence, within a period of 13 months, Aaron and his sister, Sally, who was 2 years his senior, were bereft of father, mother, maternal grandparents, and great grandfather, and there was no one left whose chief concern it was to care for the two orphan children. They were reared at Elizabethtown, NJ, in the family of Jonathan Edwards' eldest son, Timothy. Their earliest studies were under private tutors, one of whom, Tapping Reeve, later fell in love with Sally and married her when she was 17.

Aaron's uncle, Timothy Edwards, was a strict and conscientious puritan, as we might infer from an anecdote which was told by Aaron Burr himself. It seems that when he was about 8 years old, he was in a cherry tree in his uncle's garden on a bright summer afternoon when he saw an elderly lady, wearing a silk dress, approaching. Aaron, hidden in the tree, amused himself by throwing cherries at the lady, and she reported this misconduct

to Aaron's uncle, who quickly summoned the boy to his study. After a long lecture, followed by an equally long prayer for Aaron's reformation, the uncle proceeded to dispense justice and administer the punishment. Burr said, "He licked me like a sack."

Those were the days, of course, when grownups expected, and received, greater homage from the young than we in these later generations have become accustomed. Children arose at the entrance of their parents into the room and were served last rather than first on occasions when guests were present for dinner or supper—as the midday and evening meals were then called. When meeting a clergyman or an older person, children removed their hats and bowed, so we can easily perceive that Aaron's cherry-throwing prank was not only an affront to the elderly lady who was Aaron's target, but was also considered a very serious breach of conduct by Uncle Timothy.

When he was about 10 years old, Aaron had a longing to go to sea, so, in furtherance of this ambition, and perhaps, too, to distance himself as far as possible from Uncle Timothy and the disciplinary razor strap, the lad ran away. Of this exploit, Samuel Engle Burr, Jr., writes in his book *Colonel Aaron Burr, the Misunderstood Man*, as follows:

"When all had been quiet for perhaps an hour or perhaps for two hours, Aaron got out of his bed and dressed, in the dark. . . . He pulled the latchstring and stepped out into a clear moonlit night. . . . Carrying his bundle of clothing over his shoulder, he headed for the harbor. . . . Several ships were there and he chose the largest one. There was a broad plank leading to it from the pier. Pausing at its foot, Aaron called out to see if anyone was within the sound of his voice. And somewhat to his surprise—certainly to his joy—there was a reply.

"Who's there?" came a voice from the deck of the ship.

"It is I—Aaron Burr—a lad who wishes to take passage with thee as a cabin boy!"

"Well, come up the plank, lad, and let us see what sort of fellow you are. We are in need of a cabin boy but we want one who is not afraid of work."

"I am not afraid of work, sir," Aaron replied.

Within a few minutes he was hired for a penny a day, with his food and a bunk, for doing whatever the captain or the mate might tell him to do. . . .

Aaron did not go with the ship when it went to sea:

"Aaron had been found to be missing when the Edwards household arose in the morning. . . . Uncle Timothy remembered the fascination which the waterfront had for Aaron. He saddled his riding horse and rode off to the docks."

At length, Timothy Edwards found the right ship, and a Captain Anderson said,

"Aye, sir. We have a new boy. That's him coiling the rope over yonder."

Aaron did not need to be told that his uncle had found him. He had heard the stern voice, charged with some anxiety now, and he immediately started to climb up into the rigging. . . .

"Come down here, son of satan, and come back home with me. I've spent the whole day searching for thee and at last I have succeeded!"

"I shall not come down, Uncle," Aaron replied. "I know what will happen if I go home with thee. I shall be forced to kneel and to pray and then I shall have another bunch of switches broken over my back! Or it will be the strap! No, sir. I have promised to go with Captain Anderson."

"Thy promise to go with the Captain is of no consequence. I am thy guardian and I am the one to make promises."

"Very well, then. Make me a promise. Promise me—in God's name, Uncle—that I never shall be forced to kneel before thee again. I shall pray to God, but in my own way. And promise that I never shall be flogged again."

"I have called thee 'son of Satan,' and I believe that thou art. Thee needs to pray and this thou shalt do. But I promise not to flog thee again. That time has passed. At the last flogging, thee made no sound and shed no tears. Very well, there shall be no more flogging."

"As God is thy witness, Uncle?"

"As God is my witness, nephew!"

Captain Anderson said that he was sorry to see Aaron leave the ship. "He's a boy with promise, that one is," he told Uncle Timothy. "Small, but active. Not lazy or complaining, not him. He will make his mark. Take my word for it."

Uncle Timothy grunted and said, "Good day," with no other comment. He mounted his chestnut mare, reached down and helped Aaron mount behind him. No word was said as they rode back home.[1]

When Aaron was 11 years old, he was prepared for college and applied for admission to the college at Princeton, but was turned down on account of his youth. The aspiring lad was disappointed, but, during the next two years, he mastered the studies of the first two college years, and again applied for admission, this time, to the junior class! That was confidence! He was denied such admission, but was allowed to enter the sophomore class. Studying 16 and sometimes 18 hours a day, Aaron graduated from the college of Princeton at the age of 16.

He was described as a Spartan in eating and drinking, and was an avid reader of the biographies and histories of great military men, such as Frederick the Great. His youthful essays showed that he possessed an acute intellect, and a remarkable independence of thought. He also liked boating, and handled a boat with skill.

At Princeton, he had received considerable training in rhetoric and public speaking. He first decided to study theology, following in the footsteps of his father, grandfather, and great-grandfather, but he finally selected law as his future profession. His law studies were interrupted by the Revolutionary War, but, after the war, he completed his law studies and began law practice in New York City.

[1] Footnotes at end of article.

In his years of college, he had exhibited a love for reading, riding, hunting, and flirting. He seemed to possess considerable power for pleasing the fairer sex, and was all gallantry to the young ladies, who gossiped not a little about him. He seems, however, to have distributed his attentions quite equally among them, and his letters contained frequent references to "the girls." He also seemed to possess an instinctive love of intrigue in his dealings with his female acquaintances. Everybody liked him, and many predicted an eminent future for him.

Burr was a good horseman and a good helmsman. He was also a fairly good shot. He liked the military arts, and men perceived in his face, manner, and bearing the stamp of authority. When the news of the skirmish against the British at Lexington reached him, he was ready to put aside his books and he joined the American patriot forces. At 5 feet 6 inches, he apparently never knew the meaning of fear.

He participated in Benedict Arnold's expedition to Quebec, an expedition that would require 50 days and a journey of 600 miles through a terrible wilderness. Burr demonstrated a hardihood and skill in the management of boats, a toughness and courage that excited the admiration of his fellow soldiers. Burr was promoted to the rank of Captain and assigned the command of 40 men. He was a man of activity, bravery, and discipline. He served as aide-de-camp to General Richard Montgomery and was at the General's side at the battle of Quebec when Montgomery fell mortally wounded. Legend had it that Burr carried the General's body over the ice and snow until he could no longer sustain the burden. To avoid capture, "Little Burr"—as he was called by his comrades—was compelled to drop the body in the snow and hasten after his fleeing comrades. The truth was more prosaic, for the weight of the dead general and the deep snows made this feat virtually impossible. Nonetheless the story of the aide-de-camp who bore his General's body away from the fire of the enemy was told to General Washington. Burr was soon appointed to the post of Brigade-Major, and later served as aide-de-camp to General Israel Putnam. In July 1777, Burr was notified by General Washington of his promotion to the rank of Lieutenant-Colonel. Remember, he was only 21 when he was promoted to the rank of Lieutenant-Colonel.

Burr was appointed to the regiment of Colonel William Malcolm and was soon in charge of it and he set about making his men into models for the army. About this time, he met Theodosia Bartow Prevost, whose husband, Colonel Jacques Marc Prevost, an offi-

cer of the British army, was stationed in the West Indies.

Burr resigned from the service in 1779 when he was 23 years old, having been beset by illnesses. In January 1782, he was licensed as an attorney and within a few months Burr began the practice of law in Albany. In July, he married Theodosia Prevost, whose husband had died in Jamaica. She was ten years older than Aaron and had two children by her first husband. In June 1783, a baby girl was born to the happy couple and Aaron insisted that she, too, be named Theodosia. A second daughter, Sally, was born in 1785, but she died before her fourth birthday.

We are told in *Portrait of an Ambitious Man,* that Burr's success at the bar was almost immediate:

He developed a distinctive and brilliant style, along with the reputation of seldom losing a case. He was "acute, quick, terse, polished, sententious, and sometimes sarcastic in his forensic discussions. He . . . confined himself with stringency to the point in the debate." He would pursue his opponent relentlessly until he wore him down and thus achieve the compromise or settlement he sought. Two characteristic sayings were attributed to him: "Now move slow; "never negotiate in a hurry," and, "Never do today what you can as well do tomorrow; because something may occur to make you regret your premature action." The preparation of evidence was considered his strongest asset. Said Burr: Law is "whatever is boldly asserted and plausibly maintained." He addressed the jury in conversational tones and won them with his elegant manners and familiarity with the details of his case. He was not a legal scholar like Alexander Hamilton, but his cool manner and close reasoning, his spare and severe language, and his skill at confining his argument to a few powerful and prominent points often won cases. Some of his contemporaries considered him overrated, but possibly, his method was far ahead of his time.

The stimulation of his busy and increasingly lucrative law practice along with his concern for his growing family absorbed Burr fully for a time. He assured Theodosia that he would not participate in the scramble for public office that was taking place in New York.[2]

As we know, however, Burr changed his mind and, in 1784, was elected to the state assembly of New York. When the assembly term expired in 1785, he returned to the full-time practice of law, and in 1789 he was appointed attorney general of New York. In 1791, the New York Senate concurred with the Assembly and elected Burr to the United States Senate over Alexander Hamilton's father-in-law, General Philip Schuyler, the Federalist candidate.

However happy Burr's triumph may have been, that happiness was short-lived.

In *Soldier, Statement and Defendant: Aaron Burr,* Jeannette C. Nolan writes:

In the spring of 1794, Burr's smile was a mask to hide a terrible anxiety. Theodosia—his dear Theodosia!—was gravely ill. He summoned physicians and specialists to Richmond Hill; they tried this remedy and that, without avail. He consulted Dr. Benjamin Rush at the University of Pennsylvania. Dr. Rush was the most famous medical man in the United States. If the elusive illness could be cured, Dr. Rush would cure it!

Dr. Rush shook his head. "I'm afraid there is little hope," he said.[3]

With Congress in session, Burr was in Philadelphia on May 19, 1794, when he received word that his beloved wife, Theodosia Prevost Burr had died the day before. Thus, at age 38, Senator Burr was left a widower with an eleven-year-old daughter, Theodosia.

Burr was devastated. Their marriage had been extraordinarily happy; her death would shadow his life forever. But in his grief he was characteristically reserved. No one was to pity him or know how deep was his sorrow; he would allow himself no outward show of emotion. And he must console the children, the Prevost sons and little Theo, for the loss of their wonderful mother.[4]

Burr had taken his seat in the Second Congress on Monday, October 24, 1791. As a freshman Senator, he was appointed to a committee with Roger Sherman and John Rutherfurd which reported back a bill determining the date for choosing presidential electors and prescribing a line of succession to the presidency that lasted until 1886. The bill established the president-pro-tempore of the Senate and the Speaker of the House as next in line following the vice president.

Burr unsuccessfully opposed the appointment of Gouverneur Morris as Minister to France. He also unsuccessfully defended Albert Gallatin's claim to a Senate seat, believing that Gallatin was being victimized by a purely political maneuver on the part of the Federalists.

In the Senate, Burr was one of the foremost critics of Administration efforts to arrange a commercial treaty with Great Britain, and opposed the appointment of Chief Justice John Jay as envoy extraordinary to England. In opposing Jay's appointment, Burr questioned the propriety of permitting Supreme Court judges to concurrently hold any other employment emanating from the executive, maintaining that to do so was contrary to the spirit of the Constitution and would expose them to the influence of the executive.

Burr also supported a constitutional amendment to bar congressional membership to any person who held offices or stock in the Bank of the United States.

He was also a proponent of opening the Senate's doors to the public.

Burr's term in the United States Senate ended on March 3, 1797, the New York legislature having voted for Philip Schuyler to succeed him.

In April, Burr was re-elected to the New York Assembly.

In the Presidential election of 1800, he received the same number of electoral votes as Jefferson. In a contest forced upon the House of Representatives by the electoral tie with Jefferson, Burr was chosen Vice President of the United States.

He aspired to the governorship of New York in 1804; and, when he was defeated, he blamed it on Alexander Hamilton's influence, and probably with good reason.

Hamilton disliked Aaron Burr intensely, and once wrote, "In a word, if we have an embryo Caesar in the United States, 'tis Burr."

At the time that Burr was elected by the New York State legislature to the United States Senate, taking the place of Philip Schuyler, Hamilton was convinced that his father-in-law had been deposed by intrigue and subterfuge on the part of Burr. The enmity between Hamilton and Burr which began over this supposed injury was to continue over the years, and the two men seemed, by some queer twist of fate, to be inevitably bound to fight one another. James Parton, in *The Life and Times of Aaron Burr,* wrote sympathetically of the many provocations by Hamilton that ultimately led to his sad and untimely death at the dueling ground:

At every step of Burr's political career, without a single exception, Hamilton, by open efforts, by secret intrigue, or by both, had utterly opposed and forbidden his advancement. He had injured him in the estimation of General Washington. He had prevented Mr. Adams from giving him a military appointment. His letters, for years, had abounded in denunciation of him, as severe and unqualified as the language of a powerful declaimer could convey. The two men had already been near collision. I think it was in 1802 that Colonel Burr, having obtained some imperfect knowledge of Hamilton's usual mode of characterizing him, had had a conversation with him on the subject. Hamilton (so said Burr in later years), had explained, apologized, satisfied Burr, and left upon his mind the impression, never effaced, that thenceforth Hamilton was pledged to refrain from speaking of him as he had been accustomed to do. They parted with cordiality, and had ever since been, apparently, very good friends. Burr considered then, and always, that he had made prodigious sacrifices, as a man of honor and a gentleman, for the sake of avoiding a hostile meeting that could not but injure both as candidates for the public confidence. From the hour Burr learned that Hamilton still used his former freedom, he ceased to respect him; he held him in contempt, as a man insensible to considerations of honor and good faith. Burr's new Federal friends, renegades from the Hamiltonian party, had given him new information respecting the *Burriphobia* under which their former leader labored, and the language in which it was accustomed to find vent. . . .[5]

Other circumstances and occasions arose, until, finally Burr challenged Hamilton to a duel and that challenge was accepted. July 11, 1804, was the date selected, and 7 o'clock in the

morning was the fixed time. The place where the duel would take place was Weehawken, New Jersey; the weapons would be pistols; and the distance would be ten paces. Colonel Burr's second would be Mr. William P. Van Ness, a close friend and attorney; and General Hamilton's second would be a friend, Mr. Nathaniel Pendleton.

The events leading up to the morning of the duel are described by Parton:

Hamilton, as was afterward fondly remembered, plead his causes and consulted his clients, with all his wonted vigor, courtesy, and success. Around his table at the "Grange," day after day, he saw his seven children and his tenderly beloved wife, with a ceaseless consciousness of the blow that was suspended over them all. A whisper could have saved him, and saved them, but how impossible it was to utter that whisper! [6]

On the Fourth of July, Hamilton and Burr met, for the last time, at the convivial board. It was at the annual banquet of the Society of the Cincinnati, of which Hamilton was president and Burr a member. Hamilton was cheerful, and, at times, merry. He was urged, as the feast wore away, to sing the only song he ever sang or knew, the famous old balled of *The Drum*. It was thought afterward, that he was more reluctant than usual to comply with the company's request; but after some delay, he said, "Well, you shall have it." and sang it in his best manner, greatly to the delight of the old soldiers by whom he was surrounded. Burr, on the contrary, was reserved, mingled little with the company, and held no intercourse with the president. He was never a fluent man, and was generally, in the society of men, more a listener than a talker. On this occasion, his silence was, therefore, the less remarked; yet it was remarked. It was observed, too, that he paid no attention to Hamilton's conversation, nor, indeed, looked toward him, until he struck up his song, when Burr turned toward him, and, leaning upon the table, looked at the singer till the song was done.[7]

On the 9th of July, Hamilton executed his will, leaving his all, after the payment of his debts, to his 'dear and excellent wife.' "Should it happen," said he, "that there is not enough for the payment of my debts, I entreat my dear children, if they, or any of them, should ever be able, to make up the deficiency. Though conscious that I have too far sacrificed the interests of my family to public avocations, and on this account have the less claim to burden my children, yet I trust in their magnanimity to appreciate as they ought this my request. In so unfavorable an event of things, the support of their dear mother, with the most respectful and tender attention, is a duty, all the sacredness of which they will feel. Probably her own patrimonial resources will preserve her from indigence. But in all situations they are charged to bear in mind, that she has been to them the most devoted and best of mothers."

A few hours more brought them to the day before the one named for the meeting. In the evening, both the principals were engaged, to a late hour, in making their final preparations, and writing what each felt might be his last written words. The paper prepared by Hamilton on that occasion, in the solitude of his library, reveals to us the miserable spectacle of an intelligent and gifted man, who had, with the utmost deliberation, made up his mind to do an action which his intellect condemned as absurd, which his heart felt to be cruel, which his conscience told him was wrong. He said that he had shrunk from the coming interview. His duty to his religion, his family, and his creditors, forbade it. He should hazard much, and could gain nothing by it. He was conscious of no ill-will to Colonel Burr, apart from political opposition, which he hoped had proceeded from pure and upright motives. But there were difficulties, intrinsic and artificial, in the way of an accommodation, which had seemed insuperable; intrinsic, because he really had been very severe upon Colonel Burr; artificial, because Colonel Burr had demanded too much, and in a manner that precluded a peaceful discussion of the difficulty.[8]

In the long letters which Burr wrote that evening, there are no signs that the gentle blood of Esther Edwards was revolting in the veins of her erring son against the morrow's deed. There is a tender dignity in his farewell words to Theodosia, but no misgivings. He gives her a number of minute directions about the disposal of his papers, letters, and servants. His letter concludes with these touching words: "I am indebted to you, my dearest Theodosia, for a very great portion of the happiness which I have enjoyed in this life. You have completely satisfied all that my heart and affections had hoped or even wished. With a little more perseverance, determination, and industry, you will obtain all that my ambition or vanity had fondly imagined. Let your son have occasion to be proud that he had a mother. Adieu. Adieu." [9]

Late at night Colonel Burr threw off his upper garments, lay down upon a couch in his library, and, in a few minutes, was asleep.

At daybreak, next morning, John Swartwout entered the room, and saw his chief still lying on the couch. Well as he knew Colonel Burr, he was astonished, upon approaching him, to discover that he was in a sound and tranquil slumber. He awoke the man who had better never again have opened his eyes upon the light of this world. Van Ness was soon ready. Matthew L. Davis and another friend or two arrived, and the party proceeded in silence to the river, where a boat was in readiness. Burr, Van Ness, Davis, and another embarked, and the boat was rowed over the river toward Weehawken, the scene, in those days, of so many deadly encounters.[10]

About half-past six, Burr and Van Ness landed, and leaving their boat a few yards down the river, ascended over the rocks to the appointed place. It was a warm, bright, July morning. The sun looks down, directly after rising, upon the Weehawken heights, and it was for that reason that the two men removed their coats before the arrival of the other party.[11]

Hamilton's boat was seen to approach. A few minutes before it touched the rocks, and Hamilton and his second ascended. The principals and seconds exchanged the usual salutations, and the seconds proceeded immediately to make the usual preparations. They measured ten full paces; then cast lots for the choice of position, and to decide who should give the word. The lot, in both cases, fell to General Hamilton's second, who chose the upper end of the ledge for his principal, which, at that hour of the day, could not have been the best, for the reason that the morning sun, and the flashing of the river, would both interfere with the sight. The pistols were then loaded, and the principals, Hamilton looking over the river toward the city, and Burr turned toward the heights, under which they stood. As Pendleton gave Hamilton his pistol, he asked,

"Will you have the hair-spring set?

"Not this time," was the reply.

Pendleton then explained to both principals the rules which had been agreed upon with regard to the firing; after the word *present*, they were to fire as soon as they pleased. The seconds then withdrew to the usual distance.

"Are you ready," said Pendleton.

Both answered in the affirmative. A moment's pause ensued. The word was given. Burr raised his pistol, took aim, and fired. Hamilton sprang upon his toes with a convulsive movement, reeled a little toward the heights, at which movement he involuntarily discharged his pistol, and then fell forward headlong upon his face, and remained montionless on the ground. His ball rustled among the branches, seven feet above the head of his antagonist, and four feet wide of him. Burr heard it, looked up, and saw where it had severed a twig. Looking at Hamilton, he beheld him falling, and sprang toward him with an expression of pain upon his face. But at the report of the pistols, Dr. Hosack, Mr. Davis, and the boatman, hurried anxiously up the rocks to the scene of the duel; and Van Ness, with presence of mind, seized Burr, shielded him from observation with an umbrella, and urged him down the steep to the boat. It was pushed off immediately, and rowed swiftly back to Richmond Hill . . . .[12]

Pendleton, horrified at the sight of Hamilton falling, called to Dr. Hosack, who came at once. The wounded man was half sitting on the ground. Only Pendleton's arms kept him upright. "This is a mortal wound, Doctor," he managed to say before he collapsed. Hosack, stripping his clothes away, discovered that the ball must have penetrated a vital part, which an autopsy later confirmed. The ball had struck the second and third rib, fractured it about in the middle, passed through the liver and diaphragm, and seemingly lodged in the first and second vertebrae, which splintered. About a pint of clotted blood was present in the belly cavity, probably effused from the divided vessels of the liver.

He had no pulse and no respiration. Hosack advised that he be removed as quickly as possible. The anxious group of friends carried him out of the woods to the shore, where the boatman helped to convey him into the boat, still unconscious. The fresh sea winds or the application of hartshorn revived him so that he spoke feebly, complaining that his vision was poor. When he regained some sight, his eyes surveyed the boat until they lit on the case of pistols. He said, "Take care of that pistol; it is undischarged, and still cocked; it may go off and do harm;—Pendleton knows . . . that I did not intend to fire at him." He lay quiet after the exertion of speaking. But when he told Hosack that he had no feeling in his lower extremities, the doctor knew that there was no hope of survival.

Hamilton asked that Mrs. Hamilton be sent for, but that she be told the news gradually, to "give her hope." [13]

Burr went directly to Richmond Hill with Van Ness and his servant. His composure belied the morning's events. A neighbor reported that on the way there he greeted her with his usual affability. A Connecticut cousin unexpectedly called at his home at about eight o'clock. His servant, Alexis, showed the young man into the library. There, he was cordially received by the

Colonel. They breakfasted together in the dining room, conversing about mutual friends. After breakfast, as the youth walked down Broadway, he imagined that passers-by were agitated until, near Wall Street, an acquaintance rushed up saying, "Colonel Burr has killed General Hamilton in a duel this morning."

Burr's broker reported a similar story of how the Vice President managed to keep his self-control. About two hours after his return from the field of the battle, Burr sent for the man to discuss business. They were together about a quarter of an hour, Burr giving no hint of the early morning event. On the contrary, said the broker, he seemed cheerful and in good humor.

The following day the pain had diminished, but Hamilton's symptoms were aggravated. His mind remained lucid, but he suffered terrible anxiety for the family he would leave behind. His wife was frantic with grief. He tried to soothe her with such words as, "Remember, my Eliza, you are a Christian." But even his magnificent calm broke when he was surrounded by his children, the youngest but two years old. Sadly, he asked that they be taken away.[14]

Bulletins, hourly changed, kept the city in agitation. All the circumstances of the catastrophe were told, and retold, and exaggerated at every corner. The thrilling scenes that were passing at the bedside of the dying man—the consultations of the physicians—the arrival of the stricken family—Mrs. Hamilton's overwhelming sorrow—the resignation and calm dignity of the illustrious sufferer—his broken slumbers during the night—the piteous spectacle of the seven children entering together the awful apartment—the single look the dying father gave them before he closed his eyes—were all described with amplifications, and produced an impression that can only be imagined. He lingered thirty-one hours. The duel was fought on Wednesday morning. At two o'clock, on Thursday afternoon, Hamilton died." [15]

Hamilton's son had been killed only three years before in a duel which, in the language of that day, was fought for the "vindication" of his father's "honor." Now, the brilliant Alexander Hamilton had paid with his own life for "vindication" of the "honor" of Aaron Burr. The public feeling was one of angered indignation, and the name of Burr became a name of infamy—"a revengeful demon, burning for an innocent victim's blood." The coroner's jury shared in the tense public feeling and brought in a verdict to the effect that Aaron Burr, Esq., Vice President of the United States, was "guilty of the murder of Alexander Hamilton," and that "William P. Van Ness and Nathaniel Pendleton were accessories." A grand jury subsequently instructed the district attorney to prosecute. But Burr had, meanwhile, fled incognito to the state of Pennsylvania and later in mid-August, to St. Simons, an island off the coast of Georgia. After some weeks had gone by, he returned to the mainland and made his way to the home of his daughter in South Carolina. Ten days later, he set forth to Washington for the assembling of Congress and the resumption of his duties as President of the Senate.

During this period, the State of New Jersey had indicted Burr, and upon his return to Washington he learned that the State of New York also indicted him.

"You have doubtless heard," he wrote to his daughter, "that there has subsisted for some time a contention of a very singular nature between the two States of New York and New Jersey. * * * The subject in dispute is, which shall have the honor of hanging the Vice President. * * * You shall have due notice of time and place. Whenever it may be, you may rely on a great concourse of company, much gayety, and many rare sights." [16]

Burr escaped prosecution for Hamilton's murder. Meanwhile, he set about preparing the Senate for the trial of Samuel Chase, Justice of the Supreme Court of the United States, who had been impeached by the House of Representatives. Vice President Burr presided over the trial with a degree of dignity, fairness, and grace, that extracted praise even from his enemies. A newspaper of the day commented, "He conducted the trial with the dignity and impartiality of an angel, but with the rigor of a devil." There seemed to be a rising tide of favorable public reaction during these closing days of Burr's public life. The Chase trial ended in a verdict of acquittal on the first day of March. The next day, on March 2, 1805, Vice President Burr took formal leave of the Senate, in a speech which produced a profound sensation. An interesting commentary on Burr's final address was prepared in 1953 by Gordon L. Thomas, in "Aaron Burr's Farewell Address". At this point I shall quote from Professor Thomas' excellent article:

Let us look for a moment at the speaker himself.

Aaron Burr—short, straight, impeccably dressed—had, to use his own words, a "bald head, pale hatchet visage, harsh contenance. . . ." His outstanding physical characteristic was his eyes which, "bright, black and piercing," seemed to fascinate and hold those with whom he talked. They had been called "terrible eyes" by one feminine onlooker, "persuasive" by another.

This was the man who stood before the Senate and began his speech in a quiet, dignified manner.[17] * * *

After making reference to one or two rules of order that he thought should be changed, the Vice-President, without the appearance of conceit, said that he could not remember any decision he had made while presiding that he would alter. He, realized that he had made errors but he had not made explanations for his decisions "because a moment of irritation is not a moment for explanation." For his own part, he had no complaints; indeed, if any injury had been done him, he had forgotten it. . . .

After thanking the Senators for their support and respect during his term of office, he urged them not to dispose of the rules and decorum he had endeavored to establish, even though the ignorant look upon such matters as unnecessary and trivial.[18]

He maintained that, although he might have made errors in his decisions, he had attempted to be fair and just. Despite hostility toward him by some members, both in and out of the Senate, he disclaimed any knowledge of injuries done to him. On the contrary, he said, the Senators had been most cooperative and helpful. . . .

He admitted his own faults, yet found no failing in those around him. He expressed fear for the dignity and well-being of the members of the Senate, yet seemed to ignore his own precarious position. He praised the Senators for the excellence of their efforts, yet assumed little credit for a task generally conceded to be well done.

This somewhat deprecatory attitude forced the Washington *Federalist* to admit that the Vice-President's manner had "nothing of that whining adulation (or) canting, hypocritical complaints of want of talents." It added that he did not try to give "assurance of his endeavors to please them," nor did he express "hopes of their favor."

Burr's style was concise and unadorned. Nowhere in any of his known speeches did he use a single literary allusion nor, with but a few exceptions, did he make use of figures of speech. His most obvious stylistic device was the epigrammatic statement: "To be prompt is not to be precipitate," and again, "Error often is to be preferred to indecision." Matthew Davis, his official biographer, remarked that "his speeches, generally, were argumentative, short, and pithy. No flights of fancy, no metaphors, no parade of impassioned sentences, are to be found in them." In comparing Marshall and Burr, Beveridge notes that the latter never "employed imagery or used any kind of rhetorical display."

His simplicity of diction perhaps resulted partly from his legal training and partly from his education. In an essay on style written at Princeton, Burr had expressed his dislike of "swelling words" and "pompous epithets," and had continued: "There never was a ready speaker whose language was not generally plain and simple; for it is absolutely impossible to carry the laboured ornaments of language . . . into extempore discourses . . . A simple style, like simple food, preserves the appetite. But a profusion of ornament, like a profusion of sweets, palls the appetite and becomes disgusting."

Only in the latter part of his speech did Burr use emotive language, and even here it was in keeping with his subject matter and was comparatively restrained.[19]

[Referring to the Senate of the United States, Burr said:]

"This House is a sanctuary; a citadel of law, of order, and of liberty, and it is here in this exalted refuge—here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor."

Burr's general manner of presentation was appropriate to this easy, informal method of preparation. In a first-hand account Matthew Davis reported that "his manner of speaking was anything but declamatory, and more resembled an elevated tone of conversation, by which a man, without any seeming intention, pours his ideas in measured and beautiful language into the minds of some small select circle." His was "never loud, vehement, or impassioned. . . .

His enunciation was slow, distinct, and emphatic; perhaps too emphatic. . . . He spoke with great apparent ease, but could not be called fluent, although he never appeared at a loss for words." [20]

The Washington *Federalist*, although one of Burr's most scathing critics, wrote that the "whole Senate were in tears, and so unmanned that it was half an hour before they could recover themselves sufficiently to come to order, and choose a vice-president pro tem." Senator Mitchell, who also leaned toward the Federalist opinion, commented: "There was a solemn and a silent weeping for perhaps five minutes. For my own part, I never experienced anything of the kind so affecting me as this parting scene of the Vice President from the Senate in which he had sat for six years as a Senator and four years as a presiding officer. My colleague, General Smith, stout and manly as he is, wept as profusely as I did. He laid his head upon his table and did not recover from this emotion for a quarter of an hour more. And for myself, though it is more than three hours since Burr went away, I have scarcely recovered my habitual calmness. Several gentlemen came up to me to talk about this extraordinary scene, but I was obliged to turn away and decline all conversation." [21]

The *New-York Chronicle* for March 13, 1805, carried a letter "exalting . . . Burr's leave-taking speech in very high terms." The *Federalist* reports that it was considered to be the "most dignified, sublime, and impressive (speech) that ever was uttered; and the effect which it produced justifies these epithets. * * *

Another Senator being asked, on the day following . . . how long . . . Burr was speaking . . . said he could form no idea: it might have been an hour, and it might have been a moment; but when he came to his senses, he seemed to have awakened as from a kind of trance." [22]

A final judgment cannot be made as to whether the Farewell Address is representative of Burr's speaking ability or as to whether Burr was, in general, an effective speaker. If it is representative, one cannot escape the conclusion that Burr was an able if not a brilliant speaker. The existing evidence about other occasions and speeches lends credence to this view; it does not support Hammond's judgment that Burr was an ineffective speaker and that he never made a court room speech that could be "called, with propriety, an argument." [23]

As the doors of the United States Senate closed behind him for the last time, Aaron Burr, in the words of Albert Beveridge, "marched steadily toward his doom." A single bullet on the dueling grounds at Weehawken, had snuffed out the earthly life of Alexander Hamilton and had sealed forever the total eclipse of the public life of Aaron Burr—two of the most gifted political figures in American history.

Burr's implication with Harmon Blennerhassett in a scheme to separate the Western States from the union and invade Mexico has been commented on in an earlier speech. Burr was arrested and tried for treason in 1807. Chief Justice John Marshall presided over the trial in the Federal Circuit Court at Richmond, Virginia. Burr was acquitted, but his reputation was ruined. He spent a few years in Europe, then returned to New York City in 1812 and opened a law office. In spite of his ability, he never regained a large practice, and he was shunned by society. Parton tells of Burr's return to New York City from his exile in Europe:

He lay concealed for some weeks, until assurances were received that the government would not molest him, and until means were found to molify the rigor of his creditors. It was not till twenty days after his arrival in New York that the newspapers gave the first intimation of his presence in the country, when the following paragraph appeared in the *New York Columbian*: "Colonel Burr, says a Boston paper of Wednesday, once so celebrated for his talents, and latterly so much talked of for his sufferings, arrived at Newburyport from France and England, and passed through this town on his way to New York." The next day, the editor added that Colonel Burr had spent ten days in Boston *incog.* * * *

Burr had a very small tin sign, bearing only his name, nailed up in front of the house, and commenced business. Beginning with a cash capital of less than ten dollars, and that borrowed, he received, for opinions and retaining fees, in the course of his first twelve business days, the sum of two thousand dollars! It was a time of trouble to the community, and, therefore, of harvest to lawyers, and clients were eager for the services of the man who never lost a case. The future began to wear a brighter hue of promise than it had known for many a year. The father wrote cheerfully to the daughter, acquainting her with the happy turn his fortunes had taken, and anticipating the day when they should meet again after the longest separation they had ever known.[24]

Burr was not given to sentiment. As Parton states, "It was his principle not to mourn over an irrevocable calamity." He had endured much misery, scorn, and suffering. His first wife, Theodosia Prevost, had died of cancer after a lingering period of anguish and pain. Yet, ". . . his sorrows were yet to begin!"

About 6 weeks after his return to New York, he received from his beloved daughter Theodosia a letter in which were found these heart-rending words:

"A few miserable days past, my dear father, and your late letters would have gladdened my soul; and even now I rejoice at their contents as much as it is possible for me to rejoice at anything; but there is no more joy for me; the world is a blank. I have lost my boy. My child is gone for ever. He expired on the 30th of June. My head is not now sufficiently collected to say any thing further. May Heaven, by other blessings, make you some amends for the noble grandson you have lost." [25]

Burr had suffered a terrible blow, indeed. His grandson, Aaron Burr Alston, only 11 years old, had shown many of the traits of talent and courage so perceptible in the grandsire.

Burr was extremely fond of him and spoke of him wherever he went. The little boy was always in his thoughts. Burr, although stricken, shed few tears, but he carried upon his heart the scar of his loss to the end of his days. Yet, Aaron Burr had not yet tasted the dregs at the bottom of the bitter cup. A deeper and more bitter draught would be his before the cup would pass from him. Theodosia's husband was now Governor of the State of South Carolina, and she waited some months following the death of her son for a safe opportunity to journey northward where she could be in her father's inspiring presence. Burr sent a physician from New York to attend her on the passage, for she was emaciated and weak. She boarded a small schooner, the *Patriot*. The voyage to New York was expected to take 5 or 6 days. Theodosia, her physician, and her maid sailed out of Charleston, SC, on December 30, 1812, but the *Patriot* was never seen or heard from again. Theodosia perished—perished, in all probability, in a storm which violently raged along the coast a few days after the *Patriot* had left Charleston.

It is probable that no man ever suffered greater anguish, suspense, or loss than did Burr. When Theodosia perished, he went about his daily business with a serene confidence, because it was a maxim of his to accept the inevitable without repining in the presence of others. Theodosia's love for her father was one of the great love stories of the human race. Her faith in his honor was immovable and unshakeable, absolute and total. She had inherited her father's courage and fortitude, and she had shared his misfortunes and ostracism. It also must be said that no father ever loved a child more than Aaron Burr loved his daughter Theodosia. His love for her was as her love for him—constant and unwavering. Burr had wrecked his fortune and his reputation. He had lost his wife and his darling grandson. Now, at last, his most cherished joy and possession, his accomplished and beautiful daughter, Theodosia, was gone.

At age 77, in 1833, Burr remarried, but the marriage did not last. Besieged by creditors, and in failing health, he was taken into the home of a friend, a kind lady of long acquaintance, who looked after him and kept him company. Never broken in spirit, he would have her read scriptures and poems—one of his favorites being Thomas Moore's "Oft in the Stilly Night."

In the closing days of his life, we are told that Burr, old and broken, would every day go down to the Narrows—watching for the ship that never came to port—and would stand for a long time gazing wistfully down the harbor as if still "cherishing, the faint, fond hope that his Theodosia was coming to him" on the ocean of mystery which had swallowed up his beloved. It is also said that when he was no longer able to walk, he hung her portrait where he might gaze upon it, sitting or reclining, the first thing in the

morning and the last thing at night. Thus, he lived, "severed from humanity," until death relieved his loneliness.

Mr. President, as I prepare to end these comments about Aaron Burr, my reference here to Theodosia's portrait requires me to allude briefly to the artist who painted the portrait—John Vanderlyn.

Marius Schoonmaker, in a biography of John Vanderlyn, tells us that Vanderlyn, born in Kingston, New York, in 1775, went to work at 16 in the store of Thomas Barrow, importer of engravings and artist's materials. One of Barrow's customers was an eminent painter, Gilbert Stuart, who formed an acquaintance with young Vanderlyn and let him copy one of his portraits, that of Colonel Aaron Burr. When Burr saw the portrait of himself that had been painted by Vanderlyn, Burr concluded that such merit should be patronized and he sent the young artist to Paris, in 1796, where the schools were in high repute. Vanderlyn attained the highest rank among his associate pupils.

Napoleon in 1807 offered a Gold Medal for the "best original picture" submitted at the exhibition in the Louvre to be held in 1808. There were 1,200 pictures in competition, and Napoleon himself passed through the galleries inspecting the exhibits. After completing the tour, the Emperor Napoleon pointed to the painting "Marius in the Ruins of Carthage" by Vanderlyn and said "Give the medal to that," and it was so awarded.

Vanderlyn, in 1802, had painted the picture of beautiful Theodosia, to which I have alluded. When Burr's fortunes later ebbed, Vanderlyn was forced to earn a precarious existence in portrait paintings. He was living "from hand to mouth," and it was about this time that Burr, his old patron, was a fugitive from his country and lived concealed in London and Paris under an assumed name. Vanderlyn was, of course, ready to share his last crust with Burr and assume the role of patron, and, with his scanty earnings, they lived in obscure and cheap lodgings, but, of that, little is known.[26]

Mr. President, visitors to the Rotunda here in the Capitol Building may view the excellence of John Vanderlyn's work in the "Landing of Columbus."

Now back to Theodosia's portrait. I was in the rare book section of the Library of Congress recently and came upon *The History of The Burr Portraits,* by John E. Stillwell, M.D., an edition limited to 125 copies. Dr. Stillwell relates that Burr carried Theodosia's picture on his lap during travel, and hung it in his room where he could address it. How deep was the love and how prophetic his forebodings when he wrote: "I bid you *bon soir* a dozen times before I shut you up in that dark case. I can never do it without regret. It seems as if I were *burying you alive.* And his love was returned a thousand fold, for she wrote: "I contemplate you with such a strange admixture of humility, admiration, reverence, love, and pride that very little superstition would be necessary to make me worship you as a superior being; such enthusiasm does your character excite in me. When I afterward revert to myself, how insignificant do my best qualities appear. My vanity would be greater if I had not been placed so near you; and yet my pride is our relationship. I had rather not live than not be the daughter of such a man." [27]

Mr. President, Burr was misunderstood, hated, distrusted, feared by many in his lifetime; yet, even his enemies were forced to concede his brilliance and courage, his fortitude and toughness, his deep paternal love, "and the elements so mix'd in him," that Aaron Burr, the Great Enigma, was no common mortal—a very uncommon man!

Mr. President, I ask unanimous consent that footnotes be printed in the RECORD at this point.

There being no objection, the footnotes were ordered to be printed in the RECORD, as follows:

FOOTNOTES

[1] Samuel Engle Burr, Jr., Colonel Aaron Burr, *The Misunderstood Man* (San Antonio, 1967), 5-8.

[2] Herbert S. Parmet and Marie B. Hecht, *Aaron Burr, Portrait of an Ambitious Man* (New York, 1967), 57-58.

In addition to this modern scholarly biography, see also Milton Lomask, *Aaron Burr* (New York, 1979), 2 vols.

[3] Jeannette Covert Nolan, *Soldier, Statesman and Defendant: Aaron Burr* (New York, 1972), 84.

[4] Ibid., 384.

[5] James Parton, *The Life and Times of Aaron Burr* (New York, 1857), 339-340.

[6] Ibid., 347.

[7] Ibid., 348-349.

[8] Ibid., 349-350.

[9] Ibid., 350-351.

[10] Ibid., 352.

[11] Ibid., 354.

[12] Ibid., 354-355.

[13] Parmet and Hecht, *Portrait,* 212-213.

[14] Ibid., 213.

[15] Parton, *The Life and Times of Aaron Burr,* 357.

[16] Ibid., 373.

[17] Gordon L. Thomas, Ph.D., "Aaron Burr's Farewell Address," *The Quarterly Journal of Speech,* Volume XXXIX, number 3 (October 1953), 277.

[18] Ibid., 277.

[19] Ibid., 278-279.

[20] Ibid., 279.

[21] Ibid., 280.

[22] Ibid., 280.

[23] Ibid., 282.

[24] Parton, *The Life and Times,* 595-596.

[25] Ibid., 597.

[26] Marius Schoonmaker, *John Vanderlyn, Artist* (Kingston, N.Y., 1950), 28.

[27] John E. Stillwell, M.D., *The History of the Burr Portraits* (New York? [Place of publication not specified in the book. Library of Congress Catalog shows "?" assuming that it was published there.] 1928), 52.

UNANIMOUS-CONSENT AGREEMENT—TREATY NO. 100-1

Mr. BYRD. Mr. President, as in executive session, I ask unanimous consent that when the Senate proceeds to the consideration of the International Wheat Agreement, 1986, treaty No. 100-1, the treaty be considered as having passed through its parliamentary stages up to and including the presentation of the resolution of ratification.

I further ask unanimous consent that when the resolution of ratification is pending, that there be 30 minutes for debate on the resolution, to be equally divided and controlled in the usual form.

I ask unanimous consent that immediately following disposition or yielding back of time, the question occur on the adoption of the resolution of ratification, without intervening motion or action; provided further, that there be 10 minutes to be equally divided on any debatable motion or appeal or point of order, and provided finally that the agreement be in the usual form, that on any motion to reconsider there be no time for debate.

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

ORDERS FOR TUESDAY, NOVEMBER 17, 1987

RECESS UNTIL 9:30 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:30 a.m. on Tuesday next.

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

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that followng the recognition of the two leaders under the standing order, there be a period for morning business to extend until the hour of 11:30 a.m. and that Senators may speak therein.

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

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent that at the hour of 11:30 a.m., on Tuesday next, the Senate go into executive session and proceed with Executive Calendar No. 5, the International Wheat Agreement.

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

VOTE

Mr. BYRD. Mr. President, I ask unanimous consent that at the hour of 12 noon, the vote occur on the resolution of ratification.

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

Mr. BYRD. Mr. President, I ask unanimous consent that it be in order at this time to order the yeas and nays as in executive session on the resolution of ratification.

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

Mr. BYRD. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that that rollcall vote be a 30-minute vote and that the call for the regular order occur automatically at the close of the 30 minutes.

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

MIDDAY RECESS TUESDAY

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate on Tuesday next stand in recess from the hour of 12:45 to 2 p.m.

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

Mr. BYRD. That will accommodate the two party caucuses.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that the 15-minute interlude between closing of the vote and the hour of 12:45 be morning business again, that Senators may speak therein for not to exceed 5 minutes each.

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

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that following the morning business interlude which I referred a moment ago between 12:30 p.m. and 12:45 p.m., the Senate return to legislative session.

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

PROGRAM

Mr. BYRD. Mr. President, on Tuesday next, the Senate will convene at the hour of 9:30 a.m. After the two leaders or their designees have been recognized under the standing order, there will be a period of morning business to extend until 11:30 a.m. during which Senators may speak.

At 11:30 a.m., the Senate will go into executive session, under the order previously entered, and there will be 30 minutes of debate on Executive Calendar No. 5, the International Wheat Agreement.

At 12 noon, the vote by rollcall previously ordered will occur on the resolution of ratification. There will be a 30-minute rollcall vote and the call for regular order will be automatic at the conclusion of the 30 minutes.

Upon the disposition of the resolution of ratification of the International Wheat Agreement, the Senate will return to legislative session and for the next 15 minutes there will be morning business. Senators will be permitted to speak for 5 minutes each therein. At 12:45 p.m., the Senate will stand in recess until the hour of 2 o'clock p.m. to accommodate the party caucuses.

At 2 p.m., the 1-hour debate on the motion to reconsider the failed attempt to waive the Budget Act for the housing conference report, S. 825, will ensue. And the vote on the motion to reconsider will occur at 3 p.m.

Mr. President, that will be a 15-minute rollcall vote. And daily I will remind Senators that rollcall votes, by an order entered at the beginning of the 100th Congress, are 15 minutes in length only.

So, at circa 3:15 p.m., if successful, if the motion to reconsider is carried, there will be 1 hour of debate on the budget waiver for the conference report. Therefore, at circa 4:15 p.m., the vote on the motion to waive the Budget Act for the conference report will occur. And that would be a 15-minute rollcall vote, in accordance with the standing order. If that motion to waive carries, then there will be 1 hour of debate on the conference report itself, beginning around 4:30 p.m., with the vote on the conference report on S. 825, the housing and community development bill, to occur at around 5:30 p.m.

These will be rollcall votes. So there will be several rollcall votes, Mr. President, on Tuesday.

RECESS UNTIL 9:30 A.M., TUESDAY, NOVEMBER 17, 1987

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 9:30 a.m. on Tuesday next.

The motion was agreed to; and, at 5:46 p.m., the Senate recessed until Tuesday, November 17, 1987, at 9:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 13, 1987:

DEPARTMENT OF DEFENSE

JUNE GIBBS BROWN, OF VIRGINIA, TO BE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

ROYCE C. LAMBERTH, OF VIRGINIA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA.